

NSW Law Reform Commission

REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Table of Contents

| | |
|---|-----|
| Table of Contents | 1 |
| Terms of Reference and Participants | 2 |
| Executive Summary | 4 |
| 1. Introduction | 7 |
| 2. Background | 11 |
| 3. Public Awareness | 21 |
| 4. Administration of the Act | 27 |
| 5. Impact of the Legislation | 70 |
| 6. Basic Principles of the Act | 115 |
| 7. Additional Protection of Privacy | 137 |
| 8. Particular Matters | 142 |
| Appendix A - Adoption Information Act 1990 and Adoption Information Regulation 1991 | 155 |
| Appendix B - Report: Survey and Qualitative Research | 181 |
| Appendix C - Schedule of Fees | 203 |

Terms of Reference and Participants

To the Honourable John Hannaford, MLC
Attorney General for New South Wales

Review of the Adoption Information Act 1990

Dear Attorney General

We make this Final Report pursuant to the reference to this Commission dated 16 December 1991.

Hon R M Hope QC

(Commissioner)

Professor David Weisbrot

(Commissioner)

Ms Clare Petre

(Commissioner)

Associate Professor Richard Chisholm

(Commissioner)

Terms of Reference

On 16 December 1991, the then Attorney General, the Honourable PEJ Collins QC MP referred the following matter to the Commission:

The Commission is to inquire into and report on the operation of the *Adoption Information Act* 1990 and the *Adoption Information Regulation* 1991, and in particular to consider:

- (i) the implementation, public awareness and administration of the legislation; and
- (ii) the impact of the legislation on birth parents, children surrendered for adoption, adopting parents and the extended families of all parties.

Participants

The Law Reform Commission is constituted by the *Law Reform Commission Act* 1967. For the purpose of the Adoption Information Reference, the Chairman, in accordance with the Act, created a Division comprising the following members of the Commission:

The Hon R M Hope QC

Professor David Weisbrot

Associate Professor Richard Chisholm (Commissioner in Charge)

Justice J Brownie (until 13 July 1992)

Ms Jane Stackpool (until 13 July 1992)

**NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT
1990**

Ms Clare Petre (from 13 July 1992)

Executive Director

Mr Peter Hennessy

Research and Writing

Associate Professor Richard Chisholm

Adrienne Bailey

Cathleen Sherry

Sharminie Niles

Librarian

Ms Beverley Caska

Desktop Publishing

Julie Freeman

Administrative Assistance

Ms Zoya Howes

Mrs Shirley Lucke

Ms Alison Dugan

Cover Design

Stephanie East

Julie Freeman

Executive Summary

The New South Wales Law Reform Commission was required to inquire into and report on the operation of the *Adoption Information Act* 1990. In particular, the Commission was required to consider public awareness, implementation and administration of the Act, and its impact on people affected by it: adopted persons, birth parents, adoptive parents, and their extended families. This Report presents the results of the Commission's review, its conclusions and recommendations.

The Commission has also prepared a Summary Report as a separate volume. The Summary Report is an abridged version of the Commission's findings and recommendations.

Comments and conclusions

The Commission's major comments and conclusions are as follows:

The majority of the public appears to be aware of the essence of the *Adoption Information Act* 1990.

Implementation of the Act has been accomplished successfully and its administration is working well.

The vast majority of adopted persons and birth parents welcome the rights to information, and exercise them responsibly.

Compliance with the contact veto system is very high. Although there were rumours or suggestions of breaches, a careful examination of the evidence revealed only one incident that appeared to be a breach of a veto.

Post-adoption contact and reunions are seen as beneficial by almost all who initiate them, and positive or acceptable by the majority of those who are contacted.

The *Adoption Information Act* 1990 has functioned very much as expected by Parliament, with the following qualifications that:

- it is possible that the number of people who are unaware that they are adopted is somewhat higher than estimated;
- there may be somewhat greater resistance to the Act than expected on the part of adoptive parents (a majority) and adoptees (a significant minority); and
- compliance with the contact veto system is probably somewhat higher than expected.

With regard to fees under the Act:

Guidelines for the waiver of fees should be well publicised, and drawn to the attention of all applicants for birth certificates and contact vetoes.

Removing the fee for lodging a contact veto may not only be considered equitable, but would also enhance the functioning and acceptability of the Act.

The structure of fees should be re-examined to ascertain whether a closer fit could be achieved between the fees charged and the services provided to an applicant.

From its study of the operation and impact of the Act, the experience under similar laws outside New South Wales, and the submissions made in the present review, the Commission concludes that there is no need to

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

change the basic principles of the Act, which provide a reasonable and workable resolution of the conflicting interests involved. However, the evidence of real distress and anxiety caused to many adoptive parents and some adoptees and birth parents justifies some modifications to current law and practice.

Recommendations

The Commission's major recommendations are as follows:

An **Adoption Information Exchange** should be established, to be administered in a manner similar to the Reunion Information Register, on which any person directly involved in the adoption, ie adoptee, birth parent or adoptive parent (or other persons at the discretion of the Director-General) may leave information or messages for any other such person.

An **Advance Notice System** should be implemented by which an adopted person, birth parent or adoptive parent could request prior notice that an application had been made for information under the Adoption Information Act and the release of information be made subject to a delay of two months.

The Adoption Information Act should be amended to give the Director-General a **discretion** to refuse to supply a birth certificate or prescribed information or to attach conditions to the supply of that information. Adopted persons, birth parents and (with the consent of the adopted person) adoptive parents should be able to apply to the Director-General to exercise the discretion. The power should be limited to exceptional circumstances where it is necessary to avoid serious harm. It should be subject to the Community Welfare Appeals Tribunal.

The other recommendations made by the Commission are as follows:

The Department of Community Services should continue to make provision for resources to be used for publicity about the adoption information legislation aimed at all members of the community who are affected by it.

Provision should be made for appeal to the Community Welfare Appeals Tribunal against the exercise of all discretionary decisions affecting people's interests and entitlements under the Act, and that the availability of such appeals be appropriately publicised.

The Act should be amended to remove the requirement that applicants seeking information from Supreme Court records should have taken all reasonable steps to obtain the information from other information sources, and that necessary arrangements be made, and resources provided, for more ready access to adoption information contained in Supreme Court records.

The Department should reconsider the current five day period at the end of which a contact veto takes effect. If it is not possible to develop a more reliable procedure for remitting applications speedily to the Family Information Service, a longer period should be prescribed by the Act.

The Act should be amended to give the Director-General a discretionary power to supply birth certificates, identifying and other information in situations falling outside existing statutory entitlements.

The legislative provisions relating to birth fathers should be clarified in order to implement more fully the objects of the Act.

Clause 12 of the Regulation (which prohibits release of information identifying an unacknowledged birth father) should be repealed.

Birth parents should have a statutory right to non-identifying information about the adopted person during their childhood corresponding to the existing rights of adoptive parents to such information about the birth parents.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

The Adoption Information Act 1990 and the Disability Services and Guardianship Act 1987 should be amended to give the Guardianship Board necessary powers to allow it to make appropriate orders where, because of disability, it is impossible or unreasonable for people to exercise rights under the Adoption Information Act personally.

The Act should be amended to allow, subject to the Director-General's discretion, the rights to information and to place a veto of an adopted person or a birth parent to be inherited by relatives on that person's death. The contact veto system should be extended to cover such applicants.

Clause 14 of the Regulation (which prescribes when information as to "last known name and address" can be released) should be repealed.

The legislation should clearly prescribe the circumstances in which FIS staff have the right or obligation to examine messages they pass between people associated with adoption. Furthermore, guidelines should ensure appropriate procedures are followed in relation to taking and giving such messages, and are made known to senders and recipients of messages.

The Act should be amended so that the Contact Veto Register terminates only if Parliament so decides.

1. Introduction

BACKGROUND TO THE REFERENCE

1.1 In the course of debate on the *Adoption Information Bill*, the Government foreshadowed that, because of the sensitive issues involved, this important legislation would be monitored and evaluated. Concerns had been expressed in the course of debate about the effect of providing access to information and the invasion of privacy this could involve. Opposition to the law had been expressed by some members of the public. Objection was made to the extent of information available as of right and doubt was cast on the effectiveness of the contact veto system. Following the commencement of operation of the legislation in April 1991, the Government asked the New South Wales Law Reform Commission to conduct a review of the legislation. A grant was made available to the Commission from the Department of Health and Community Services providing the resources necessary to carry out the review.

APPROACH OF THE COMMISSION

The Commission's task

1.2 The terms of reference clearly involve a close examination of the operation of the Act, and its effects on the groups specifically mentioned: birth parents, children surrendered for adoption, adopting parents and their extended families. The Parliament, and previously the Legislative Council Standing Committee on Social Issues (the Willis Committee), had certain hopes and expectations about how the Act would operate and what it would achieve. The Commission's task was to examine how the Act actually worked, how it affected people; and to see how the expectations compared with the reality. Much of this Report, accordingly, sets out the results of what was essentially a fact-finding exercise.

1.3 Although the terms of reference do not expressly ask the Commission to make recommendations, they implicitly invite the Commission to make any recommendations it sees fit about the legislation. Accordingly, this Report will include some recommendations arising from the Commission's investigation.

Public Consultation

1.4 The primary task of the Reference was collection of information about the implementation and administration of the Act. The Commission employed a number of methods to ascertain from those affected how it was operating. It was necessary to consult, as extensively as time and resources permitted, with those affected by the Act throughout New South Wales. Invitations to make submissions or comments to the Commission were made in press releases and advertisements, and in the many media appearances made by Commission members and staff.¹ An Issues Paper was published in March and approximately 1500 copies distributed. The Commission invited people to make their submissions and comments in writing, by telephone or in person, and arranged to meet with members of adoption organisations and groups. In Sydney, a public hearing was held on 13 March 1992, and in late April and early May the Commission conducted public hearings and took private submissions in seven country centres: Queanbeyan, Wagga Wagga, Lismore, Tamworth, Wollongong, Dubbo, and Newcastle. In all publicity for the review the Commission invited submissions and comments from anyone who was affected by the Act or who wanted to express a view, indicating that confidentiality would be respected.

1.5 The Commission also wrote to Members of Parliament about the review and distributed copies of the Issues Paper to them. The Commission appreciates the interest shown by members of Parliament in this review and the publicity many gave to our efforts to consult with as many people as possible affected by the *Adoption Information Act*.

1.6 The submissions received in response to these efforts constitute the major evidence on which the Commission relies in this Report. More than 700 written submissions were received, and personal and telephone submissions were taken from more than 300 people.² Nearly 100 people addressed the eight public hearings, and the Commission met with several organisations whose members attended in a group for discussion and presentation of their submissions. The response to the calls for submissions and comments involved one of the most extensive exercises in public consultation the Commission has ever conducted. The process imposed considerable demands on administrative resources and staff. The results were, in the Commission's view,

justification for the efforts. The submissions, which as noted in Chapter 5 were of very high quality, provide a unique insight into the experience of adoption as well as the impact of the legislation on members of the adoption community.

1.7 The other source of evidence on the operation of the *Adoption Information Act* 1990 was those parts of the administration and other organisations with responsibilities under the Act. The Commission examined the activities of the two agencies with principal roles, the Family Information Service of the Department of Community Services (known as FIS) which has the primary responsibility for administration, and the Registry of Births, Deaths and Marriages, which has the main information function under the Act. In addition, the Commission looked at the operation of the Post Adoption Resource Centre (PARC), established with funding from the Department of Community Services to provide a counselling service for members of the adoption community to meet their needs arising out of the adoption information legislation. Senior staff of all these bodies co-operated fully with the inquiry, and provided a great deal of valuable information and advice to the Commission on a range of issues. To the extent that other government and non-government agencies have functions under the Act, the Commission also made enquiries as to their activities.

1.8 The Commission also took account of other material and research relevant to this legislation. The Report of the Willis Committee, *Accessing Adoption Information* 1989³ and the non-confidential submissions made to that Committee, and the Parliamentary debates on the *Adoption Information Bill* 1990 formed an important basis for understanding the purpose of the legislation and the expectations held about its operation. Members of the Commission met with members of the Willis Committee early in the review to discuss the Committee's inquiry and Report. Submissions and representations made to the Premier and the Minister for Community Services following the announcement of a review of the legislation were referred by them to the Commission and were also considered.

Social research

1.9 The Commission gave careful consideration to the possible use of social research. The processes of consultation which occurred on this reference, while of great value, do not necessarily provide reliable quantitative information about the total population affected by the Act. Those who choose to make submissions to the Commission, or to parliamentarians, may not necessarily be representative of all people in the relevant categories. Those vigorously in favour, or opposed, may be over-represented, and the efforts of groups to encourage submissions may result in disproportionate numbers of responses expressing particular views. For this reason, the Commission examined whether it would be possible and desirable to conduct systematic surveys of representative samples of the various categories of people affected by the Act, such as applicants for a birth certificate or lodgers of a contact veto.

1.10 Early in the inquiry the Commission obtained valuable advice on this and related issues from a number of people having relevant expertise, in addition to senior staff at FIS, PARC and the Registry of Births Deaths and Marriages. It expresses its gratitude in particular to Associate Professor George Cooney of the School of Behavioural Sciences, Macquarie University; Mrs Alison Croft, Chairperson, NSW Committee on Adoption; and Mrs Audrey Marshall, consultant social worker. The Commission also benefited from advice from Ms Susan Young and Mr John Schwartzkoff, of MSJ Keys Young.

1.11 After careful consideration, the Commission decided that quantitative research of representative samples was not appropriate in the present review. There were two main reasons for this conclusion. First, it would have been difficult or impossible to contact those involved without possibly invading their privacy, a conclusion confirmed in advice to the Commission from the Privacy Committee.⁴ Furthermore, the practical limitations of identifying the relevant populations and securing the participation of a sufficiently sizeable sample in the time available would prevent such research from yielding decisive answers.

Qualitative research

1.12 The Commission commissioned the social research organisation MSJ Keys Young to undertake a limited qualitative research study. This is a study of a number of individuals who consented to take part in the research. The method of selecting these individuals was intended to ensure that the Commission received very detailed insight into the experiences of a number of people who were affected by the Act in different ways. Although the limited number involved in this study, and the methods of selection, mean that no claims can be made that the

experiences of those individuals are representative, the study provides valuable insights into the variety of ways that the Act can affect people, and has assisted the Commission to analyse the impact of the Act. This study is set out in Appendix B, and will be referred to in Chapter 5.

Omnibus survey on awareness of the Act

1.13 The Commission's terms of reference include an assessment of the extent of knowledge of the Act. The Commission therefore sought the assistance of MSJ Keys Young on ways of assessing public awareness. It was decided to arrange for suitable questions to be included in a market research survey (an omnibus survey) conducted by Roy Morgan Research Centre. This survey and its results are set out in Appendix B and described in Chapter 3.

THE REPORT

1.14 This Report presents the Commission's findings on the terms of reference.

1.15 Chapter 2 provides a brief introduction to the *Adoption Information Act 1990* and the context in which it came into being. The *Adoption Information Act 1990* and the *Adoption Information Regulation 1990* are reproduced in Appendix A to the Report. The legislation has been included in order to reduce the need for extensive quotation of the terms of the legislation in the body of the Report, and in order to make the legislation more available to those who may use it.

1.16 Chapter 3 describes the publicity given to the legislation and presents the Commission's findings on public awareness of the Act, based on submissions and on the relevant results of the omnibus survey described in the MSJ Keys Young Report in Appendix B.

1.17 Chapter 4 reviews the implementation and administration of the legislation. The roles of the Family Information Service, the Registry of Births, Deaths and Marriages and the Post Adoption Resource Centre are examined. The operation of the main provisions of the Act, access to birth certificates, supply of prescribed information, the Reunion Information Register and the contact veto system are also considered in this Chapter.

1.18 Chapter 5 reports on the impact of the legislation on birth parents, adopted people, adoptive parents and the extended families of all parties. The Commission has relied on the submissions received, the research commissioned for this review and other published research to assess this part of the terms of reference.

1.19 Chapter 6 examines what the Commission regards as the basic principles of the legislation, matters that were addressed in many submissions to this review.

1.20 Chapter 7 sets out recommendations for some additional protections for the privacy of those affected by the legislation. These recommendations acknowledge the degree of anxiety which some people feel in association with the release of adoption information. The Commission proposes the creation of an Adoption Information Exchange, and an Advance Notice System, and a discretionary power to withhold information. These recommendations for change to the law and practice relating to the release of information are intended to provide a degree of relief and protection for those who see the rights created by the *Adoption Information Act* as unjustifiably intruding on their privacy.

1.21 Finally, in Chapter 8 we make reference to several particular, although minor, aspects of the legislation which in the Commission's view should be amended.

FOOTNOTES

1. The Commission also publicised the review extensively within the adoption community and the community generally, to legal, medical and social work professionals, and to members of the New South Wales Parliament. Media advertising and publicity by the Commission included the following activities:

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Television interview on a Sydney commercial evening news.

Radio interviews on approximately 15 metropolitan and country radio stations and networks; one interstate interview; two sessions of approximately 30 minutes each with talkback.

Press releases to all major radio, television and print media in February and April.

Press releases to 120 suburban and country newspapers in February and April.

Press releases to radio and television stations in country areas relating to the public hearings.

Advertisements in four weekend newspapers circulating throughout New South Wales and interstate during the weekend of 28-29 March 1992, and in one national newspaper, 25 April 1990, and in Koori News, 8 April 1990.

Advertisements in country newspapers in each of the locations for public hearings; total of 8 advertisements.

2. The submissions received were numbered. Submission numbers appear in bold in the Report, immediately preceding a quotation.
3. New South Wales. Legislative Council Standing Committee on Social Issues, *Accessing Adoption Information* (October 1989) (The Hon Max Willis Chairman); referred to as the *Willis Report*.
4. New South Wales Privacy Committee *Letter* (1 April 1992).

2. Background

ADOPTION INFORMATION LAW IN NSW BEFORE 1991

Early adoption laws

2.1 Adoption in the legal sense was introduced into New South Wales law by Part XIV of the *Child Welfare Act* 1923. In earlier times the word 'adoption' had been used to refer to the permanent placement of children in the families of persons who were not their parents, but these arrangements did not have the legal effect of transferring parental rights and responsibilities from the birth parents to the 'adopting' parents.¹ The 1923 Act provided for the Supreme Court to make adoption orders on the application of a husband and wife, or a married man, a married woman with the consent of her husband, or an unmarried woman, subject to certain limitations relating to age. To make an order, the Court had to be satisfied as to parental consent and the suitability of the applicants, and satisfied that the adoption would promote the welfare of the child. Consent was required from parents or guardians, but could be dispensed with "if the court [was] of the opinion that such person has deserted or abandoned the child". When an adoption order was made:

for all purposes civil and criminal, and as regards all legal and equitable rights and liabilities, the adopted child shall be deemed to be a child of the adopting parent, and the adopting parent shall be deemed to be a parent of the adopted child as if such child had been born to such adopting parent in lawful wedlock, and the order of adoption shall terminate all rights and liabilities existing between the child and his natural parents other than the right of the child to take property as heir or next of kin of his natural parents or of their lineal or collateral kindred.²

2.2 The section further provided that the adopted child was not entitled to take property "limited to the heirs of the body of the adopting parent", or as next of kin to any lateral or collateral kindred, or child, of the adopting parent.

2.3 An amendment in 1924 provided that applications could be heard in open court or in public or private chambers, and that the court could order that any persons other than the parties could be excluded from the court. The child was to take the surname of the adopting parents.³ The rule-making power of the judges was amended to include rules "preventing the publication of the names of the child and the applicant or either of them in cases in which such publication would be inexpedient".

2.4 Adoption law was elaborated in certain respects by amendments in 1939,⁴ 1941,⁵ and 1961.⁶ The 1939 Act provided that the Registrar-General should register orders of adoption in the manner prescribed by rules of court, but did not deal with the question of access to such records. Under the legislation governing the registration of births deaths and marriages, there was no specific provision limiting access to copies of original birth registrations: access to them, like access to other records, was a matter for the discretion of the Registrar-General.⁷ Some insight into the basis on which that discretion was exercised is contained in a decision of the Court of Appeal in 1967.⁸ The Court rejected an argument that an adult adoptee was entitled *as of right* to his or her birth certificate, affirming that the matter was within the discretion of the Registrar-General. The Court described⁹ the then policy of the Registrar-General in the following terms:

It appears that the refusal was in accordance with a policy pursued by the Registrar-General's Department of not issuing a certified copy of the original registration of birth of a child who has been legally adopted save in the most exceptional circumstances. The view taken in the Department is that, in determining the sufficiency of any reason furnished by an applicant for requiring a certified copy, the Registrar-General is obliged to take into account matters of public policy. In determining the sufficiency or otherwise of the reason furnished in an application for a certified copy of the original birth registration of an adopted child, regard must be had, it is said, to the interests of all persons concerned, including the adopted child, the adoptive parents and the natural parents. Thus, in the present instance, the Registrar-General took into account the possibility of embarrassing, or more serious consequences which could be caused to one or more classes of persons by the disclosure of the original information contained in the birth registration of the applicant...

2.5 The 1939 Act introduced a prohibition on receiving payments in relation to adoption,¹⁰ and this was elaborated in the 1961 Act.¹¹ The 1961 Act also prohibited the publication of advertisements indicating that a parent wished to have a child adopted, or that a person wished to adopt a child, or that a person wished to make arrangements for adoption. These provisions were clearly intended to control private adoptions, a matter to be dealt with more comprehensively in the *Adoption of Children Act* 1965 (which came into force in 1967).

2.6 Adoption legislation prior to 1967, therefore, did not expressly restrict the parties' access to records or identifying information, and the possibility of rights of inheritance in the adoptee from the birth parents obviously required that the birth relationship could, in such cases, be known to the parties. It is difficult to determine the extent to which in practice adoption had the effect of preventing parties to the adoption from having access to identifying information. Evidence to the Commission indicates that in some cases parties had the opportunity to discover each others' identity at the time of the adoption. It appears to have been the practice of the Registrar-General, at least by 1967, not to issue original birth certificates to adult adoptees unless there were exceptional circumstances. On the other hand, prior to 1967 the adopting parents were given a copy of the order of adoption, which disclosed the name of the birth mother (and at times of the birth father). In some forms of adoption, then as later, the identities of the parties would be known to each other. Such cases would include adoptions by natural parents, step-parents and relatives, and, perhaps, many adoptions arranged privately. In summary, prior to the 1967 there was no *legal* prohibition on the disclosure of identifying information; some forms of adoption practice provided a degree of confidentiality for the adoptive parents, though not for the birth parents, who could be identified from the order of adoption given to adoptive parents.

The Adoption of Children Act 1965

2.7 More comprehensive legislative treatment of the subject was introduced with the *Adoption of Children Act* 1965, which formed part of what was originally intended to be uniform Australian adoption laws, and, as later amended, continues to govern adoption. This legislation, which came into force in 1967, introduced into adoption law for the first time the rule that the child's welfare is to be regarded as the paramount consideration.¹² It also contained rules designed to ensure that adoptions outside the extended family were arranged by the Child Welfare Department (now the Department of Community Services) or by authorised adoption agencies.¹³ Previously, they could be arranged by the parties themselves, or by an intermediary such as a legal or medical practitioner or a clergyman.¹⁴ It also terminated the rights of adoptees to inherit on the intestacy of birth parents, and gave them full rights to inherit from adoptive parents and siblings.¹⁵ In other respects, too, it gave new emphasis to what is often referred to as the 'clean break' between the child and the birth family. It became an offence for a member of the birth family to take a child from the adoptive parents,¹⁶ or without their consent to communicate with the child.¹⁷ Publication of proceedings liable to identify the parties was forbidden.¹⁸

2.8 With the introduction of the 1965 Act, the *Registration of Births, Deaths and Marriages Act* 1899 was amended to provide for separate registration of adoptions.¹⁹ When an adoption order was made, the details were recorded at the Registry of Births, Deaths and Marriages and the Registry issued what was in effect a new birth certificate, showing the adopted person to be the child of the adopters.²⁰ This was known as the 'amended birth certificate'. Adopted persons, even when adult, had no right to obtain their original birth certificate, except on the order of a court.²¹ Similarly, birth parents had no right to obtain the amended birth certificate of their adopted children and could only obtain a copy of the original birth certificate with the consent of the Director-General of the Child Welfare Department.²² Nor did adoptive parents or other relatives have rights to information about members of the birth family.

2.9 The 1965 Act introduced new provisions restricting access to court and other records. Proceedings were now to be closed to the public unless the court otherwise ordered.²³ The contents of reports to the Court were not to be made available to any person, even a party, unless the Court so ordered.²⁴ The records of proceedings under the Act were not to be open to inspection by any person, subject to the regulations.²⁵ The regulations provided that such records were open to inspection only by order of the court,²⁶ and by officers of the Court, by the Director-General or the principal officer of a private adoption agency in relation to adoptions arranged by that agency.²⁷ Adoption records kept by authorised adoption agencies were not open to inspection except to certain officials such as staff of the agency or of the Department of Community Services.²⁸ The Director-General and principal officers of private adoption agencies were required to take such precautions as they considered necessary to avoid revealing to any person not directly associated with the proceedings, the name and address of

the applicants, or “any other matter likely to enable that applicant, the child or the father or mother or a guardian of the child to be identified”.²⁹

2.10 The new emphasis on secrecy was underlined further by a provision enabling executors who did not know the identity of an adopted beneficiary of a birth relative to transfer property to the Director-General, who would then apply it for the benefit of the adopted person.³⁰

2.11 The 1965 Act, therefore introduced for the first time relatively comprehensive provisions intended to shroud adoption in secrecy. Many of these provisions had retrospective operation, applying the approach of secrecy to adoptions that took place under the previous statutory conditions. The effectiveness of these new provisions would no doubt have been increased by the prohibition on privately arranged adoptions. Even during this period, however, adoption was not always associated with secrecy. Some adoptions occurred in situations where the parties were known to each other. These included many adoptions by step-parents and relatives, as well as adoptions by former foster parents,³¹ and adoption of older children who may have spent part of their lives with a birth parent or relative. The court made it clear that such knowledge, and even continuing contact with birth relatives, was not inconsistent with adoption.³² Similarly, the Family Court has held that in appropriate circumstances an order for access may be made in favour of a birth parent in relation to an adopted child.³³

2.12 The rules of law and professional practice that were intended to promote secrecy in adoption appear to have been generally effective in relation to adoptions of new born children to non-relatives. Evidence to the Commission, however, indicates that they were by no means always successful. Sometimes adopted persons or birth parents came across clues or information that enabled them to trace their birth relatives. Although some adoptive parents, especially in earlier times, might have attempted to keep the children ignorant of the fact of their adoption, it seems that one way or another the children often discovered or suspected their adopted status. With the help of organisations such as Jigsaw and Adoption Triangle, some people succeeded, sometimes after many years of searching, in discovering their biological origins, or tracing members of their birth families.

The social background to secrecy in adoption

2.13 The secrecy surrounding adoption during this period was related to the social conditions and beliefs of the time. Most children surrendered for adoption were born outside marriage, and the births often resulted from unintended pregnancies, to which young women were particularly vulnerable: sex education and contraceptive services were lacking or inadequate, and abortion often was unavailable or unacceptable. Stigma was associated with all those immediately associated with adoption: unmarried motherhood and illegitimate birth were widely seen as shameful, and infertility a source of embarrassment to adopting parents. Adoption was seen as a way of avoiding this stigma and serving the needs of all parties. The child would have the benefit of the status of legitimacy, and a good home with loving parents who very much wanted a child. The birth mother could avoid unmarried parenthood, achieve for the child what she expected would be a better home than she could provide, and make a new life for herself. The adopting parents would have a much-desired child of their own.

2.14 It was not uncommon for adoption arrangements to conceal the true facts and create the illusion that the child had been born to the adoptive parents. The birth mother would sometimes leave her usual community to have the baby in secret. The child could be ‘matched’ in appearance with the adopting parents, and the adopting mother, in some cases, would simulate pregnancy to create the illusion that she was the biological mother. The children would not necessarily ever be told of their adoptive status. Not all cases, however, involved such thoroughgoing attempts to conceal the biological facts, and by at least the mid 1960s adoptive parents were being advised by adoption agencies to tell their children of their adoptive status. Even where the children were ‘told’, however, their adoptive status was often an awkward subject both in the family and the general community, and it was widely assumed to be best for all concerned if all parties treated the adoptive family as no different from other families.

Pressures for change

2.15 By the 1980s the assumptions and values underlying this model of adoption had altered. The stigma associated with illegitimate birth and unmarried parenthood was fading: the supporting mother’s benefit was introduced in 1973, and in the mid-1970s legislation intended to remove legal discrimination against ex-nuptial children (as they were now to be called) was adopted throughout Australia. A greater degree of frankness about

sexual matters probably also reduced the stigma associated with infertility. By the late 1970s, the number of healthy new-born babies surrendered for adoption had commenced what was to become a steep decline.

2.16 These developments reduced the need to maintain the pretence that adopted children were the biological children of the adoptive parents. Other developments contributed to a further erosion of the 'clean break' approach by suggesting that the interests of some of the parties, and perhaps all, would be served by a greater acknowledgment of the biological parentage of adoptees. Autobiographical publications and research indicated that many adoptees, including those in happy adoptive homes, experienced strong desires to know their biological inheritance, and in some cases to make contact with their birth mothers or other members of their birth families. Research also revealed that for many birth mothers, adoption had never marked a 'clean break' in an emotional sense. Many of them had consented to adoption only with great reluctance, in the face of circumstances which made it difficult or impossible for them to keep their children. It became apparent that for many birth mothers, losing their children to adoption was the cause of intense and continuing emotions, notably grief and often shame and guilt. Far from having made a fresh start, the unresolved emotions associated with the relinquishment had continued to trouble them. Many birth mothers had longed for, and some sought, information about what had happened to their children, and if possible contact with them. Similar feelings were experienced by some birth fathers, particularly, but not only, when they had married the birth mother.

2.17 The positive experiences in countries where post-adoption information was available, combined with strong pleas from adopted people, created a new interest in Australia in opening up access to original birth records. England did so in 1976. Access to original birth records seemed more consistent with emerging views of human rights, especially notions of non-discrimination, with a growing appreciation of the importance of medical information about inheritable diseases and other characteristics, and with a growing interest in genealogical research. The view that adult adoptees should have access as of right to their original birth records began to be discussed enthusiastically and rapidly became the dominant view of professionals working in the area of adoption.

Openness: developments and debates

2.18 These developments were increasingly reflected in adoption practice, which now began to stress the importance of honesty and frankness. Since the 1960s adoptive parents have been increasingly encouraged, and more recently (since 1977) have been required to promise, to inform their children of their adoptive status. It has also increasingly become the practice of adoption agencies to supply the parties to the adoption with 'non-identifying' information, namely information of a social and medical nature. Adoptive parents and adopted persons, for example, might receive information about the birth mother's physical characteristics such as hair colour, or level of education. From the early 1980s, agencies developed practices such as ongoing exchanges of information through the adoption agency, provision of photographs of the child for the birth parent, and meetings between adoptive parents and birth parents around the time of placement. Such practices have marked a more open and flexible approach to adoption placement.

2.19 In 1976, the Department of Youth and Community Services (as it was then named) established the Adopted Persons Contact Register.³⁴ Adopted persons and birth parents could place their names on this register, and where there was a match the Department arranged a reunion. Adopted persons under 18 years could place their names on the register only with the consent of their adoptive parents. Although there were over 8,000 names on the register by 1989, the rate of reunions was only about 14%. From 1981, in limited circumstances, the Department would search for and make contact with a person who was not on the Register on behalf of someone who was.³⁵ Since 1986 this service, called outreach, was offered where the applicant was suffering from a serious congenital medical condition or was an adolescent experiencing significant emotional or behavioural problems, or where there were "strong compassionate grounds relating to an exceptional degree of deprivation or loss".³⁶

2.20 The First Australian Conference on Adoption was also held in 1976. That conference showed strong support for the right of adopted people to have access to their original birth certificates. This theme was to be repeated, with increasing confidence as more was learned about overseas developments, in subsequent conferences and seminars, and was a recurrent topic in publications on adoption policy.³⁷ Proposals for reform were at first rejected in New South Wales, but the pressure for change grew as other States, starting with Victoria in 1984, were changing their laws to provide access to birth certificates and information. The change came in New South Wales with the *Adoption Information Act 1990*.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

2.21 The period between the 1970s and the 1990s saw continuing debate on the issues raised by the pressure for more openness in adoption. The new trends created great apprehension for some, especially adoptive parents who had adopted children in the climate of secrecy and feared that much that they had worked for was put at risk: they might lose the affections of their children, or have their lives otherwise complicated by the intrusion of members of the birth family. For adopting parents who had concealed the fact of the adoption from others, especially the adoptees themselves, the new openness threatened to reveal the true situation and raise difficult questions about why it had been concealed for so long. Even where the adoptees had been 'told', the new rights created dilemmas and difficulties: commencing a search could lead to revelations, emotions and relationships that would not necessarily be easy, and could have unpredictable effects on existing family relationships. There was apprehension, too, for some birth parents, especially those who had not revealed the facts to members of their present families. For some, opening the records held the promise of a personal voyage of discovery and might answer long-standing questions and ease stress and anxiety which had built up over the years; for others, it appeared to threaten the stability of their family relationships. For the former, it seemed indefensible for the law to continue to protect the secrecy of former times; for the latter group, to open the records seemed grossly unfair, a retrospective law that betrayed the assurances of confidentiality that they saw themselves as having been given when they adopted children, or surrendered a child for adoption. Not surprisingly, the debate about adoption information law was intense and emotional, and various legal mechanisms were devised, or advocated, in an attempt to respond compassionately and fairly to the wide range of interests and perspectives held by those involved in adoption.

THE ADOPTION INFORMATION ACT 1990

2.22 The *Adoption Information Act* 1990 came fully into operation on 2 April 1991, although certain provisions relating to contact vetoes commenced at the time the Act received royal assent on 26 October 1990. It represents a major change in the approach taken to confidentiality of information concerning parties to adoptions. It applies to all adoptions, including adoptions made before it came into force. Indeed, since its major provisions relate to adopted persons who have turned 18 it currently affects people involved in adoption orders made before 1974.

2.23 The *Adoption Information Bill* was debated in Parliament in April 1991, and received the support of all major parties; indeed only one member of the Legislative Council spoke against it. The Bill had been drafted in accordance with the recommendations of the report from the Legislative Council Standing Committee on Social Issues Inquiry into Accessing Adoption Information, held in 1989. The Standing Committee comprised members of all the major political parties, chaired by the Hon Max Willis, and is referred to in this Report as the Willis Committee; and its report *Accessing Adoption Information* as the *Willis Report*. The Willis Committee undertook "to examine and report on the facilities, procedures and restrictions relating to access to information on adoptions in New South Wales" following a reference by the then Minister for Family and Community Services. During 1989 the Committee received 443 written submissions and took evidence from 84 witnesses. The submissions and evidence to the Willis Committee, except for the confidential submissions, were among the material studied by the Commission, and were valuable in highlighting what people expected of the law.

2.24 The Willis Committee argued that the previous policy and practices that denied adopted persons and birth parents access to identifying information concerning adoptions should no longer be supported by law. In doing this, the Committee endorsed the move, in Australia and several other countries, to open adoption records and facilitate reunions between people separated by adoption. One of the major and unanimous recommendations of the Willis Committee was that adoptees should have unqualified, retrospective access to their original birth certificate once they reached 18 years and further information to enable current identification if that is necessary. It further recommended that birth parents have retrospective and unqualified access to their adopted child's post-adoptive birth certificate and such further information required for identification once the adoptee reaches 18. The creation of a Contact Veto Register was also recommended to protect the rights of those birth parents and adoptees who wish to maintain their privacy.

2.25 These recommendations are implemented by the *Adoption Information Act* 1990. The rights to information created by the Act are absolute, in that adopted persons cannot legally prevent birth parents from obtaining their amended birth certificates, nor can birth parents prevent the adopted person from obtaining his or her original birth certificate, and the other information specified in the Act. There are, however, provisions designed to allow birth parents and adopted persons to prevent contact with each other by lodging a contact veto. A detailed account of the operation of the Act is given in Chapter 4.

2.26 Administration of the Act involves two government agencies, the Family Information Service of the Department of Community Services and the Registry of Births, Deaths and Marriages. The Registry records all contact vetoes lodged with the Department of Community Services on the relevant certificates of birth or adoption, and provides original and amended birth certificates or assistance in searching records to give effect to the information rights created by the *Adoption Information Act 1990*. The Act also provides a specific entitlement for adopted people and birth parents, who have obtained the original or amended birth certificate, to have further searches done on their behalf by the Registry. The Family Information Service supplies prescribed information from Departmental records, maintains the Contact Veto Register, administers the Reunion Information Register, and provides information and support to people affected by the Act. In addition to normal Registry fees for copies of certificates, a \$100 fee is payable with an original or amended birth certificate, for the other services available under the Act, and there is a \$50 fee for lodging a contact veto.³⁸ The Director-General of the Department of Community Services has used his discretion to allow for the waiver of these fees.

ADOPTION INFORMATION LAW IN OTHER JURISDICTIONS

2.27 The development of laws granting access to birth certificates and identifying adoption information is a recent phenomenon in Australia. Such laws have however been in existence for many years in some other jurisdictions, notably Sweden, Finland, Scotland, England and Wales, Israel, and New Zealand.³⁹ In Australia, such laws have been introduced in most jurisdictions, and are under review in others.⁴⁰ It is outside the scope of this review to engage in a detailed comparison of law and practice in other jurisdictions, but the main features⁴¹ of the Australian legislation may be briefly summarised as follows.

Victoria

2.28 Adult adoptees are entitled as of right to their birth certificates, but are required to attend an interview.⁴² They are also entitled to information about themselves, whether or not it would identify a birth parent or relative.⁴³ There is no provision for veto by the birth parent against the release of the certificate, information or contact. Birth parents are entitled to information which would identify the adopted person or the whereabouts of the adoptive parents only with the agreement of the adopted person,⁴⁴ but are entitled to non-identifying information without requiring such consent.

Queensland⁴⁵

2.29 Adult adoptees are entitled to the name of their birth parent at the date of the consent to adoption and the date of birth of the birth parent, if the birth parent has not lodged an objection to the release of this information.⁴⁶ There are similar provisions relating to information about full and half birth siblings.⁴⁷ Birth parents are entitled to the names of the adopted person, and of the adoptive parents, only if the adoptee has not lodged an objection to the release of this information.⁴⁸ There is also provision for the lodging of objections to contact, knowing breach of which is an offence.⁴⁹

South Australia

2.30 Adult adoptees are entitled, unless the birth parent has directed otherwise, to the names, dates of birth and occupations of birth parents, and other non-identifying information relating to the birth parents in the Director-General's possession.⁵⁰ Names and other information about siblings also adopted are also available to an adopted person. Unless renewed, directions expire after five years.⁵¹ The Director-General however has a discretion to supply such information notwithstanding contrary directions if it is "necessary in the interests of an adopted person".⁵² Similar provisions apply to birth parents: subject to a contrary direction, they are entitled to the names of the adopted person and the adoptive parents and other non-identifying information that relates to the adopted person.⁵³

Western Australia

2.31 An adult adopted person is entitled to the original birth certificate,⁵⁴ providing that no objection to contact has been made by the birth parent and that the adoptee has received counselling.⁵⁵ The Director-General also has a discretionary power to release information to parties to adoption in "special circumstances".⁵⁶

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Recommendations were made by the Adoption Legislation Review Committee in 1991 that would allow adoptees and birth parents access to identifying information.⁵⁷ No veto system has been recommended, only a register for people to express their wishes in relation to contact. The Western Australian government has indicated recently that it will enact most of the Review Committee's recommendations.⁵⁸

Tasmania

2.32 Adult adoptees may obtain information identifying their birth parents only where the birth parent has agreed.⁵⁹ Birth parents have the same limited rights in relation to information about adoptees and adoptive parents.⁶⁰ The Court has a discretion to release information where there is no entitlement under the Act in "special circumstances".⁶¹

Australian Capital Territory

2.33 Draft legislation is under consideration.⁶² Rights to information are proposed for adopted persons, birth parents, and adoptive parents, as well as relatives.⁶³ Adoptees and birth parents could lodge information vetoes⁶⁴ while all other parties could lodge non-binding objections to contact.⁶⁵

Conclusions

2.34 It is clear from this brief survey that laws creating access to identifying adoption information either exist or are in contemplation in virtually all parts of Australia. There are many differences, however, in the nature of the provisions. Provisions for adoptees are typically more generous, and less recent, than provisions for birth parents. Different solutions have been reached in different jurisdictions to the tension between maintaining confidentiality and granting information rights. Information rights are variously subject to one or more of several limitations, notably the prior consent of the other person, the lack of objection by the other person, the approval of a court or department (in the discretionary provisions), and attendance at counselling or information sessions.⁶⁶

2.35 The different approaches illustrate the possible forms such legislation may take, and these were carefully considered by the Willis Committee. Experience under these varied legislative approaches may in time lead to evidence which will inform legislators and perhaps lead to a greater uniformity in Australian law. Indeed, as is seen later in this Report,⁶⁷ valuable evidence has already emerged from Victoria, which was the first Australian jurisdiction to pass such legislation. At this stage in the development of Australian laws, however, there is little evidence pointing to the relative advantages of some approaches over others, and there is no obvious reason to assume that the most common provisions are necessarily the most desirable.⁶⁸ The New South Wales Act, for example, is more restrictive than that of Victoria (where there is no 'contact veto') in the rights it grants to adoptees; on the other hand, the information rights granted to birth parents are extensive in comparison with other jurisdictions. It does not follow that in either respect New South Wales law is better, or worse, than the other legislation. The Commission attaches relatively little significance, therefore, to the extent to which the New South Wales Act resembles or departs from features of legislation in other jurisdictions.

FOOTNOTES

1. For a discussion of the early history of "adoption", see M Horsburgh "Insecure families: early adoption practices in New South Wales" (1978) 2 *Australian Child and Family Welfare* 17. For Victoria see Shurlee Swain "Adoption: Was it Ever Thus?" in P and S Swain (eds) *To Search for Self: the Experience of Access to Adoption Information* (Federation Press, Sydney, 1992) at 2-16.
2. *Child Welfare Act* 1923, s127.
3. s126, amending the previous rule that the child should take the adoptive parents' surname "in addition to his proper name".
4. *Child Welfare Act* 1939, replacing the previous legislation, provided for adoption in Part XIX.
5. *Child Welfare (Amendment) Act* 1941.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

6. *Child Welfare (Further Amendment) Act 1961.*
7. *Registration of Births, Deaths and Marriages Act 1899 s12. See T M Wells The Practice of the Registrar-General's Department (New South Wales) (Law Book Company, Sydney, 1953) at 7-8, 84.*
8. *Ex parte Hahne; Re Watson [1967] 1 NSW 194.*
9. The Court expressly refrained from stating whether it *agreed* with the policy, which it saw as a matter for the Registrar-General rather than the Court.
10. s171.
11. s2, amending s171 of the 1939 Act.
12. s17.
13. s18, 21.
14. For an example of a privately arranged adoption application which failed under the 1965 Act see *Re an Infant TLR and the Adoption of Children Act (1967) 87 WN(Pt 1)(NSW) 40.*
15. s35, 36: certain rights that had arisen prior to the Act were, however, preserved.
16. s49, which refers to "a person who was the father or mother... of the child but has, by reason of the adoption, ceased to be the father or mother...".
17. s49A (inserted by a provision in the *Adoption of Children (Amendment) Act 1980* which, however, came into force only in 1987).
18. s53.
19. *Registration of Births, Deaths and Marriages Act 1899, Part VA.* These provisions are now contained in *Registration of Births, Deaths and Marriages Act 1973, Division 5.*
20. s46.
21. *Registration of Births, Deaths and Marriages Act 1899 s12; now Registration of Births, Deaths and Marriages Act 1973 s46.*
22. Advice to the Commission from the Registry, June 1992.
23. *Adoption of Children Act 1965 s64.*
24. s66.
25. s67.
26. It appears that this power has been exercised rarely, if ever, for there appears to be no record of such an application.
27. *Adoption of Children Regulation, cl34.*
28. cl7.
29. cl32.
30. s68B, which came into force in 1987.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

31. See eg *Re an Infant K and the Adoption of Children Act* [1973] 1 NSWLR 311.
32. See eg *Re Adoption of Children Act* (1979) 5 Fam LN 15 (adoption by grandparents of child who had continuing relationship with mother); *Re Adoption Application No A80/5270* (1981) 8 Fam LN 7 (adoption of Vietnamese children in contact with birth parents, who had migrated to Australia).
33. *In the Marriage of Newling and Mole* (1987) 11 Fam LR 974.
34. The Register was governed by the provisions of the *Adoption of Children Regulations*, Part 5A. The Act provided for such regulations: s 73(f1), (f2). Under the *Adoption Information Act* 1990 the Reunion Information Register replaces the former Adopted Persons Contact Register. See Chapter 4.
35. See *Adoption of Children Regulations* cl32D, which provided that the Director-General could, where it appeared that the welfare of the adopted person would be promoted by so doing, take such action as was reasonable to locate a natural parent or relative with whom the adopted person wished to be reunited, so as to ascertain their wishes in relation to a reunion with the adopted person. The Director-General could take similar action where the birth parent or relative was on the Register and the adoptee was not, but in this situation too the Director-General was to consider the welfare of the adoptee.
36. See New South Wales. Legislative Council Standing Committee on Social Issues *Accessing Adoption Information* (October 1989) (The Hon M Willis Chairman) at 9.
37. See eg C Picton (ed) *Proceedings of the First Australian Conference on Adoption 1976* (Committee of the First Australian Conference on Adoption, Melbourne, 1976); Victoria. *Report of the Adoption Legislation Review Committee* (The Committee, Melbourne, 1983); A Marshall *Review of Adoption Policy and Practice in NSW Department of Youth and Community Services* (Sydney, 1984); R Oxenberry (ed) *Proceedings of the Third Australian Conference on Adoption: Changing Families* (Adelaide, 1982).
38. A schedule of fees under the Act appears in Appendix C.
39. For a recent survey, see F O'Dea and S Midford *Access to Adoption Information* Research Paper No 1 Adoption Legislative Review, Western Australia (1989).
40. A very convenient, but somewhat dated, presentation is provided in O'Dea and Midford. A more recent and detailed treatment is P Boss *Adoption Australia* (National Children's Bureau of Australia, Melbourne, 1992).
41. No reference is made here to information rights relating to under-age adoptees, or to rights of relatives, or to provisions for contact registers.
42. *Adoption Act* 1984 (Vic) s92, 87.
43. s93.
44. s96.
45. The Queensland provisions were inserted by the *Adoption of Children Amendment Act* 1990, passed in May 1990, and were substantially modified (by restricting information rights) by the *Adoption Legislation Amendment Act* 1991, passed in February 1991.
46. s39B(6). This provision, being a later amendment, appears to prevail over the rights unconditionally expressed in ss(1).
47. s39B(1)(c), subject to s39B(6), (7).
48. s39B(2), (6).
49. s39AA; s39D.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

50. *Adoption of Children Act 1988 (SA) s27(1)(a).*
51. s27(7).
52. s27(5).
53. s27(1)(b).
54. Which is, however, to be marked "adopted": *Adoption of Children Act 1896-1981 (WA) s24AA(5).*
55. s24AA.
56. s24AA(7).
57. Western Australia. Adoption Legislation Review Committee *Final Report: A New Approach to Adoption* (Perth, 1991).
58. *The Australian* 2 June 1992 at 5.
59. *Adoption Act 1988 (Tas) s 82.*
60. s84.
61. s87, 88.
62. *Adoption Bill 1991 (ACT).*
63. cl66.
64. cl70.
65. cl71.
66. Some different models for this type of legislation are set out in the Commission's Issues Paper, *Review of the Adoption Information Act 1990 (IP7)* at 15-16.
67. See Chapter 6.
68. The significant amendment of the Queensland provisions, very soon after they had been passed, indicates how finely balanced decisions about these matters are, and how legislation may be based on considerations other than the systematic examination of experience under particular legislative provisions.

3. Public Awareness

INTRODUCTION

3.1 The Commission's terms of reference require it to report on the public awareness of the *Adoption Information Act* 1990. Public awareness is an essential element in the effectiveness of such legislation which has a significant effect on the rights of individuals, and which requires a specific action from the people affected to implement those rights.

3.2 When the *Adoption Information Act* 1990 became law, it was recognised that extensive publicity would be necessary before the provisions of the Act came into operation. The Department of Community Services used a number of strategies which are outlined below to ensure that the people affected by the *Adoption Information Act* 1990 were informed of its existence, and their rights and responsibilities under the Act.

3.3 Submissions to the Commission show that the publicity has been effective in reaching a substantial section of the population affected, although a significant number of people affected still remain unaware that the law has changed. In the course of review, the Commission initiated research to ascertain the extent of public awareness of the Act. The results of that research are presented in detail in Appendix B and discussed later in this Chapter. This Chapter also discusses some problems associated with awareness of the legislation, and makes some suggestions for making the existence and provisions of the *Adoption Information Act* 1990 more widely known.

PUBLICITY FOR CHANGES TO ADOPTION INFORMATION LAW

3.4 In recognition of the vital need for publicity for the legislation, the Government's intention was that within the budget for implementation of the *Adoption Information Act* 1990, there would be an allocation for publicity. This would be used prior to the Act coming into operation and also in later years. The delay in commencement of the Act was, in part, to provide time for that publicity to be undertaken. The Department of Community Services took responsibility for publicity of the legislation, although personnel from the Registry of Births, Deaths and Marriages and the Post Adoption Resource Centre were involved in preparing advertising, liaising with media and giving media interviews. A media co-ordinator was appointed to assist the Adoption Access Working Party with publicity. The Commission has been advised that an allocation of \$250,000 over five years, or \$50,000 per annum was made for the computer system and for publicity. The expenditure on advertising in the campaign phases noted below was approximately \$50,000.

Campaign Phases

3.5 The Department of Community Services planned an extensive publicity campaign in three phases between November 1990, following passage of the Bill through Parliament, and late April 1991, the month in which the access to information provisions came into force. The campaign relied on both paid advertising and press releases, from which news stories and interviews with Departmental and other interested people resulted. Phase 1 of the publicity began in early November 1990 and focused on explaining the legislation, the release and availability of the Draft Regulation and the program of community consultations that took place about the Regulation. Advertisements were placed in the major Sydney metropolitan daily newspapers as well as the national weekend newspaper and Sunday newspapers. Paid advertisements were placed in 96 non-metropolitan newspapers covering every local government area outside the Sydney metropolitan area. All non-metropolitan advertisements (and press releases) included contact details appropriate for the local area.

3.6 The second phase of publicity and advertising took place in early February with the general aim of continuing publicity for the commencement of the access to information procedures in April 1991, and specifically to promote the contact veto system. Advertisements ran in major metropolitan and state-wide newspapers, week day and weekend. In this phase, paid advertisements were also placed in newspapers interstate and overseas. In each State an advertisement went in at least two newspapers, one week day, one weekend. In New Zealand advertisements were placed in North Island and South Island week day papers, and a Sunday newspaper. In each case the advertisements were tailored with details of the local agent, usually the Department of Community Services, where an appointment to lodge a contact veto could be made. Customised press releases supplemented the paid advertisement in each State. Advertisements placed in the major metropolitan and state-wide newspapers in the period 18 March through to 2 April 1991 highlighted both access and contact veto rights.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

In this phase there was a repetition of a successful strip advertisement campaign used in the first phase. Strip advertisements were placed in a Sunday newspaper colour magazine over a five week period in March 1991.

3.7 The third phase of the Department's publicity campaign was concerned with providing information about the Act and its implementation specifically for country residents. This took place in the two months of February and March 1991. Advertising was placed in nine regional newspaper magazines which were published in 150 country newspapers covering all regions of New South Wales. The cost of advertising in the second and third phases was approximately \$40,000.

3.8 The Department also conducted a radio advertising campaign featuring a series of 30 paid 30-second commercials and 30 free commercials with Radio Station 2GB. These ran in the first week of March 1991 across all five listening sessions, Monday to Friday. A community service tape based on the radio commercial was produced and distributed to radio stations throughout New South Wales during late February/early March for radio stations to use in air-time allocated to community service announcements.

Other Strategies

Press Releases

3.9 The Department of Community Services organised a series of press releases to complement the paid advertisements. Press releases were customised with details relevant for the particular country newspaper to which they were released. In January, a press release from the then Minister for Family and Community Services, the Hon Robert Webster, concerned the contact veto. Details were given with the location and telephone number of the local Family and Community Services District Centre. In March 1991, the Minister's press release contained details about making applications for an original or amended birth certificate at the local court house. Media files compiled by the Department indicate that these press releases were taken up in a large number of country newspapers.

Interviews

3.10 Media statements were released to radio and television stations in addition to the newspaper media statements noted above. As a result, representatives of the Department of Community Services, the Registry of Births, Deaths and Marriages, the Post Adoption Resource Centre, the New South Wales Committee on Adoption, private adoption agencies and community groups concerned with adoptions were frequently interviewed for news and current affairs programs. The program of community consultation in the Draft Regulation for the *Adoption Information Act* during November 1990 by representatives of the Department and the Registry incorporated a program of interviews with country media, radio and television. Some interviews and segments in which the Act was discussed were broadcast around Australia.

Brochures

3.11 The Department of Community Services prepared a brochure to explain the major provisions of the *Adoption Information Act*. These were distributed widely both inside and outside Australia. The brochure has been updated periodically to reflect, for example, the change in the status of legislation from a Bill to an Act, increases in the charges for a birth certificate, and changed contact details for agencies and support groups. The most recent edition of the brochure, dated February 1992, provides details in a summary form of how the Act affects adopted persons, birth parents and adopting parents, including how to place a contact veto. Contact details for the Family Information Service, Registries, adoption agencies and major support groups are also provided. FIS also produced information sheets and fact sheets which explained individual aspects of the legislation to send to people making enquiries about the new law.

Legal Profession Seminar

3.12 Coinciding with the commencement of the Act, the Department of Community Services arranged a Continuing Legal Education Seminar for members of the legal profession and other interested people. The Seminar covered the background to the *Adoption Information Act* 1990 and detailed discussion of its provisions. It was attended by about 100 people and papers presented at the Seminar have been published and made available to members of the legal profession, and others through the College of Law Continuing Legal Education

Department. Three articles about the new legislation appeared in the New South Wales *Law Society Journal* in April, May and August 1992. The implementation of the Act was also noted in other relevant professional journals, for example, those of the medical and social work professions.

Continuing publicity

3.13 Since April 1992 the Family Information Service has continued to publicise the new legislation when the opportunity occurs, although the level of activity and paid advertising has never matched that of the pre-operation period. FIS has co-operated with requests from print, radio and television media for background briefings and participation in programs. The Commission notes also that publicity for this review of the *Adoption Information Act* has been another means by which the Act itself has been publicised throughout the State.

PUBLIC AWARENESS SURVEY

3.14 The Commission was interested in determining by some objective means the extent of public awareness of the *Adoption Information Act* 1990. At the request of the Commission, MSJ Keys Young commissioned Roy Morgan to include three questions in an omnibus survey, that is a compilation of questions posed to a representative sample of the adult population of New South Wales. The questions were asked to 1,102 adults, comprising 664 Sydney residents and 438 non-Sydney residents. The survey was conducted on two consecutive weekends in April 1992, and was based on face-to-face interviews. The survey is described in detail in Appendix B and a brief summary only is provided here.

3.15 The first question asked in the survey invited respondents to comment on a statement that accurately summarised the main features of the Act. The statement was:

In New South Wales adopted people aged 18 or older, and people who have given their child up for adoption now have the right to receive identifying information about each other. By "identifying information" we mean having access to the **original** birth certificate issued when the child was born and/or the **amended** birth certificate issued at the time the child was adopted.

3.16 Overall, 73% of the respondents correctly answered that this statement was true, 12.5% that it was false and 14.5% said they did not know. There were some small differences based on residence (more non-Sydney residents than Sydney residents said it was true), gender (more women than men said it was true, and fewer women said they did not know), and age (those between 35 and 49 were more likely to say it was true than those who were younger, or older).

3.17 The second question asked was whether in the last 12 months, the respondents had read, seen or heard anything about the rights to identifying information by people directly involved in adoption. Overall, 65% said that they had. Again, there were some small differences based on residence, gender, age, and education level.

3.18 The third question asked whether respondents fell into any category of person affected by adoption, ie whether they had been adopted, or had given up a child for adoption, or were a parent who had adopted a child, or had a sibling given up for adoption, or had a sibling adopted into the family, or were a spouse of an adoptee, or a relative of a person who was given up for adoption or adopted into their family. The answers to this question, extrapolated to the NSW community, suggest that there are 815,000 adults in NSW who, as it is put in the MSJ Keys Young Report, "would have a fairly immediate interest in adoption".

3.19 The answers of those respondents who were associated with adoption were compared with the sample in general. Curiously, those involved in adoption (15.5%) were somewhat more likely than other people (12%) to answer that the statement (which accurately summarised the Act) was false. Those associated with adoption were less likely to answer that they did not know whether the statement was true or not (11%, compared to 15%). Of those associated with adoption, adoptees were the least well informed, 64% answering that the statement was correct, and 25% saying that they did not know.

3.20 MSJ Keys Young point out that there is a degree of apparent inconsistency among the answers in that while 73% said that the statement was true, only 65% said they had read, seen or heard something about information rights in the past twelve months. A possible explanation is that some people might have answered "Yes" to the statement because it sounded official and plausible rather than because they actually knew it to be

so. If so, the number of persons actually aware of the law might lie somewhere between 73% and 65%. Although there is room for speculation about *precisely* how accurately the answers to the questions reflect the success of the Department's publicity campaign, in the Commission's view it can be said with some confidence that, as stated in the MSJ Keys Young Report:

The majority of the public appears to be aware of the essence of the *Adoption Information Act* - that adopted people and the birth parents who surrendered them for adoption now have the right to identifying information about each other.¹

CONCLUSIONS AND RECOMMENDATIONS

3.21 It is difficult to be precise when determining the extent to which the people affected by the *Adoption Information Act* 1990 are aware of it. In the course of consultation, the Commission heard from people who were making a submission and who had only just become aware of the Act, and received anecdotal evidence and advice from others that not everyone who was affected yet knew of the law. The survey results presented by MSJ Keys Young indicate that the majority of the public, perhaps between 65% and 73%, appears to be aware of the essence of the Act. If this is so, a considerable minority, a quarter or more of the adult population, is not yet aware of it.

3.22 There is an inherent difficulty in ensuring that everyone is informed about a change to a law that affects them. This is particularly acute when, as with adoption, some of those who are affected do not realise that they are within a category of the population which the law affects. Adoptees who are unaware that they are adopted, and birth fathers who are unaware of their paternity of a child relinquished for adoption may know that the law has changed, but cannot recognise that the law affects their own rights. A further difficulty applies in the case of the law relating to all adoptions recognised in New South Wales which happened at least 18 years ago, in that many of those affected by the new law will not now be resident in this jurisdiction.

3.23 The Commission received a few submissions arguing that everyone who was affected should have been contacted directly by the Department of Community Services to be informed, either of the proposed changes to the law, or at least that they had been enacted. However, as was also pointed out in other submissions and made clear to the Commission in the course of the inquiry, such an approach was not feasible or appropriate.

3.24 Efforts by the Department of Community Services to advertise and publicise changes to the adoption information law which are noted above represent, in the Commission's view, a major effort that was successful in bringing to the attention of a large proportion of the people affected that the law has changed. It is not surprising that a substantial minority remain unaware of the law. Even for people who are aware that they fall into a class of persons affected, it is difficult to ensure that every person will actively read, hear, or otherwise learn about information in the public arena that is relevant to their particular situation. As one submission commented, "it seems that many people are not attuned to an issue until its impact for them personally becomes apparent".²

Problems noted about awareness

3.25 The difficulties for people living outside New South Wales, and in country areas were often noted in submissions. Whilst the Department of Community Services made extensive efforts to advertise and get publicity throughout country areas and interstate, the level of exposure was likely to be less for country residents than for people in metropolitan areas. The Department should continue to address publicity to country residents and to people affected who live outside New South Wales. It is also important to publicise within New South Wales that rights to information and to place a veto can be exercised through agents of the Department of Community Services in other States and overseas. Relatives and friends of people living elsewhere who are affected by the law have expressed concern on their behalf, and appear generally not to be aware that these facilities exist.

3.26 Other submissions and the MSJ Keys Young qualitative research indicate that while there may be a general familiarity with the essence of the legislation, there are definitely problems with misunderstandings and ignorance of some of the details of rights and procedures under the Act. Many of the views expressed to the Commission about the legislation were founded on an incorrect understanding of the principles or details of the legislation or of administrative procedures. Some adoptive parents, for example, believe that information rights for birth parents accrue while the adoptees are minors, or that detailed information about their financial status or infertility can be obtained by a birth parent as prescribed information. Some adoptees expect to get the entire

'adoption file' and not only what is prescribed information. The rights of birth fathers do not appear to be generally understood. It is clear that the contact veto system and the reasons for the procedures by which it operates are not universally understood. It is possible that some misunderstandings have been the result of obtaining information about the legislation from sources other than the Department of Community Services or the Registry. There remains a need to publicise in more detail some of the particular rights and procedures under the Act, including those noted here.

3.27 It was also noted that whilst publicity about the changes to the adoption information law was prolific around the time it was introduced, the impact has been lost by now.³ The same submission argued that there was a need for *continuing* publicity directed not only to those who are not yet aware of their rights, but to those who are only just becoming entitled to them. The Commission agrees that this is an important factor in ensuring public awareness. The nature of the law is such that a continually increasing number of people are affected by it as adoptees turn 18 and they, and their birth parents, become entitled to information and to place a contact veto. Moreover, there is evidence from other jurisdictions with longer experience of such laws that access to adoption information is a right that people affected will choose to exercise at a time appropriate to their individual situation. There is a need, therefore, to continue to publicise what those rights are and how they may be exercised.

Recommendation

The Department of Community Services should continue to make provision for resources to be used for publicity about the adoption information legislation aimed at all members of the community who are affected by it.

3.28 Without criticising the extent or approaches of the publicity already achieved, the Commission suggests that there are additional means which could be used. We are mindful of the need to make efficient and effective use of limited resources. Moreover, it is difficult to assess the value of any one method of publicity, but it seems likely that some forms of publicity, such as commentary in the print and electronic media, and exposure through radio and television plays or 'soapies' are more likely to be productive than formal government advertising. Nevertheless we suggest the Department of Community Services should consider using the following approaches to advertising and publicity:

Advertising and attempting to generate editorial coverage in magazines for adolescents and young adults, for example *Dolly*, *Cleo*, *Cosmopolitan*.

Advertising and attempting to generate editorial coverage in nationally available general magazines such as *Womans Weekly*, *Womans Day*, *Ita* and *New Idea*.

Advertising and attempting to generate editorial coverage in magazines and newspapers distributed free to commuters and local communities.

Distribution of brochures and other publicity material through government agencies unconnected with welfare and community services, and other information sources in the community, such as public libraries and community centres.

Distribution of brochures and other publicity material through community groups and organisations such as service clubs, professional and interest associations, and youth movements.

Publicity aimed at students in tertiary education.

Providing material for educational publications for relevant courses, such as legal studies and social science subjects for senior students.

Television and radio community service advertising.

FOOTNOTES

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

1. Appendix B at B11.
2. Anglican Adoption Agency *Submission*.
3. Salvation Army *Submission*.

4. Administration of the Act

OVERVIEW

4.1 The *Adoption Information Act* 1990 received royal assent on 26 October 1990. The contact veto provisions commenced on that day, and the remaining provisions of the Act and the Regulation that was gazetted in March commenced operation on 2 April 1991.

Implementation phase

4.2 In the six months prior to commencement of the major portion of the *Adoption Information Act* 1990, preparations were made for it to become operational. An Adoption Access Working Party was formed to liaise over implementation.¹ This comprised representatives of those parts of the administration which would have responsibilities under the Act and members of the adoption community.² The Working Party provided a forum to discuss issues surrounding implementation from the range of perspectives.

4.3 In November 1990 the draft Regulation and the Regulatory Impact Statement were released for public comment, and the Regulation was finalised and gazetted in March 1991.³ Minor amendments to the Regulation were made in July 1991.⁴ Public consultation on the Regulation was wide. A program was conducted to explain the Act, its planned operation and the Regulation, consisting of nine public meetings in three metropolitan and six country venues.⁵ Written submissions and a questionnaire from participants in the public meeting were received and a phone-in held. Concurrently with the program of public consultation, the Department of Community Services generated media publicity⁶ and conducted training programs for staff throughout the State. During this time the Act and the rights created under it, particularly the right to lodge a veto against contact, were advertised.⁷

4.4 The introductory phase, which delayed implementation of the access to information provisions, was designed to allow for adequate time for an adopted person or a birth parent to register a contact veto before any right of access to a birth certificate and prescribed information arose. The delay also acknowledged that adoptive parents who had not disclosed the adoption to the adopted person would need time to do so. This would give the adopted person an opportunity to exercise rights granted by the Act and avoid the possibility that knowledge of being adopted would come as a result of being contacted.

Statistics of use of the Act

4.5 The accompanying tables indicate the statistics relating to the major activities under the Act. They rely on figures supplied by the Registry and FIS, current to the dates stated.

Table 1

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

| ACTION | TOTAL |
|--|--------------|
| Applications for original or amended birth certificates from 2 April 1991 to 30 June 1992. | 7,358 |
| Contact Veto Registrations from 1 December 1990 to 30 June 1992. | 3,432 |
| Birth certificates issued subject to a Contact Veto up to 30 June 1992. | 225 |
| Contact Vetoes lodged after the issue of a birth certificate up to 30 June 1992. | 31 |
| Contact Vetoes removed up to 31 May 1992. | 31 |
| Reunion Information Register registrations up to 30 June 1992. | 15,985 |
| Applications for further searches to 30 June 1992. | 2,151 |
| Fee waivers on applications for certificates (%) | 35 |

[\[Link to text only version of table 1\]](#)

Table 2: Application for Birth Certificates - Monthly Statistics

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

| MONTH | TOTAL |
|----------------------------|--------------|
| Prior to April 1991 | 641 |
| April | 1650 |
| May | 1183 |
| June | 548 |
| July | 524 |
| August | 368 |
| September | 298 |
| October | 246 |
| November | 222 |
| December | 194 |
| January 1992 | 237 |
| February | 209 |
| March | 286 |
| April | 254 |
| May | 306 |
| June | 192 |
| TOTAL | 7,358 |

Table 3: Contact Veto Registrations - Monthly Statistics

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

| MONTH | TOTAL |
|----------------------|--------------|
| December 1990 | 90 |
| January 1991 | 81 |
| February | 280 |
| March | 1051 |
| April | 1102 |
| May | 425 |
| June | 87 |
| July | 57 |
| August | 28 |
| September | 19 |
| October | 17 |
| November | 9 |
| December | 13 |
| January 1992 | 19 |
| February | 14 |
| March | 11 |
| April | 15 |
| May | 13 |
| June (to 26th) | 12 |
| TOTAL | 3343 |

Applications for birth certificates

4.6 Applications by adoptees for original birth certificates comprise approximately 70% of the total, and from birth parents for amended birth certificates 30%. Only a very small number of birth fathers have applied. After the initial surge of interest, the rate of applications has settled into a relatively steady pattern of around 250 per month. Applications now being received come from adoptees turning 18 and their birth parents, from people who have only now decided to exercise their rights to information and from those who have only recently found out about the legislation.

4.7 The rate at which applications have been made is less than was estimated prior to the Act coming into operation. Drawing on the experiences of other jurisdictions, it was anticipated that up to 12,000 applications would be made in the first year. Whilst acknowledging the difficulties of making firm predictions, the Department of Community Services expects that the level of applications will not decline in the next few years, and if the pattern in Victoria is repeated in New South Wales, the rate could increase. In Victoria, where adoptees have been able to obtain their original birth certificates since 1985, the number of applications increased each year until

a peak was reached in 1990. It could be expected that demand in New South Wales will diminish after about 1994, reflecting the decline in the number of non-relative children adopted in New South Wales which started to occur in the mid 1970s.

Contact veto registrations

4.8 The peak for contact veto registration was in the three months surrounding the commencement of the Act in April 1991. Since about September 1991 the rate has been stable at an average of 15 per month. In the early stages vetoes were being evenly lodged by adopted persons and birth parents, however figures now show 55% have been placed by adopted persons and 45% by birth parents. Vetoes are now being placed mainly by adopted persons turning 18, but also by people who have recently found out about the legislation, or on rare occasions, in response to contact. Although a veto placed in the last circumstance does not apply to the person who has already received a birth certificate, it has a symbolic value as a statement of the vetoer's desire for no contact.

4.9 Contact vetoes are being removed by vetoers who no longer wish or need to maintain privacy. This occurs for example, following receipt of a message left in response to signing an undertaking not to contact, after unidentifying exchange of correspondence through the Reunion Information Register, or when the circumstances of the vetoer's life change so as to remove the need to prohibit contact. Contact vetoes have been varied by the vetoer on several occasions to allow a one-off meeting or exchange of information.

4.10 A number of people, both adoptees and birth parents, have simultaneously lodged a contact veto and registered on the Reunion Information Register. FIS is unable to provide exact figures as they would have to be compiled manually, however they report that it is a significant trend among vetoers. These apparently contradictory actions give the vetoer a control over the timing and nature of any contact, a power which many people desire and which is addressed by the Commission's recommendations in Chapter 7.

Total adoption population

4.11 It is not easy to determine the total population who have an interest in exercising rights to information or to veto contact under the Act. Figures of some 80,000 adoptions between 1923 and 1974 are used to arrive at a figure of a possible 400,000 people affected by the Act, being adoptees, birth parents and adoptive parents. These gross figures should, however, be modified to make allowance for several circumstances. Some birth parents and adoptive parents will have relinquished and adopted more than one child. Although difficult to determine precisely how many, a significant number of people fall into more than one category. The figures for adoptions include step-parent adoptions where a parent can be both a birth parent and an adoptive parent. They, and the adoptees in these situations are less likely to have a need to exercise their rights under this Act. Some of the older adoptees, and a large number of their birth parents and adoptive parents would no longer be alive. Caution should therefore be used when relying on both absolute and percentage figures to determine rates of usage and numbers in the community affected by the Act.

FAMILY INFORMATION SERVICE, DEPARTMENT OF COMMUNITY SERVICES

Role of the Family Information Service

4.12 The Family Information Service (FIS) is the agency with the primary responsibility for implementing the *Adoption Information Act 1990*.⁸ It is a section of the Adoption Branch of the Department of Community Services; the Officer-in-Charge reports directly to the Manager, Adoptions Branch. The Branch is part of the Southern Division (and not the central Executive Structure) of the Department for administrative purposes. The Family Information Service has responsibility for all post-adoption services. Other than release of information under the *Adoption Information Act 1990*, FIS has responsibility for on-going exchange of information between birth parents and adoptive parents for adoptions where the adopted person is still under 18 years. With the increasing openness practised in adoptions in recent years, and the growing awareness of the need for family medical information, this function is an expanding aspect of post-adoption services.

Functions

4.13 The administrative activities of FIS in relation to the *Adoption Information Act 1990* are as follows:

providing information explaining the Act to the community

answering telephone and personal enquiries about rights under the Act

conducting information sessions for people seeking information

compilation of prescribed information from Departmental files

supplying prescribed information (in writing and in person)

processing contact veto applications

maintaining the Contact Veto Register

administration of the contact veto system

matching parties mutually seeking contact on the Reunion Information Register

administering exchange of information between people who have lodged contact vetoes or who are on the Reunion Information Register

outreach to persons not on the Reunion Information Register

administering collection of fees and waiver of fees

advising/counselling clients in various situations

liaising with information sources (including private agencies), interest groups and other government departments concerning administration of the Act

training FIS, Departmental and private agency staff in administration of the Act.

4.14 District Offices of the Department of Community Services also have functions under the Act. They provide information and advice about the legislation generally, and to people applying for birth certificates and lodging contact vetoes. Their major role is in taking contact veto applications, and supplying "confidential"⁹ and distressing prescribed information on behalf of FIS. Staff at District Offices have these responsibilities as part of their general duties for clients of the Department of Community Services. The decentralisation of functions within the Department has implications for training and the quality of service delivery and are noted below.

Volume and nature of work

4.15 FIS reports that in the calendar year 1991, 6,760 new client files were established, in addition to dealings with clients who already had an established file following previous contact with FIS. This compares with 3,879 files opened in 1990, and represents a considerable increase in the volume of work over previous years.

4.16 Apart from the duties given the Family Information Service as a consequence of passage of the *Adoption Information Act* 1990, several activities unexpectedly became necessary for the smooth and effective implementation of the scheme created by the legislation. Some of those activities are noted here.

Media enquiries: The high degree of media interest in the Act generated a continual demand for radio, television and press interviews, in both metropolitan and country areas. This placed unanticipated demands on senior staff, however the media appearances and interviews gave publicity to the legislation which supplemented paid advertising.¹⁰

Telephone enquiries: FIS receives a large volume of telephone enquiries from people interested in or affected by the *Adoption Information Act*. At the peak, from mid March until the end of April 1991, staff were handling approximately 850 new enquiries per week. The rate has levelled off and in the past six months has been steady at approximately 250 to 300 new clients or matters per week, plus follow-up calls from existing clients.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Response to representations to the Minister: FIS reported that responding to Ministerial representations and other correspondence relating to implementation of the Act imposed additional demands on more senior officers. In the Commission's view, Ministerial correspondence was answered thoroughly and with attention to the individual concerns raised.

Education for clients: Implementation of the new Act resulted in a large increase in clients seeking advice from FIS for dealing with different aspects of adoption generally. Particularly noticeable was the demand for assistance with 'late telling' and for older adoptees dealing with issues long ignored. In response, FIS assumed an educative role and produced the brochures "Late Telling" and "Discovering You Are Adopted". A brochure, information sheets and fact sheets about the legislation were also prepared. Another area of education is providing information to adoption interest and support groups.

Guide to searching and information meetings

4.17 FIS, in co-operation with the NSW Committee on Adoption, prepared a search guide for adoptees and birth parents. Commonly known as the "blue book", *Adoptees and Birthparents' Guide to Searching: ADOPTION* was supplied to applicants with birth certificates as part of the services provided for the \$100 fee. It contains information about techniques of searching records to trace people, and offers advice about search process. It also offers insights into how other people might be feeling, for example when an unexpected or unwanted contact is made. Information meetings are conducted monthly by FIS staff, providing an introduction to the Act, searching and making contact.

Staffing

4.18 At 30 June 1992 there were 19 staff employed in the Family Information Service, of which 13 were permanent positions and six temporary. The Officer-in-Charge who has overall responsibility for the Service has professional qualifications and welfare experience. There is a Senior Registration Officer and a Senior Information Officer, four Family Mediation Counsellors (one temporary) with social work or equivalent professional qualifications, and six Information Officers (four temporary). The remaining staff are clerical and computer officers.

4.19 Although the structure is different, the number of substantive (permanent) positions in FIS is the same as before the Act commenced when FIS had more limited role in adoption information with provision of non-identifying information and administration of the Adopted Persons Contact Register. As the number of permanent staff within the Family Information Service was not adequate to cope with the influx of work created by implementation of the Act, some temporary staff had to be employed. In the early days there were many more temporary staff than are now employed. Funding for the temporary positions has been extended several times by the Department following representations from the Officer-in-Charge. All the temporary staff were due to cease at 30 June, but approval has been extended for three full-time positions, but only until 30 September 1992. The uncertainty of funding created tremendous instability for the staff, with the consequent loss of expertise and the constant need to train new staff.

Training of staff

4.20 Implementation of the *Adoption Information Act* 1990 has had implications for training of staff, both within the Family Information Service and in District Offices of the Department of Community Services throughout New South Wales. Training for staff within FIS in procedures under the Act has occurred as the Act has been implemented. Employment of temporary staff has created an added burden. Training was provided for Departmental staff across the State in November 1990 in conjunction with the community consultations on the draft Regulation. Three metropolitan and seven country sessions each of one day were given. Each District Office received a package of procedural guidelines and training material, and further training was given after adoption services were regionalised following a Departmental restructure in 1991.

Funding of the Family Information Service

4.21 The annual budget estimates for administration of FIS provided for total expenditure in the first three years of operation of between \$600,000 and \$660,000. Estimates of revenue were made prior to commencement, but revised after the first months of operation of the Act. Receipts for the year 1990/1991 were \$412,734, with

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

\$176,886 revenue foregone (waived fees). Revised figures for 1991/1992 are \$175,560 receipts and \$75,240 revenue foregone, and for 1992/1993 and the two years thereafter \$141,960 and \$60,840. The revisions took into account the lower than estimated rate of applications for certificates under the Act and the higher than anticipated rate of waiver of fees.

4.22 As estimated, the income generated was fully expended in salaries of Family Information Service staff, computerisation of FIS records and the provision of a state post-adoption resource centre (PARC). PARC is funded through an agreement between the Department of Community Services and the Benevolent Society, for a total of \$757,650 over three years. Computerisation and publicity for the legislation has been allocated \$252,000 over five years. Many of the costs of administration have been unexpected or higher than anticipated. As much of the work of FIS is very labour-intensive, salary costs have exceeded the amounts provided. Charges for retrieval of files from State Archives has been quite high, and there have been costs associated with relocation of premises used by FIS in July 1991 and again in July 1992. The revenue is required to cover all the operations of the Family Information Service, and not just those associated with administration of the adoption information system.

4.23 Other government and private agencies with responsibilities under the *Adoption Information Act 1990* anticipated that they would, and have argued that they should, receive a portion of the fees paid by applicants to FIS. This has not occurred to date. Claims against the \$100 fee have been made to the Department of Community Services by the Registry of Births, Deaths and Marriages and the Department of Health. An application for an allocation of the fees collected has also been received from Adoption Triangle.

Need for confidentiality

4.24 The activities of the Family Information Service in making contact with all people affected by adoption, adopted persons, birth parents and adoptive parents, requires a great degree of sensitivity and regard for confidentiality. The Act imposes an obligation not to disclose information about people obtained in connection with the administration or execution of the Act.¹¹ Furthermore, procedures developed within FIS to be followed by all Departmental officers in administering the Act recognise the need for being discreet. Samples of correspondence and even the envelopes in which correspondence is sent were provided to the Commission. Together with the procedures of FIS for contact by telephone and fax with District Offices and with clients, they indicate that approaches are made by its officers to clients with concern for the recipient's privacy and confidentiality. Obviously staff cannot know of the exact situation of every person who will be approached, yet these procedures have been developed taking into account a wide range of possibilities, particularly that others close to the person are unaware of the reason for the communication. FIS has demonstrated to the Commission throughout the period of this review that the confidentiality of their clients is very highly regarded.

Computerisation of adoption records

4.25 The Department of Community Services holds records relating to the adoption of children since 1923. These comprise Departmental records and files, and records deposited from some adoption agencies which have closed. A program for computerisation of adoption records was implemented from 1987 by the then Minister, the Hon Virginia Chadwick in an endeavour to make the Adopted Persons Contact Register more effective. The Adoptions Index System was introduced at the same time as administration of the new legislation commenced. This contains the Reunion Information Register, the Contact Veto Register, and details of all FIS clients. FIS is currently undertaking a project to expand the database and computerise records of all legal adoptions and adoption consents given in New South Wales. With this database, FIS expects that searching will be much more expedient and effective.

4.26 FIS reports that there have been problems with computerisation and the expected efficiencies are yet to be demonstrated. Manual records have been maintained concurrently with the computerised version and this will continue until FIS is satisfied that computerisation is completely reliable in locating information and matching registrations. As yet, management and other reports cannot be generated and a large amount of data related to adoption has not been recorded.

Discretions of the Director-General

4.27 The *Adoption Information Act* 1990 gives the Director-General of the Department of Community Services a number of discretions. These include whether to supply information to relatives after the death of an adopted person or birth parent, to place a relative or other person on the Reunion Information Register, or to approach a person who has lodged a contact veto.¹² Furthermore, both the Act and the Regulation give to the Director-General considerable power to determine policy and administrative practice, and to delegate the power given to the Director-General under the Act.

4.28 It is generally desirable that discretions should be exercised according to guidelines which are available to relevant staff and the persons affected by the decisions. Some of the guidelines for administration are derived from clear statements in the Act and Regulation, such as the information prescribed under s6-8 and outreach under s34.¹³ However there are other significant areas of the Director-General's powers which are not. The Department of Community Services does have guidelines for most of these, although FIS reports that some decisions are made so infrequently as to need consideration on a case-by-case basis at the highest level. Some areas have created difficulties for the people affected. The policy on approaches by the Director-General to a vetoer at the request of a person affected by the veto under s24 has been contentious. The policy on waiver of fees appears not to have been known to all who could have been affected.

4.29 The matter of delegation of the Director-General's discretions over the release of prescribed information¹⁴ to Principal Officers of adoption agencies has been raised with the Commission (and previously with the Director-General).¹⁵ The Commission understands that it arises from a concern that without such delegation, administration will be more cumbersome and clients disadvantaged because of delay in release of information. From the Department's view, the current practice does not present any difficulties, and affords some benefits to the information recipient in access to advice and counselling. There is also concern over accountability when such a delegation is dispersed.

4.30 In the Commission's view any such delegation should be highly selective, both as to what is delegated and the person or body acquiring the delegated power. It may be appropriate to delegate certain discretions to selected adoption agencies. It would not be appropriate to delegate to outside bodies major discretionary powers, such as the power (recommended in this Report) in exceptional circumstances to prevent the issue of birth certificates or prescribed information. Clear guidelines should apply to the exercise of any such delegated powers, and the delegation should be kept under review.

Appeals

4.31 The legislation gives the Director-General various responsibilities to supply information or take action at the request of adopted persons, birth parents and adoptive parents. It also provides that where the Director-General refuses or fails to take certain actions, an appeal may be made to the Community Welfare Appeals Tribunal.¹⁶ This is a normal mechanism for making an administrator accountable for decisions made in the performance of his or her functions, particularly when given discretionary powers. The Community Welfare Appeals Tribunal is an independent body with jurisdiction to review decisions made by the Minister, the Director-General and officers of the Department of Community Services under several Acts within the Department's administration. Other decisions are reviewable by the courts under general administrative review principles.

4.32 The appeal process must be initiated by lodging an appeal with the Registrar of the Tribunal within 28 days of receiving official advice of the decision. The appeal is made against a decision of the Director-General and the reasons which are given for the decision. It goes without saying that a person must be made aware of the right to appeal and the procedures necessary to activate it. The hearing before the Tribunal is as informal as circumstances allow. No legal representation is required, although it may be permitted.

4.33 To date there has been only one appeal lodged under s36. It concerns a decision of the Director-General under s34 about locating a person not registered on the Reunion Information Register at the request of a relative. The appeal is pending at the time of this Report. FIS reports that so far, few applications under the Act subject to appeal have been refused by the Director-General exercising a discretion.

4.34 In the Commission's view the existence of discretions is necessary to the satisfactory administration of the Act, and the Commission has recommended elsewhere in this Report that certain additional discretionary powers be created. However the importance and sensitivity of the issues makes it imperative that the exercise of

discretion on important issues should be subject to appeal, and that people affected by the Act be informed of the existence of rights to appeal. The most appropriate appeal body would appear to be the Community Welfare Appeals Tribunal.

Recommendation

Provision should be made for appeal to the Community Welfare Appeals Tribunal against the exercise of all discretionary decisions affecting people's interests and entitlements under the Act, and that the availability of such appeals be appropriately publicised.

Support groups

4.35 Adoption is an area where the activities of non-professional support and interest groups are necessary and valuable. The most prominent of the support groups, Adoption Triangle, has been active in facilitating reunions between people separated by adoption for many years prior to the new legislation, and in advocating the changes to legislation which makes information available and reunion possible. Other major support groups for members of the adoption community in New South Wales include Mothers for Contact in Adoption, Association of Relinquishing Mothers (ARMS), the Adoptive Parents' Association and the Adoption Privacy Protection Group (APPG). Adoption Triangle has groups throughout the State, and there are also some groups which have developed to meet the needs of people in the local community, such as the Shoalhaven Adoption Support Group, and others formed on this model. Activities of these groups vary, and they are run with differing approaches and degrees of formality. Generally they provide support, encouragement and advice to members, and some are involved in lobbying for law reform. Unlike Victoria, however, it has not been Government policy in this State to promote self-help adoption support groups.

4.36 Submissions received frequently referred to the great benefit derived by members of groups such as Adoption Triangle in coping with adoption issues and in searching. Many people find it easier to deal with people who themselves have had similar experiences with adoption. One submission argued strongly that the adoption community should represent and run itself, through groups strategically located around the State conducted by ordinary people involved in adoption, but supported by a basic level of Government funding and training.

4.37 The Family Information Service has regular contact with the major support groups in adoption, some of which are represented on the NSW Committee on Adoption. Knowledge of, and contact with, smaller or informal groups is less regular. Concerns were expressed to the Commission about the variable degree of knowledge and understanding of the legislation demonstrated by members of some of the groups. In many instances, the advice given is based on personal experience (which can be limited), by people who have little training in counselling or in handling the issues of adoption. In the absence of requirements for mandatory counselling from approved sources as in some other jurisdictions, these groups fulfil an important role in advising all people affected by adoption about how to deal with issues of information, searching and reunion. The Commission itself took submissions from several people who acted as intermediaries and advisers in self-help groups. Overall their sensitivity and dedication impressed the Commission, however this is not to deny a basis for the concerns expressed in other submissions.

4.38 FIS proposes that some form of accreditation be available to encourage groups to meet minimum standards and ensure members with responsibilities for advising others are adequately informed about the legislation, administrative procedures and issues related to adoption information and reunion. Accreditation could be achieved by attendance at a training course, and demonstrated familiarity with the Act and Regulations. Training could be provided by either the Family Information Service or the Post Adoption Resource Centre, and achieved by personal attendance at a course or completion of a distance learning package.

4.39 In the Commission's view, a system of accreditation administered by the Department of Community Services seems desirable. There is no question of prohibiting any of the activities of self-help and other groups, but only of establishing a scheme under which those which have passed the necessary requirements would be entitled to state that they have been approved to provide counselling in relation to the Act. Such accreditation could also be taken into account when funding is under consideration.

Providing services to country clients

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.40 As people throughout New South Wales are affected by the adoption information legislation, accessible services must be provided for them. Several submissions from people in country areas referred to the isolation they feel and the difficulties they face. Many are no different from the disadvantages of distance which apply to country residents generally, however the new Act does create some peculiar problems. Access to adequate and accurate information and advice is the primary concern. The concept of confidentiality is of a different order in a small community and can create difficulties for people wishing to preserve their privacy whilst exercising their rights under the legislation. The cost and convenience of getting access to services is a major hurdle for some. The 008 telephone number maintained by FIS is much appreciated. Some criticism of the administration noted below was directed at services to country clients.

4.41 The administration also faced problems in providing services to their country clients. Some problems noted here for FIS and the Department were also faced by the Registry which had to rely on Local Registrars in court houses to perform various functions. Adoption is a specialised area of practice, and access to adoption information involves not only new law and procedures but also new attitudes and values in dealing with clients. As responsibility for dealing with clients about adoption is devolved to the local level within the Department, there are extra demands on FIS for training and ensuring standards of practice are maintained.

4.42 FIS provided procedure manuals and trained at least one member of staff in each Office, however this was affected in some areas by staff movements resulting from Departmental restructuring in the past year. There is much liaison between FIS and District Offices on individual cases. As it is hard for staff to build up knowledge and expertise when adoption forms only a small part of their practice, they and their supervisors have to develop informal networks of experience and procedures for seeking assistance with the tasks which they perform only infrequently.

4.43 The need to provide services to clients throughout the State has implications for resources. Training and liaising with District Officers requires considerable resources: money, time and personnel. It is important that adequate resources are made available to maintain the level of training, information and support for staff to provide assistance to all people who seek it.

Comments about administration by the Department

4.44 In reporting on the administration of the *Adoption Information Act*, inevitably the Commission has received commendation of and complaints about the activities of personnel in the Family Information Service and District Offices. These were made in submissions to the Commission, and in representations to the Premier and the Minister for Community Services made available to the Commission. Although the majority of comments were complimentary, several aspects of administration were the subject of complaints. Comments about particular aspects of the administration, for example the supply of prescribed information and the contact veto system, are noted in those sections of the Report.

4.45 The staff of FIS have impressed many clients with their dedication and compassion. Some singled out and referred to officers by name, others related incidents where their kindness, assistance and compassion were beyond that expected of the bureaucracy. Many have found it invaluable to be able to call a counsellor for information, advice, reassurance or consolation and receive a sympathetic response. Many people who have had dealings with the staff regard them as dependable, understanding and supportive. Some adoptive parents expressed appreciation that an approach was made to them first when it was necessary to trace an adoptee. The Commission is aware of the efforts of the administration to make information and services available to people whose circumstances created difficulties in getting access to them.

4.46 Many searchers greatly appreciated the Blue Book, the *Guide to Searching* published by FIS, and relied on it extensively. Not only did it contain useful information about how to trace people, it offered them insights into how others could be feeling. Similar assistance was given at the Information Sessions conducted by FIS.

4.47 There was, however, criticism. Some people were frustrated by the procedures that were necessary, such as having to provide so much identification, take time off work to lodge applications in person or pay fees only in cash. Others objected to delays in responding to enquiries, or having to deal with a several different members of staff. It was felt by some that staff were unable to deal with the unusual enquiries, or "it was like talking to a

computer". Others felt that some staff involved did not understand or did not care, or displayed the same paternalistic attitudes that had characterised their previous dealings with welfare officials. Others complained that reliable information was not always provided, particularly by District Offices. It seems that in the early days of operation, not all clients received a copy of the *Guide to Searching* as it was out of print for some time. Some staff were said to be positively unhelpful, or even rude. Despite their criticism, some acknowledged that the administration was under considerable pressure, especially in the early months of the Act's operation, and that they probably did not have sufficient staff.

4.48 The Family Information Service acknowledges that implementation of the Act has not been without difficulty, and that this was inevitable given that the legislation so intimately touches the lives of many people. FIS contends, however, that the level of complaints has been minimal when compared with the volume of work that has occurred.¹⁷ The Officer-in-Charge of FIS submits that the results achieved in the implementation and first year's operation of the Act are due to the efforts of the many committed staff working within the constraints of the resources available.

4.49 It is inevitable that some of the criticism voiced to the Commission about administration by FIS and Departmental staff is valid, and it is to be expected that not everyone will have been satisfied with their dealings with the Department. The commitment of staff has been demonstrated to the Commission in the course of this review. In the Commission's experience, certain of the complaints made about FIS (and also about other aspects of the administration associated with the Act) are based on misunderstandings. Often the entitlements given by the Act or the procedures required by it are not understood fully. On other occasions, the reasons for a particular approach taken in the legislation or the administration which seemed arbitrary or unconsidered were not appreciated. Perhaps given the newness of the legislation, the lack of knowledge and understanding is to be expected. So is apprehension and opposition to the law which may be an underlying factor in attitudes or responses to individual dealings with FIS and Departmental staff. It is the view of the Commission that none of the complaints raise issues of improper or inefficient administration of the Act.

REGISTRY OF BIRTHS, DEATHS AND MARRIAGES

Role of the Registry of Births, Deaths and Marriages

4.50 Under the *Adoption Information Act 1990* the Registry of Births, Deaths and Marriages has responsibility for supplying information recorded on various of its Registers to adopted persons, birth parents and others who have an entitlement arising under that Act. The Registry is an information source for the purposes of the Act,¹⁸ and the Principal Registrar has various functions associated with supply of original or amended birth certificates and prescribed information,¹⁹ and administration of the contact veto system.²⁰

4.51 The Registry of Births, Deaths and Marriages is responsible for creating and maintaining registers of information about the population of New South Wales.²¹ The powers and duties of the Principal Registrar derive primarily from the *Registration of Births, Deaths and Marriages Act 1973* (the *Registration Act*). They include the power to release, at the Principal Registrar's discretion, a certified copy or an extract of information contained on certain Registers. The *Adoption Information Act 1990* alters the Principal Registrar's powers and the exercise of his discretion in that it determines the circumstances in which a copy of the original birth registration and the adoption details of a person (the amended birth certificate), can be issued.

Functions

4.52 The administrative functions of the Registry of Births, Deaths and Marriages under the *Adoption Information Act 1990* are:

answering telephone and personal enquiries concerning rights under the Act

processing applications for original or amended birth certificates

recording contact vetoes on the appropriate Registers

collection of fees and administration of fee waivers on behalf of FIS

supplying birth certificates not subject to a contact veto

accepting undertakings where a contact veto is in place

supplying birth certificates subject to a contact veto

issuing search kits on behalf of FIS

further searches of Marriage and Death Registers

removing contact vetoes following lifting by vetoer.

4.53 Responsibilities under the *Adoption Information Act* 1990 fall on the Principal Registrar, and these have primarily been carried out by the Principal Registrar, the Deputy Principal Registrar and the Adoption Section in the Central Registry located in Sydney.²² It was anticipated that the administration required by implementation of the *Adoption Information Act* 1990 could be met by an extension of existing Registry activities. However, in response to the demands of satisfying public enquiries, administration of the contact veto system and supply of certificates, a new, separate section was formed within the Certificates Division. It has responsibility for all functions concerning release of certificates relating to an adopted person under both the *Adoption Information Act* 1990 and the *Registration Act* 1973. Registry staff have been instructed to refer all adoption matters and enquiries to the Adoption Section.

4.54 Regional offices of the Registry in Newcastle and Wollongong accept applications for certificates and issue search kits on behalf of the Family Information Service, and accept undertakings where a certificate is to be issued subject to a contact veto. Local Registrars are located in Court Houses throughout New South Wales. Although an employee of the Department of Courts Administration, the Clerk of the Court acts as the Local Registrar and is the agent of the Registry of Births, Deaths and Marriages in all matters, including some functions under the *Adoption Information Act* 1990. Local Registrars accept applications for certificates and witness contact veto undertakings. Local Courts and Regional Registries have accepted 14% and 13% of applications for birth certificates respectively. All applications made outside Sydney are forwarded to the Central Registry for processing.

Volume of work

4.55 Functions under the *Adoption Information Act* 1990 create a considerable amount of work for the Registry. Statistics indicating use of the Act relating to the Registry's responsibilities are presented in Tables 1 and 2 above.

4.56 When the *Adoption Information Act* commenced, the level of interest in the Registry from people affected by it was considerable. In the period January to May 1991, the Registry handled an average of more than 30 telephone calls per day and after certificates were first released, follow-up calls to applicants averaged 9 per day. Current statistics are 35-55 per day for telephone enquiries about adoption matters generally, and 6-12 per day for follow-up calls. Files reveal that client liaison with applicants is substantial, particularly where insufficient information is supplied with applications, or there are difficulties in supplying information from the Registers. There has been an increase in applications for the original birth certificates by the birth mothers of children relinquished for adoption.

4.57 The Registry opened on three Saturdays prior to 2 April 1991, when the Act commenced. This was to make Registry service more readily available, and to avoid overcrowding and taxing of resources in the first days of operation of the Act. There were 294 applications lodged on the first day and a total of 629 for the three Saturdays. These applications were deemed to have been made on 2 April 1991.

4.58 In May 1992, the Registry held an Open Day one Saturday for people who had experienced difficulties tracing relatives following access to an original or amended birth certificate. At no charge to clients other than for certificates issued, staff provided assistance in searching Registers for information to which the adopted person or birth parent had entitlements under the Act.

Nature of work

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.59 The nature of Registry work concerning adoptions is particularly exacting and sensitive. Each application needs to have the identity of the person verified, and extensive searches and checks are carried out before the certificate is released or the veto recorded. Each file requires a minimum of 1 hour, and possibly 4 or 5 hours. Searching and matching functions are vital for the correct identification of registrations affected, and can be very time-consuming and frustrating, depending on the quantity and quality of information supplied. The Registers are only partially computerised so that some of the searching, especially of older records, is manual. Careful checking is necessary in all cases, but particularly to ensure that the registration of a contact veto is properly noted. Even when there are no positive results from a search, considerable time is expended in checking details to confirm the "no trace" result.

4.60 Adoption Section staff deal with clients whose needs are different from those of other people who seek information from the Registry. Applicants may be anxious about the results of a search, deeply affected by what is found, or frustrated by the absence of information or an entitlement to information. Sensitivity is needed in dealing with all who seek help from the Registry. Staff appear to have been extremely helpful to clients, and to the many others affected by the new legislation who have sought advice and assistance from the Registry. This has occurred both for people seeking information and searching for relatives, and for those who are concerned and anxious about privacy and unwanted contact.

4.61 Registry staff have also become informal sources of advice for people affected by adoption. Some of the enquiries received flow directly from release of information under the Act, and relate to the Registry's expertise in searching and tracing information on the public record in New South Wales and other States. Others relate to adoption generally, and staff often need to refer enquirers to agencies such as the Adoption Branch and the Supreme Court.

4.62 Publicity and community education have become significant functions of the Registry in relation to the new legislation. Especially around the time the Act commenced operation, media interest in the Registry was high, and staff gave many interviews. There have been several approaches from students and staff of tertiary institutions for information about the Act. Senior Registry staff have presented information about the law to the Post Adoption Resource Centre, adoption support groups, and to other community groups.

Staffing

4.63 Almost all administration for the *Adoption Information Act 1990* has been undertaken by the Adoption Section. Since work related to the Act began in November 1990, the number of staff concerned has varied. Approval was given for a maximum of 15. As the volume of work diminished following the first few months of the Act's operation, numbers were reduced and at present a staff of six full-time employees at various grades handles the work. The Deputy Principal Registrar (who was Acting Principal Registrar for several months during the past year) has had major responsibility for administration. The Officer-in-Charge, Adoption Section and other staff were drawn from within the Registry. All staff have been selected for their understanding and skills in the relevant legislation and Registry procedures. Searching of Registers is more complex than with other Registry functions and client relations more extensive and sensitive. Creation of a separate section with specialist staff is an appropriate response to the demands of the *Adoption Information Act 1990*.

4.64 Training of staff in the Adoption Section occurred in the period prior to implementation of the Act. Of necessity, training was on-the-job, with procedures developed as required by the Act and Regulations and in conjunction with the Family Information Service, and refined in the light of experience. The Registry examined the practice in other jurisdictions in establishing the Adoption Section. The Section is small enough for constant supervision by and consultation with superiors. Procedural guidelines were prepared for Regional Offices of the Registry and for Local Registrars for distribution by the Department of Courts Administration.

Registry of Births, Deaths and Marriages funding

4.65 The Registry of Births, Deaths and Marriages sought additional funding from Treasury to cover salaries of staff who would be engaged on administration of the *Adoption Information Act 1990*. It was advised that \$115,000 would be available on the basis that revenue would be met from additional income generated from charges under the Act and for further searches. The additional capital and running costs associated with establishing and operating the system, as well as staff salaries have been met from within the Registry budget, however the Registry has been unable to recoup its costs from the charges.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.66 The fee of \$100 charged by the Department of Community Services for applications for a birth certificate under the Act is collected by the Registry on behalf of the Department to avoid inconvenience for clients having to approach two agencies before any information was obtained. The money is remitted to the Department regularly. Although it expected to receive a proportion of the revenue, the Registry has not as yet resolved the issue with the Department. The decision has been taken to continue to operate the Adoption Section without covering costs so as not to disadvantage clients seeking access to information. This situation will be affected when the Registry goes "off budget" as is expected in the next financial year. The Registry will have control of all its financial affairs, and must meet the level of contributions to Consolidated Revenue set for it.

Interstate registrations and adoptions

4.67 A surprising number, perhaps around 5%, of adoptions concern registrations in two or more States. In November 1990, each of the Registrars of all the jurisdictions in Australia agreed that they would act co-operatively and respect the entitlements to searching and the issue of certificates created in the adoption information legislation of other States, provided that it did not conflict with their own State's legislation. This reciprocal agreement is working for the benefit of people who are affected by the New South Wales Act, both with searching and other matters, for example with witnessing undertakings not to contact where a contact veto is in place. Other Registries are aware of the requirements of the New South Wales legislation, and verify identities and ascertain whether there is a contact veto in place before releasing information from their Registers.

4.68 Concern has been expressed about the position of adoptees and birth parents where consent to an adoption was given in New South Wales and the adoption took place in the Australian Capital Territory. In the absence of adoption information laws in the ACT, birth parents are not entitled to information under the NSW legislation as they would expect. While the reform of the law of the ACT is outside the scope of this reference, we draw attention to the anomaly.

4.69 There are some problems which arise because of the different legislation in each State. One occurs where a contact veto is placed for a birth which has occurred in one State and the adoption in another. A contact veto should be lodged in each State to be fully effective. Registry procedures advise the intending vetoer that this action is necessary. Where an information veto may also be lodged, it may not necessarily be noted in this State which does not recognise such a right.

Comments about administration by the Registry

4.70 In submissions to this review, there has been considerable expression of satisfaction with the Registry of Births, Deaths and Marriages in administration of this legislation. The overwhelming majority of comments made to the Commission reflected very favourably on the sensitivity and efficiency of the staff. These views are echoed in the correspondence received by the Attorney General's Department and the Registry itself. It is clear that senior staff of the Registry were concerned that implementation of the Act was successful at the administrative level and at the individual level for all concerned. Willingness of staff to work beyond normal hours is clearly evident. Concern has been expressed to the Commission about the authority for searches carried out by the Registry where there is an interstate adoption. Although no formal response has been sighted by the Commission, it appears that no improper action was involved.

4.71 There were mixed reactions to the performance of staff in local Court Houses throughout the State. In some submissions they were singled out for praise and thanks, and in others their lack of knowledge and assistance were criticised. Such a situation is to be expected, given that many of the staff in Court Houses would have infrequent experience of the new procedures and little opportunity for gaining more than a superficial understanding of the new system. In the Commission's view the level of complaint does not give rise to concern. It indicates that there is a need for liaison by both the Department of Community Services and the Registry with the Department of Courts Administration to ensure that staff in local Court Houses who are called upon for advice have adequate information available and are aware of where further assistance in handling these enquiries can be obtained.

Relationship between the Registry and FIS

4.72 As the two main administrative agencies, FIS and the Registry are required to have contact on a number of aspects relating to release of adoption information. Established procedures exist regarding recording on the

Registers the lodgment and withdrawal of contact vetoes. FIS staff are also involved in searching Registry records (in accordance with Registry guidelines) to ensure that clients and relatives seeking information are correctly identified or that no relevant contact vetoes exist. Where records reveal that the recipients may be distressed by the information, Registry practice is to refer release of information to FIS who can provide counselling and other assistance. There is also regular contact between the two agencies on an ad hoc basis regarding information relating to identification of parties involved in adoptions where records of either agency are incomplete or unclear. The Registry has been involved with FIS over the project to develop the computerised database of NSW adoption records.

POST ADOPTION RESOURCE CENTRE

Role of the Post Adoption Resource Centre

4.73 The Post Adoption Resource Centre was established in April 1991 "to provide a comprehensive counselling service addressing the needs of adopted persons, birth parents and adoptive parents relating to the adoption experience, with, as an initial focus, needs arising out of the Adoption Information Legislation".²³ The Post Adoption Resource Centre (PARC) was established by the Benevolent Society under a Community Funding Agreement with the Minister of Family and Community Services which provides funding for three years to operate a State Post Adoption Resource Centre. PARC incorporates the Post Adoption Service formerly conducted by the Benevolent Society at the Royal Hospital for Women, Paddington. This Service was based on the social work records of the defunct Crown Street, Queen Victoria and South Sydney Hospitals.

4.74 Establishment of PARC was based on a recognition that an increased demand for counselling services would arise from implementation of the *Adoption Information Act* 1990 and that limited resources and expertise existed in the community to meet this specialised need. It was determined by the administrative agencies responsible for implementation of the Act, in consultation with the Benevolent Society, that a more effective use of resources would be achieved by counselling services being provided by a non-government organisation rather than by expanding existing Departmental services. An Advisory Committee was established for PARC in accordance with the terms of the funding contract with the Department of Community Services. The Committee's role is to monitor the operation of the Centre, and it advises on questions of policy and priorities for services and research. Members of the Advisory Committee represent self-help groups, government agencies, individuals, and academics concerned with adoption, and the management of PARC and the Benevolent Society.

4.75 PARC offers information, advice, support and counselling to all people affected by the *Adoption Information Act*: adopted persons, birth parents and adoptive parents. As well as services directly provided to individual clients, PARC is responsible for training and education in the skills and issues of adoption. The main functions of PARC are noted below. In addition, PARC supplies prescribed information from the social work records of Crown Street Women's Hospital.

4.76 Information is provided to a wide range of people about the adoption experience, particularly as related to access to information under the Act. Most is given to telephone enquirers and PARC regularly holds information meetings at which adopted persons, birth parents and adoptive parents speak about their experiences. These are often a starting point for those seeking support and advice about taking action under the Act. Information sheets published by PARC, journal articles, books and reading lists are made available to clients to supplement information and counselling services. PARC has held open days in some country centres for clients unable to attend the Centre in Sydney.

4.77 Counselling services are provided on a fee-for-service basis to groups and individuals. Most clients require short term (1-5 sessions) counselling, and those who require more are usually referred to other agencies or private therapists. Issues dealt with in individual interviews include searching, mediation, help with letter writing, help with disclosing the fact of adoption or the existence of a relinquished child, grief, unsuccessful reunion, rejection and identity issues.

4.78 Outreach is the initial contact made by PARC at the request of an adopted person or birth parent with the person who is being sought. It is a small but highly significant part of PARC's work. PARC has developed guidelines for conduct of outreach to ensure that it is done most effectively and with sensitivity to all parties involved. Mediation is another important function. A PARC social worker can act as an intermediary to assist the

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

adoptee and birth parent/s agree on the nature of their future relationship, including any contact which is to be established between them.

4.79 PARC considers training and skills transfer to be an important function. PARC provides information, consultation and training in adoption issues for health and welfare professionals in community agencies and other institutions such as hospitals, and information and training for volunteers in adoption self-help and support groups. The training program has been quite extensive; in 1991 more than 20 engagements were undertaken.

4.80 Although PARC was established to provide a state-wide post adoption service and accepts clients from throughout New South Wales, access to PARC's services so far has predominantly been by people in the Sydney metropolitan area. On several occasions PARC staff have travelled to country centres to provide information sessions and training. A 008 telephone number was installed, and although it was removed for a time to contain costs, is now operating again. PARC intends to identify resources available to and needed by people in country areas and develop its services to people throughout the State.

Volume of work

4.81 The number of clients seen by PARC has not reached the levels anticipated when the service was established, which were projections based on the expected level of applications for birth certificates. PARC's services have been to some extent under-utilised, because of this and because of a greater than anticipated reliance on the advice and counselling services of the Family Information Service.

Table 4: Use of PARC Services (to 21 April 1992)

| SERVICES OFFERED | MEETINGS HELD | TOTAL NUMBER |
|-----------------------------------|----------------------|---------------------|
| Telephone Counselling | - | 4867 |
| Interviews | - | 260 |
| Mediation | - | 87 |
| Release of Prescribed Information | - | 140 |
| Group Information | 11 | 333 |
| Group Programmes | 15 | 156 |

[\[Link to text only version of table 4\]](#)

Table 5: Status of PARC Clients (percentages)

| | Percentage of Telephone calls | Percentage of Interviews |
|----------------------|--------------------------------------|---------------------------------|
| Adopted persons | 37% | 44% |
| Birth parents | 28% | 48% |
| Adoptive parents | 7% | 5% |
| Professional workers | 12% | 0% |
| Other clients | 10% | 4% |
| No records kept | 7% | 0% |

[\[Link to text only version of table 5\]](#)

Staffing

4.82 PARC's professional staff consists of a manager and four social workers, with an administrative staff of three. Staff have appropriate professional qualifications and the agency has implemented a thorough program for quality assurance in accordance with standard social work practice. This involves regular client evaluation of services, guidelines and protocols for outreach and mediation, personal supervision and continuing professional training for staff.

Post Adoption Resource Centre funding

4.83 A major portion of the expenditure of revenue received by FIS has been allocated to the Post Adoption Resource Centre. Under the agreement signed by the Benevolent Society with the Department of Community Services, PARC funding was set at \$183,650 for 1990/1991, \$314,000 for 1991/1992, and \$260,000 for 1992/1993. Apart from fees, the other source of funding for PARC is the New South Wales Department of Health which funds the two staff positions formerly located in the Royal Hospital for Women to deal with the social work records of the Crown Street Hospital.

4.84 PARC charges fees for each of its services, but waives these on the usual grounds. It also administers a Fees Assistance Fund, set up by an anonymous donor associated with the Australian Association of Philanthropy to assist people on low incomes who are prevented from undertaking post-adoption documentation searches for information held in Registries of Births, Deaths and Marriages. Eligibility is determined according to whether there is justification for a waiver of the fee payable with an application for an original or amended birth certificate. PARC earned \$15,829 in fees up to 30 May 1992, and an amount of \$20,921 was foregone in fee waivers.

4.85 There are difficulties with implementing a full cost recovery structure for a counselling service in the context in which PARC operates.²⁴ Many potential clients are unable to afford a fee, and most would find difficulty in paying the full cost of providing the service they receive. In the original budget a notional amount of \$20,000 was expected as income from fees in Year 1. This has not been met because of a lower than anticipated level of utilisation of services and the operation of the fee waiver for disadvantaged clients. This result is consistent with the experience of a similar centre in London. Although to date training provided by PARC has been offered at a less than cost recovery basis, there is a potential for income earning from this function.

Comments about PARC

4.86 Submissions received by the Commission in the course of this review contained comments on the services provided by PARC as perceived by clients and the adoption community generally. A survey of 290 clients conducted by PARC and prepared in November 1991 was made available to the Commission. This survey

reports a very high (over 90%) level of satisfaction with PARC services, and in particular with the telephone information/counselling service, the information meetings, and counselling in small groups and individually. The majority of those who were charged a fee for a PARC service considered the fee to be reasonable.²⁵ This positive view is confirmed by submissions to the Commission in which the majority of comments about PARC, and about individual members of staff of PARC, were most favourable. Clients valued highly the information they could get from PARC, the opportunity to share in a wider personal experience of adoption in the information meetings and the attitude shown by staff to clients.

4.87 Many of the complaints about PARC's services relate to cases where access to services is limited by problems caused by time and distance. It appears that in the early months of its operation, PARC was difficult to reach by telephone. People in country centres advised the Commission that PARC services were not really available to them. There was disappointment when the 008 number was cancelled. Predictably, the need for and level of fees met some opposition, especially from people who considered that they were not in need of counselling and from searchers facing the high costs of tracing hard-to-find relatives.

4.88 There is a general perception that PARC focuses on those who are supportive of the access to information parts of the legislation and does not offer a balanced service to all members of the adoption community. This is particularly so for adoptive parents and adoptees who have no wish for information about or contact with birth parents, and wish to maintain their privacy. PARC has identified this as an area in which to make their role more accessible and acceptable. Although the protocol applying to mediation recognises the sensitivity of the situation, some people have responded negatively to an outreach by PARC. In specific cases, two strong complaints have been made against the invasion of privacy and the propriety or even legality of PARC's actions in approaching another person on behalf of a client.²⁶

OPERATION OF THE ACT: SUPPLY OF ORIGINAL OR AMENDED BIRTH CERTIFICATES

4.89 The supply of original or amended birth certificates is the key element of the access to adoption information provisions of the *Adoption Information Act* 1990. It is the provision most frequently used, both because that is what most adopted persons and birth parents want to have and because the legislation creates a scheme in which possession of an original or amended birth certificate is the first step to receiving other information relating to the adoption. This aspect of the Act appears to have operated with few problems.

Prior to the Adoption Information Act

4.90 The *Registration of Births, Deaths and Marriages Act* 1973 gives the Principal Registrar considerable discretion to issue copies or extracts of registered information.²⁷ However, where the person has been adopted, the law and policy relating to the supply of information prohibited an adopted person from obtaining a copy of the original registration of his or her birth, and a birth parent from obtaining the amended birth certificate of the relinquished child.²⁸ The birth certificate issued by the Registry to an adopted person contained details taken from the Register of Adoptions and a copy of this amended birth certificate was available only to the adopted person and the adoptive parents.²⁹ The form and contents of the amended birth certificate varied over time, but at all times however certain differences indicated, at least to the informed, that it was not a record of a registration in the Register of Births. In recent years the Registry has altered the birth certificate of an adopted person to bring it closer to that of a person who has not been adopted, but differences are still evident.

Adoption Information Act 1990

4.91 The *Adoption Information Act* 1990 altered the *Registration Act* to permit the Principal Registrar to issue a copy of a recording in the Register of Adoptions which shows particulars other than those after the adoption.³⁰ The adopted person can receive a copy of the original birth certificate, and a birth parent a copy of the amended birth certificate. This certificate is recognised under the Act as a 'passport' to obtaining further information, "prescribed information", about the adoption, and the other parties involved.

Issue of certificates by the Registry

4.92 Application is made to the Principal Registrar for a copy of the original or amended birth certificate. The application form can be lodged by mail, or in person at an office of the Registry or a Local Court House. In

accordance with the *Adoption Information Act*, the applicant must satisfy the Registry of his or her identity,³¹ and the Registry has guidelines concerning the acceptable documentary evidence for the use of Local Registrars. All applications are forwarded to the Adoption Section for processing.

4.93 In the Adoption Section, the identification of the applicant is verified, the relevant information on the Adoption Register located by matching the information, and the certified copies of the original or amended birth certificate prepared by retyping, photocopying or photographing and endorsing with the correct authorisations. Certificates are endorsed "Superseded by a later record and issued under the Adoption Information Act, 1990. Not For Official Use.". To ensure that the correct certificates are being released, Registry procedures provide for checks and double checks, and that the information contained on the certified copy conforms with the *Registration and Adoption Information Acts*. A check is made about whether the issue of the certificate is subject to a contact veto, both when the registration is identified, and again immediately prior to dispatch of the certificate to the applicant.

4.94 In some instances the Registry is unable to supply the certificate requested. If the birth or adoption occurred interstate or overseas and was recorded in another Registry, then the applicant is supplied with only that information which is available from the Registers in New South Wales. The Registry supplies the person with a document which can be used to obtain the information from another Registry. In a small number of cases, for example when the child was a foundling, there may be no record of the birth. In this case the Registry may be able to issue a document which can be used by the person to obtain further information from information sources under the *Adoption Information Act*. If it appears that although the adoption consent was given the adoption did not proceed, the Registry refers the matter to FIS so that they can inform the birth mother and provide any necessary counselling. It is Registry practice to refer applicants to FIS for release of certificates if the circumstances suggest that there is confidential information or other information which may be distressing. It is desirable that suitably trained staff are responsible for giving applicants such information and providing appropriate support.

4.95 The information contained on the certificates supplied by the Registry is that which is recorded on the original registration. As with any registration, the Registry relies on the information supplied by the informant, and does not attempt to check or verify the details. In some instances, the birth mother has supplied information, deliberately or inadvertently, which is inaccurate. The recipient may discover this after some time as a result of attempts to trace the persons named. Whilst the Registry can conduct other searches and possibly identify the person concerned, it cannot be totally certain, and is reluctant to issue such information, if it is available, and this situation understandably causes frustration in the person seeking the identity of a birth parent.

Procedure where contact veto lodged

4.96 If a veto is in place, the Registry notifies the applicant who must attend a Registry Office or a Department of Community Services District Office (or an agent overseas or interstate) to have witnessed their signing of the undertaking not to contact. On receipt of this document, the Registry will supply the copy of the certificate to the person who has signed the undertaking. As signing the undertaking must occur during a personal interview, Registry staff are often placed in the situation of needing to deal with people over very emotional issues. This may require of staff skills and experience beyond those required for normal duties. Every effort should be made to ensure that the staff doing this work are appropriately qualified for it. This admittedly poses difficult issues for staff at Local Courts: consideration should be given to the allocation of senior staff to this work, or even, where this is not possible, making arrangements for the interview to be conducted at another location, where appropriate staff are available. The availability of suitably qualified staff should be the major consideration in determining the extent to which this work is performed in a Registry Office in a Local Court or at an office of the Department of Community Services.

Further searches

4.97 In addition to an entitlement to an original or amended birth certificate, the legislation gives an entitlement to adopted persons and birth parents to marriage and death certificates relating to the other party.³² The Registry has conducted 2,151 such further searches under the Act. Release of a full copy of such certificates is not sanctioned either by the *Adoption Information Act*, as the prescribed information must relate to either the birth parent or the adopted person respectively,³³ or in accordance with the policy and practices³³ of the Registry

regarding the release of certificates generally.³⁴ The information is released in the form of a “Result of Search” which contains information extracted from the entry on the Marriage and Death Registers.

4.98 The operation of the entitlement to further searches is affected by clause 14 of the Regulation which, in effect, prohibits release by an information source of the last known name and address of a person which was received by the information source after the adoption occurred, unless it has been acquired in the listed circumstances and which would give rise to a presumption that the person had consented to its release. The restriction is clearly seen in the case of an adopted person seeking a death certificate of a deceased birth mother. The adopted person is placed in a disadvantaged position compared with a non-adopted person who would be entitled to a full death certificate in this situation. The combined effect of the law and practice affecting the Registry in the release of information is that the Principal Registrar is put in the position of exercising the discretion on a case-by-case basis, which can be both administratively cumbersome and unpredictable. The Commission deals with this matter in Chapter 8.

4.99 Restrictions on the release of information by the Registry under both the *Adoption Information Act* and the *Registration Act* has been a frustration to many people tracing their relatives following access to adoption information. Several submissions referred to the difficulty of tracing people without information which is easily obtained from Registers and nowhere else, and the consequent halt to their inquiries. It is most evident when the identity and whereabouts of siblings who were not adopted are concerned, but there are many different circumstances when the information is not available.

OPERATION OF THE ACT: RELEASE OF PRESCRIBED INFORMATION

Introduction

4.100 Release of information concerning the parties to an adoption is the second major element of the information provisions of the *Adoption Information Act* 1990. The information is contained on files held by a number of organisations, which have been designated “information sources” by the Act.³⁵ The primary one is the Family Information Service, which has all Department of Community Services records relating to children who were adopted, and access to records of wards of the State who were adopted. Private adoption agencies also hold records relating to the adoptions they arranged. Information is also contained in the medical records of hospitals where adopted children were born, and in the Supreme Court records of adoption proceedings. Prescribed information sought by any adopted person or birth parent is likely to be held by more than one organisation. The amount of information recorded varies according to the agency responsible and the time at which the adoption occurred.

4.101 The entitlement of adopted persons, birth parents and adoptive parents to prescribed information is created by the *Adoption Information Act* 1990 and the extent information which can be supplied is determined in the Regulation.³⁶ The approach of the legislation is detailed and complex, specifying each category of information, and only information which falls with such categories may be released. All information sources must comply with the legislation regarding who may receive what information. The comments which follow regarding access to prescribed information from FIS apply to information provided by every information source.

4.102 In general the demand for prescribed information does not nearly match the level of demand for original or amended birth certificates. This may occur for various reasons. People who have obtained a birth certificate may not yet have decided to take any further action, or may have used the certificate to trace the person and get the information at first hand. Many persons who received non-identifying information prior to 1991 are unlikely to have much need for prescribed information now. Perhaps there is a greater need for information for those unable to trace the other party, or facing a contact veto. In only a very small number of cases (6 for FIS) have applicants wanted prescribed information without also seeking a birth certificate. In these cases only medical information is required.

Family Information Service

4.103 Records relating to the adoption of children since 1923 are held in various forms by the Department of Community Services. Original records from adoptions arranged by the Department’s predecessors, and records relating to adopted persons who previously were wards of the State are available in the Department, but these are usually located in the Department’s archival storage. Departmental files relating to adoptions prior to about 1953

were destroyed some time ago³⁷ and the Department holds only minimal information relating to them. The Department also holds records from certain private adoption agencies which have closed and whose records have been deposited with the Department. The extent and quality of these records are variable. About 2,500 applications for prescribed information have been made to FIS.

4.104 FIS guidelines for the release of prescribed information reflect the requirements and entitlements in the legislation. They specify the categories of information which may and may not be released. Prescribed information is supplied in non-identifying form. It is information recorded at the time of the adoption, and not up-to-date. The exception to this is where FIS holds more recent information which was supplied with the intention of transferring it to the adopted person or birth parent.³⁸ The prohibition on release of identifying information about an unacknowledged birth father is strictly observed.³⁹ Another prohibition observed is on release of the last known name and address unless certain conditions are fulfilled.⁴⁰ Both these matters have been criticised in some submissions, and are dealt with by the Commission in Chapter 8.

4.105 Information sought from FIS is compiled from the files by Information Officers, and checked by senior staff before being provided (in the usual case) in written form to clients. The information is held in files of the Department of Community Services actually located in archival storage. The files must be physically retrieved from storage, and manually accessed. Computer access to this information is not possible.

4.106 Special provision is made for the release of prescribed information which is considered to be potentially distressing. This includes information which the Regulation defines as "confidential information" but FIS assesses each case individually to determine if any of the information could be distressing for the recipient.⁴¹ For adoptees this information may relate to the circumstances of conception of the adopted person (eg rape or incest), or medical or psychiatric history of birth parents. For a birth parent, learning of the death of the adopted person, the breakdown of the adoption or that the child was never adopted is regarded as distressing information. Suitably experienced staff, either from FIS or District Offices, release distressing information, so that they can explain the information and provide support to the client. The Registry of Births, Deaths and Marriages refers such cases to FIS for release of the certificate and other relevant information. It is obviously important that appropriate staff handle these matters in each information source. The Commission has not been informed of any difficulties relating to this.

Problems concerning supply of prescribed information

4.107 A comment frequently made about obtaining prescribed information was the delay which occurred. FIS acknowledged that there had been delays in supplying this information, commonly of four months in the early period of operation of the Act when demand was heavy. Their policy was to treat applications in the order received. The procedures which have to occur to provide the information include checking records to verify identities and the relevant files, retrieval of the files from archival storage where they were held, reading the files and compiling the information which can be released. Some delay is inevitable to allow for this process. Delays are still in the order of 6-10 weeks, and are likely to be affected by reduction in staff numbers after 30 June 1992.

4.108 Criticism was also made when the prescribed information was not available, or in the opinion of the recipient, insufficient. Expectations may have been fuelled by media reports of "adoption files thrown open" and the "veil of secrecy removed". Some applicants or people about whom information was to be revealed were led to believe that the entire contents of Departmental records would be released. The categories of information in clauses 5, 6 and 7 of the Regulation are in the nature of a 'shopping list'. The information can be provided only if it is on record. As a general rule, files for adoptions since 1967 in most cases have a considerable amount of information, files for adoptions from 1953 to 1967 have a moderate amount of information available, and for adoptions arranged by the Department prior to 1953 there is very little information available. All clients are encouraged nevertheless to apply to FIS for prescribed information, if only to obtain evidence that they have exhausted all other avenues should they wish to apply to the Supreme Court for information from their records.

4.109 In other situations the information supplied was compared with the extent of non-identifying information previously obtained from the Department of Community Services. It was Departmental policy prior to the *Adoption Information Act* to release to adoptees, adoptive parents, birth parents and birth relatives all non-identifying information available from all sources to which the Department had access. Both positive and negative information was released, without sanitising or censoring.⁴² By prescribing only those categories of information

(and they relate to factual and not subjective information) to which an adopted person is entitled, the regulations generally have had the effect of reducing the amount of information received from files. Some submissions drew attention to this anomaly.

4.110 The extent of information about birth parents supplied under the Act was also unfavourably compared with information which in recent years has been given to adoptive parents to pass on to the adoptee. Since 1977 "My Story" books were produced from the information provided by the birth parents and contained a range of information in non-identifying form about the birth parent/s and their families. This could be quite extensive and detailed. Information was given about birth parents prior to this date, but was not necessarily as extensive.

4.111 The Commission is sympathetic with applicants who had to endure such long waits before receiving information. Understandable, too, is the disappointment of those whose records revealed little if any new information. There is no evidence that the delays were caused by factors other than the obvious level of demand, compared with the staff resources available to process applications. Whilst such a situation is regrettable, it seems to have been unavoidable given that resources for FIS were limited by the allocations made in the Department's budget.

Access to former State wards' 'B' files

4.112 Another area causing difficulty for some adopted people and for FIS occurs when an adopted person has been a ward prior to adoption, or a sibling of an adopted person was also a ward but not adopted. This was a common occurrence if several children from a family became wards, but only some were subsequently adopted. In some cases a child has been a ward for a period of many years, and would have access at that time to a great deal of information about themselves now contained in Departmental files.

4.113 It has been suggested by FIS⁴³ that in the case of wards who are later adopted there is a 'conflict' between the Act and the Departmental practice of allowing supervised access to non-confidential information on their wardship file (known as the 'B' file). The Commission understands that it is present practice to prevent access to material in such files, to which the person would otherwise have been entitled under Departmental practice relating to 'B' files, where such information extends beyond the entitlement arising under the *Adoption Information Act* 1990. Original material in their file, such as certificates and school reports are supplied to the adoptee under clause 10 of the Regulation.

4.114 In the Commission's view this is an unnecessarily restricted approach. A file created at the time when the person was a ward, and in connection with the wardship, falls outside the scope of the *Adoption Information Act* 1990. Information in it is not information "obtained in connection with the administration or execution of this Act" under s15. It follows that there is no inconsistency between the Departmental practice and the provisions of the Act. It is a matter for Departmental policy whether to disclose the whole or some of the file. It would be possible, of course, for the Department to adopt a policy under which it did not disclose those parts of the file which would lead to the identification of individuals separated by adoption. However the Department would be entitled to take into account the policy reasons that underlie the present practice relating to wards, and should not regard itself as obliged to apply to this different matter the policies expressed in the *Adoption Information Act*. Insofar as the Department does decide to implement the policy of the *Adoption Information Act*, in the Commission's view it should keep in mind the basic principles, discussed in Chapter 6, under which rights to identifying information are granted, subject to the protection of the contact veto system.

Information available to birth parents

4.115 Considerable anxiety has been expressed about the extent of information available to a birth parent about adoptive parents.⁴⁴ The information prescribed relates to age, nationality, ethnic background, physical appearance, occupation, hobbies and interests, religion and composition of family. It is, unless information has been supplied to the Department more recently with the intention of the birth parent receiving it, information as at the time of the adoption, not current information. It does not extend to details of medical history, or financial affairs, as appeared to be understood by a number of adoptive parents who made submissions to the Commission. There is no authority for the release of information of that nature. Information obtained as

prescribed information must be distinguished from information about an adoptive parent available from other sources, on the public record and elicited from private enquiries.

4.116 The rights to information of birth parents have been referred to in many submissions. The rights to identifying information once the adopted person reaches 18, and the claim for access to non-identifying information prior to that time are discussed in Chapter 8.

Information for relatives

4.117 Access to information after the death of an adopted person or birth parent is governed by s9. Difficulties have arisen in this matter essentially, it seems, because the drafting of the Act does not reflect the intentions of the Willis Committee. The problem is discussed in Chapter 8.

Access to prescribed information: some comments

4.118 As already noted, the provisions of the legislation relating to the release of information are highly specific and structured. Eligible applicants have a legal right to information falling within the relevant categories, but the supply of other information to them might constitute a criminal offence under s15, which prohibits the disclosure of other information relating to an adoptee, birth parent or adoptive parent obtained in connection with the administration of the Act. The legislation attempts to spell out precisely what information is to be supplied to which people and what information should be withheld.

4.119 This highly detailed approach may well reflect the sensitivity of the subject matter, and the difficulties in balancing information rights with rights to privacy. It has the consequence that decisions about the supply of information are based on specific rights, and are not generally dependent on the exercise of discretion by officials. This approach has much to commend it. In what is often a highly emotional area, some people would regard it as intolerable for decisions to be made on the basis of the discretion of public servants.

4.120 On the other hand, this approach creates a highly legalistic climate. More importantly it involves the difficult task of formulating rules that must apply satisfactorily to the relevant categories of people in a range of different situations. Submissions to the Commission indicated some of the dilemmas confronted within this structure. One involves the connection between non-identifying information and identifying information. Where the relevant persons are not expected to meet, there is much to be said for supplying detailed but non-identifying information. For example, birth parents would like to know about the sort of adoptive family that has been found for their children, and it is widely accepted that adoptive parents, and the children, would benefit from similar information about the birth family. If, however, the relevant persons are later to obtain identifying information about each other, the combined effect will be to give them a great deal of personal information about the other family. In the situation where the parties, now adult, can meet, the provision of such information can be offensive to some people.

4.121 The problem is exemplified by a birth parent who, once he or she has obtained the amended birth certificate, or some other identifying information, may know a great deal about the hobbies, health, and general situation of the adoptive parents. Some adoptive parents may feel, not unreasonably, that if birth parents are to be given the opportunity to contact the adoptee, there is no reason why they should know the personal details of the adoptive parents. Similarly, a birth parent who will never be identified may have no objection to the adoptee learning details about the birth parent's life or family, but may have concerns about this if the adoptee is to be placed in a position in which he or she is later able to identify the birth parent.

4.122 Another difficulty lies in that what is 'non-identifying' depends on what other information the recipient already has. Accumulated non-identifying information may sometimes lead to the identification of a person. This is the case, for example, where an adoptee knows the date and place of birth, and the first name and occupation or other characteristics of a birth parent: it may require only limited research to identify the parent. Alternatively, the adopted person may already possess some identifying information, such as a birth parent's surname, even though it was not made available officially, for example having been identified at the hospital to the adoptive parents as "Baby Smith". When other information thought to be non-identifying is provided, the combined effect is to allow the adopted person to identify the birth parent.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.123 Finally, the relevant records may contain a mixture of information about members of a family or the circumstances of a birth or adoption; in such cases the task of identifying and presenting the "prescribed information" and suppressing the remainder can be extremely difficult and onerous.

4.124 The Commission understands that the present detailed provisions embody the results of a great deal of thought and consultation. Further, while there have been submissions about the precise categories of information that should or should not be available, the evidence to the Commission did not generally address the question whether the law should use a different sort of system. The Anglican Adoption Agency submitted that the detailed prescription of information that could be given to an adopted person from the Agency file has led to confusion: "The tightness of definition of what may be given, has been contrary to the spirit of the Act, which seeks to allow access to information and therefore the possibility of contact. It would have been less restrictive and contentious if information which should not have been given had been prescribed."⁴⁵ By contrast, in its Annual Report for 1990 the Privacy Committee expressed concern that information released under the legislation should not be unduly wide.⁴⁶

4.125 A number of choices are open. The law could make provision for obtaining birth certificates and leave it to the discretion of information-holders whether to provide information available to them. Alternatively, it could provide that parties to adoption had an absolute right to see, or obtain copies of, certain files and records, perhaps all files and records relating to the adoption. It could provide for access to all relevant information except certain specified matters. It could impose various requirements on access to such information.

4.126 The evidence suggests that the present system is functioning adequately, and as mentioned, many comments on prescribed information involved fine tuning rather than fundamental change. There is no urgent need to consider fundamental change, and any such consideration would need to draw on a careful study of the experiences in systems which have taken a different approach.

Private adoption agencies

4.127 The Act designates private adoption agencies⁴⁷ and prescribes⁴⁸ other institutions which hold records relating to adoption as information sources for the release of prescribed information. The private adoption agencies are Centacare (formerly Catholic Adoption Agency), the Anglican Adoption Agency, the Seventh Day Adventist Adoption Agency, Barnardo's, Link-Up (Aboriginal adoptions), and the other prescribed institutions are Brieways Private Hospital Guildford, Burnside, Dalmar Child and Family Care, Mercy Family Life Centre (originally called the Waitara Foundling Home), Salvation Army Post-Adoption Service, and the Scarba Family Centre. The persons designated to deal with applications for release of prescribed information are the principal officer of the private adoption agency and the chief executive officer of other prescribed institutions.⁴⁹

4.128 The Commission received submissions from each of these information sources about the Act generally, and the operation of the provisions relating to the supply of prescribed information. The submission of the NSW Committee on Adoption, on which the private agencies are represented, also commented on the latter aspect of administration. Submissions from the public commented on passing on experiences with the private agencies.

4.129 Submissions did not reveal any major problems with agencies in the role under the Act as suppliers of prescribed information. This should be distinguished from the individual cases in which dissatisfaction was expressed with particular dealings of clients when they were seeking information, or particular instances of an agency's methods of approaching on behalf of a party seeking contact with another person, or where the appropriateness of the involvement of agencies with this legislation in the light of their past roles in arranging adoptions was questioned.

Relationships between FIS and the private agencies

4.130 The NSW Committee on Adoption of which private agencies are members, and the Post Adoption Resource Centre were represented on the Working Party overseeing implementation of the *Adoption Information Act 1990*. The Committee on Adoption has a continuing involvement in the operation of the Act, acting as a 'watchdog'. Representatives of the adoption agencies attended the training session conducted by the FIS in April 1991 and several other training sessions given by FIS. FIS maintains regular contact with information sources including a newsletter/update which advises of significant information about administration of the Act, and

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

changes to legislation and policy. FIS also responds with advice and information to specific problems agencies may have regarding release of prescribed information.

4.131 Whilst release of prescribed information is the role assigned by the Act to private adoption agencies, they perform a range of other functions under and as a consequence of the *Adoption Information Act* 1990 including:

responding to telephone and written enquiries about the Act and its effects

supplying prescribed information

providing counselling and support associated with the release of prescribed information, including confidential information

providing counselling and support generally to all members of the adoption community

mediation (acting as an intermediary) for adopted persons or birth parents seeking to make contact with the other party to the adoption

arranging reunions at the request of the parties involved.

4.132 The extent to which prescribed information is sought from the information sources is varied, and is a function of the number of adoptions that were arranged through the agency prior to 1974. Centacare had received 278 requests for information and the Mercy Family Life Centre 74 to the end of March 1992, the Anglican Adoption Agency 34 up to 30 June 1992. Other institutions reported a small but steady rate of requests, for example fewer than 5 to Burnside. The prescribed information is compiled and supplied in accordance with the guidelines based on the *Adoption Information Act* 1990 and released either by mail, or if in the opinion of the agency it is appropriate, in an environment of counselling.

4.133 Some similar problems for applicants as occur with FIS are reported in relation to the release of prescribed information by agencies. Applicants can be dissatisfied with the extent of information available under the legislation, or actually held on the files of the agency. Records relating to adoptions arranged by private agencies under the law prior to 1967 have not all been retained. It is common for an information source to report that "no records are available" for adoptions from certain hospitals or organisations or for certain years. The numbers involved do not create the same level of demand on staff resources and delay does not appear to be a problem. Restrictions on access to information about and by siblings of an adopted person is a difficulty more likely to be encountered with the records of those information sources which also offered substitute care for children of families, and from where some people were adopted, for example Burnside.

4.134 In a few submissions criticism was voiced of methods used by certain of the agencies making contact on behalf of adoptee or birth parent. Whilst this is a role undertaken by agencies, they do so as a private matter for their clients. Sensitivity and discretion need to be exercised in making such approaches.

4.135 The issue of fees drew much comment from clients and the agencies. Some agencies charge a fee for the release of prescribed information. Clients are sometimes surprised and dissatisfied that a fee is charged by the agency in addition to that paid to FIS with the application for a birth certificate.

4.136 The agencies raised some of the problems which they face in their role as information sources under the Act. The supply of information and any associated services impose additional demands on their limited resources, particularly where counselling is given. One problem is that clients come from throughout the State, and country residents face difficulties with access to their services. Centacare reported that distance did not preclude access to information, but that country residents must expend greater effort and expense to obtain it.⁵⁰ For clients interstate and overseas, the agency has faced restrictions in relying on telephone or mail contact, and on occasions has had to arrange for a link up with local support services to provide appropriate support and counselling.

Supreme Court records

4.137 The Court records contain documents lodged with the Court relating to the adoption proceedings. The contents of the files are commonly consents from the birth parent/s, a report from an agency or the Department relating to the adoption, the original birth certificate and affidavits from the adoptive parents and referees. The Court file has traditionally been closed, and not available for access by any person without the consent of the Court or, in earlier times, the Director-General of the Department. The *Adoption of Children Act* 1965 provides that the records of any proceedings under the Act shall not be open for inspection by any person (other than the Director-General and officers of the Court) except on order of the Court and that reports prepared for the proceedings are not to be made available, even to participants.⁵¹

4.138 The *Adoption Information Act* 1990 s14 alters these provisions to the extent that information will be released from the records in accordance with the Regulation Part 2, Prescribed Information. The Supreme Court is prescribed as an information source,⁵² but applications for prescribed information held in Court records will only be entertained if the applicant can establish entitlement to the information, and that all reasonable steps have been taken to obtain the information from other information sources.⁵³ The Act has clarified for the Supreme Court the policy and practice they should follow for release of information from adoption records. Now applications may be considered administratively by the Registrar in Chambers, without reference to a Judge. Access to information other than prescribed information and to copies of documents not authorised for release by the *Adoption Information Act* 1990 requires an application to a Judge of the Court.

4.139 The Supreme Court Registrar in Equity has advised the Commission that in the past three months there have been 47 applications of which 32 have been granted and 4 refused, with decisions pending on the others. The majority (80%) of applicants in this period were adoptees, with 10% from relatives of adoptees. One natural mother and one person not directly concerned also applied. As would be expected from the extent of information held elsewhere, they mostly concern adoptions before 1960.

4.140 Some submissions commented on the difficulty of establishing an entitlement to apply to the Supreme Court for information from the Court records.

4.141 The present situation reflects the provisions of s14(3), under which the records of the Supreme Court are available, in effect, only as a "last resort". In the Commission's view, there is no obvious reason why this should be so. If Supreme Court records contain information falling within entitlements under the Act, there seems no advantage in preventing the person entitled to the information from having access to those records, or to the relevant information in those records. Ready access to Supreme Court records may be particularly helpful in the case of adoptions prior to the mid-1950s, when few other records might exist. No doubt facilitating access to Supreme Court records has resource implications, and that the demand may require appropriately qualified staff to be appointed, or seconded from FIS.

Recommendation

The Act should be amended to remove the requirement that applicants seeking information from Supreme Court records should have taken all reasonable steps to obtain the information from other information sources, and that necessary arrangements be made, and resources provided, for more ready access to adoption information contained in Supreme Court records.

Medical records⁵⁴

4.142 Public and private hospitals are sources of prescribed information under the *Adoption Information Act* 1990.⁵⁵ They hold medical records which may contain prescribed information to which adoptees and birth parents are entitled to have access. In addition, some have social work records which contain prescribed information which can also be released. As Department of Community Services records for adoptions are not complete in all cases, records held by hospitals will be an important source of information for many enquirers. Unfortunately, records in hospitals may not have been preserved either. For births prior to about 1960, it is likely that only the Birth Register, and not the full medical notes or history would be accessible.

4.143 The Department of Health released a Protocol for the Act in December 1991, setting out the procedures for accessing information.⁵⁶ The Protocol incorporates the requirements of the Act as to first obtaining an original

or amended birth certificate, providing sufficient other identification, and ensuring that no contact veto applies to the person before information is supplied. A search fee of \$30 may be charged by the hospital, but this may be waived or reduced at the discretion of the hospital's Chief Executive Officer or delegate. The information is provided by mail in the usual case, a standard practice being to photocopy records, obliterating non-prescribed information. Where social work records exist separately, a separate application may be necessary. The Protocol complies with the requirements of the legislation for the release of confidential information.⁵⁷ In addition, counselling is recommended for the release of information which may be considered distressing for the recipient.

Statistics

4.144 Statistics as at June 1992 from hospitals involved in the administration of the Act have been provided by the Department of Health. The demand for prescribed information has not been as high as had been expected. The bulk of requests (over 400) have been made to the Royal Hospital for Women, which holds records for the defunct Crown Street, Queen Victoria and South Sydney Hospitals in addition to its own. Of the other hospitals reporting, the Royal North Shore, which also holds Mater Misericordiae records, has dealt with 81 applications, Royal Prince Alfred 40, and Parramatta 8. St Margaret's has had nearly 200 enquiries. Hospitals reported that in a small proportion of cases, no information was available, and in some other cases only the information on the Birth Register and not the full medical records could be found. It appears that each request requires up to two hours to process, and longer when there are complications.

Fees

4.145 The Department of Health Protocol authorises a charge of \$30 as a search fee. This is comparable with charges applying to requests under freedom of information legislation. The Commission was advised that for a number of reasons this has not been sufficient to cover the costs involved. The fee was approved only from December 1991, and can be waived in the same circumstances as other fees for information under the Act.

4.146 Fees charged by medical records departments are contentious for searchers. Having already paid \$100 to the Department of Community Services, they do not expect to have to pay again at every source of prescribed information, particularly if little or no prescribed information is available from the Department. Before the new legislation, information from hospital medical and social work records had been available free of charge.⁵⁸

Problems

4.147 A number of problems have been identified with administration of this aspect of the *Adoption Information Act*. Hospitals have had difficulty in establishing what information constitutes "prescribed information". What constitutes "medical history" within the meaning of the Regulation is imprecise and open to multiple interpretations. Hospitals were reluctant to release information in the absence of guidelines from the Department of Health. A draft was issued in August 1991, five months after the Act came into operation, and the final version in December 1991. When most medical records departments began to release information in September 1991, there was a considerable backlog of requests.⁵⁹ Some difficulties in interpretation of prescribed information and distressing information, and the entitlements of applicants are still being encountered. Another difficulty for medical records staff arises when records reveal information that is not prescribed, for instance relating to a time after the adoption, but which on an objective assessment on medical or other grounds, arguably should be revealed to the applicant. There is uncertainty, too, on what information can be released to adoptees under the age of 18.

4.148 Problems were also encountered because of inadequate training and preparation for the specialised requirements for release of medical records, which were not understood initially. Medical records staff are now dealing with many issues that have social work implications, such as helping clients who are distressed, angry or frustrated by their search. For staff who are not specifically trained in this area, the provision of adoption information can be difficult. These difficulties do not appear to be as great now as they were in the early months of operation.

4.149 The major difficulties in implementation have concerned the cost of administration. The need to charge fees is contentious for the medical records departments themselves, as well as those who are required to pay them. It was assumed at first that the Department of Community Services would pass on a proportion of the \$100 fee it charged adoptees and birth parents to the Department of Health. This did not occur so hospitals were

forced to provide services with no additional funding, and for most hospitals, with no increase in staff. Time consuming and costly searches imposed a considerable strain on staff and resources.

4.150 Perhaps the most pressing problem for hospitals, also one of cost, is the storage of obstetric records. In August 1989, the Department of Community Services requested that no more obstetric records be destroyed as its own records for pre-1967 adoptions were inadequate. Some hospitals such as Royal North Shore, which stores its own records as well as those of the Mater Misericordiae Hospital, do not have the space to store all records on site. Off-site space will have to be acquired at an estimated cost of \$200,000 for the first year and \$50,000 for each subsequent year.⁶⁰ This problem could be solved by the identification of all adoption-related obstetric records which could be saved and others destroyed in accordance with the normal procedures. The Department of Health is currently working on identification of adoptees' obstetric records, in co-operation with the Registry of Births, Deaths and Marriages. The task is taking longer than anticipated and is expected to cost \$10-15,000. This remains a problem, but once completed it will considerably reduce the cost of record storage.

REUNION INFORMATION REGISTER

Adopted Persons Contact Register

4.151 In 1976 the then Department of Family and Community Services established the Adopted Persons Contact Register to assist people separated by adoption to make contact with one another. This was in response to pressure from within the adoption community for a means to facilitate those people finding each other. The practice was given statutory effect by amendments to the *Adoption of Children Regulation* in 1980.⁶¹ By 1989, there were approximately 8000 people registered, 54% of whom were adoptees, 37% birth parents, and 7% relatives. In a small number of cases (currently 22) a desire for no contact was recorded as the only means then available for noting such wishes. The rate of matches was around 14%.⁶²

4.152 The Department considered that a major problem for the Adopted Persons Contact Register was the frustration of adoptees' efforts to locate birth parents caused by reticence of birth parents in registering. The reasons most frequently given by birth parents were: the desire not to interfere in the adoptee's life; a belief that the parent had relinquished all rights; an acceptance that the adopted person would come looking if they wanted to find the birth parent; ignorance of the Register's existence; fear of rejection (mistakenly interpreting that if the adoptee is not on the Register he or she is not interested); and a feeling of a lack of entitlement associated with guilt over the surrender of the child.⁶³ Another factor which affected the rate of reunion is the difficulty of locating people whose address held by FIS was no longer correct. As well, it was not uncommon for birth parents and adoptees to be falsely told that the other party was dead. Such people would not have thought to register. Successful matching depended on the accuracy and extent of information available, and no tracing was done. The Commission received evidence from several people who had been on the Adopted Persons Contact Register who did not believe that a match was likely, and from a small number who appeared not to have been matched despite both parties being on the Register.

Reunion Information Register

4.153 With the passage of the *Adoption Information Act* 1990 the Adopted Persons Contact Register was subsumed into the Reunion Information Register, established under Part 4 of the Act. The Register was renamed to distinguish the Adopted Persons Contact Register from the Contact Veto Register, and to indicate that it was neither exclusively for adopted persons nor about contact.

4.154 Entry on the Register is in accordance with the provisions of s32 of the *Adoption Information Act* 1990. Adult adopted persons and birth parents as defined in the Act are entitled as of right to have their names on the Register. Adopted persons under the age of 18 years (as young as 12 years) may have their names placed on the Register with the consent of their adoptive parents or the Director-General. Other people having an interest in an adopted person or birth parent, including relatives and others who have a significant but not legally recognised relationship with them may, at the Director-General's discretion, be registered. Examples of people falling into the latter category are foster parents of a child who was subsequently adopted into another family, or a care-giver with whom a child who was later adopted had a close relationship. The Act allows a greater flexibility for other people to be on the Reunion Information Register than for them to obtain birth certificates.⁶⁴ The Register is

voluntary, ie a person must enter his or her own name. People who were registered on the Adopted Persons Contact Register have been transferred to the Reunion Information Register without the need to re-register.

4.155 Registration is covered by the fee charged for obtaining the original or amended birth certificate, provided that application is made within six months of that event. This procedure encourages the use of the Reunion Information Register as a means of locating the other person, which can be a far less costly and difficult task than using other methods of searching available. Registrations have averaged 15 per day for the twelve months ending May 1992. Many others already on the Adopted Persons Contact Register have provided current contact details since obtaining an original or amended birth certificate. At that time there were 15,985 people registered.

4.156 Details supplied to FIS and Departmental records enable staff of FIS to identify the matching people. The rate of matching is presently still about 15%, although a higher rate should occur with larger numbers registering. Since the new legislation the information available is more accurate, and computerisation of records also contributes to the possibility of a greater success rate. Searches are made on mother's maiden name, adopted person's date of birth and court order number. FIS searches outside the records held by the Department only in limited circumstances. Where there is a match of names on the Register, the Director-General may make arrangements for a reunion.⁶⁵ Family Mediation Counsellors in the Family Information Service handle the process of putting parties in touch with each other. Each party is given the opportunity to withdraw from the Register at this stage, or to indicate the desired manner in which the contact should occur. It is the policy of FIS to approach the person who first registered his or her name, except where there is a contact veto, when the vetoer is contacted first. Whilst managing a reunion can be a straightforward matter of passing on information which allows the two parties to make contact with each other, usually there is a need for counselling or other assistance for one or both of the parties to prepare for or make the contact. This is most necessary where a person has simultaneously placed a contact veto and registered on the Reunion Information Register. This occurs where the adopted person or birth parent is not opposed to contact but wants to avoid the possibility of unexpected contact over which he or she can exercise little control.

4.157 Although there appears to be a perception that the Reunion Information Register is not an effective method of locating a person, it can be much easier than searching independently. The Commission's recommendation for an Adoption Information Exchange made in Chapter 7 would have an impact on the operation of the Reunion Information Register. It could be that checking the Register when a person applies for a certificate will become an automatic procedure.

Outreach

4.158 Outreach refers to the policy approved by the Department in 1981 (and given statutory effect in March 1987 by amendment of the *Adoption of Children Regulations*) of trying to locate a person not on the Register at the request of another separated from them by adoption.⁶⁶ It was available for adoptees from 1981, and birth parents and relatives from 1988. In 1986 after several hundred outreaches had been made, restrictions were placed on the criteria for accepting outreach requests because of limited resources. Prior to commencement of the *Adoption Information Act* 1990, the Department conducted outreaches in exceptional circumstances. These were likely to be where there was an urgent medical reason either to obtain or pass on information, an adopted adolescent was experiencing severe emotional or behavioural problems, or there were strong compassionate grounds relating to an exceptional degree of deprivation or loss.⁶⁷ Outreach occurred predominantly at the request of adoptees, less frequently of birth parents and occasionally for other relatives.

4.159 Since the *Adoption Information Act* 1990, FIS will undertake outreach only in the most exceptional circumstances. This policy recognises that one party will now have access to information which can be used to locate the other party. There have been approximately 40 cases since April 1991 and the person was found in approximately 90% of cases. Location of persons not registered occurs at the discretion of the Director-General. The Director-General must be satisfied that it will promote the welfare and best interests of the parties concerned, and that it is appropriate on medical, psychological or psychiatric grounds relating to a party on the Register, or on any ground relating to unusual or extreme circumstances.⁶⁸ The person at whose request the outreach occurs must agree not to undertake or continue searching independently.⁶⁹

THE CONTACT VETO SYSTEM

4.160 The contact veto is the legislative mechanism for protecting the privacy of adopted persons and birth parents who do not wish to associate with the other party to the relinquishment. The entitlement to lodge a contact veto is given to an adopted person over the age of 17 years 6 months, and to birth parents. It applies only to adoptions made before the assent of the *Adoption Information Act* 1990, and to adoptions where the Order of Adoption was made in New South Wales under the *Adoption of Children Act* 1965, or made elsewhere and recognised under that Act.⁷⁰

4.161 The contact veto is perhaps the most controversial aspect of the *Adoption Information Act* 1990, both in the legislative provisions and in their administration. Since it was enacted, the contact veto system has been criticised as insufficient protection of privacy and ineffective, as well as wrong in principle. The procedures required for registration have been much criticised. Accordingly the Commission examines administration of the contact veto system in detail in this section. Its impact on people who place or are subject to a contact veto is considered on Chapter 5, and it is also considered in Chapter 6 in the context of the basic principles of the legislation.

Lodging a contact veto

4.162 The contact veto must be lodged in writing in a form approved by the Director-General.⁷¹ The policy of the Department of Community Services is that the veto should be lodged in person, by attending an office of the Department of Community Services or an approved agent in order to complete the application form. In all but a few cases lodgment within the State has occurred at an office of the Department of Community Services.

4.163 Guidelines were prepared and distributed by the Family Information Service to all Departmental Offices where staff would be taking contact veto registrations. Separate instructions were prepared for and distributed to interstate agencies and consulates at which contact veto registrations could be lodged. These guidelines include instructions on how to complete the forms correctly and explained some of the emotional issues for all parties, including the vetoers. Staff were instructed that while taking the registration of a contact veto they should ensure that the person had a clear understanding of the functions and conditions of the veto, (including that it was **not** an information veto as appears to have been commonly understood and expected by some, that the lodger would be informed if and when the birth certificate was released, and the likely duration of the Contact Veto Register); that the application was completed accurately; the reasons for placing a veto were clarified with the person; and that the vetoer was encouraged to record reasons for placing it, and to leave a message for the other party. Guidelines also draw attention to possible use of the mechanism of the contact veto simultaneously with registration on the Reunion Information Register if the person did not object to contact, but wanted control over the timing and nature of any contact. A Memorandum from the Director-General of the Department of Community Services dated 18 April 1991 to staff emphasised that people lodging contact vetoes did not require counselling and should not be counselled in relation to lodging a veto.

4.164 The policy and procedures established by the Department for lodging contact vetoes derives mainly from the statutory requirement for the Director-General to be satisfied of the identity of the applicant.⁷² The requirement of personal lodgment is a safeguard against false applications, which in the experience of the Department and other jurisdictions could be expected to occur in a small minority of cases.⁷³ Personal attendance allows for verification of the identity of the person lodging the veto by an authorised officer of the Department, and is consistent with the level of verification required in dealing with staff in District Centres about individual clients. Personal lodgment also affords an opportunity for an officer to explain to the applicant the nature of the veto and its legal effect, and to offer the applicant the opportunity to leave a message.

Criticism of procedures

4.165 The Departmental policy and practices concerning lodging a contact veto have been the subject of much criticism in submissions received by the Commission. It was argued that compliance was unnecessarily difficult, invaded privacy, and afforded Departmental officers an opportunity to put pressure the vetoer. People particularly affected were said to be those unable to travel to a Departmental office because of ill health or lack of independent mobility, or others who would find it difficult to maintain privacy in attending an office in their local community. Some submissions expressed dissatisfaction with the attitude of Departmental officers who seemed to be critical of people wishing to lodge a veto, and who pressured applicants to leave a message with the veto against their wishes. Some difficulty with the arrangements for lodgment at an agency was also reported.⁷⁴

Lodging of contact vetoes: the Commission's view

4.166 The Commission is satisfied that it has not been Departmental or FIS policy to apply any pressure on applicants who wish to exercise their legal right to lodge vetoes. It is also satisfied that on many occasions Departmental officers have been helpful and accommodating in helping to overcome practical difficulties faced by applicants as a result of the requirement to lodge vetoes in person. Nevertheless, the numerous complaints on this matter strongly suggest that in at least some cases improper pressure was indeed applied. It was said, for example, that on at least one occasion the staff member had told the applicant that their desire to lodge a veto showed that they needed therapy. It is not clear how often this happened, and it seems likely that it was associated with the early period of the law's operation, and perhaps with inexperienced staff. Because emotions often run high in these situations, and because some applicants deeply resent the law and the obligation to attend the interview, there is a potential for advice or information given by officers to be perceived by applicants as constituting improper pressure even where this is not intended. It is obviously wrong for any such pressure to be applied, and staff need to make efforts to ensure as far as possible that their conduct of the interview is not perceived by the applicant as involving pressure. Staff training should cover these matters, and include the clear instruction that there should be no discouragement of people who wish to exercise their legal rights to lodge a veto, or any pressure applied as to the leaving of messages. It is quite acceptable, however, that the officer should discuss with an applicant the advantages of leaving a message, and point out the significance of such messages for people affected by vetoes.

4.167 A number of submissions urged that it should be possible for a veto to be lodged by mail, and without any interview or equivalent procedure. The Commission does not agree with this view. The placing of a contact veto has the effect of altering another person's rights, in that it makes those rights conditional upon agreeing not to attempt to make contact with others. This control over another person is such as to require, in the Commission's view, assurances on the part of the administration that the applicant is properly identified as the person entitled to lodge a veto, and that he or she fully understands his or her act and its legal effect. It is highly desirable that persons lodging vetoes should have some understanding of the likely effect of the veto on the person affected, and that they should have given thought to whether they should place a message with the veto, and what such a message should be.

4.168 In the ordinary case, these objectives can be most satisfactorily met by the person who is lodging the contact veto attending an office of the Department of Community Services and completing the application in the presence of an officer who is trained to explain the legal position and prepared for dealing with the emotional issues which are likely to arise in the course of such an interview.

4.169 Inevitably this ordinary course will not always be the most appropriate to the circumstances of the person wishing to lodge a contact veto. The Commission believes that, while holding to the preferred method of lodging a contact veto, there should be more flexibility in approaches for people whose circumstances make this difficult. It should be possible for such a person to lodge a contact veto application having consulted with a solicitor or an agency such as an adoption agency or the Post Adoption Resource Centre. Either of these should be able to ensure that the person understands the law and the possible effect of the veto on the other parties. The Commission does not consider that it is sufficient that the application be lodged with a statutory declaration as to the identity of the person, a proposal made in some submissions.

4.170 The requirement for personal lodgment can cause difficulties. There are many circumstances in which it may be impractical, impossible or unreasonable. There may also be situations where a person may lack the capacity to understand the nature of a contact veto or be less able to cope with the anxiety or emotional stress of either lodging a veto or having contact with the other party to adoption. Several submissions, especially from adoptive parents drew the Commission's attention to the predicament of the relatives of these people. There are arrangements operating informally to provide a measure of protection for the people concerned, and it is possible to approach the Guardianship Board for an order to appoint a guardian for the purposes of placing a contact veto. The Commission is sympathetic with the relatives of people unable to exercise the right to place a veto (or for that matter obtain a certificate). In Chapter 8 the Commission has recommended amendments to give the Guardianship Board powers in this area, and both the Advance Notice System and the Adoption Information Exchange mechanisms recommended in Chapter 7 should provide a greater degree of control in a more formal manner.

Applicants outside New South Wales

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.171 The Family Information Service recognised that people residing outside the jurisdiction would need to lodge contact vetoes. Arrangements were made and guidelines provided for consular officials and for officers of accredited government departments interstate and overseas to receive contact veto registrations. The form is completed in the presence of the officer concerned, who performs the same role as New South Wales Departmental officers when taking veto registrations. Advertisements placed by FIS in newspapers in metropolitan and regional press in other States and New Zealand in February 1991 directed persons who wished to lodge a contact veto to the appropriate Departmental office. FIS advises that approximately 45 contact vetoes have been lodged through interstate agencies and 20 through overseas consulates.

4.172 Although the existence of this facility was advertised before the Act commenced, it does not appear to be widely known. As with other matters concerning the *Adoption Information Act* 1990, the Commission considers that publicity about rights and how to use them should be on-going. Publicity about facilities for people who live outside New South Wales should be directed both at the people affected and to residents of New South Wales who may have relatives and friends living outside the jurisdiction.⁷⁵

Costs

4.173 The cost of lodging a veto has been set at \$50. Waiver of the fee is available on the same grounds as waiver of the fee for an application for a birth certificate. This fee is intended to cover the administrative costs associated with taking the contact veto but FIS and the Registry report it is not sufficient to cover the actual cost of processing each veto. The fee for lodging a contact veto has caused much consternation. The Commission comments on this matter below in reporting on fees generally under the Act.

The Contact Veto Register

4.174 The Director-General is required by the *Adoption Information Act* 1990 to maintain a Contact Veto Register on which is recorded details relevant to each contact veto registered.⁷⁶ It is maintained in computer form, and as a hard copy file for each client.

4.175 Following receipt of registration of a contact veto by FIS, details must be endorsed by the Principal Registrar on the original or amended birth registration held at the Registry of Births, Deaths and Marriages.⁷⁷ Information on the forms must first be verified with Adoption Branch records to accurately identify the parties to the adoption, and then the information is transferred to the Registry where further checks are done to ensure that the correct registrations are endorsed. When the appropriate registration has been marked with the red contact veto stamp, the Registry notifies FIS, and FIS informs the vetoer that lodgment is complete.

Five day registration

4.176 The Act provides that a contact veto takes effect after a period of five working days after lodgment with the Department of Community Services, or when it is registered if this occurs sooner.⁷⁸ The time period runs from when the application is received by the Department of Community Services. Applications lodged at District Offices of the Department are required to be posted by priority paid or certified mail to the FIS office.

4.177 The Commission received submissions which alleged or expressed doubt that a veto had been recorded within the five days. The Commission has sought evidence from the administration on these matters and where possible, specific circumstances have been investigated. The evidence discloses no grounds for the allegations of improper administration. The Commission is also satisfied that, at least in some cases, the circumstances were understood by those making the allegations. FIS has advised that its policy with applications to lodge a veto received by the Department which may not be valid, is to ask the Registry to record the veto on the appropriate certificate and therefore not allow release of information without the signing of an undertaking, and then to investigate whether it is a valid veto and should remain.

4.178 Many cases cited to the Commission related to vetoes which had been lodged prior to 2 April 1991. FIS reports that there were delays in sending acknowledgments to vetoers that registration had occurred, and that misunderstandings may have been created as a result. The Commission has been advised that contact vetoes lodged prior to 2 April 1991 were duly noted on the Register before any certificate was released, although vetoes lodged in the five months before April may not all have been noted within the five day period. The Commission

was advised that when the Act commenced operation, in order to ensure that all contact vetoes had been registered, there was an additional period of four weeks delay in the release of birth certificates so that there would be time to record the expected late rush of applications for contact vetoes. Immediately before the first certificates were mailed out, a final check was done to determine whether any veto received up to the preceding day applied to one of those certificates. The administrative burden of processing veto registrations was heavy prior to and in the early weeks of the Act's operation. On one day over 170 contact veto applications were received by FIS. Registrations were completed on time, however FIS and the Registry report that this occurred only because of the efforts of the staff involved.

4.179 As to the appropriateness of the five day period, FIS has advised the Commission that they believe it to be unrealistic, particularly when it is necessary to use an unreliable mail system to transfer the applications from District Offices to FIS in Sydney. In the interests of confidentiality, FIS does not permit client details such as those on a contact veto application to be sent by facsimile, and requires them to be sent by certified or priority paid mail. They maintain that 10 working days would be a more realistic time period.

The Commission's view

4.180 The rate at which contact vetoes are currently being lodged appears to present no difficulties within either FIS or the Registry for complying with the five day requirement. However, where applications are lodged at an office other than that of FIS, administrative procedures necessary to ensure confidentiality have the effect of making timely compliance more problematic. It would be desirable to overcome this. Preferably a procedure for conveying the original documents safely and swiftly to FIS at reasonable cost should be developed. Failing this, the Commission recommends that a time period longer than five working days be prescribed by the Regulations.

Recommendation

The Department should reconsider the current five day period at the end of which a contact veto takes effect. If it is not possible to develop a more reliable procedure for remitting applications to the Family Information Service, a longer period should be prescribed in the Act.

Duration of a contact veto

4.181 A contact veto expires when cancelled by the person who lodged it, or when that person dies.⁷⁹ Any application by a person to lift a veto must be made to the Department of Community Services, which then advises the Registry so that the veto can be physically removed from the relevant entry in the Register. The Director-General is required to advise the Principal Registrar of the expiration of a contact veto, unless it is caused by a death of which the Director-General is unaware. There seems to be an inherent difficulty with this requirement, as there is no mechanism by which the Director-General can be advised as a matter of course of the death of a vetoer.

4.182 The Act makes provision in s29 for closing the Contact Veto Register, a matter considered separately by the Commission in Chapter 8.

Ascertaining the existence of a contact veto

4.183 It is possible for a person to ascertain whether a contact veto has been lodged against him or her without applying for the relevant original or amended birth certificate.⁸⁰ A person entitled to a certificate or information may apply to the Director-General for a statement as to the existence of a contact veto and any message, and non-identifying details of who has placed it, and can receive information other than that which would identify the vetoer. The Director-General has received about 20 applications for information about whether contact vetoes were in place. FIS advises that frequently when people enquire about the existence of a veto, they do not pursue the matter when they learn that the existence of a veto will be revealed when they apply for a birth certificate.

Effect of a contact veto

4.184 The contact veto allows for the only restriction on the absolute rights to information created by the *Adoption Information Act*. There are two effects which flow from the mechanism. First, no certificate or

information can be released without the "information recipient" formally acknowledging the restrictions placed upon the right to associate with the person lodging the veto and agreeing to be bound by them.⁸¹ Secondly, the Act creates specific offences and imposes a maximum penalty which a breach of those offences by an information recipient will attract.⁸²

Release of a certificate or information subject to a contact veto

4.185 In accordance with a recommendation of the Willis Committee, the Act created a mechanism which prevents the release of information without the recipient acknowledging the restriction it creates. Where a contact veto is in place, no original or amended birth certificate, or prescribed information can be released unless the recipient has signed an undertaking not to attempt to or make contact with the person who lodged it, or to procure another person to do the same.⁸³ The Director-General will not exercise his discretion under s12 to release information until an undertaking has been signed if a veto exists. The information source where the application is made (usually either the Registry or FIS) notifies the person and accepts the undertaking. Once the undertaking is signed, the person lodging the veto is notified that access has been given to the certificate or information, and, where relevant, that a message has been left should the vetoer wish to collect it.⁸⁴

4.186 The Registry has advised that currently there are 38 certificates which have not been released because an undertaking has not yet been signed. Some of these applicants have only recently been advised and are expected to sign the undertaking. The reasons other applicants have for not signing are not known in all cases. Some have accepted the veto and have declined to pursue their search in accordance with the wishes of the vetoer. It may be that others do not understand their entitlement to the certificate despite the veto, that they are not aware of the result of their application, or that they have declined to acquire the certificate believing that the veto on contact will be too hard to observe.

4.187 The approach which requires a person subject to a contact veto to specifically acknowledge the law relating to contact and sign an undertaking to be bound by it has been criticised on the grounds that it assumes that the person would otherwise be likely to break the law. This was said not only to be false, as shown by the overwhelming compliance with vetoes, but to create or perpetuate a stereotype of persons seeking birth certificates as inherently likely to be law-breakers, or as persons unable to control their emotions, or more generally as persons against whom special precautions need to be taken.

4.188 Nothing in the evidence presented to the Commission suggested that there was any connection between the giving of the undertaking and the high level of compliance with the veto system. There is, however, a strong case for ensuring that the person understands the obligations created, and the Commission sees no objection in a requirement that the person sign a statement to the effect that he or she understands the law and its operation in the particular case: a copy of such a statement, in a form which included the terms of the veto in the particular case, should be given to the person. There seems little to be said for the additional requirement that an undertaking should be signed. It might be argued, however, that a change from the requirement of a signed undertaking might be mistaken as an indication that a less serious view was being taken as to the obligations created by the veto.

4.189 It is possible that a certificate will have been issued prior to the lodgment of a contact veto, and this has happened in 31 instances to date. This situation can occur if the person who does not wish to be contacted has been unaware of their right to veto contact, or has not exercised it promptly. In this event, the vetoer is notified by the Family Information Service of the name of the person who received the certificate and the date of issue. The person who has received the certificate is also notified of the existence of the contact veto, although the veto has no legal force. Some vetoes are placed following contact which the vetoer did not want, and act as a clear statement of the person's wishes. The Commission has evidence that only on rare occasions have the wishes of the vetoer in this situation not been respected, and further contact made or attempted.

4.190 There is no statutory right for a person subject to a contact veto to leave a message for the vetoer, however FIS developed a policy that enables the person subject to a veto to leave a message for the vetoer to be collected if that is what the vetoer wishes. The policy is in line with the philosophy of the Act in facilitating the flow of information. There have been several occasions on which this method of communication between parties has resulted in managed contact and lifting of the contact veto.

4.191 The Commission has received submissions to the effect that the policy has not always been followed, although it appears that problems with procedures for notifying a vetoer that the message has been left have been resolved by FIS. In the Commission's view this policy is appropriate, and subject to the express wishes of the vetoer, FIS should ensure that all such messages are drawn to their attention.

Offences relating to a contact veto

4.192 The effect of a contact veto is to make it an offence for an information recipient to contact or attempt to contact a vetoer, or procure another to so do; or to use information received under the Act to intimidate or harass the vetoer, or procure another to so do.⁸⁵ "Information recipient" means an adopted person, adoptive parent, birth parent, relative or other person who has received an original or amended birth certificate endorsed with a valid contact veto, or who has received prescribed information under the Act, knowing that a contact veto against him or her is in force.⁸⁶ No other person is legally liable to observe the contact veto, although it may be argued that there is a moral obligation to respect the wishes of the person who has lodged it. Similarly, if a contact veto is lodged after the issue of a certificate or prescribed information, there could be a moral, but not a legal obligation not to comply with the wishes of the vetoer.

Definition of "contact"

4.193 There is considerable unease about the effectiveness of the contact veto mechanism in the absence of a statutory definition of "contact". This criticism was a theme in many submissions. Failure to define the term was not a drafting oversight; it is left to be resolved by the Courts on a case-by-case basis. This approach recognises the impossible task of specifying in advance the nature of contact given the range of human experiences that could be at issue⁸⁷

4.194 In the Commission's view, however, the difficulties arising from this lack of definition should not be overstated. As indicated in Chapter 5 of this Report, the evidence strongly suggests that the high level of compliance with the contact veto system is mainly due to the willingness of information recipients to comply with the wishes of the other person, and to some extent to the public acknowledgment, through the law, that such wishes should be respected. Nothing in the Commission's inquiry suggests that a more detailed definition would raise the already high level of compliance with vetoes, and it is possible that a highly detailed definition might encourage people to focus on the letter of the law rather than comply with the spirit of the veto. The Commission therefore does not recommend any statutory definition of "contact".

Effectiveness of the contact veto system

4.195 A general theme of submissions, and an expectation voiced by many others prior to introduction of the system, including some participants in the Parliamentary debate, was that a contact veto is likely to be ineffective. It is assumed that despite the undertaking given by the information recipient, the temptation to act on the information received will be too strong to resist, and the threat of criminal sanctions insufficient deterrent.

4.196 To date, 225 certificates have been issued subject to a contact veto. The evidence on compliance, reviewed in Chapter 5, shows a remarkably high level of compliance with the contact veto system. The Commission's findings are confirmed by enquiries made to FIS and the Registry of Births, Deaths and Marriages. Although FIS has received allegations of breaches, it has not yet been given information which would allow it to investigate the claims. The Privacy Committee has advised that it has not received any complaints about breaches of contact vetoes.⁸⁸

4.197 The Director of Public Prosecutions has been authorised by the Attorney General to give consent to prosecutions for a breach of a contact veto.⁸⁹ The Director of Public Prosecutions has advised the Commission that to date there have been no requests for consent to prosecute referred to him.⁹⁰ A decision to consent to prosecute a breach of a contact veto would be made in accordance with principles set out in *Prosecution Policy and Guidelines of the Director of Public Prosecutions, New South Wales*.⁹¹ The Commissioner of Police has also advised the Commission that there is no record of any offence relating to s28 of the Act.⁹²

4.198 Staff of the Registry and FIS who deal with people subject to a veto reinforce the value of being able to receive and give a message where a veto has been placed. They also confirm that the people concerned are very unlikely to disregard the vetoers wishes and make the unwanted contact.

The contact veto system generally

4.199 The system of contact vetoes has been criticised in many submissions, on a number of grounds. On principle, many adoptees and some birth parents object to having to take actions to protect their privacy, a right they believed they already enjoyed. To have to pay for such protection is a further insult. The issue of fees for lodging a contact veto is dealt with in the section immediately following. Many maintain that not only should a person be able to prohibit contact, but that they should also be able to prohibit release of information, particularly identifying information, about themselves or their families. They contend that the veto is insufficient protection when information will be given to the applicant anyway. These objections go to the principles of the adoption information legislation. The principles are considered in Chapter 6.

FEES

4.200 Parliament intended that the procedures for access to adoption information be self-funding, and not constitute a charge on Consolidated Revenue.⁹³ The administration was expected to incur expenses, primarily in the Family Information Service, the Registry of Births, Deaths and Marriages, the Post Adoption Resource Centre and the Department of Health. As well, private adoption agencies, private hospitals and charitable organisations which were designated information sources would have costs of servicing requests for information. The Department of Community Services and other prescribed information sources are empowered to charge fees for the provision of information and services under the *Adoption Information Act 1990*.

Fees charged by the Department of Community Services

4.201 The schedule of fees for services provided under the *Adoption Information Act 1990* and the *Adoption Information Regulation 1991* is reproduced in Appendix C. A fee of \$100 (payable to the Principal Registrar of Births, Deaths and Marriages and transferred to the Department of Community Services) must accompany an application for an original or amended birth certificate under the Act. This is in addition to normal Registry charges for the issue of a certificate (currently \$20). This fee entitles a person to receive a package of services:

an information package, including the booklet *Adoption: Adoptees and Birthparents Guide to Searching*;

access to prescribed information held on Departmental files;

registration on the Reunion Information Register; and

attendance at an information meeting conducted by the Family Information Service.

4.202 Each of these services is available separately from the Family Information Service without a person first having obtained an original or amended birth certificate, although this is not the usual practice. The fee charged for lodging a contact veto is \$50. This is to cover the costs to the administration of FIS and the Registry for identifying the relevant records, placing the veto, and any further correspondence and perhaps communication with the vetoer about the veto, for example when a birth certificate has been accessed. It was intended that the costs of providing the services under the Act should apply to all those who seek an original or amended birth certificate rather than only those who make use of the service.⁹⁴

Waiver of fees

4.203 It is the policy of the Department of Community Services that fees may be waived or reduced in cases of financial hardship: for people receiving pensions or benefits from the Department of Social Security on production of a Health Care Card, for full time secondary and tertiary students, and in other circumstances on an assessment of need. It is also Departmental policy that no person should be disadvantaged, particularly regarding placement of a contact veto, on financial grounds. The Department of Community Services advised the Commission that in

excess of one third of fees are waived. Delegations have been given to the Principal Registrar and to District Offices to waive fees on the first two grounds to applicants for birth certificates and contact veto registrants.

Charges by other information sources

4.204 Details of other fees charged in relation to the *Adoption Information Act* are noted in the sections dealing with each agency or information source. Charges are levied by some private adoption agencies, and waivers can be given. The Department of Health Protocol for the Release of Information under the Adoption Information Act which was issued in December 1991 authorised hospitals to charge a fee of \$30.00 for accessing medical records. The level of charge set is comparable with fees paid with requests for information from hospitals under freedom of information legislation, and the waiver or reduction of fees at the hospital's discretion applies on grounds similar to those used by the Department of Community Services. PARC charges fees for its information and counselling services, and operates a Fees Assistance Fund.

Submissions on fees

4.205 The fees imposed by the legislation were heavily criticised by a large number of submissions. Hostility to fees was most intense in relation to the contact veto: people felt that it was outrageous that they should have to pay to protect what they saw as rights which should in any case have been protected by law. In many cases the objection was linked to criticism of the contact veto system: people felt that they should not have to pay for a system which they felt afforded inadequate protection for their rights. It was not uncommon for people to tell the Commission that they had decided not to lodge a veto, in part because of their objection to the fee.

4.206 Fees for information recipients were also subjected to widespread criticism. In particular, many felt that it was unfair and discriminatory that adoptees should have to pay more than other people for their original birth certificate. A significant number of submissions, however, took the view that some fee was justified, because applicants obtained documents and services additional to those of other people who obtain birth certificates.

4.207 It was often suggested that the amount of the fees imposed real hardship, although these submissions frequently overlooked the considerable waiver of fees that has occurred. It was also clear that the Department's policy for waiver of fees was not widely known, and that some people had been deterred from exercising their rights under the Act because of the level of fees charged. Some submissions also commented on the cumulative costs of obtaining information and tracing people by searching registers in several locations. For those whose relatives came from or had moved outside New South Wales, such costs could be prohibitive. These were not the main objections to fees, however: almost all who objected saw the imposition of fees as wrong in principle.

4.208 Finally, some submissions suggested that in some cases the amount of the fees was disproportionate to the value, to particular applicants, of what was actually obtained. The clearest instance was where an adoptee applicant already had sufficient information, and was perhaps in contact with members of the birth family, and merely wanted the original birth certificate. Such an applicant nevertheless had to pay a fee in an amount that might have been proportionate to the documentation and services provided for a person embarking on search. This was perceived as unfairly high when all that was required was a birth certificate.

The Commission's view

4.209 The imposition of fees, and the setting of the amounts of such fees, involve wider policy issues relating to the use of public resources, and in particular the 'user pays' approach to government services, which fall outside the terms of this review. However the review did bring out a number of matters which should be mentioned.

4.210 First, it is difficult to overstate the intensity of the objection to fees for lodgment of the contact veto. It is clear that removal of this fee would significantly reduce opposition to the legislation, and would almost certainly remove an obstacle to many who would like to lodge a veto but who feel that because of their strong objection in principle to the fee, they should not do so. In the Commission's view, there is a powerful argument in principle for removing this fee. As indicated elsewhere in this Report, the contact veto system represents the main source of protection for those who feel that their rights are threatened by the information rights created by the Act, and is an essential part of the balance drawn between the conflicting interests involved. The Act does indeed involve a form of retrospective legislation which can operate adversely on those who have organised their lives on the basis that the law would not provide for the release of identifying information. It may of course be argued that the veto

system involves a public cost which should be met by the user.⁹⁵ It could also be argued that the fee serves the purpose of discouraging the irresponsible exercise of a power that limits the rights of another person, although this objective should be served by the maintenance of appropriate procedures for the lodgment of vetoes, a matter discussed above. However there is much to be said, both in terms of fairness and in terms of enhancing the functioning and acceptability of the Act, for removing the fee for lodgment of a veto.

4.211 Objections to fees for information recipients are somewhat different. Insofar as the Act creates an entitlement to services, the imposition of fees may be seen as an expression of the 'user pays' principle. It is arguable that principle should not apply, first, because the Act should be seen as part of welfare services for which the principle is inappropriate, and second because the Act may be seen as redressing long-standing injustices brought about by the former law and practice which shrouded adoption in secrecy. There is a more specific objection to the present fee structure for information recipients, namely that it imposes a single fee on a variety of applicants, who use of the relevant services varies widely. As already mentioned, an adoptee who wishes only to obtain the original birth certificate makes no use of these additional services and has a plausible claim of discrimination, since other people can obtain their birth certificate for the payment of only the standard Registry fee. In the Commission's view the fees structure should be re-examined to ascertain whether it would be practicable to achieve a closer fit between the amount of the fees and the services actually provided to particular applicants.

4.212 In summary, the Commission makes the following comments about fees:

Guidelines for the waiver of fees should be well publicised, and drawn to the attention of all applicants for birth certificates and contact vetoes.

Removing the fee for lodging a contact veto may not only be considered equitable, but would also enhance the functioning and acceptability of the Act.

The structure of fees should be re-examined to ascertain whether a closer fit could be achieved between the fees charged and services provided to an applicant.

FOOTNOTES

1. The Commission received copies of the Minutes of the Adoption Access Working Party.
2. Department of Community Services (Legal Branch and FIS), Department of Health, New South Wales Committee on Adoption (representing member agencies and support groups), the Registry of Births, Deaths and Marriages, Legislative Council Standing Committee on Social Issues, Attorney General's Department, Adoption Triangle, and later the Post Adoption Resource Centre.
3. No 111 of 1991, published in Gazette No 41 of 8 March 1991.
4. No 349 of 1991 published in Gazette No 106 of 12 July 1991.
5. Liverpool, Newcastle, Lismore, Tamworth, Dubbo, Queanbeyan, Wagga, Parramatta and Glebe.
6. See Chapter 3.
7. See Chapter 3.
8. Information concerning the administration of the *Adoption Information Act* 1990 by the Department of Community Services is drawn from the Department's Submission made on their behalf by the Family Information Service; other material supplied to the Law Reform Commission by officers of the Department, particularly the Adoption Branch, the Family Information Service, the Legal Branch and several officers in District and Regional Offices around the State; and several discussions held by the Commission with Departmental personnel.
9. As defined in *Adoption Information Regulation* cl11.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

10. See Chapter 3.
11. s15(1).
12. See s6(2), 9, 12, 24, 27(4), 32, 33, 34.
13. To qualify for outreach on medical or psychological grounds the application must be verified by appropriate evidence.
14. Those arising under s6(2)(b), 9; cl10, 13.
15. Anglican Adoption Agency and Centacare *Submissions*.
16. s36.
17. FIS *Submission* at 2.
18. *Adoption Information Act* 1990 s4.
19. s6, 8, 9, 10.
20. Part 3, s20-23, 27.
21. See generally New South Wales. Law Reform Commission *Names: Registration and Certification of Births and Deaths* (Report 61, 1989).
22. Information concerning administration of the *Adoption Information Act* 1990 has been provided to the Law Reform Commission by the Registry in its submission and in documents made available to the Commission, and in personal discussion with Registry staff.
23. Benevolent Society Funding Submission to the Department of Family and Community Services, October 1990, quoted in *Report on the Initial Operations of the Post Adoption Resource Centre, April 1991 - December 1991* (Benevolent Society of New South Wales, 20 December 1991) Executive Summary at 1. Information in this section is drawn from this Report and submissions to the Commission from the Advisory Council and the staff of the Post Adoption Resource Centre.
24. See Benevolent Society Submission to Department of Community Services, October 1990 at 4.
25. See Appendix C.
26. *Report on the Initial Operation of PARC* Part 2 at 8.
27. *Registration of Births, Deaths and Marriages Act* 1973 s43, 44, 45.
28. See Chapter 2.
29. s44(1).
30. s43, Schedule 1 amending *Registration Act* s46.
31. s11, 13; cl13.
32. *Adoption Information Act* s6, 8; *Adoption Regulations* cl5(a), 7(a).
33. *Adoption Information Act* s6, 8; *Adoption Regulations* cl5(a), 7(a).
34. See NSWLRC Report 61. The Commission's recommendations for an Open Register are currently being reviewed by the Legislative Council Standing Committee on Social Issues.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

35. See s4, cl18.
36. s6, 7, 8, 10; cl4-15.
37. The Commission was advised by FIS that enquiries are still taking place to clarify when and why the files were destroyed.
38. cl4.
39. cl12.
40. cl14.
41. Confidential information is defined in clause 11 of the *Adoption Information Regulation*. The NSW Committee on Adoption prepared guidelines on distressing information which can be referred to. Much of the information referred to in this document does not fall within the categories of information prescribed in the Regulation. However, only such information can be released that is authorised by the legislation.
42. Family Information Service policy documents submitted to the Willis Committee.
43. FIS *Submission* at 5.
44. cl7.
45. Anglican Adoption Agency *Submission* at 3.
46. Privacy Committee *Annual Report 1990* at 19.
47. See s4.
48. cl18.
49. s11; cl19.
50. Centacare *Submission*.
51. *Adoption of Children Act* s66, 67; *Adoption of Children Regulations* cl34. See Chapter 2.
52. *Adoption Information Act* s4
53. s14(3).
54. The Commission has drawn on advice provided to the Commission by the Director, Health Services Implementation, NSW Department of Health, Medical Records Managers in several hospitals and the submission of the Medical Records Association.
55. s4. Hospital is defined as a hospital or other health service under the control of an area health service constituted under the *Area Health Services Act 1986*; or an incorporated hospital or a separated institution within the meaning of the *Public Hospitals Act 1929* or a hospital specified in the Fifth Schedule of that Act; or a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.
56. Department of Health, Protocol for the Release of Information under the Adoption Information Act, Circular No 91/120, 2 December 1991.
57. *Adoption Information Regulations* cl11(2).
58. Health Commission Policy on the Provision of Medical and Social Information Regarding Adoption, NSW Health Commission Policy Paper on Adoption, Appendix 1, supplied to the Willis Committee.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

59. Medical Record Association *Submission* at 2.
60. Department of Health *Submission* at 3.
61. *Adoption of Children Regulation* Part 5A.
62. Submission of the Department of Family and Community Services to the Willis Committee at 1, quoted in the *Willis Report* at 51.
63. *Willis Report* at 51.
64. cf s9(2)(b).
65. s33(1).
66. *Adoption of Children Regulations* cl12D.
67. Submission of the Department of Family and Community Services to the Willis Committee at 2.
68. s34(1).
69. Searching by FIS relies on inquiries to only certain authorities: Registry of Births, Deaths and Marriages, the Electoral Commission, the Department of Motor Transport, adoption agencies and information sources, Department of Social Security and the Police Missing Persons Unit.
70. *Adoption Information Act* 1990 s16, 17.
71. s18.
72. s18(1).
73. Advice of the Family Information Service to the Law Reform Commission 29 June 1992; *Willis Report* at 53.
74. Anglican Adoption Agency *Submission*.
75. See Chapter 3.
76. s19.
77. s21.
78. s22(2).
79. s23.
80. cl16.
81. s27.
82. s28.
83. s27.
84. As required by s25.
85. s28(1), (2).
86. s28(4).

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

87. M Squire *Adoption Information - The New Legislation* Papers presented at a Continuing Legal Education Seminar (College of Law, Sydney, 5 April 1991) at 36.
88. Letter to the Commission 2 July 1992.
89. Government Gazette No 79 17 May 1991 at 3728.
90. Letter to the Commission of 23 June 1992.
91. R O Blanch (DPP, Sydney, September 1991).
92. Advice to the Commission, June 1992.
93. FIS *Submission* at 21.
94. Department of Community Services, Adoption Information Regulation Regulatory Impact Statement at 5.
95. This argument is complicated by the fact that some of the costs involved, such as the work of staff at the personal interview, could be regarded in part at least as a service to the information recipient, whose interests are presumably advanced by ensuring that the veto lodger is properly identified and informed about the implications of lodging a veto and the significance of accompanying messages.

5. Impact of the Legislation

INTRODUCTION

5.1 In this Chapter the Commission presents the results of its inquiry into “the impact of the legislation on birth parents, children surrendered for adoption, adopting parents and the extended families of all parties”. The Chapter is based on a range of sources, notably:

Submissions made at public hearings held in Sydney and seven country venues

Written submissions (numbering over 700)

Telephone submissions (numbering over 300)

Personal interviews

Meetings with groups, representing adoption interest groups

The report prepared for the Commission by MSJ Keys Young (Appendix B)

A ‘persons found’ study conducted by PARC at the Commission’s request

Correspondence received by the then Premier, the Hon Nick Greiner, and the then Minister for Health and Community Services, the Hon John P Hannaford, and made available to the Commission

Non-confidential submissions and evidence provided to the Willis Committee

Research and other publications.

5.2 The presentation in this Chapter follows the wording of the terms of reference and also attempts to draw together the main conclusions of the Commission relating to issues of particular importance in the present review. In order to respect the confidentiality of individuals, submissions are referred to by number, except in the case of organisations which have indicated that they are willing to be named. Case summaries have been drawn from various submissions. In all, fictional names are used and some unimportant details have been altered.

5.3 Before presenting the Commission’s findings on the operation of the *Adoption Information Act* 1990, it is necessary to comment on the nature and significance of the various sources used in this Chapter.

Written and oral submissions

5.4 It hardly needs to be said that the Commission learned a great deal from the people immediately involved in the course of one of the most extensive public consultations the Commission has ever undertaken. The opportunity to hear directly, whether in person or in writing, from such a large number of people affected by the Act was invaluable. It has enabled the Commission to learn about the wide range of experiences under the Act, and the equally wide range of opinion about the issues involved. It seems highly unlikely that any significant type of experience, or point of view, has not been expressed somewhere in this invaluable mass of material. The Commission is very grateful to all who made submissions, the vast majority of which were extremely helpful and thoughtful. In particular, those who spoke at public hearings typically displayed considerable courage in speaking publicly about such personal and sensitive matters, and in the vast majority of cases, presented what they had to say with clarity, compassion and restraint.

5.5 The submissions were extraordinarily diverse. Some people spoke of their own experiences while others spoke about second or third hand accounts of the experiences of other people. Some were more concerned to present arguments about the merits of the law than to relate their own experiences, although in some cases, these arguments were supported by anecdotal material about the impact of the legislation. Some submissions were very well informed while others indicated a misunderstanding of some aspects of the law. Some submissions showed a great deal of compassion and understanding of other people’s points of view while others

showed more limited insights, and sometimes assumed or stated that other people's views and experiences would necessarily be similar to those of the person making the submission. Some people simply signed their names to petitions or form letters,¹ while others presented detailed and carefully considered material. Some were speaking about this issue for the first time, while others had given evidence, or engaged in lobbying activities, on one or several previous occasions: some of the material received by the Commission had been also used previously in the debate about this legislation. Many of those who spoke to the Commission used their own distinctive language and way of presenting what they had to say, while others appeared to be reflecting the results of discussions held in one of the several organisations involved in lobbying to preserve or change the law, or in providing advice and support for particular categories of people affected by the Act. Some submissions addressed a large range of issues while others focused on one or two aspects of the law. Some submissions were largely based on personal experiences with the legislation while many others were based on expectations about what *might* happen as a result of the legislation. The vast majority of those who spoke to the Commission were directly involved in the issues, being an adopted person or otherwise involved in the 'adoption triangle', or were involved in administering adoption law or services. A large number of submissions were received from all of the main groups involved in adoption and both from people who were seeking information and from people who were concerned about having information released about them, or being contacted by another party to the adoption.

5.6 The diversity in the form and manner of submissions was matched by the diversity of their content. In each of the categories of people affected by adoption, the Commission heard a great range of experiences and views. In particular, it was clear that within each category of persons affected by the Act, there were those whose concern was to obtain information previously concealed by the operation of the adoption laws and those whose main interest was the protection of what they saw as their privacy from disclosure of such information and the contacts that might be made as a result. Much of the focus, as expected, was on babies surrendered for adoption to unrelated persons, and what was said in this context may not equally apply to adoptions by step-parents, or by former foster parents, or by relatives, or adoptions of older children.

5.7 The richness and complexity of this material makes it important to consider carefully what inferences can properly be drawn from it. Four general characteristics of the personal submissions should be kept in mind. First, people have naturally described their views and impressions at a particular time, although the release of post-adoption information marks a stage in a series of events lasting over time: people's initial response may be very different from their response some years later.² This point also has implications for the significance of this review, for it is possible, even likely, that the pattern of experiences and views will change over time: the experience of the first year's operation may be rather different from that of years to come. Secondly, the reactions of the individuals involved are often so various, complex and often ambivalent that it is difficult to characterise them in simple ways. Each person's experience is unique, and often emotionally highly-charged, and many of those who spoke to the Commission noted how difficult it is for people to share the experiences of others under the adoption legislation. Adoptees, for example, frequently said that it is difficult for them to convey to people who have not been adopted the importance to them of finding identifying information about their origins. Thirdly, the individuals involved in a particular situation might give very different accounts of it, emphasising some matters and omitting or attaching different significance to others. In virtually all the available accounts of experiences, it is necessary to rely on the presentations of one participant in the situation. Even if one assumes that there is no intention to mislead - as seems true in nearly all submissions received by the Commission - rather different stories might have emerged from the accounts of each of the other participants. Fourthly, the process of making submissions and lobbying for law reform tends towards simplification: those seeking to retain or remove the law are tempted to state their own experiences and views in a more simplistic and unequivocal way than they might do in other contexts. Submissions to the Commission are therefore likely to understate the extent to which those affected by the law have feelings that are often ambivalent, and often, even typically, change over time.³

5.8 Partly for these reasons, the experiences and views of those who made submissions may not necessarily reflect the extent to which those experiences and views are held by other members of the adoption community. The fact that a particular view was taken by a certain percentage, say, of birth parents or adoptive parents, may reflect, in part, the effectiveness of lobby groups. The pattern of submissions may also reflect the characteristics of those with particular experiences or points of view. It is possible, for example, that those who oppose the Act might be more vigorous than those who favour it, because they see the review as an important opportunity to influence change, while those who favour it might tend to assume that since the law is in place there is no great need for action. Again, it is possible that those who are concerned to prevent other people knowing about events in the past, or those for whom the experiences have been particularly painful, might be reluctant to put

themselves forward. For these reasons, precise conclusions about what has been called 'the silent majority' cannot be drawn from the proportion of particular experiences or opinions occurring among those who made submissions.

5.9 It is also difficult to draw clear inferences about 'the silent majority' from the statistics (presented in Table 1, Chapter 4) on the exercise of rights under the Act. The number of adoptees and birth parents who have exercised information rights under the Act is clearly fewer than the number who are interested in information or reunions, since, as we shall see later in this Chapter, people who welcome contact are often unwilling to take the first step, and wait for the other person to take the initiative. This seems particularly true of birth mothers. Similarly, the number of vetoes lodged is not an accurate measure of the number of people who wish to prevent contact. We know that some who have lodged vetoes did so in order to exercise a measure of control over the timing and nature of contact, not because they wished to prevent it altogether. Conversely, some who did not want contact may have refrained from lodging vetoes because they objected to the fee, or believed that it would be ineffective. Most obviously, some people may have taken no action because they were among the minority of people who did not know about their rights under the Act (see generally Chapter 3).

5.10 To summarise, the written and oral submissions constitute an invaluable source of information to the Commission about the issues, experiences and views associated with the legislation. Further, the large number of submissions often makes it possible to say, for example, that at least a substantial minority took a particular view. On the other hand, it cannot be assumed that the incidence of particular experiences or views among those who made submissions is necessarily the same as it is among other people affected by the Act: claims about the 'silent majority', although commonly made in the submissions, are actually very difficult to establish. On some matters, however, reasonable estimates can be drawn from a study of the submissions *in combination with other types of evidence*, to which we now turn.

The MSJ Keys Young Report

5.11 The report by MSJ Keys Young, which forms Appendix B to this Report, has been described in Chapter 1. The Commission's understanding of the issues and experiences of people affected by the Act has been greatly assisted by this separate and independent study, which is referred to throughout this Chapter.

Adoption review: 'Persons Found' survey

5.12 In a further attempt to provide another useful source of information, at the Commission's request, PARC⁴ undertook a small study of 41 cases in which contact had been made or attempted, focusing on the experience of the persons who were found. The cases chosen were the first cases involving contact, up to a total of nine, dealt with by each of the six social workers currently on the staff. Workers A, B, C and D had each dealt with nine cases, E with 4, and F with 1. The workers wrote a brief account of each case, based on their notes and recollections and in some cases also based on a follow-up phone call. The workers answered, to the extent that they could, the following questions:

How was contact made?

How long ago?

Did the person found know about the Reunion Information Register/Adopted Persons Contact Register?

Did they ever put their name on a register?

If they did know about it and did not register, why not?

Did they know about contact veto possibility?

If they knew, did they think of putting on a veto?

If they knew and did not put on a veto, why didn't they?

How would they describe their attitude to the legislation prior to contact? eg fear, didn't think about it, didn't know about it.

After the contact, how would they describe their attitude to the legislation?

In the light of their experiences, did they agree with a law that made it possible for them to be found?

Should the law have prevented the other person from having identifying information about them unless they had agreed to it? Yes/no; reasons?

Any comments you would like passed on to the Adoption Law Review?

5.13 PARC sent to the Commission the social workers' summaries of each of the cases, typically half a page or so in length. Although these summaries do not mention names, addresses or other obviously identifying details, it is possible that publishing them in their original form might enable them to be identified by persons already aware of some of the facts. The study will therefore be described here only in general terms.

5.14 The survey addresses a common concern about the legislation, namely that it will have a disruptive or damaging impact on the persons who are found. It is a general characteristic of the literature in this area that the focus is on the *persons searching*, and to a considerable extent the available research is based on searchers who volunteer to participate in research. These people of course, may not be representative of other searchers. A similar difficulty arises in surveying the experience of persons who have approached PARC for assistance. It is possible that in relevant ways they are different from people who have conducted their searches without any assistance by PARC. By focusing, however, on the persons found, it should be possible to gain an insight into the experiences of this category of persons affected by the Act. There is no evident reason why the persons found as a result of mediation through PARC should be different from persons found by other searchers. The survey thus provides an insight into the elusive 'silent majority' about whom there has been so much speculation and assertion in debates about the Act.

5.15 The experiences of the people in this survey are likely to be typical of persons *contacted through professionally qualified intermediaries* such as PARC. Therefore, this survey should give a reasonably good indication of the usual responses of people contacted through professional intermediaries. While it may not so closely reflect the experiences of those contacted directly, however, it seems unlikely that the experiences of this group would be *substantially* different from those of the sample. The size of the sample (41) means of course that it would be wrong to attach any precise significance to the results: such surveys can only give a very approximate indication of what the larger pattern might be. Reference will be made to this survey at appropriate points in this chapter.

Ministerial correspondence and submissions to the Willis Committee

5.16 The Commission's examination of correspondence addressed to the then Premier (Mr Greiner) and the then Minister for Community Services (Mr Hannaford), and of the non-confidential submissions and evidence to the Willis Committee, also assisted the Review. The former contained representations from a number of people who also made submissions to this Review. Most of the latter material related to the period before the Act came into force, and, although it did not bear directly on the operation of the Act, it provided valuable insights into the issues and views that emerged in the preparation of the legislation and its course through Parliament. These insights are of considerable importance in the present review, since as will be seen in Chapter 6, it is important to determine, as far as possible, whether the operation of the Act conformed with the expectations held at the time it was passed.

Research and publications

5.17 Research and publications have assisted the Commission's review in various ways. In this Chapter, they are mainly used to provide a context for the evidence received, and in some aspects to assist in assessing the experiences of those affected by the Act. Of course, they need to be used with caution. The experiences of people in other places, and at other times, might be significantly different from those of people in New South Wales during the operation of the Act, owing to differences in (for example) the laws, the social background, and adoption practice at the relevant times. It is also necessary to take into account limitations of the evidence used

in published accounts: some of it, for example, is based on anecdotal material or small or unrepresentative samples.

BIRTH PARENTS

Introduction

5.18 The evidence showed that the experiences of birth parents varied greatly. Of the birth parents who participated in the review, the majority were birth mothers. Most, but by no means all, had consented to the adoption when they were young and unmarried. In a significant number of cases, the birth parents married, often some time after the child's birth. In some cases, they were married at the time of the adoption, and for various reasons were unable to care for the child. In some cases the father was closely involved with the mother, and with the decision to have the child adopted, while in others the father was unknown, or was not involved, perhaps because he had no knowledge of the birth, perhaps because he had no interest or accepted no responsibility, perhaps because he was effectively excluded by the mother or her family. Sometimes, the mother consented to adoption only after a period during which she attempted, with varying amounts of support, to care for the child herself. In many cases, the young mother's family played a large part in the events surrounding the relinquishment. In some cases the mother's parents provided no support and urged that the child be adopted; in others they provided a great deal of support and encouragement, and urged the mother to make up her own mind about what would be best for the baby.

5.19 The views of birth parents on the legislation also varied widely. The majority of birth parents who made submissions were enthusiastically in favour of the Act, and strongly asserted their rights to information and contact, and the benefits they saw as flowing from this. A significant minority, however, argued that the law should not open up the past: that birth parents had terminated their relationship with the adoptees when they consented to adoption, and had commenced a new life, perhaps with a new family who were unaware of the fact that they had given birth and relinquished the child for adoption. For many of these birth parents, the prospect of meeting the adoptee and revealing the adoptee's existence to family was daunting. They felt a betrayal similar to that expressed by adoptees and adoptive parents opposed to the legislation.

5.20 A dominant theme amongst birth mothers was that the experience of relinquishment was not of a 'clean break' but, on the contrary, was associated with enduring grief and pain. The focus on the act of relinquishment and its consequences was of central importance for these birth mothers, for at least two reasons. First, for many birth parents access to information, and where possible contact with the adoptee, was seen as a major step in the resolution of issues associated with intense grief, in some cases mixed with feelings of guilt and shame. It provided a key to many aspects of the motivations and intentions of birth parents. Others told of their anger at the way they had been treated, their feelings of emptiness and unfinished business. One submission said "relinquishment is like a storm that lasts forever". It was common for birth parents to say that they wanted the opportunity to explain to the adoptee how it came about that they gave consent to the adoption, and that despite the relinquishment the child had not been unloved or unwanted.

912 Birth mothers have carried their pain silently and often alone: they "harbour deep, unresolved feelings and sharp memories of the bearing and relinquishing of a child" ... By effecting a reunion, they have been 'given permission', as it were, to privately and publicly acknowledge the child who was surrendered to adoption. They have been able to 'come out of the closet' in the first step towards healing the grief of separation from their children and working through unresolved guilt.

49 I have spent nine years in therapy resolving this issue ... Mine was a tragic loss. My own hard work and humanity have resolved all this for me - along with the help of the Adoption Information Act 1990 - just as I had finally given up hope of ever letting go of a very anguished mystery within, a door opened.

5.21 Second, the evidence about the circumstances in which consent was given is highly relevant to the force of arguments on the extent to which it is now appropriate to treat birth parents as having voluntarily given up all rights to information about, or contact with, the adoptee. Many birth parents argued forcefully that an understanding of the circumstances in which they gave consent showed that it would be unfair for the law to treat them as uncaring, or as having rejected the child, or having forfeited all rights to information or contact.

5.22 As always, there are exceptions: the act of giving consent to the adoption was not necessarily the key issue for all. Some birth parents, for example, expressed their views more in terms of the ordinary wishes of parents separated from their children to learn how they had fared in life, and if possible, make contact with them. Some birth parents, too, lacked the intensity of expression indicated in many submissions. They appeared to have no strong feelings either about contact or about privacy. They wanted to be available if the adoptee wanted them, but did not feel inclined either to apply for the amended birth certificate or to lodge a contact veto. They were content to accept what happened.

5.23 Lack of action, however, did not always indicate a lack of intensity. The Commission has heard from birth mothers who expressed a deep need to see the child, but felt that they had no right to take the first step, or to take action that had the potential to distress members of the adoptive family. Some birth mothers may not have taken advantage of the legislation yet, but appreciate that they have the opportunity to access information in the future.

188 ... the Commission [should] take into account, when looking at statistics on reunions arranged to date ... the fact that an unknown number of birth parents have not acted as yet but who have every intention of doing so at some time in the future and when they feel that a reunion is most likely to be coped with in the context of their own lives.

5.24 The experience of contact and reunions, not surprisingly, also varied greatly. For almost all information recipients, even those who have encountered vetoes or whose discoveries have disappointed them, the exercise has been valuable and has assisted them in coming to terms with the consequences of relinquishment. For some birth parents who are contacted by the adoptee, on the other hand, the experience has been very distressing, although as we shall see for the majority it appears to have been positive or at least acceptable.

Consenting to adoption

5.25 We now turn to a more detailed account of the central themes in relation to birth parents, starting with what emerged as the main focus for many birth parents, the consent to adoption.⁵ The evidence consistently stressed a number of circumstances which seemed common to a great number of birth mothers who consented to the adoption by unrelated adopters of their new-born babies. These circumstances were of great significance to many who made submissions to the Commission.

30 After relinquishing my son in 1969 and, in fact, never touching or seeing him after birth because I was told it would make it harder for me to forget him, I believe nobody can understand the years of guilt and torment a birth mother goes through as she literally "pines" for her lost child ... I never gave up searching and hoping that one day I would be reunited with my child, and in fact the only thing that kept me going sometimes was to realise that he had my genes and was possibly also searching for me with the same intensity.

485 I was sixteen when I became pregnant to my (now) husband, I was so frightened and didn't tell my parents ... I truly wanted to keep my baby and thought that we would be married and live 'happily ever after'. But the father of the baby was unemployed and boarding in a room somewhere. Where were we going to live? What were we going to live on? How would we, just children ourselves be able to care for a baby? ... The 'Social Worker' stepped in and told me that my only option (if I really cared about my baby) was to give 'it' up. This person then went to my parents and told them that it was my wish to relinquish my baby. They didn't ask me - they had also been convinced it to be 'the right thing to do'. She then told me it was my parents' wish that I give the baby up.

My experience at that time was horrendous - what cruelty - to lie 'open-faced' to a child already uncertain of proceedings and the future of herself, the man she loved and their beloved baby!

I felt I had no choice! After I was admitted to hospital I went into labour - I was left alone, I asked for my boyfriend and my mother (who had requested they call her so she could be with me) - they refused. Finally the baby was born - they didn't even tell me that she was a girl until I begged they tell me. I didn't see her, they took her away immediately. My heart broke - I was helpless, alone and hopeless. I begged to see her - NO ...

My baby was 'stolen' from me - I didn't give her up by choice. The system at that time was criminal. Like vultures they swooped - 'Go home and forget', they said. In my heart I never gave my baby away. She was with me always - in my thoughts, my dreams and in my heart...I knew nothing of how my baby was - alive or dead, happy or sad, so many questions, so much heartache, grief and guilt.

105 For ... eighteen years, I had no knowledge of [my son's] fate, and, contrary to the assurances of the social workers and others connected with adoption, I did not forget about him. Rather, I remembered him frequently and with great emotion. The adoption had a profound effect on me, especially as I was expected to keep it a secret, and "get on with my life", as if the adoption had not occurred.

5.26 Not all birth parents feel this way. Some, a small minority of those who made submissions to the Commission, described their decision to relinquish the child as a deliberate choice which they wanted to be respected:

805 Some years ago, I gave birth to a child who I decided to have adopted out. I am now married with a family and although my husband knows about my past, my children don't. I honestly live in fear that my adopted child will one day turn up on the doorstep and that I'll be forced into a situation where I will have to tell, not only my children, but also other relatives and friends about the whole thing. The prospect of that, and all it implies, really terrifies me ... [W]hen I gave up my child for adoption I accepted the fact that I was giving up my child to another couple for them to bring up as their own. As far as I was concerned I also gave up my rights as a parent at that time and I understand it to be permanent. The adoption was not made on the understanding that "you can love my child as your own, educate it, clothe it, feed it, provide a home for it - but I may choose to come along in 20 years time to claim it back again."

5.27 Although the diversity of individual situations must be kept in mind, the evidence available to the Commission indicates a number of circumstances that were usually associated with consents to the adoption of new born babies to unrelated adopting parents.

5.28 First, birth mothers were frequently young and single. Many would have become pregnant unintentionally, and carried their pregnancy to full term, against the background of a lack of sex education, contraceptives and availability of abortion.⁶

5.29 Second, there was a lack of social and financial support for unmarried mothers. The supporting mothers benefit was not introduced until 1973. For many single mothers, it would have been difficult or impossible for them to manage on their own with a baby unless their own families provided a great deal of assistance. In many cases of children surrendered for adoption, this family support was not available: indeed the families often encouraged the young mother to relinquish the child for adoption. In many cases there was no support available from the fathers: the mothers were discouraged from involving them, or placing their names on the birth certificate; social norms tended to weaken any sense of responsibility that father might feel; some did not know that they were the father, while others refused to acknowledge their paternity.

5.30 Third, the lack of social services such as financial support and child minding facilities was accompanied by a great deal of stigma associated with birth outside wedlock. This stigma attached both to the mother and to the child. For the mother, it was a factor that would inhibit her bringing up the child herself. For the child, it was a stigma that would be capable of causing continuing embarrassment and stress. For both mother and child, adoption was seen as a way of removing this stigma. The birth mother was frequently urged to surrender the child because the child would obtain not only a new family that would be well placed to give the child a desirable and loving home and conventional family, but it would also remove from the child the stigma of illegitimacy. To the extent that the mother was able to conceal the facts, or forget them, the stigma associated with unmarried parenthood would also be lifted from her. Such stigmas would also have been a significant factor in the minds of many of the families of the birth mothers.

5.31 Fourthly, the young mothers were subjected to a great deal of persuasion and pressure to give up their children for adoption. This was presented to them by family members, hospital staff and social workers and no doubt many others, as the best thing to do, especially for the child. Many of them were told, and accepted, that the best way they could express their love and concern for the child was to give the child up for adoption and allow him or her to have a far better childhood, and far better opportunities than the birth mother would be able to provide. In view of the matters mentioned in the previous paragraphs, this advice must have seemed, and to a large extent no doubt was, well grounded. Many birth mothers have said, and there is no reason to disbelieve this, that they relinquished their children for adoption essentially because they thought it was the best thing they could do for their child.

5.32 The final factor was a combination of hospital practices relating to the delivery and birth. The Commission heard of birth parents who were drugged immediately after giving birth and were then transported without their consent to another hospital or convalescent centre where they were completely separated from their child, who had remained at the hospital. Some practices involved a deception of the birth mother: examples included concealing the words on the document of consent or misrepresenting the document, and telling the birth mother, contrary to the fact, the child had died shortly after birth. Another practice, which was employed in at least one major Sydney hospital, was to hold a pillow or sheet over the mother's body during the delivery so that the child could be removed without ever having been seen or held by the mother. Many of these practices were illegal. They all appear to have been directed to ensuring that the mother did not exercise her right to withdraw her consent, and, in the case of the practices preventing contact between the mother and child, were no doubt designed to prevent any 'bonding' between the birth mother and the child. The evidence to the Commission indicated that these practices may well have been successful in preventing the mother from withdrawing consent, but were manifestly unsuccessful in creating an emotional 'clean break' between mother and child: their main effect seems to have been to engender in many birth mothers a deep resentment about the experience.

5.33 These factors, while common, did not apply in all cases. Sometimes consents were taken only after careful and thorough counselling. Some mothers may have had the necessary resources and family support to bring up the child, had they cared to do so, but chose otherwise. Some, indeed, may have abused or abandoned the child and the child may have been adopted only after proceedings in which the mother's consent had been dispensed with. It is not possible to determine with any reasonable precision the proportion of birth mothers who fall in these different categories. We do not have systematic evidence that would enable a judgment to be made about the frequency of particular practices and circumstances over the long period, between 1923 and the mid-1970s, relevant to this review. However it is the Commission's belief, based on the evidence available, that the majority of birth mothers consented to adoption in the circumstances which led them to see adoption as the only course open to them to serve the needs of their children.

5.34 The Commission's view of the evidence is similar to that of the Willis Committee, and is supported by a number of submissions⁷, recently published autobiographical material⁸ and research.⁹ A major study conducted in 1984 summarised its findings as follows:

A national study of 213 women who relinquished a first child for adoption when they were young and single found,

- (1) The effects of relinquishment on the mother are negative and long lasting.
- (2) Approximately half the women reported an increasing sense of loss over periods of up to 30 years, with sense of loss being worse at particular times, eg. birthdays, Mothers' Day.
- (3) For the sample as a whole, this sense of loss remained constant for up to 30 years.
- (4) Relinquishing mothers, compared to a carefully matched comparison group of women, had significantly more problems of psychological adjustment.
- (5) The major factors which made for worse adjustment to the relinquishment were
 - absence of opportunities to talk through feelings about relinquishment
 - lack of social supports in dealing with the relinquishment

most importantly the continuing sense of loss about the child

(6) However, it was not the case that all women who had relinquished a child for adoption reported negative adjustment to relinquishment - there was approximately a normal distribution of outcomes.

(7) The relinquishing mothers expressed a clear view that their sense of loss and problems of adjustment to the relinquishment would be eased by knowledge about what had happened to the child they gave us for adoption.

The research shows clearly that it is inappropriate to view relinquishing mothers as women who have "put the problem behind them". Nor should they be regarded as callous and heartless in giving their child away - the majority of women felt they had no alternative to the difficult choice they made.¹⁰

5.35 A more recent review of the literature summarised the situation as follows:

The relinquishing parents in the past were told that they would get over the loss of the child quickly, even forget. The mother could shed parenthood like an overcoat and move out into the world as if nothing had occurred. This fiction was quickly realised to be false by the mothers who had relinquished, but most, believing the "experts" to be correct, assumed that their grief and pain was a sign of their own badness or madness. Society, via parents, friends and professionals also told them to forget and not to discuss their relinquishment experience nor their feelings. This advice, in effect, further isolated them from others who had relinquished and from any support and understanding. The myths were perpetuated out of the ignorance, fear and the resultant low self concept that surrounds relinquishment.¹¹

5.36 It is clear that such summaries accurately describe the experiences and attitudes of a large number of birth mothers. It is less clear whether the mothers interviewed in these studies, and the birth parents who gave evidence to the Commission, are representative of relinquishing mothers in general. It should be emphasised that although the research on this matter is often of a high standard, it is based on self-selecting samples, that is, individuals who volunteer to participate in research. It is possible that those birth mothers who participate in such research feel more strongly about the issues than birth mothers who do not, or perhaps they feel differently. It has been stressed above that a small number of birth mothers who participated in this review did regard their consent to adoption as a deliberate act which should make a 'complete break', although even in these cases the submissions often indicated that this had been, and continued to be, a painful decision, rather than that the birth mother had succeeded in dismissing the matter from her thoughts and feelings.

5.37 Although there is room for doubt about the precise proportions of birth mothers who consider that they have made a 'clean break' and those who have a very different view, the evidence leads the Commission to conclude that for the majority of birth mothers, the decision to sign the forms of consent to adoption was made at a time when they could not be reasonably regarded as being indifferent to the child's welfare, or as having abandoned the child for selfish reasons of their own. This finding is very helpful in understanding the needs and attitudes of those birth mothers who do seek information. It also shows that there is little justice or compassion in the argument that birth mothers, because they chose to give up their children for adoption, should necessarily be seen as people who have no legitimate interest in the welfare of the child, and no legitimate reason to ask the law to acknowledge and respond to their desire to obtain information about the child and perhaps make contact. On the other hand, it is obviously important that the interests of the significant number of birth parents who do regard their consent as marking a permanent and complete severance between themselves and the adoptees, and wish to conceal this chapter in their lives, should be kept carefully in mind.

Birth parents seeking information or contact

5.38 The submissions indicated that for the vast majority of birth mothers who used it to obtain information, the Act relieved the pain of never knowing if their child was alive or dead, happy or sad, healthy or ill. For many it provided an opportunity to meet as adults the children they had never known and to establish a relationship with them. For the overwhelming majority of the birth parents who participated in the review, this experience was

positive. It has allowed them to finally come to terms with the relinquishment and to resolve some of the anguish that they have lived with for so long.

75 [F]or relinquishing mothers who gave up their children to adoption because they did not have the resources available to care for them, the pain of this relinquishment can never be expunged. To go through life not knowing what has happened to their children is an emotional experience difficult to imagine. That some of their anguish and suffering can be alleviated by knowing that when their children are 18 years they will be able to access information about them must be regarded as a basic human right.

70 I hope they never change the law back ; it is HELL on earth not to know if she lived or not. Don't do to another generation what the law has done to me and so many other mothers and children.

8 For us [birth mother and daughter] finding each other has made our lives complete. Both families have met and enjoy the fact they have extended family. I know not everyone is as lucky my daughter and myself to have found mutual love and friendship, but if we have found happiness and put a lot of guilt and worry behind us, there must be a lot more people who will benefit as well.

5.39 The evidence indicates how satisfactory arrangements can often be made, even in difficult situations:

In Case 2, the birth mother who is in her late fifties had never told her husband, nor her older children, that she had a child prior to the marriage. The daughter met her birthmother and they are in regular contact. However neither families - the birthmother's nor the adopting parent's - are aware of the reunions ... The daughter has met her birth father but has agreed to carefully guard his identity and privacy.¹²

5.40 Many birth mothers received no documentation in relation to the adoption, so for some, the amended birth certificate is the only concrete acknowledgment they have of their child's existence, the only acknowledgment that the baby they relinquished was a tangible being they had lost. One birth mother told the Commission that, until her reunion, she slept with her daughter's amended birth certificate under her pillow and kept it with her always.

5.41 The evidence consistently indicated that the approach of birth parents seeking information or contact is careful and sensitive to the needs of other parties in the large majority of cases.¹³ This was amply demonstrated in submissions to the Commission:

178 Giving up my son for adoption has meant nearly 18 years of guilt and feeling that something is missing for me ... Personally I am not yet sure whether I will try to make contact with my son as soon as I am legally able to when he turns 18. Perhaps the last thing an 18 year old boy needs or wants is another adult in his life! However, regardless of what I decide to do and more importantly than that, I feel strongly that he has the right to know where he came from. If he is anything like me he will have a great curiosity about his family and where certain physical traits may have been inherited from. More seriously, he may need to know something about our medical history. Or maybe he would just like to know why he was given up for adoption.

I realise that in these situations the adoptive parents may feel they have the most to lose - after all, they have taken on these children and made loving family homes for them where their birth parents have been unable to provide this for them. However ... it is ridiculous to assume that they would turn their backs on the only family that they had ever known and loved ...

5.42 Centacare Adoption Services made the following submission, based on a survey of their clients:

There has been demonstrated an overall sensitivity on the part of birth parents towards the adoptive parents, their position and the bonds between the adoptee and his/her adoptive family. These attitudes and behaviours are often based on:-

- (a) The uncertainty as to whether the adoptee knows of his adoption,
- (b) A feeling that in some way they are "breaking a promise not to make contact" that was made when signing the consent for adoption, and

(c) A feeling that they are less entitled to the provisions of the legislation.¹⁴

5.43 Quoted comments of birth parents in this survey include the following:

I have made contact with his parents. It is now up to him to decide whether he wants to contact me.

Because of the intrusion contact may have caused into one's life and the unknown reaction as to the intrusion I felt it would be better to give my daughter time to adjust to the information and breathing space to make a choice whether she wanted contact or not.

If I never see her again I am greatly relieved that she is happy healthy and has led a good life and has been well cared for.¹⁵

5.44 There is considerable agreement among the research studies and in the submissions to the Commission, about the needs and wishes of relinquishing mothers who experience loss and grief associated with the relinquishment of their children.

5.45 First, they want information about the present health and welfare of their children. As stated by MSJ Keys Young, "the information needs tended to be about how their children had fared, what they had become in life, what they looked like as adults etc." They want to know "[i]f their children are alive or dead, and whether they are happy and secure."¹⁶

5.46 Secondly, many birth parents who seek information about their adult adopted children also seek the opportunity to make contact with them. Submissions to the Commission indicated that there were a number of reasons for this. Birth parents wanted to see the adoptee for themselves and wanted to hear directly from the adoptee news about their lives and about their feelings towards the birth parent. In part, this was an expression of the birth parents' general desire to learn what their children had become and how they had fared in life. However, another important aspect for many birth parents is there being an opportunity for them to explain to the adopted person how it came about that they had given consent to adoption. Many birth parents are apprehensive that their children may have been told that their mothers had given them up because they did not want them or had abandoned them and the birth parents wish to assure their children that this was not the case. As stated in the MSJ Keys Young Report:

The angry tone of messages by some children in association with their vetoes makes it clear to their birth mothers that their child believes their birth mother rejected them. The experience of some adoptees of having their adoptive parents tell them their birth mothers hadn't wanted them indicates that this message is given to some adoptees. This contrast fell sharply with the truth as the birth mothers knew it, that they feel an even greater need to contact their child and explain that they *were* wanted.¹⁷

5.47 In some cases, perhaps most, the birth parent's feelings are mixed, and may include considerable guilt or shame about the relinquishment of the child. For a significant number of these parents, it seems, what they want is to obtain their children's forgiveness or understanding.¹⁸

5.48 Finally, some birth parents may wish to establish some kind of continuing relationship with the adopted person. It is this aspect, no doubt, which poses the most difficulty for adoptive parents, and perhaps for some adopted persons. What emerges with some clarity from the evidence, is that for the majority of searching birth parents, a continuing relationship with the adoptee is a development which they welcome if it happened but is by no means essential. As one submission stated, it would be 'icing on the cake'.

5.49 An important characteristic of the evidence in this respect is that overwhelmingly, these birth parents do not wish to displace the adoptive parents. Commonly, attitudes to adoptive parents are generous and understanding. The birth parents usually recognise that they cannot and should not attempt to establish with the adoptee the sort of relationship that they might have had if they had brought the child up. Submissions to the Commission indicated that most are very concerned to handle the situation in a way that does not embarrass or offend the adoptive parents, or displace them in the adoptee's affections. It is common, for example, for the birth

parents to worry about whether the adopted person is aware of his or her adoption: they are anxious that their search should not cause a distressing revelation to the adopted person.

5.50 In the Commission's view, then, the majority of the birth parents who seek information about their children have a very strong desire or need to have up to date knowledge of their welfare and an account of their lives and, often, the opportunity to talk with them. While many of them would hope that such a meeting would lead to a longer satisfying relationship, they typically describe that relationship in terms of 'friendship' and in general they recognise that such a relationship may not eventuate. In that event, while they might be disappointed, they would greatly value the information and brief contact and what they have learned from it. Birth parents who have had an opportunity to meet their children and learn about their lives, but have not had the opportunity for that relationship to develop into a continuing one, are likely to be much less distressed than birth parents who have had no opportunity to meet the adoptees at all.

5.51 These comments are not true of every birth parent who seeks information or contact. It seems that a small minority some birth parents do experience a need or desire to take over a parenting role. There may also be some birth parents who behave in ways that are insensitive or harmful to the adopted person and other members of their families. However, the evidence very strongly suggests that such birth parents are very much the exception.

Birth parents opposed to the release of information

5.52 While the vast majority of submissions from birth parents supported the Act, the Commission received a small number of submissions from birth mothers who opposed contact or the release of information.¹⁹ Some argued that birth parents in many cases really did make a free and considered choice to relinquish their babies, and that their decision should now be respected and enforced, by protecting all parties against having access to identifying information. These people, almost without exception women, felt that the Act was re-opening old wounds and bringing back hurtful experiences that they had managed to put behind them. The majority of these women had not told their other children, or in some cases their husbands, that they had relinquished a child, and they felt that if they were forced to do so they would lose their family's love and respect.

407 Twenty years ago I gave birth. I was promised that nobody would ever find out and so with a lot of effort I got on with my life. Nobody ever knew my secret. I married and my husband and I have four beautiful children. My husband and children have never been told. The law was changed and now all of a sudden my world has been turned upside down. How do you think I felt when I had to fill out a veto and surrender my child a second time? ... If my husband and children ever discover my past I will lose them and right or wrong they are my life and the people who have pushed for changes will be responsible for my death. It may sound melodramatic but that is how it is... For the rest of my life I am worried that someone will contact me and that will be the end of everything I have worked so hard for.

952 I gave up my child for adoption a long time ago because the child was not my husband's. The trauma that time brought me to the brink of suicide. It has caused me enormous pain ever since, but I know that the decision was the right one to protect the happiness of my husband, my other children and, not least, the child ... I am in danger of losing all that is most dear to me if the past comes to light ... I can't believe that it will bring happiness to my child to know the circumstances of her birth.

5.53 Some birth mothers, in addition to objecting to the release of information, resented having to pay for their privacy.

151 I am a relinquishing mother. ... I was forced by this law to attend FACS Offices and pay \$50 to lodge a veto to ensure what I had always assumed was my right - my right to privacy and my right to deny access to confidential and potentially damaging information ... I object to information of a private nature being given to what is essentially a stranger ...

5.54 Some of the strongest objections to the Act came from a small number of submissions from women whose child was conceived through incest or rape. These women were fearful that despite vetoes, their child would knock on their door and they would be forced to reveal the sexual assault to their family. Like many adoptive

parents, these birth mothers feel that the government has betrayed them by removing the secrecy they were promised so long ago.

5.55 There is no denying the intensity of these submissions, and the Commission has given careful thought to meeting the anxieties of these people. Most, it seems, are experiencing continuing stress as a result of trying to maintain the secret; as submission 952 states, "it has caused me enormous pain ever since". It is important that counselling and support facilities should be available.²⁰ It may be that the anxieties would be eased, in some cases, if the birth parents were aware of the evidence relating to adoptees who search and the usual outcomes of contact: in fact, it seems very rare for contact to lead to abandonment by spouses and other family members. In a number of cases known to the Commission it turned out that a birth parent's 'secret' was already known to members of the family, or even to most of the local community: in such cases the 'disclosure' involved not so much the discovery of information as the beginning of a period when the facts could be discussed openly, often to the relief and benefit of the birth parent.

5.56 These comments, however, may be of little comfort to those who are convinced that *in their own case* the effect of contact would be disastrous. No amount of evidence about other people can establish that in a particular case the result of contact will not, in fact, be as bad as feared. More important, perhaps, the Commission's impression is that many birth parents who have such fears would be loathe to seek counselling or support. Birth parents in such situations, however, would benefit if they were able to send anonymous messages to the adult adoptees, if they could arrange for the release of information to be deferred for a period such as two months, and if, in a rare case where they had reason to believe that they might be harmed by the adoptee, they could seek an order preventing the disclosure of the information: the Commission recommends all of these measures in Chapter 7.

Birth fathers

5.57 There is great variation in the involvement of birth fathers in the events surrounding the birth and the adoption. Some were fully involved, and may have married the mother either before or after the adoption. Others were uninvolved, and may not even have known that the child was born, or that they were the father. Many refused to take any responsibility for the mother and may even have refused to acknowledge the child as their own. As noted earlier in this Chapter, a number of factors combined to prevent most fathers' names appearing on the birth certificate.

5.58 Few birth fathers made submissions to the Commission. Perhaps because their names appear infrequently on the birth certificates, the Commission heard very little from birth fathers who opposed the release of information and the possibility of the adoptee making contact. It appears to be the general experience in many jurisdictions that men are less actively involved than women in seeking post-adoption information. However it was clear from the evidence that some birth fathers are very involved, and may very much wish to obtain information about, or to contact, the adoptees. Many have unresolved feelings in relation to the adoption and would like to make contact as a result. Some, as the Willis Committee found, feel very angry about having been disregarded, and having their names omitted from the birth certificate.²¹ Others feel guilty at having 'abandoned' the mother and child, and wish to make amends.²²

5.59 Evidence to the Commission indicated that birth fathers may have a range of experiences which may lead them to seek contact, or welcome it when it happens:

Martin, now in his forties, is the father of a 20 year old son. He was denied all contact with his pregnant girl friend during the last months of pregnancy. Martin has always felt a need to know his son and, after constant and prolonged effort did finally succeed in having his name added to the birth registration. He located his son, made the approach to him through the adoptive family and has found warm acceptance. He finds that he has many things in common with his son and his family. Both he and his son acknowledge and respect the birth mother's refusal of contact of any sort.

Luke, in his twenties, encountered a veto from his birth mother but, because of information recorded for him by his mother at the time of the adoption, was able to contact his birth father. He

had been unaware of Luke's existence but has been happy to acknowledge him as his son. He has shown him photos and given him information about his mother with whom he had long lost touch. He offered to make contact with the mother but Luke indignantly refused this offer. He has no wish to compromise his undertaking or intrude into his birth mother's life.

Birth parents who are 'found'

5.60 Criticisms of the adoption information legislation are often based on claims or assumptions that it will have adverse consequences for birth parents. The Adoption Privacy Protection Group (APPG), for example, wrote to the Commission that:

Unwelcome interference in the life of a relinquishing parent, undermining the stability of a subsequently created family, creates very grave concerns.

5.61 Such apprehensions appear to be associated with a number of assumptions. One is that birth parents would have put the matter out of their minds, and that there would be no problem if it were not for adoption information laws. Another is that due to the guilt and shame associated with birth outside wedlock the birth mothers would want to keep this event secret from others, even close members of their families. Another assumption is that revelation of the facts might be shocking to other members of the family, and indeed destructive to the family.

5.62 There is a striking difference between these assumptions and the view of birth parents that emerged from the Commission's study of their evidence, and from their face-to-face presentations in interviews and at public hearings. It seems to the Commission, as was suggested in some submissions, that the difference may be partly due to false information given to adoptive parents at the time of the adoption and partly to ignorance of the circumstances in which many birth mothers consented to relinquish their children. The view that birth mothers normally forget, or that they are so ashamed that they value secrecy above all else, may also reflect an acceptance of some of the myths of adoption, and, in some cases, a degree of stereotyping and moral condemnation of birth parents. It is possible, too, that such views are partly influenced by the needs of the some adoptive parents, who may find it more comfortable to see the process of relinquishment as involving a 'clean break' from the birth mother.

5.63 No doubt the apprehensions indicated by APPG are true for some individuals. As PARC says, the claim that the Act has caused pain is undeniable.²³ But it is important to determine, as far as possible, what sorts of experiences are commonly encountered when contact is made with a birth parent.

5.64 The evidence strongly suggests that these assumptions are true only in a minority of cases. As mentioned above, experience has shown that it is very rare for birth mothers to be unaffected by the experience of relinquishing a child for adoption. The stigma associated with extra-marital birth is now greatly reduced, and for many birth mothers may not now be a significant influence on their behaviour. In the present climate, it is likely that in many cases birth mothers have already told members of their present families, and that those family members would be understanding and supportive.

5.65 Individual accounts given to the Commission illustrate the diversity of impacts of contact on birth parents.

Rita, now in her 60s, is a birth mother who surrendered 2 children for adoption over a period of 5 years. Each child was placed in a different family. She subsequently married and had more children, although the marriage ended unhappily. She was thrown into a state of near terror and confusion when contacted by Mary, the eldest of four adopted children. She has, however, had a very satisfactory reunion with Mary and has found to her surprise that she has been warmly accepted by Mary's extended family.

Kevin is an adopted man who traced his elderly birth mother. She was living with Jo, an elderly relative. At Kevin's request, a social worker made contact with the birth mother. The birth mother was initially confused, and gave the letter to Jo who knew nothing of Kevin's existence. Jo spoke to the social worker and, though shocked to learn of Kevin's existence, was not opposed to contact.

The elderly mother was very pleased to meet Kevin. She has however assented to Jo's wish that Jo's family not be told of Kevin's true identity.

Mark is an adopted man in his 70's who discovered by chance the whereabouts and identity of his elderly birth mother. This came about through the agency of an acquaintance, Beth, who was compiling a history of his birth family. Beth indicated to the birth mother that her son had been searching for her but that no contact would be made if it were not her wish. The birth mother rang Mark and asked for time to tell her other children. They had in fact already been made aware of Mark's identity, but everyone felt that the birth mother's dignity be respected and that she be given the choice. The children reacted with appropriate surprise and acceptance when told of their lost brother. All are delighted with the way things have turned out and are now looking forward to a reunion, involving as well children and grand children.

Lucy is a birth mother who was approached by the daughter she relinquished over 20 years ago. She has met the daughter secretly on one occasion. After the surrender, Lucy went on to marry another man and have a daughter. Neither the daughter nor her husband knew of Lucy's relinquished daughter. Lucy felt "suicidal" and "desperate" fearing the consequences of exposure. She eventually went on to tell first her husband and then her daughter of the relinquishment and a meeting was organised. Some months later Lucy said she still felt fragile but greatly relieved that there were no more secrets in her family. She reported her husband's remark that an invisible wall between them had disappeared.

One adoptee has contacted her birth mother, who did not lodge a contact veto and whose husband and children do not know of the adoptee's existence. The two are arranging to meet in private. The birth mother is more concerned that the adoptive parents should not be upset in any way, rather than that her own husband and family find out.

5.66 The evidence relating to the impact on birth parents of adoptees' access to their original birth certificates, and identifying information may be summarised as follows. First, we now have considerable experience in a number of jurisdictions with laws granting to identifying information to adoptees. Studies of experience in these jurisdictions, described in Chapter 6, indicate that for most birth parents contacted by adoptees the experience appears to be a positive one. The two Victorian studies based on random samples are particularly important in this respect.

5.67 Second, those organisations in New South Wales which have been most closely involved in counselling parties affected by the Act strongly support the Act: while they acknowledge that reunion experiences are not necessarily happy, and may on occasion be very distressing, they consider that the benefits far outweigh the detriments. This view is consistent with available surveys, although these are not decisive because it cannot be shown that they are representative.

5.68 Third, the 'persons found' survey conducted by PARC at the Commission's request echoes the results of other studies.²⁴ Of the 41 cases, 12 involved birth parents, all except one being birth mothers. Their experiences were as follows:

Birth parents in 'persons found' survey

| | | |
|--|-----------|-------|
| Contact experienced as positive/acceptable | 8 | (67%) |
| Contact experienced as negative/unacceptable | 3 | (25%) |
| Experience equivocal or unknown | 1 | (8%) |
| Total Cases | 12 | |

[\[Link to text only version of table\]](#)

5.69 Available evidence, therefore, supports the view that for the majority of birth parents who are contacted by adult adoptees, the experience is more positive than negative. In a significant number of cases, however, the experience is unhappy, and the availability of identifying information is disapproved by the birth parent.

Impact of the law on birth parents: conclusions

5.70 The review confirms the results of other recent inquiries and studies on birth parents who have relinquished children for adoption. It shows that most birth mothers consented to the adoption of their children in circumstances where they felt they had little choice. The relinquishment was a source of grief and stress, of varying intensity, that continued through their lives. While some wish to prevent others from knowing of this part of their history, and regard the Act as an invasion of their privacy, the majority are grateful for the opportunity that the law has given them to learn about their birth children, whether this comes about as a result of their own initiative or that of the adoptee. Many birth mothers want to have the opportunity to talk with their children, and explain the circumstances in which they consented to their adoption. While many would be glad if they develop a friendly relationships, few wish to disrupt or displace the adoptive parents or interfere with their lives. For birth mothers, the Act has been beneficial in the majority of cases.

5.71 It seems likely that experience of the legislation in the future will be at least as positive as it has been to date. While many had been thinking about possible reunions for many years, those birth parents 'found' in the first year of operation of the Act had little time to come to terms with the reality of contacts. In many ways, this initial period of operation is likely to have been the most difficult. With time, the people immediately affected, and their families, will become better prepared for the consequences of the Act, and post-adoption contact will increasingly be perceived as an everyday occurrence, although it will remain stressful for many.

ADOPTees

Introduction

5.72 The Commission received written submissions from adoptees, and heard many others at public hearings, in telephone submissions, and in interviews. Their ages ranged from 18 and younger to over 70. Some approached the Commission independently, others (usually the younger adoptees) with their parents. Some shared and echoed the views of their parents, while others said that their views were not shared by their adoptive parents and family, and in some cases that their views were not shared by their adopted siblings (even, in one case, by a twin).

5.73 There is now a formidable literature on the desire of many adoptees to trace their origins.²⁵ Their experiences and needs have been described in autobiographies, research papers and conference presentations, and have been described in the *Willis Report*. Many of the submissions to the Commission retraced this familiar ground, which the Commission considers does not need to be set out in more detail in this Report. The following comments will focus on aspects of particular importance to the assessment of the *Adoption Information Act 1990*.

5.74 There is no single 'adoptee perspective' of the Act: their views cover a wide spectrum. A clear majority of the adoptees who participated in the review were in favour of the information rights given under the Act, although a substantial minority were critical of the Act insofar as it provided information rights without the prior consent of the persons concerned: these concerns related mainly to the information rights given to birth parents.

5.75 The Commission also received submissions from adoptees whose views fall somewhere in between these two positions. Not surprisingly, adoptees who are not very interested in searching tend not to volunteer for research projects and do not figure largely in the literature. An insight into the attitudes of these adoptees, however, is provided in the MSJ Keys Young Report. They quote such adoptees:

I felt I was happy with my life and didn't want to do anything. I don't know the people on the other side - they could be quite nice people ...

I'm a wimp, I guess I'm lazy and a bit fearful of taking on a search. What if I get so far and couldn't find them? If someone else did the work ...²⁶

5.76 Like other groups, adoptees differed on the merits of the contact veto system. Many adoptees thought that the contact veto system was an appropriate protection for people's rights, but were also firmly of the view that the law should not go further than this:

354 If [our natural parents] do not want any further contact or involvement past identification, the current law provides to let that be their way out. However, do not let their inability to face their actions of the past cause the people who are the results of their previous poor decisions to suffer further by reversing the current legislation or making it more difficult to obtain the data needed to allow us to identify our real selves ...

Awareness of adoption

5.77 There is no reliable evidence on the proportion of New South Wales adoptees who are unaware of their adoptive status. New Zealand evidence cited to the Willis Committee suggested that the figure was as low as 1%. The vast majority of adoptive parents who made submissions to the Commission said that they had told their children of their adoptive status, although a small minority said that they had not done so and claimed that their adult adopted children were unaware of their status. Of course, this is not necessarily so: as is well known, and was reflected in many submissions to the Commission, many adoptees discover accidentally and from sources other than their adoptive parents, that they are adopted. Some adoptees who contacted the Commission learned of their adoption as long as 40 years ago, when they were teenagers. Adoptees at all ages noted in their submissions that their adoptive parents were unaware that the adoptees knew of their adoptive status. The Commission also heard from adoptees who were in their 30s, 40s or 50s when they learned of their adoption: few of them had learned of their adoption as a result of the Act. PARC's submission, pointing this out, suggested that "[i]t is clear that with or without the change of legislation the concealed adoption will always be a time bomb waiting to explode".²⁷

5.78 Typically, since the question has never been raised by their parents, adoptees who learn 'accidentally' of their status do not mention the subject for fear of upsetting their parents, who may go on believing that the adoptees think that they are the biological children of the adoptive parents. Even where children know of their status, they often respond to cues from their parents indicating that the topic is a sensitive one. This point is frequently noted by researchers. In a recent study, for example, Seale notes that "children who recognise that their parents are uncomfortable when they raise questions about their birth family and their adoption frequently stop asking. They may collude with their adoptive parents in denying their adoptive status and appear not interested in order to prevent hurting their parent's feelings".²⁸ The awkwardness surrounding the topic, as well as the inevitability of discovering an adoption, is captured in a number of submissions:

268 All my life I have had a feeling that I was adopted despite my parents making every endeavour to dispute this fact. It was not until I was in my late 30s (1984) that my adoptive father confirmed that my long held feelings were true.

113 I was adopted in 1952, my parents decided never to inform me of my adoptive status. I eventually found out by accident at the age of eight, but have never discussed the topic with my parents, even to this day.

361 I was brought up to believe that my parents were my true flesh and blood, but certain serious situations and occurrences led me to believe from the age of 15, that I was adopted. At that age I could not find out. In fact, unless my "parents" told me, which I knew they would never do, I had absolutely no chance of ever finding out. So big was this secret that all our cousins, aunts, uncles, family friends knew, but I was 33 years old before I gained the courage to write to Youth and Community Services, and find out the truth ... It hurts to think that I may have died without ever knowing. It seems ridiculous that anyone could ever think that we would never find out. I personally think that if anyone had the right to know it was me.

5.79 Submissions to the Commission by adoptive parents who had not 'told', therefore, do not necessarily indicate the number of adoptees who do not know of their adoptive status. Of course adoptees who do not know of their adoptive status would not have participated in the review, and it is likely that many of their adoptive

parents would be reluctant to do so. However the 'persons found' survey,²⁹ and submissions to the Commission, suggest that the number is not insignificant, and may be considerably larger than generally assumed.³⁰

5.80 A number of submissions, particularly from adoptees, urged that adoptive parents should tell their adult adopted children, and this was a strong theme of the *Willis Report* and the Parliamentary debates. It seems that these exhortations, as well as advice to adoptive parents since at least the 1960s, have had only moderate success, with the result, unfortunately, that adoptees who do not know of their status are unable to exercise their rights under the Act, either to prevent contact by lodging a veto or to apply for information. They are often seen as the most vulnerable people in the operation of the Act, but it seems that in the majority of cases, while the initial revelation triggered by contact from a birth relative may be deeply shocking, these adoptees appear to cope reasonably well.³¹ Some submissions went so far as to suggest that if the *Adoption Information Act* is informing people that they are adopted, then the Act is having a good impact on adoptees. These submissions argued that it is wrong for a person to not know something so fundamental about themselves, regardless of the good intentions of adoptive parents. It was seen as particularly unfair if the 'secret' was known to other family members but not to the adoptee. The Commission's impression is that most adoptees would agree that they should have the right to know of their status, but at least one adult adoptee, informed as a result of the Act, told the Commission that she would have preferred not to have known, and that her adoptive parents (and more recently her brother, also adopted) were the right people to make this decision.

Adoptees with positive experience of the Act

5.81 A large proportion of adoptees were pleased with the new access to information. Many had long desired contact with their natural families and the Act facilitated this contact. Others had already experienced reunions prior to the Act and were pleased that such reunions would now be easier to achieve for other adoptees.

354 We [adoptees] do not generally see ourselves in our daily routine as "lost" because most of us have come from loving families who we respect and love. However, despite the anxieties, worry and emotion that the actions resulting from this legislative change cause us, we all find that fitting that last piece to the jigsaw of our natural family background, completes our personalities.

With this change in legislation we can now go through life knowing we have "found" our true identity. We can see our real origins that identify our appearances, our attitudes our characters, be they outgoing, reticent, sporting, entertaining tall, short and as well our sexual preferences.

400 I am an adopted person who was reunited with my birth family last September. This event has changed my life. It has given me a longed for true identity. It has made me feel that I am a "legitimate" individual and that I am as good as anybody else. The day I found out I had two brothers, I cried tears of happiness! I consider that I am privileged to have had this experience in life.

906 I am an adopted person, and have recently made contact with my natural mother with wonderful results. I know almost for certain that my search would not be over if it wasn't for the Adoption Information Act.

115 ... I have been reunited with my birth mother and 4 brothers. Fortunately things have worked out exceptionally well and we have a very close relationship. This is something I have hoped for, for about 20 years and when the law changed it gave me just what I needed.

5.82 For many, particularly those who had been searching before the Act, receiving a copy of the original or amended birth certificate was a positive experience in itself. Often the birth certificate had a significance other than simply identifying the other party to the adoption. One adoptee said, "the day I received my birth certificate, was the very first time in my 38 years that I felt important". Another said, "[i]t's hard to explain the sheer excitement of receiving my birth certificate, it gave me a beginning". To another, receiving her original birth certificate with her birth mother's name, meant that she could put a name to a fantasy she had held to for over 35 years.

5.83 Even for those who have always known they were adopted, and have looked forward to obtaining the birth certificate, the reality can make a strong impact:

279 I did in fact obtain my original birth certificate. At the time of reading it, I experienced emotions which surprised me. It was a rather eerie experience is probably the best way to put it ... To actually see it in writing, seeing something you knew existed for over 30 years, but had never seen it, was a little scary. Once the shock had worn off, it wasn't a problem ...

5.84 Receiving original birth certificates was a triumph for an number of adoptees who had attempted to obtain them before the passage of the Act. These adoptees were often incredulous that a government department could deny them information about themselves, particularly if they were into their 40s, 50s and even 60s. They perceived the withholding of personal information as an insult to their ability to manage their own lives, as well as a peculiar form of discrimination against adoptees.

5.85 Most adoptees found the experience of applying for the birth certificates and prescribed information positive and empowering. Some however were frustrated by the delay in receiving prescribed information, particularly if there was ultimately only a small amount available. If the adoptee arranged a reunion, the lack of prescribed information was often unimportant as they could fill in any gaps by asking the birth parent personally. For those who were not successful with a reunion, either because they were met with a veto or the birth parent could not be found, the lack of detail in prescribed information was a considerable disappointment. So too was receiving information on a birth certificate which proved to be false, thus any opportunity to pursue the search for identity and blood relatives was lost.

5.86 The absence of birth fathers' names from birth certificates also presents a problem for adoptees. Often the birth mother will give the adoptee the father's name and sometimes help contact him. She may even be married to the birth father, so no problem arises. However, if the birth mother cannot be found, has lodged a veto or simply refuses to tell, the adoptee may have no way of discovering who his or her father is. Instances of this situation cited to the Commission included one adoptee who had been adopted by her natural maternal grandmother. She had known who her natural mother was since the age of 12 but no one would tell her who her father was. Her mother had refused to tell her before she died and although she suspected some people in the small country town she grew up in knew, none of them would tell her either. An elderly cousin said she knew who her father was as well, but told her she may or may not reveal his name before she dies. The adoptee said she had a "great need to know who [she] really is - not just half of it". She suspected that her father's name was recorded somewhere but she had never been allowed to access it.³² As she was 56 she could not understand why the information was being denied her and who people were trying to protect. Her natural father was probably dead, as was her mother and adoptive parents. She is aware of the possibility that she may have been conceived through incest.

5.87 Adoptees felt that this situation, and others like it, could be remedied by allowing them access to their adoption files and to Supreme Court records, where their birth father's name may be recorded. Many were angry that they were again being denied information by adoption officials and government departments, when it was information relating to themselves. This was particularly so for older adoptees. While most adoptees are initially concerned with finding their birth mothers, the search for birth fathers assumed a greater importance at a later stage. As was recognised by the Willis Committee, having made contact with birth mothers, adoptees often want to 'complete the picture'. Just as they had been frustrated in the past by their search for their birth mothers, they were finding the pattern being repeated in the search for fathers, despite the new legislation. These issues are considered in Chapter 8.

5.88 The Commission was impressed by the generosity and understanding shown by many adoptees to the needs and sensitivities of other people. Many submissions illustrated this, as well as providing insights into the varying experiences and interests of those who sought information or contact. One adoptee describes his experiences on encountering a contact veto lodged by his birth mother as follows:

302 It was frustrating not to be able to make contact, but it was exciting to know that my birth mother was alive and thinking about me. I immediately applied for the brief message she had left for me with the Department of Family and Community Services. This told me that she had had a good relationship with my father; that she was unmarried at the time of my birth; that she had given me up for adoption because she wanted me to have a better home than she could provide; that she

wished me well; and that she wanted her privacy protected. I was happy to learn from the social worker who gave me the message that this message was kinder than many she had seen. I was also happy to learn that I was not, for example, the product of a rape or some other tragedy ...

I also wrote a letter addressed to my mother and left it with FACS so that she could collect it if she wished. FACS advised that they could let her know a message was available. In the letter I thanked my mother for persisting with her pregnancy; told her what I had been doing for the last 40 years; assured her of my affection for her; assured her of my concern to avoid embarrassing her; explained my reasons for wanting to contact her; and asked her to initiate further contact either through FACS or directly ...

[The adoptee then engaged in research into the family background, taking careful steps to avoid embarrassing his mother. He learned that she collected his letter, and shortly afterwards she rang him.]

Within minutes we had renewed a contact interrupted forty years ago. My mother had read my letter, judged that its writer was honourable, and decided that direct contact was the appropriate response. Very bravely, I think, she suggested that she visit my wife and I ... We have had several brief meetings and numerous phone conversations and will almost certainly opt for a continuing relationship. My mother had felt confident that I would be well cared for after adoption and that I would not need to seek her out. She did not want her life and reputation disrupted by an unexpected relation ... she is easily able to keep our relationship private, but has yet to decide whether to tell her husband and family about me, and is uncertain whether to tell me about the identity of my father ...

5.89 An adoptee in her 40s wrote:

319 I have gone through all the emotions any other adopted person goes through, at different stages of my life. The resentments of teenage years, the curiosity, the need of medical as well as genetic knowledge as my own children were born and the sheer heartache of wanting to identify myself with my original family. Origins are important to different people at different stages of the individual's life. I did not realise until my reunion with my natural mother and her (and mine) family how much I was possessing my own children because they were my own flesh and blood. Thank goodness family became a reality and I could mentally let go of the things I should and my whole life seemed to gain more perspectiveness. I had tormented myself for years because of the law of that time and not wanting to intrude in some else's life. Now I know my natural mother needed to know that I was well and had a good life ... my mum now feels part of my birth after becoming friends with my natural mother ...

5.90 There is considerable discussion in the literature on the extent to which adoptees who seek information about their origins had unhappy family lives, or seek or need some form of therapy. The evidence in submissions to the Commission did not directly bear on these questions. Nevertheless, the Commission's impression of the large number of adoptees who gave evidence or made submissions was that they were not distinctive in any obvious way, nor did their accounts of their family lives suggest that there was any strong link between unhappy or disturbed life in the adoptive family and the desire to obtain birth information. This impression is consistent with more recent literature, and with the view that the wishes and needs of adoptees should be seen as quite normal and ordinary.³³ They typically want information of practical significance, such as medical information, or they express the sort of curiosity about their biological inheritance that underlies a great deal of recent interest in tracing family history and genealogy. In many cases, of course, the significance of the information and the urgency of the search is greater than for non-adopted people, who already have information about their immediate ancestors and wish to trace family links to earlier generations, or to trace the wider family network. Others wish to do no more than recognise the reality of two sets of parents, and want to know and understand the ones from whom they have so far been separated.

5.91 Some submissions from people critical of the Act expressed scepticism about the phenomenon of 'genealogical bewilderment'.³⁴ This term, while capturing some aspects of the special experiences of adoptees, should not be treated as if it were a complete account. The term 'bewilderment', for example, does not well describe the many adoptees who strongly asserted their rights to information that other people take for granted. The use of this dauntingly technical expression also suggests that there is something pathological, or mysterious,

about these adoptees and their wishes. It also seems to have been understood, at least by some critics, as a claim that *all* adoptees have a similar experience. Nothing could be clearer from the evidence to the Commission than the wide variety of perceptions, attitudes and needs that exist among adoptees. While some feel very intensely that birth information, and sometimes contact with a birth parent, is of the greatest importance in giving them a sense of 'who they really are', or in providing 'the missing piece of the jigsaw puzzle', and some feel that without this information their lives have been incomplete and their functioning limited, others seek information with more of a sense of ordinary curiosity.

5.92 The Commission's view on this matter is supported by a Victorian study which reported that searching adoptees attending a group interview attached great significance to having the 'normality' of their feelings acknowledged:

Confirmation of the normality of needing information and searching was helpful. Many had felt their need to know was a kind of madness peculiar to them. Respondents who had been told they were adopted had sometimes been told not to tell others about their status. For some, this left a sense of shame and humiliation which they expected to carry for life. Much pleasure was expressed in hearing the reasons others searched: "It was my first opportunity to talk to adopted people I didn't know the need was so great till that day. I felt I wasn't alone ... I was just the same as everyone else there. It makes you feel as if you could do it ..."35

5.93 The Commission's impression is that while many adoptees commence by obtaining the birth certificate and only then making a decision whether to go further and attempt contact, most of those who obtain a birth certificate do in fact decide to go further.³⁶ A large number of submissions to the Commission spoke of the benefits felt by adoptees who had obtained birth certificates and information and had made contact with birth mothers or other members of the birth family.

5.94 Centacare in its submission to the Commission included the results of a survey of people who had applied to it for prescribed information. Of 57 adoptees who responded, only one was not in favour of the new legislation. Responses to the survey included the following:-

I think it is an adopted person's right to find out his or her roots. It was one of the best laws ever brought in.

I was happier that it was going to be easier to obtain the information I feel I am entitled to. I felt I needed to know where I came from and hopefully the circumstances leading to my adoption.

Every person has the right to know their birth parents and especially family history of diseases etc. I think the law is wonderful.

5.95 Adoptees who have not taken advantage of their rights under the Act may also view it in a positive light. Some adoptees said that while they had not as yet applied for their birth certificate or prescribed information, they appreciated having the opportunity to do so in the future. These adoptees, along with those who have applied, were also pleased to have more control over information relating to themselves, instead of the information being completely in the power of government or adoption officials.

5.96 Some adoptees who have had 'negative' reunions or learnt information about themselves or their birth family which was distressing, nevertheless expressed support for the Act in quite strong terms. While they had to cope with difficult circumstances or their relationship with their birth parent(s) had not turned out as they hoped, they still believed that access to information was good. Only rarely did the adoptee regret having sought information and contact.

308 I had a face to face meeting with my mother in 1986 - a most unhappy experience for me as my mother made it painfully clear she never wanted to see me again or to have any future contact ...

In my work with Adoption Triangle for the past nine years, I have heard many stories of searching and hoped for contact; some with unhappy endings and some with the happiest endings but most settled down to comfortable relationships. Even with the worst possible scenarios there have

always been gains - information, background, identity and a beginning of coming to terms with the grief.

Adoptees who had, or feared, negative experiences under the Act

5.97 The Commission received a number of submissions from adoptees who are unhappy with the new rights to information, and also from adoptive parents stating what they said were the views of their adult adopted children. In some cases the contact has caused distress and disruption to their lives. Most of these people objected to the lack of control they had over their own personal details. That is, they were angry that information about themselves and their adoptive parents would be released against their wishes. Many considered this a breach of privacy.

285 I am a 29 year old adopted person. I feel that it is not fair that I have to pay for my privacy ... Even if I put a veto on, my birth mother can still get my birth certificate and I feel that this is an intrusion into my privacy.

5.98 Others considered it not only a breach of privacy but a threat to their security and peace of mind. Adoptees who had lodged vetoes were particularly angry as they felt that the veto should be able to remove this threat.

128 I paid a mere \$50 for *my* details to be kept *my* details, so therefore I think that I should be entitled to live my life, without fear of not wanting to answer the door or the telephone, or looking out the window to see an unusual car parked, it's called "looking over your shoulder".

5.99 Many adoptees were concerned about the affect the legislation would have on their adoptive parents. They felt that the birth parents' rights to information breached their adoptive parent's privacy. Those with older adoptive parents were particularly aware of the stress release of information and contact may cause and were angry that they could not protect their adoptive parents from this.

802 My mother deserves to be enjoying the fruits of raising a fine family - her children and grandchildren. Instead her reward for providing a loving, stable and hardworking home for two unwanted babies is to be pushed closer to death.

5.100 Adoptees who objected to the new access to information, felt that they, as adults, should be able to determine whether information about themselves was released by a government department or adoption agency. They felt angry at their lack of power to prevent the release to birth parents of information about themselves and their adoptive families. Many believed that their birth parents had given up any rights they had when they consented to the adoption. These adoptees felt that their adoptive parents were their *real* parents and that their birth parents were simply strangers.

5.101 Some adoptees resented being reminded of their adoptive status, and being required to deal with issues arising from it:

I had resolved the matters in my own head ... I never sought any information. The law forced me to think about it again and then to make a response.³⁷

5.102 Adoptees often resented the potential intrusion birth parents could have in their lives. For those at important stages in their development, for example about to do the Higher School Certificate, university exams, entering the workforce, marrying or having children, the appearance of birth parents presented a potential disruption. Some adoptees felt that they simply did not have room in their lives for another whole family, particularly if they were at a stage when they were growing up and breaking childhood ties.³⁸

5.103 It appeared in some cases that adoptees' hostility to the Act clearly reflected the anxiety and anger displayed by their adoptive parents. In one private interview, an adoptive parent told the Commission that she 'reassured' her (handicapped) adopted child, who was said to be terrified of being taken away by the birth parents, by assuring her that if the birth parents arrived she would "set the police on them".

5.104 Some adoptees who did not want contact were content to lodge a veto and felt secure that they would not be contacted. The majority of adoptees who did not want contact, however, seriously questioned the effectiveness of the veto. They sometimes referred to the veto as a “joke”, because identifying information would still be released. They felt that this would inevitably lead to unwanted contact on the part of a determined birth parent. These adoptees objected to having to pay \$50 to protect their privacy when they considered privacy a fundamental right. For all of the above reasons adoptees did *not* lodge a veto. These adoptees, it seems, do not want contact, but considered the veto an unjustifiably expensive inconvenience.

Impact of the Act on adoptees: conclusions

5.105 Evidence to the Commission confirmed the well established finding that many adoptees feel a great interest in their biological origins. For some, there is a deeply felt need, for others it is more a matter of curiosity. The evidence to the Commission did not suggest that it was only adoptees who had unhappy adoptive homes, or who were in any way pathological, who desired birth information or contact. It did suggest, however, a certain insistency in the desire to find “the missing part of the jigsaw”, to “discover who I am”, (phrases commonly used to try to express the adoptees’ feelings). It also suggested that for almost all adoptees, the need and interest varied over time. It was often strongly felt, for example, when female adoptees had children of their own. Like other researchers, the Commission noticed that the women appeared to be more likely than men to seek information about their birth family.

5.106 It did not seem that adoptees generally wished to replace or disown their adoptive parents; frequently they said that the experience had reinforced their love for their adoptive parents and links with their adoptive relatives. Nor did the adoptees, in the Commission’s view, generally feel angry towards the birth parent, although they often wanted to hear at first hand the reasons why they were relinquished for adoption.

5.107 By no means did all adoptees favour the information rights granted by the Act, however. A substantial minority expressed concerns about privacy, at times echoing arguments and phrases used by their adoptive parents. In many cases, but by no means all, their views were based on anticipated difficulties rather than actual experiences. In most cases, the main focus was on problems anticipated to arise as a result of contact by birth parents, although many of these adoptees shared the view of the Willis Committee that the balance between information rights and protection for privacy should be the same for adoptees and birth parents.

5.108 As one might expect, the expressed attitudes of adoptees to the issues of privacy and information were often similar to those of the adoptive parents, especially in the case of younger adoptees. This was not invariable: in some families different children, even birth siblings adopted into the same family, had very different views.

5.109 The Commission’s inquiry, therefore, indicates that adoptees are generally strongly in favour of their new rights to birth certificates and information about their birth families. A substantial minority, however, are concerned, whether for themselves or their adoptive parents, about the implications of the rights given to birth parents. They differ, too, on whether the contact veto system provides adequate protection against unwanted contact.

ADOPTIVE PARENTS

Introduction

5.110 The views and experiences of adoptive parents formed a large part of the evidence to the Commission. Over 250 written submissions (including form letters prepared by APPG), were received from adoptive parents, and numerous adoptive parents also participated in public hearings and made telephone submissions. The views and concerns of many adoptive parents were reflected in submissions and materials supplied by APPG and other groups. The Commission attended a public meeting at which adoptive parents were well represented, and held lengthy separate meetings with representatives from APPG, and from Central Coast Friends of Adoption. At both of these meetings adoptive parents were very well represented. The Commission also attended a special

meeting of the Adoptive Parents Association (APA), and also received a submission from that organisation. In addition, the views and experiences of adoptive parents are considerably discussed in the literature.

5.111 It is clear that many adoptive parents are very concerned about the impact of the Act, and are very hostile to it. As with other categories of people affected by the Act, it is not easy to determine how far those who have made submissions are representative of adoptive parents in general. Adoptive parents who saw the law as violating rights to privacy, and wished to change the law, might be more likely to make submissions than those who were more content with the law, or who were not very interested, especially in the light of the energetic work of the APPG and other similar groups in assisting them to formulate their views and communicate them to the Commission. Nevertheless, a large majority of adoptive parents who made their views known to the Commission were strongly opposed to at least some of the basic principles of the Act, notably the rights given to birth parents. While the level of disapproval may well be lower among adoptive parents generally than among those who made submissions, it seems clear that a great many adoptive parents, probably a substantial majority, are dissatisfied with the Act at least in some important respects.

Adoptive parents hostile to the Act

5.112 The many adoptive parents who were hostile to the Act regarded it as involving a gross violation of their own privacy and that of the adoptees. They resented not being able to prevent personal information about themselves being released to people they consider strangers.

957 I am angry that many items of private information will be available to persons currently unknown to me. The sources of the information are many and varied. The potential for someone who is disinterested in privacy or unfamiliar with what is appropriate in the circumstances is enormous. Excessive amounts of information about my family and myself may be handed over. Privacy is a basic human right that I value highly.

5.113 A persistent theme of these adoptive parents' submissions is that in supplying information under the Act, the Government is not only violating their privacy but breaking a promise or contract that it made with adoptive parents at the time of the adoption. They were upset that information they supplied confidentially for the purposes of adopting a child, might be made available for a wholly different purpose, against their wishes. In some cases, they assumed or feared that the information rights under the Act were more extensive than they actually are:

301 The private details supplied by us (on application to adopt children) to the Child Welfare Department in 1967 were supposedly confidential. When the Government decided (who exactly decided?) to hand over all details of adoptions since 1923 to the Benevolent Society (a private charitable institution) what became of our private files? Are they accessible to the 'Post Adoption Resource Centre' - presumably formed for this very purpose within the Benevolent Society? Does this mean our financial and health status as well as psychological reports are now open to an unknown number of people not covered by privacy provisions that cover State Government employees?

5.114 Many submissions expressed resentment that government policy had changed so radically in relation to secrecy for adoptions. In their view, in the 1960s parents were assured absolute secrecy.³⁹ They were told that their files were closed, that the birth parents could never discover their names and vice versa. Moreover, they were assured that for the child, the adoptive family and the birth parents, this was the best thing. They were consequently angry that adoption policy seemed to have reversed after they have arranged their lives in accordance with the advice they were given at the time of the adoption.

40 Many years ago when we adopted our children, we were assured by all concerned, the Adoption Agency, the Solicitor, the Child Welfare Department (as it was then called), that our privacy and the privacy of our children and their birth parents was absolutely protected, all relevant papers concerned would be destroyed, BUT by the change in the law, this has all been removed and no matter what is said about vetoes being possible etc ... this is no safeguard to protect our privacy and we feel that no privacy at all remains in our children, the birth parents or our lives. Why was the law allowed to be changed in retrospect? We had believed that from the moment that we

adopted our first child, that this child was forever ours, without any interference from anyone, and we cannot understand why this law was altered to allow such invasion of so many folk's privacy.

398 We were given the assurance that our identity would never be revealed to the natural mother, and without our consent, our daughter would not be able to locate her. We would never have adopted a child if these conditions did not apply.

220 In 1963 my husband and I adopted our eldest daughter. The law at that time assured us that no contact would ever be made by the birth mother, nor were we the adoptive parents ever to contact her and that legally the child was ours. We were told that no surnames would ever be revealed ensuring complete privacy for all concerned. We have kept our side of this agreement but it seems the NSW government can change the rules at whim.

5.115 For adoptive parents who have not told their children that they are adopted, this change in policy posed an agonising dilemma, having to choose between telling their adult children they are adopted or running the risk of the adoptee being informed by an agency, government department or a birth parent or relative.

98 I have never told my daughter that she is adopted, and I know she would be devastated. It was my husband's dying wish, that she would never know, that he was not her birth father.

903 [W]e have raised two children from the tender ages of 6 weeks of age and 3 weeks of age respectively. They are now in their 30's. Our family have not been told of their adoption as in that era we were advised it was our decision to make. We made the decision that they would be raised as any natural child ... We were assured at the time of these adoptions that by law no access would be possible by birth parents at any time in the future.

447 I am 83 and have two adoptive children, neither of whom know that they are adopted. When these children were adopted back in the 1940s we were advised by the Social Workers, Doctors also the Government authority **NOT** to reveal this to them as there were sinister connotations with these children ie.

Children of murderers,

Children of prostitutes

Children of people in asylums

Children of unmarried women

etc

so I have never revealed these intimate and personal details to my children and to do this now would not only cause great distress but I feel [it] would be the end of me.

190 When my husband and I adopted our baby son in 1955 we were given absolute assurance that no information would ever be released as to him or our whereabouts, we therefore chose **NOT** to tell him he was adopted. If it is necessary to change the law to suit a small minority, it should not have been retrospective, and should only apply to adoptions taking place after 1991.

5.116 The retrospective nature of the legislation is obviously a major source of dissatisfaction for these adoptive parents. They frequently said that they did not object to the new access to information provisions applying to adoptions occurring after the Act came into operation, but thought they should not apply to adoptions which had already taken place and which were finalised when a stricter regime of secrecy was in force.

5.117 A frequent theme in the submissions from these adoptive parents was that they had been forgotten, and their efforts in raising the children had not been acknowledged. Some adoptive parents resent what they perceive as the Act's lack of recognition of their role as parents. They felt that the homes, education, values and love that they have given their children have been ignored and that they are being treated as temporary carers rather than

parents. Some thought it unfair that the birth mothers, who they saw as having made no contribution to the children's welfare, should be given more rights than they themselves, who had raised the children. They saw no advantage to themselves, and no recognition of their needs and perceptions, in the legal change that facilitated a greater flow of information between adoptees and birth parents. Many felt, as some submissions put it, that "the adoption triangle had become two-sided" and that adoptive parents no longer had a place. They felt excluded, in that they could not apply for identifying information under the Act, they could not place vetoes, and they could be left out of a reunion if either the adoptee or the birth parent by-passed them and contacted the other person directly. They felt powerless and discarded.

40 This whole adoption process has become two-sided, with the adoptive parents' feelings being made to seem inferior. So often after reading reports in the media, we have felt as though we are guilty of some dreadful crime, almost as though we had snatched these children from their mothers' arms, when all that we did was to open our hearts and our homes within the law to children who otherwise in those days, would be placed in an institution.

398 The child and the natural parents have all the rights. WE have none. We have only done the work, paid the bills and brought up a lovely child as our own. If people were not happy to adopt these children, they would have been fostered out, sometimes going from home to home. We, the adopting parents must have saved the government millions of dollars.

5.118 Many of these adoptive parents were concerned for the security and peace of mind of their children as well as themselves. If their children indicated that they would prefer not to have contact with a birth parent, or objected to identifying information about themselves being released, adoptive parents were concerned that their children's wishes should be respected. Some adoptive parents indicated that they experienced a sense of frustration and powerlessness, knowing that if the birth parent chooses to access the information, contrary to their child's wish, there is nothing they can do to stop this.

5.119 Many adoptive parents were concerned about the time the access to information provisions come into operation. Eighteen year olds are often about to sit their Higher School Certificate, and their parents felt that having to make a decision about placing a veto or organising a reunion would be a major disruption at that time. Some adoptive parents simply felt that 18 was too young and that their children would not be emotionally mature enough to deal with a reunion or placing a veto, or more generally to make a decision that could affect the rest of their lives.

5.120 Some adoptive parents have experienced difficulty with the Act when their child does not place a veto, but does wish to avoid contact. In this situation the adoptive parents were upset about the prospect of any unwanted direct contact with the child. They found it distressing if they perceived their child as being unnecessarily disturbed by a birth parent.

5.121 Adoptive parents can also find themselves in the position of an intermediary between the adoptee and birth parent, as birth parents often feel that it is proper to contact the adoptive parents first, rather than the child. If the adoptee does not want contact, the adoptive parents can be left with the considerable emotional burden of dealing with the birth parent. The Commission received submissions from adoptive parents whose children refused to answer the telephone when their birth parents called, leaving their adoptive parent to speak to them. If the adoptee no longer lived at home and the birth parent only had the adoptive parent's address, the adoptive parent would be forced to reply to all mail from the birth parent, explaining why the adoptee did not want contact. This could lead the adoptive parent to resent the birth parent and object to the operation of the Act.

5.122 Overall, adoptive parents who objected to the Act seemed to be suffering from the pressure that is now put on adoptive families to take a positive step in order to maintain the status quo. Many adoptive parents were happy with the Adopted Persons Contact Register because it guaranteed that they would not have to come into contact with their children's birth parents, unless this was their children's express desire. Now the only way contact can be prevented is through the veto system which adoptive parents are not entitled to use. They are in this respect entirely dependant on their children's wishes. Some adoptees do not want to veto and others simply could not be bothered. This can leave adoptive parents feeling vulnerable. Many adoptive parents whose children have placed a veto do not believe the veto will be effective, so that they, too, receive little comfort.

Adoptive parents in favour of the Act

5.123 A significant minority of adoptive parents who made submissions supported the legislation. Often these people have been seeking information on behalf of their children for many years and are pleased that it is finally forthcoming.⁴⁰ It was common for such an adoptive parent to seek contact with a birth parent as a chance to express their gratitude for the opportunity of having the adoptee in the family. Some have watched the anguish and frustration of their children's searches and are relieved to see these searches end in happy reunions. They perceive that as a result their children are happier and more satisfied people.

477 As adopting parents, we have always felt our children's parents had a right to know they were well and happy, we have also believed our children had a right to know more of [their] identities and to meet their birth parents if that was mutually desired. We don't own our children and acknowledge they have another part of their lives, they are entitled to information. We would be very sad if the NSW Adoption Information Act 1990 is altered to bring back the ban on our children's rights. We feel no threat if our daughter makes contact with her mother, she loves us and nothing will change our love for her.

335 I think that it is wonderful that adopted persons can make contact with their birth families. The relationship with my adopted daughter has been enhanced. It has not affected her father and brothers in any way.

When I asked my daughter how she felt about making contact, she said, "I feel more a whole person. I know why I am the shape I am. I have my mum's hair and my nose comes from my dad's family. Nobody has eyes like I have, but grandad thinks that they are my grandmother's."

I haven't had any issues arising from the Act, in relation to which I have needed help. My only complaint is that the legislation should have been introduced years ago - preferably about 1965 ...

868(b) We were contacted by our daughter's birth mother ... A complete reunion took place soon after that date and during the last twelve months we have established a warm and loving relationship between the two extended families ... Our daughter was astounded [by the birth mother's contact] and took some time to come to terms with it ... As we all struggled with our emotions at one point, our [adopted] son assured us we would not lose him or his sister. I sense that our daughter has an increased respect and affection for us, following the reunion with her birth mother. Other members of our extended families were each affected differently. My father-in-law was not at all keen on a reunion taking place initially, but was happy after it had happened because he immediately liked our daughter's birth mother ...

I believe very strongly that adoptive parents who do not tell their adopted children are foolish in the extreme. Arguing that they never expected the law to change is no defence. In effect these people are living a lie by hiding the truth ...

I do think the law should give adoptive parents the right to obtain original birth certificates ... However, I would be most concerned if adoptive parents could veto contact between birth mothers and adult adoptees ...

5.124 For many adoptive parents in favour of the Act, the access to information and/or reunions have made their job of parenting easier. They consider that it has helped their children understand themselves better and in turn has improved the parent/child relationship.

11 My adopted son has just turned 20, and this week we made contact with his natural sister. I am only sorry it couldn't have happened earlier ... In April he decided that the only way he could "get his head together" was to find out who he really was, so we set about making an application for his birth certificate ... It is early days yet, but I believe that finding his Mum will be the best thing that ever happened to my son. He hasn't met her yet, or even spoken to his sister, but hangs on every word we tell him about them. He now realises that his mother was pressured, not rejecting. It won't affect our relationship. If we don't know each other by now, and love each other enough to want what is best for each other, then we never will.

5.125 Adoptive parents who are supportive of reunions with the adoptee's birth family more often than not found that their relationship with their child was strengthened. They found that the experience of searching for and finding a birth family brought them closer together. They discovered that the birth parents would not take their place as parents, but would simply be friends to their adopted children. It is likely in many of these cases the ground for a positive outcome had often been laid during the adoptees' childhoods. One adoptive parent described the following incident involving an adopted daughter:

335 When in her early teens, she walked into the house one day and said, "What a horrible person my real mother must be, to give me up for adoption". Then and there, I told her about the stigma of illegitimacy; how it affected both mother and child; how it would have been virtually impossible and socially unacceptable for her mother to have kept her; and that in giving her up for adoption, the mother was thinking of the child's future welfare, rather than her own.

5.126 Some adoptive parents in favour of the Act expressed dissatisfaction with not being able to apply for information themselves. Often these parents' children were not interested in searching themselves so there was no likelihood of contact unless the birth parents took the initiative. These adoptive parents often wanted contact to obtain medical information, particularly in relation to mental illness. One adoptive parent who spoke to the Commission had custody of her adopted daughter's child. The daughter suffered from a schizophrenia and the adoptive mother was seeking information for the sake of her grandchild. She had been denied information on the ground that only her daughter could apply.

Ambivalent attitudes

5.127 A valuable insight into the more complex and ambivalent attitudes of some adoptive parents was provided by the meeting the Commission had with the Adoptive Parents Association, and that Association's submission.⁴¹ The Association welcomed the Act insofar as it granted information rights to adoptees, but was more ambivalent towards the rights given to birth parents:

It was not envisaged that the law would change to give birth parents rights to information. Adoptive parents and society have been preparing for the access to information by adoptees since the 1970s at least.

5.128 The submission pointed out that adoptive parents feel that the interests of the adoptee and those of the birth parent are different, and while recognising the force of the birth parents' claims, have reservations about them:

Relinquishing mothers know their roots and identity, they do not need to find them, and therefore theirs is not the same need [as adoptees] ... Adoptive parents acknowledge that relinquishing mothers do have grief but this isn't necessarily cured by the law. They cannot have their babies back and life isn't fair. Although birth mothers have their sympathy, adoptive parents do not feel that their right to information should be automatic ... The rights of a birth mother should be circumscribed ...

5.129 Although many arguments advanced by and on behalf of adoptive parents appeared to accept that the rights of birth parents and adopted persons should be similar, it is clear from the submissions that adoptive parents were most threatened by the granting of information rights to birth parents. Most of the expressed anxieties focussed on contact initiated by birth parent or other members of the birth family. It seems highly likely that the opposition of many adoptive parents and some adoptees to the Act would be considerably mitigated if the Act merely gave rights to adopted persons.

Attitudes to adoption and the other parties to adoption

5.130 Submissions from adoptive parents hostile to the Act often expressed the view, either expressly or implicitly, that there would have been no difficulties or issues to be resolved had the Act not been passed. These parents, it seems, had approached their role as if it were no different from that of other parents. In this approach they had received considerable support from the law, and, it seems, from professional and lay advice. The

underlying basis of the adoption selection process and their behaviour as parents was that they should behave exactly as if they were the biological parents.⁴² They saw this as being in the interests of all parties. The child's interest would be promoted by having an 'ordinary' family. The birth mother was seen as someone who had permanently and completely relinquished the child, and would probably not welcome being reminded of this episode in her life, or having it revealed to people who knew her.

5.131 As will be apparent from some of the quotations in this chapter,⁴³ some members of adoptive families showed a degree of stereotyping and moral condemnation of birth mothers, who were perceived as very different types of people from members of the adoptive family. Although this was a feature of a significant number of submissions, especially from those concerned to protect their privacy, it was by no means universal. Many adoptive parents and adoptees, probably the majority, had a more favourable and sympathetic view of birth parents, and one or two adoptive mothers remarked wryly that had it not been for good fortune, they might well have found themselves in the same position.

5.132 Against this background, many adoptive parents saw the new information laws, in effect, as upsetting the natural order of things. They found it difficult to understand why a birth parent would seek information or contact, and considered that those who would do so must be an atypical, and perhaps unbalanced, minority. There appears to be a link between this perception and the view of some adoptive parents that a contact veto would not stop such people from making contact to satisfy their needs. There may also be a link, in some cases, with stereotypes associated with unmarried motherhood: this emerges clearly from submission 447, quoted above. These adoptive parents also tended to see curiosity by their adopted children as reflecting adversely on their performance as parents. Many submissions from adoptive parents stressed that their children were well adjusted, and had experienced very happy and satisfying family lives, and (in consequence) had no interest in seeking information about their birth families. The underlying assumption (which is contrary to much of the evidence to the Commission, and to the views of most modern researchers) appears to be that only adoptees who have not had a good family life will want to seek out their birth family.

5.133 These ideas may also be reflected in some of the arguments advanced by those who see the law as violating privacy rights. In particular, the intense resistance to paying fees for a contact veto may be linked with the view that there is something 'unnatural' about providing information rights, and it is unreasonable to expect people to pay for restoring what they see as the natural order of things. They are also relevant to adoptive parents' attitudes to counselling and support: these adoptive parents are likely to feel offended and threatened by any suggestion that they might benefit from counselling or professional advice. Such a suggestion violates their sense of being an ordinary family, whose main need is to be left alone, both by 'do-gooders' and by members of the birth family.

5.134 Such views could naturally affect the children. The submissions and the literature both indicate that in such families adoption can become an awkward or taboo subject, with a tacit agreement between parents and children that it should not be mentioned.⁴⁴ In this situation, silence on the part of the children can be interpreted by the parents as indicating that they are not interested. In some cases this is far from the truth: as noted, many adoptees felt that in order to protect their adoptive parents they should not openly discuss their desire for information. Adoptees spoke to the Commission of soon learning 'not to ask questions' about a subject that evidently caused their parents considerable discomfort. Some waited until the adoptive parents had died before taking action;⁴⁵ others did so without their parents' knowledge. Some of those who discovered they were adopted did not reveal to the parents that they were aware of their adoptive status. On the other hand, in some families adoptees and adoptive parents alike maintain the ordinariness of the adoptive family: see for example the adoptive parent quoted in the MSJ Keys Young Report at B21. As stated in their Report, "the fear of loss following a decision to search can be experienced by both the adopting parents and the adoptee".⁴⁶

5.135 The difference between adoptive parents who are opposed to or threatened by the Act and those who are not is very striking, and on the basis of the available evidence does not appear to have a clear relationship with such matters as age, or social class. The MSJ Keys Young Report suggests that the difference may be linked to different patterns of family functioning, with members of 'closed' families more threatened by the Act than members of more 'open' families.⁴⁷ This suggests, for example, that the similarity between the views of some adoptees with those of their adoptive parents may often be better explained by the fact that "members of a closed

family share similar attitudes towards outsiders” than by the criticism attributed to some birth mothers that adoptive parents bring pressure on their children, although of course this may also occur, whether consciously or otherwise.

Impact of the Act on adoptive parents: conclusions

5.136 The majority of adoptive parents appear to be strongly opposed to the Act, especially insofar as it gives information rights to birth parents. A sizeable minority, on the other hand, support the Act, but are generally more enthusiastic about the granting of rights to adoptees than to birth parents. Most of the written submissions from adoptive parents opposed to the Act took a strong form. They said that the retrospective operation of the Act was a breach of the ‘contract’ under which they accepted children for adoption, which they saw as guaranteeing that identifying information would not be released. They doubt the effectiveness of the contact veto, and advocate a law under which identifying information is only released where both parties have agreed in advance, or, at least, that the veto should be such as to prevent the release of identifying information. However it was clear that some adoptive parents, probably under-represented in the written submissions, took a more tentative and ambivalent view. They were concerned about the impact of the law on their lives, but saw the strength of the case for establishing information rights.

5.137 The high level of anxiety of so many adoptive parents is not matched by available evidence about the attitudes and behaviour of adoptees and birth parents who seek information, or the outcomes of contacts. While many of the privacy-oriented adoptive parents tend to think of birth parents as unsettled or unstable people who are willing to disrupt the adoptive family to satisfy their own needs, the evidence strongly points to the opposite conclusion. Again, while these adoptive parents see contact as potentially devastating, evidence about actual reunions indicates that in fact it is overall a positive experience for the majority of those who are ‘found’ as well as virtually all those who are searchers.

5.138 It may be that the mismatch between the perceptions of these adoptive parents and the actual situation is linked to a range of attitudes and assumptions some of which were greatly encouraged by the law and practice of adoption at the relevant time. These attitudes and assumptions include the view that treating the adoptive family as if it were the biological family is in the interests of all concerned. It is now known that, unfortunately for these adoptive parents, these assumptions are not generally true: denying the reality of the biological links, and attempting to keep the child’s origins secret, often produces continuing strains and tensions for all the parties. True or not, however, the assumptions may hold a central place in the family lives of these adoptive parents, and some of their children. Changing such attitudes and patterns of behaviour is very difficult, and is resisted by many of these adoptive parents, who have not surprisingly devoted their energies into attempting to change the law, which they see as unnecessary and unfair, rather than adapting to it.

5.139 There is no doubt that the impact of the law on many adoptive parents is harsh, essentially because of the tension created by the information rights, especially as the rights of the birth parents, are fundamentally inconsistent with maintaining a denial of the actual history of the adopted person. That denial takes its most obvious and painful form where the adopted person does not know of his or her adoptive status. But it may also exist, in a less obvious form, where adoptive parents deny the ordinariness of the birth parent’s desire for information about the adoptee, or assume that the birth parent is likely to lack sensitivity and ordinary decency in using the information made available by the Act.

5.140 It seems likely that the anxieties of adoptive parents will ease somewhat over time, as the evidence about the operation of the law becomes more widely known. If the Commission’s understanding is correct, however, this process is unlikely to be swift or complete, for the habits and attitudes built up over time are not easily changed. And there will undoubtedly continue to be accounts of unhappy contacts, and insensitive or disturbed birth parents or adoptees, which will contribute to continuing anxieties on the part of adoptive parents.

5.141 It is obviously desirable to respond to the needs of this large group of angry and anxious people. The question whether the law should be changed is addressed elsewhere: the Commission’s view is that nothing in this review indicates that the Act should be changed in its basic features, but that a number of changes should be made to provide greater protection for those who feel that the Act violates their rights to privacy. These matters are considered in Chapters 6 and 7. The Commission’s recommendations, which are consistent with the basic

features of the Act, should provide considerable benefit for people concerned about privacy, although they do not go as far as many would like, because to do so would undermine the Act and cause a great deal of hardship to adoptees and birth parents.

5.142 In the Commission's view, it is desirable that everything possible be done to make available to those who feel threatened by the Act accurate information about the experiences of other people who have been affected by it. Adoptive parents who have not been able to take the step of telling adult adoptees of their adoptive status might benefit from talking with others who have, and with others whose children have been contacted by birth parents. Some may be assisted by discussions about the benefits and stresses arising from different ways of responding to the challenge of adoptive parenting. Some submissions to the Commission suggested that some adoptive parents may benefit from attention to unresolved difficulties associated with infertility.

5.143 An indication of the possible needs of some adoptive parents is given in a recent publication by a former President of the Adoptive Parents Association of Victoria (APAV):

A person can choose to run away from a challenge. Alternatively the challenge can be viewed as an opportunity, albeit a forced one, to become better informed, to gain new insights with unexpected horizons. Surely it is the role of the adoption community to assist individuals and families to embrace the second view when personally confronted with the somewhat frightening changes in adoption law and practice which began in Victoria in 1984 ...

Even well-informed members of APAV have expressed the same sort of feelings of stress as adoptive parents who somehow were unaware of the changes to the law until it affected them. The feelings are fairly universal ... loss of control, loss of own image, return of grief over infertility and loneliness because no-one understands ...⁴⁸

5.144 As noted earlier, however, many adoptive parents are likely to resist such initiatives. In particular, although PARC and adoption agencies would be well placed to offer counselling, and establish group sessions for adoptive parents, many adoptive parents appear to see them as so identified with development of information rights that they might not be perceived as appropriate sources of support for persons whose main concern is to protect their privacy.

5.145 The Commission recommends that there be further examination of forms of assistance that might be useful and acceptable to adoptive parents of adult adoptees. It may be that their own support groups such as the APA or the APPG, would be willing to assist in such an exercise, and perhaps, with appropriate financial support, to participate in the provision of assistance. In the Commission's view it would be appropriate for there to be government funding for such initiatives if they are thought to be viable. Although the Commission does not consider that the argument against retrospectivity requires repealing the Act (see Chapter 6) there is a strong case that the Government should support any reasonable measures that can be devised that would assist adoptive parents and others to adjust to changes in law which have indeed involved a major, and for some very painful, change in the 'rules of the game' that applied at the time of the adoption.

EXTENDED FAMILY MEMBERS

5.146 The Commission found that the impact the Act had on extended family members varies, partly according to whether they themselves sought information and contact, or had been contacted, or were affected indirectly through other family members. Relatives in the last category were generally influenced by the reaction of the related adoptee, birth parent or adoptive parent to the new law. That is, if an adoptee was strongly in favour of the legislation, his or her family would almost invariably support it, while relatives of those opposed to the legislation, often shared that opposition.

444 My sister was adopted into our family in the 1970s and is regarded as "FAMILY" in every sense of the word. However, she felt threatened when the ADOPTION LAW changed and allowed birth certificates to be issued to relinquishing parents, even though she has lodged a contact veto. Surely it is her right to make the decision whether she wants any of her details released and that of

our parents. This is totally an invasion of privacy, how dare my own and my parents private information be made available to Birth Relations of my sister.

5.147 Where contact has actually occurred, as a result of the legislation, some families have not reacted well. This is particularly so if the person directly concerned is no longer alive and never told their family of the adoption. For example, the Commission heard from one woman whose late husband, unknown to her, was a birth father. She discovered this when his adopted daughter contacted her after having accessed her birth certificate. This revelation caused considerable shock as the woman had been married for 46 years and her husband had never mentioned a relinquished child.

5.148 Many reunions however, have had positive ramifications for extended families. The Commission heard many stories of birth parents and adoptees being warmly welcomed into their extended families. At times, the adoptee or birth parent who makes contact will develop a stronger and more rewarding relationship with a different member of the extended family than the person originally sought. These accounts are somewhat similar to the evidence provided in the Tabak study, noted above and discussed more fully in Chapter 6.

5.149 The submissions indicate that other children of birth parents generally react favourably to contact initiated by an adopted birth sibling. For some, especially where the birth parents had married, their long held hopes of 'completing' the family were fulfilled when they met their parents' other child, their full brother or sister. Although it seems that most such reunions have positive outcomes, the Commission heard of a few cases in which the children of the birth parent reacted negatively, and rejected the birth parent. In some cases, the arrival of the adoptee can be seen as something of a threat, especially in displacing the role of the eldest child in the family.

5.150 Relatives who were themselves searching had a different perspective on the Act. They were often frustrated with the legislation as they were invariably denied access to birth certificates and prescribed information. The lack of information rights for relatives has affected many non-adopted siblings of adoptees. Their parents are often dead and they feel that the right to information about a brother or sister should pass to them. These people may have known the child as a baby and have vivid memories of it 'disappearing'. They may feel a strong need to reunite that person with the family. There is no provision for relatives to 'inherit' rights to information under the Act, in spite of the Willis Committee recommendations.⁴⁹

5.151 Some non-adopted siblings whose parents are still alive advocate that they should have a right to information independently of their parents. They believe that as adults they should be entitled to contact their siblings, regardless of their parents' wishes in relation to a reunion. They feel that their parents should not be able to deny them the opportunity to form a relationship with an adopted sibling, if that is the adopted and the non-adopted sibling's wish.

5.152 Natural and adoptive grandparents also resent their inability to access information. Grandparents may have custody of their grandchildren, giving them a particular interest in applying for information. One woman who wrote to the Commission had custody of one of her daughter's children, but the other had been adopted. She wanted to be placed on the Reunion Information Register but was told that she would not be allowed to without her daughter's permission. She has not spoken to her daughter in three years. In another submission, the parents of a birth father told the Commission how they had grieved for their natural grandchild ever since the adoption. The birth mother was too scared to access information, the birth father was not named on the birth certificate so he could not apply, and the grandparents had no rights at all.

5.153 The varied ramifications of the Act for extended families are well summed up by the submission of a step-mother of two adoptees. The step-mother had acted as an intermediary in an attempted reunion between her step-daughter and her step-daughter's birth mother. The reunion did not turn out as they had hoped. However, her step-son's birth sister had made contact with him and a good relationship had formed between the birth sister's family and the step-son's (adoptive) family. Her step-son's wife had also made contact with a child of her father's, adopted out at birth, of whom she had only recently become aware. The step-mother said of the impact of the Act:

933 All this, as you can imagine, has placed great stress on our family, not least on our fourteen year old [natural] daughter. It is hard for her to categorise family relationships now. Who are her relatives and who are not? It is difficult to explain the difference between a legal sibling and a blood

sibling when emotions enter in ... It is all very confusing to a young teenager (and perhaps also to those of us who are older) not to know any more where are the boundaries of one's family ...

This change in the law means that [birth mothers'] carefully built life, with the putting behind of past mistakes, may come tumbling down. For the families they may have had since, there is a complete over-turning of family relationships and assumptions - and even memories - as they discover depths of hidden secrets in someone they thought they knew. Yet for [our adopted daughter] and other adopted people there is a genetic and emotional void which needs to be addressed in some way. That "one mistake" that someone made resulted in a new life. That new life deserves access to full information and an emotional link with who they are, just as those of us have who are reared in their genetic family.

I am brought to the conclusion that there are no rights or wrongs to this legislation. No matter what is done, there is pain for someone - often for many people - as a lifetime's secrets are brought to life.

This is part of the story of what one family has been through in the past eighteen months. It is not everything - how do you describe the mixed emotions of a step-by-step search, of hope, rejection, anger, further hope, of anguish as we see the pain, misery, hope of someone we love, of shock in discovering extra people who had not even entered into our thought processes, confusion, acceptance, pain, delight. How do you explain the extraordinary paradox in relationships which has meant that as we encourage [our daughter] to find her birth mother, in a way opening ourselves to potential risk, our relationships within our family have grown and deepened.

CONTACT AND REUNIONS

5.154 Each story of contact or reunion, attempted or achieved, is different, but some generalisations can be made.⁵⁰ Experiences of reunions are complex, diverse, and almost invariably emotional. They typically go through stages. The initial contact is likely to be highly charged, after which the relationship changes: in some cases, it dwindles, in others, it develops. Contact typically involves other family members, and the various interactions that follow provide one reason why it is impossible to describe the 'normal' reunion.⁵¹

Intermediaries

5.155 The use of intermediaries (often referred to as 'mediators') was the subject of much comment. Many submissions emphasised the value of making contact through experienced and sensitive intermediaries, such as PARC, Adoption Triangle, and other organisations and individuals. Some searchers who made contact directly said that with hindsight they could see that it might have been better to have someone make the approach on their behalf. Fear of rejection was common, both on the part of birth parents and adoptees.⁵² Skilled intermediaries often provided valuable lines of communication before contact was made, enabling the parties to learn of each other's attitude to making contact and sharing information. The evidence indicates that most people are willing to accept the level of relationship the other wants, although they may be disappointed, and really want something more (or perhaps less).

5.156 The majority of searchers who used intermediaries to make contact believed that this was the best approach. They felt that it reduced the initial shock to the person being contacted and gave them some breathing space to decide what they wanted to do. A number of people who made direct contact also supported the use of intermediaries, stating that while direct contact worked for them, they would not advise it for others. Most felt that intermediaries should not be compulsory however, as people should have the power to decide what is best for them. They felt that for too long adoption has been an area where the main players have been told what to do by social workers and bureaucrats and that it was time they controlled their own lives.

Counselling and support

5.157 Lack of counselling was a concern to many people dealing with information about adoption, particularly in country areas. Many people were relying on self-help groups which, while providing considerable support, did not always have the resources to help everyone in need. PARC provided valuable counselling and advice but was not accessible to people throughout the State. Some searchers indicated that PARC's 008 number was difficult to get through to, but this could have been a result of an initial rush to obtain information.

5.158 Counselling and support may be crucial to people involved in a reunion. Family and friends often cannot provide the necessary support, either because they have no experience, or they are too much involved in the situation themselves. Impartial advice from an experienced adoption worker can assist with decisions, such as the next appropriate step, or the wording of a letter. Counselling can provide a forum for exploring feelings and anxieties, especially with others in similar situations. Adoptees have reported feeling uncomfortable speaking of adoption issues with their adoptive family, and also of believing that no one shared their feelings.

5.159 Counselling and support may not be available to many people: some because of their own reluctance to use it, others who are restricted by geographical isolation. As noted earlier in this chapter, some people (including adoptive parents) are averse to counselling because they believe it would signal a weakness or abnormality in themselves. A professional person to confide in could afford relief for all people who feel anxious about adoption issues. It is important that appropriate and acceptable support services are available to all members of the adoption community.

5.160 Skilled intermediaries also provided information and counselling, which in many cases helped people prepare for a range of possible outcomes. A number of submissions to the Commission complained that the media presented only 'happy stories' of reunions, and others that it presented only 'disaster stories'. Certainly there were examples of both. Overly pessimistic expectations can produce unnecessary anxiety, and overly optimistic expectations can, as remarked in the MSJ Keys Young Report, "set people up for disappointment and failure if they fall short".⁵³ It does not follow that counselling, or the use of intermediaries, should be made compulsory. Compulsion would be resented by some, and is arguably not an efficient use of scarce resources. Although there is room for difference of opinion on this question, and different jurisdictions have provided different answers to it, nothing in the Commission's inquiry suggested that the Willis Committee was in error in leaving counselling, and the use of intermediaries, as a matter for the judgment of the parties themselves.⁵⁴

Reunion experiences

5.161 It is clear from the evidence that experiences do range (sometimes among different participants in a particular reunion) between great joy and relief to extreme distress and disruption.⁵⁵ In the Commission's view, however, relatively few reunions fit entirely into either category. The complex and ambivalent feelings possible even in 'successful' reunions are neatly expressed by a 37 year old woman three years after a reunion with her birth mother, who said:

I had a happy adoption and I love my adoptive parents, I love my birth mother with whom I have had a good reunion, why do I feel so confused?

5.162 Reunions involve a mixture of emotions for all concerned, with some members of the families welcoming the experience, some others wishing it had never happened, and others ambivalent or uninvolved. These 'mixed' reactions, which tend to be difficult to describe and are not the most useful to cite in the course of lobbying for or against the Act, probably represent the majority of cases.

5.163 The range of experiences and reactions has already been illustrated earlier in this chapter, but the following brief accounts may be useful at this point:

Ruth, an adoptive mother, told of Jenny, her 21 year old daughter being contacted by her 42 year old birth mother, Sarah. Ruth recognised Jenny's need to know of her origins but wondered where she herself would now fit in. Her distress centred on her anxiety that Sarah may try to take over.

She feared losing her cherished daughter and didn't know how she should react to the friendship Sarah and Jenny seemed to be establishing.

June, an adoptee in her 20s found her birth mother and made contact. June's adoptive mother could not accept the situation and began making phone calls to the birth mother, abusing her.

Karl, an adoptee in his late thirties, suffered neglect and abuse in an adoptive family. The much longed for reunion with his birth mother found a neurotic and demanding woman wanting to maintain contact but unwilling to acknowledge Karl to her existing family. The pressures of the situation were such that he was unable to carry on his work. He says that with the support of his wife and participation in a group he has, in the course of a year, emerged with a new and confident sense of identity and self-worth. He has resolved many issues with his birth mother and adoptive family and plans now to move into a new area of employment.

5.164 Some adoptees have not reached a stage in their life when they need to make contact themselves, but do not want to discourage contact if their birth parents desire it. Some adoptees, like birth parents, will not search for fear of rejection. They may believe that if their birth parents 'did not want them' once, they will not want to know them now. Some adoptees may desire contact, but do not search for fear of hurting their adoptive parents. Many older adoptees indicated that they would never have searched while their adoptive parents were still alive.

5.165 For adoptees and birth parents in any of the above categories, contact may be anything from joyous to traumatic. It seems that however and whenever the initial contact is made, it will always involve considerable emotional upheaval. Initial reaction is usually shock and it can take time for people to adjust and decide if they want to continue the relationship. For those who were not expecting contact, this decision can be difficult, particularly if they are placed in the situation of having to tell family members of an adoptee or birth parent's existence. In other cases, the person contacted may have actually been waiting for the contact to be made. One birth mother, when rung by an adoption agency and asked "Do you know why we are calling?", immediately replied "Yes. Where is she?".

5.166 Submissions indicated that the process of making contact was often seen as commencing an unpredictable chain of events which were likely to change substantially the lives of those involved. People affected said, for example, that "life would never be the same again" after contact, that "you can't put the clock back", that it is an "irrevocable step". This is clearly so in some cases, although the significance of the effects, and their duration, varies from case to case. Reunions often lead to complex readjustments in the family relationships of the parties, especially when it is attempted to limit the extent of the disclosure. MSJ Keys Young reported that one adopted woman who was prevented by a veto from contacting her birth mother made contact with a half sister, who was ignorant of the adoption:

... they both presumed the mother (who is now widowed) is protecting herself in relation to the second family by the veto. The second family, in turn, is experiencing difficulty in keeping the new "auntie" a secret from the mother lest she be upset. Oh what tangled webs we weave ...⁵⁶

5.167 In a small number of cases, the Commission heard of insensitive and intrusive behaviour following contact. One birth mother, for example, complained of harassment by members of the adoptee's family, involving constant phone calls and "emotional blackmail".⁵⁷ Similarly, an adoptee said that contact was exciting at first but had become difficult to live with; she found the "intrusion into her life" of the birth parents difficult to handle, wished it had never happened.⁵⁸ There is a lack of evidence, of course, about the *long-term* impact of contacts resulting from the 1990 Act, but those who complain of a recently experienced unwelcome contact often speak in strong terms, referring, for example, to feeling "desolated", and of experiencing adverse effects on their personality, their health and their ability to cope with ordinary life. There were also some statements to the effect that contact had accelerated some deaths, broken up marriages, and disrupted families. For these people, the perceived effects of contact on the lives of these people were the opposite of those experienced by the larger number of people for whom obtaining information and making contact were positive, and who spoke of the extensive benefits that the experience brought to their lives.

5.168 Detailed study would be required in order to understand fully the extent of such difficulties in any particular case, and the connections between the range of events and personalities involved. In some cases the adverse consequences might be linked with other causes. In some the seriousness of the consequences may

reflect the extent to which the persons contacted had elected to base their self-esteem and relationships with others on the hope that the facts relating to events in their past would never become known. In others, the consequences will be attributable more simply to insensitive or gross behaviour by one or more of those involved. While the actual occurrence of such events appears to be uncommon, such events are widely feared. The Commission has treated these submissions very seriously, and has attempted to respond to the problems posed by such cases in its recommendations for increased protection for privacy, set out in Chapter 7.

5.169 PARC's view of the complex and varied experience of contact and reunions, which is consistent with the evidence to the Commission, is stated as follows:

The claim that the Adoption Information Act causes pain is undeniable. What is overlooked or goes unacknowledged by those making this claim, is that adoption is based in loss and grief - the loss by the adopted person of birth parents and the connection to genetic roots, the loss by the birth parents of their child and the opportunity to create a normal parental relationship with the child, for most adoptive parents the loss of genetic continuity, of giving birth to the child of their relationship and seeing that child develop to maturity. Pain is inextricably interwoven into the institution and process of adoption. Earlier adoption legislation tended to accept the assumption that the placement of a child and the making of the Order of Adoption provided a neat and conclusive solution to the problems of all three parties - it did not provide for the possibility of there being ongoing needs.

It has become increasingly clear over the years that, whether they choose to acknowledge it or not, for all three groups, adopted people, birth parents and adoptive parents, there remains unfinished business. For some people the inability to deal with these issues because of lack of access to information has been the cause of such deep seated bitterness and frustration that it overshadows their whole life. For others it has been a source of chronic pain, bearable but debilitating ...⁵⁹

Attempted reunion involves considerable personal risk, the risk of rejection, the risk of discovering adverse and distressing information, the risk of acquiring unanticipated responsibilities. Even "successful" reunion carries its own costs for individuals and families in terms of old sorrows relived, adjustments to be made, new relationships accommodated. The potential gains in terms of personal growth and enhancement of the quality of life are undoubted. Arriving at that goal can however involve a prolonged and painful journey. There will inevitably be some who regard the experience as a negative one and who see themselves as being worse off as a result. These latter constitute a minority of our clients ...⁶⁰

The 'persons found' survey

5.170 The 'persons found' survey, described in the Introduction to this chapter, is also relevant in assessing the evidence about contact and reunions. It is useful to divide the cases into very general categories, namely cases where the result of the experience for the person found appears to have been either positive or at least acceptable, cases where the consequences have been negative or unacceptable, and cases where the results are equivocal or unknown. On this approach the results of the survey are as follows:

| | | |
|--|-----------|---------|
| Contact experienced as positive/acceptable | 27 | (66%) |
| Contact experienced as negative/unacceptable | 8 | (19.5%) |
| Experience equivocal or unknown | 6 | (14.5%) |
| Total Cases | 41 | |

[\[Link to text only version of table\]](#)

5.171 This small survey must be treated with caution. The judgment on whether the contact is experienced as 'positive' or 'negative' (obviously very broad categories) represents the Commission's opinion based on the brief case studies provided by PARC. Nevertheless, it has the advantage of focusing on a random group of persons found through PARC, and should give at least a rough indication of the likely reactions of other people with whom contact is made as a result of the Act. The results are consistent with the opinions of experienced post-adoption counsellors, and with other evidence examined by the Commission. They are also consistent with research in other jurisdictions, including Victoria which is reviewed in Chapter 6.

5.172 The survey indicates that *for the majority of persons found* as a result of the Act, at least where a professional intermediary is involved, the experience is a positive one, although it is negative for a substantial minority, probably somewhere between 15-30%. Other evidence indicates, as would be expected, that the experience of the *searchers* is overwhelmingly positive: very few regret having searched, even where their discoveries fall short of their hopes. Overall, therefore, on the basis of the submissions to the Commission, evidence from other jurisdictions, and the present survey, it can be said with some confidence that the early experience of the birth parents and adopted persons affected by the Act is positive, although for a significant minority, perhaps about 10-20%, it is negative.

IMPACT OF CONTACT VETOES

5.173 The contact veto system received a great deal of comment, as was to be expected, and indeed desired, by the Commission. Its importance as a statutory mechanism designed to protect privacy was well understood. The Commission had specifically invited comments on the contact veto system, and in particular the degree of compliance with it, in the Issues Paper, press releases and advertisements.

5.174 The administration of the contact veto system is discussed in Chapter 4, and its place as a 'basic principle', and arguments about its desirability, are considered in Chapter 6. This section discusses the evidence received by the Commission about the impact of the contact veto system on people affected by it.

Level of acceptance

5.175 Many people regarded the contact veto system as a fair and workable resolution of the potential conflict between rights to information and concerns about privacy. This appeared to be the majority view among those who made submissions made to the Commission, and was strongly supported by virtually all those professionally involved in adoption.

5.176 The system was however regarded as unsatisfactory by a large number of people, especially adoptive parents but including some adoptees and birth parents. At the heart of the opposition was the view that the system was wrong in principle, because identifying information should not be made available without the consent of the person concerned. Another important theme of the criticism was that the system would not be effective. These two views were closely linked to more specific matters, in particular resentment about the necessity to attend personally when lodging a veto, and having to pay fees. It was often suggested that many people who were very concerned to prevent contact would not lodge a veto because of their strong objections. It may be that in some cases this was a convenient rationalisation for not having lodged a veto because of a simple failure to take the appropriate steps, or a calculation that a payment of \$50.00, or personal attendance at a Department of Community Services office, was too high a price to pay to avoid the risk of unwanted contact. It seems likely, too, that in many cases the decision may have been based on the view, which as shown below is incorrect, that most information recipients would ignore a veto. Nevertheless it is probably true that resentment about aspects of the veto system, rather than an indifference about contact, accounts for the failure of a considerable number of people to take what might otherwise seem to the obvious and relatively painless step of lodging a veto to avoid or regulate contact.

5.177 A small minority of submissions argued that the system imposed undue restrictions on information recipients, and that there should be no legal restrictions on contact flowing from the receipt of birth certificates or information obtained under the Act. These submissions suggested that there was no need for legal enforcement when compliance would come from a desire to respect the vetoer's wishes, that it deprived those affected of the

right to freedom of association, and that there is a moral obligation on birth parents and adoptees to allow the other person at least one face-to-face meeting.

Level of compliance

5.178 The expectation of Parliament (noted in Chapter 6) was that there would be a high level of compliance with vetoes, although there may well be some breaches. A strong theme of critics of the Act, both before and after it came into operation, was that the system would be ineffective and vetoes would frequently be breached. The level of compliance was clearly seen by all parties as a key issue in the inquiry. As mentioned earlier, the Commission received a large number of submissions, in many forms, including confidential interviews, in which many people spoke of the most intimate personal matters, in some cases bitterly criticising the Act. Every effort was made to ensure that the Commission was made aware of any breaches. The Adoption Privacy Protection Group (APPG) and some other organisations provided support and advice for people who wished to complain about the Act, and brought to the Commission's notice a number of cases in which the behaviour of information recipients was seen as intrusive and unfair.

5.179 In the result, at the end of the review period the Commission had satisfactory evidence of only one case of an arguable breach, in the following account of a birth mother who made contact with her son who had lodged a veto:

... she had a friend of hers approach the young man. The friend indicated that she, his mother, was waiting nearby for a brief meeting if he wished. If he truly did not want contact she would go away and that would be that. He, not surprisingly, could not resist the chance to see what his birth mother looked like and the result was a meeting. It seems that he had lodged the veto in response to the wishes of his parents. There has subsequently been quite amicable contact with the birth mother while the adoptive parents remain unaware.

5.180 There were rumours of breaches, and one or two people claimed they knew of breaches of a veto in another family,⁶¹ but this was the only case of which details were provided to the Commission. Also, some people alleged there had been a breach in cases where there was none: for example, where a Departmental officer informed a veto lodger that there was a message left for him or her; or attempted contact by a birth relative who obtained the birth certificate before lodgment of the veto (and therefore was not technically bound by it); or contact with adoptive parents, but not with the adoptee who lodged the veto.

5.181 The absence of evidence of any other clear case of breach of the vetoes applying to the release of 225 certificates is remarkable. It does not follow, of course, that there have been no other breaches. APPG, in discussions with the Commission, suggested that some people who felt that their privacy had been invaded would not feel able to make submissions to the Commission because to do so would be a painful experience and might possibly expose them to further unhappy experiences. This is possible, but as mentioned, a significant number of people who did feel that their privacy was at risk, or had been invaded, made very forceful submissions. There were also some anonymous submissions, but none alleged breach of a veto. It seems highly likely that if there had been a significant number of breaches they would have come to the Commission's notice, either through such bodies as PARC or APPG, or directly.

5.182 The Commission's conclusion is that there is good evidence only of one incident which can plausibly be regarded as a breach of a veto, and that it is highly unlikely that there have been more than a very small number of breaches. Compliance with the veto system is therefore very high indeed. It is not easy to think of other laws which have such a high level of compliance. This finding is entirely consistent with other evidence to the Commission, as well as the findings of research expressed in the literature, which overwhelmingly points to the conclusion that the vast majority of birth parents, like the vast majority of adoptees, seek information or contact in a way that is sensitive and responsible. The MSJ Keys Young study also reported that all the adoptees and birth parents who participated in that study and were subject to a veto indicated that they would comply with it.⁶²

Impact of vetoes

5.183 It is clear that many people seeking a birth certificate are very apprehensive that they might encounter a veto, and to encounter one is often "a bitter blow".⁶³ For an adoptee it can feel like a second relinquishment. For the birth mother it can also feel like a painful and condemnatory rejection. The subject is fully discussed, with examples, in Appendix B at B25-B27. The most painful experience is clearly where the veto is not accompanied by a message. Messages mean a great deal indeed to the information recipients, even if they are brief. Messages partly serve to convince the information recipient that the veto was really intended, and, more obviously, often include precious information, for example that the veto lodger is happy and in good health.

5.184 A number of people who made submissions commented that it was often important for information recipients to hear the refusal of contact in some direct form from the other person;⁶⁴ especially in the case of young adoptees, birth parents often wished to be assured that the veto reflected the adoptee's true wishes.

5.185 Among those who made submissions to the Commission there were different levels of understanding of the severe impact of contact vetoes on recipients. Some seemed to treat the lodgment of a veto as routine, and were puzzled, or outraged, by any suggestion that it should be accompanied by an interview or other procedure. One adoptee expressed this feeling succinctly:

I had resolved matters in my own head ... I never sought any information ... The law forced me to think about it all again and then to make a response.⁶⁵

5.186 The opposite view is represented by one adoptive parent, who wrote that:

335 The Contact Veto is cruel, degrading and evil and I am wholly opposed to it. Every woman who ever surrendered a child for adoption owes that child the courtesy of one polite and helpful interview. Every adopted person owes their birth mother the same right.

5.187 In some cases, however, the contact veto is seen by both parties as a reasonable adjustment of their respective interests in information and privacy, and many vetoes are accompanied by helpful and compassionate messages. It seems likely that this is one reason for the very high compliance rate.

5.188 The lodgment of a veto may also be a stressful experience. It is possible that mixed emotions underlie some of the resistance of some who oppose any fees or procedures relating to the veto. At such a time, when the veto lodger may feel resentful at having the whole matter brought up, attempts to give advice or information may be resented. An insight into the feelings of some veto lodgers and their families is given in Appendix B, where an adoptive parent is reported as saying:

The change in the legislation has completely altered our family life. We always had a happy family life and our son didn't want to know ... My younger daughter then got upset and asked if they were going to take her away. It's all my wife and I talk about any more⁶⁶

Uses of the veto system

5.189 It is apparent that the contact veto system is sometimes used for purposes other than simply preventing contact. As mentioned, messages left with vetoes are often very important. Further, already a significant number of vetoes have been later removed, and even more have been varied to allow for a meeting, or exchange of information. Not uncommonly, vetoers' personal circumstances change, or they change their feelings in relation to contact. They may be pleased that the other person cared enough to search, they may be pleasantly surprised by letters left for them by the searcher or they may simply have decided that their initial fears were unjustified. The Commission heard from several adoptees whose birth mothers had rescinded vetoes and developed good relationships with their children. A birth mother who met a veto wrote to the Commission saying,

88 [M]y daughter has placed an objection on my having any contact with her. This I respect. So as not to upset her elderly parents we have contact only by correspondence ... All parties are happy with this arrangement.

5.190 The veto system is sometimes, and increasingly, used not to prevent contact but to *regulate* it. The veto lodger may wish to arrange for the contact to be made in a way that will not come to the notice of other members of the family. This flexible use of the veto system was anticipated by the Willis Committee, who wrote that it should be “a fluid structure and contain as much information relating to the reasons and the time-frame of the contact-veto as possible”.⁶⁷ The proposed Adoption Information Exchange, recommended by the Commission in Chapter 7, is therefore consistent with the views of the Willis Committee, and represents a development of the present practice.

Conclusions

5.191 The contact veto system has been perhaps the most controversial aspect of the legislation; those opposed to the granting of unconditional information rights have frequently argued that it would be ineffective in protecting privacy. The evidence indicates the opposite: compliance with the veto system is remarkably high, with evidence of only one plausible breach emerging from the Commission’s inquiries. It is likely that compliance is due to the eagerness of information recipients to comply with the wishes of the other persons, combined with the futility of non-compliance with them than to the penalties. However, the legal significance of the veto appears to play a part: not so much because of the fear of penalty, but because it represents a formal public determination that the wishes of persons who lodge vetoes should be respected.

5.192 The evidence strongly indicates, therefore, that the contact veto system has been extremely effective, and that, contrary to expectations of many critics of the Act, the combination of rights to information with a prohibition on contact where this is requested has been a remarkable success.

IMPACT ON ABORIGINAL PEOPLE

5.193 The impact of adoption on Aboriginal people has been a leading concern in adoption law since the first national conference in 1976, which included what was to be a very influential seminar relating to, and mainly conducted by, Aboriginal people.⁶⁸ The tragic history of these laws, under which many children were separated from their families and communities, is now well known and documented.⁶⁹ The Willis Committee paid careful attention to this issue.⁷⁰ The Commission heard from Aboriginal people at a public hearing and received a submission from Link-Up, an Aboriginal organisation that works with Aboriginal adults who were separated from their natural families and communities under child welfare or adoption laws, and, prior to 1969, laws relating to the ‘protection’ of Aboriginal people.⁷¹ The legislation has a special importance for Aboriginal people who have been adopted into non-Aboriginal families, for in addition to the aspects that apply to other adoptees, it allows them to rediscover their Aboriginality. The information rights created by the Act were welcomed by Aboriginal people who participated in the review, though not necessarily by the adoptive families, especially in cases where the adoptees discovered their Aboriginal descent only as a result of the Act.

5.194 Link-Up had experienced difficulties with certain aspects of the legislation, in particular the limited nature of prescribed information. The lack of access to foster children’s files (a question addressed in Chapter 4) relating to children who were subsequently adopted presents problems for many Aboriginal adoptees. The limited amount of information on extended family is equally difficult owing to the “cultural importance of grandparents and aunts and uncles in the Aboriginal kinship structure”.⁷²

5.195 The issue of unacknowledged birth fathers, raised elsewhere in the Report, also presents specific problems for the Aboriginal community. Link-Up had experience of a birth father who was not on his adopted son’s birth certificate and, it was assumed,⁷³ could not obtain information himself or be traced by the adoptee. The father was practising traditional aspects of Aboriginal culture and needed to pass ancestral information onto the adoptee, his only son.

5.196 Aboriginal birth mothers in contact with Link-Up were particularly concerned with the flow of non-identifying information while the child was under 18. This is an issue which needs to be addressed for all adoptees and one which the Commission deals with in Chapter 8. It is particularly important for Aboriginal adoptees whose birth mothers are very concerned that their children know their ancestral origins. The “knowledge of original heritage can assist the child in their transition to adulthood and provide a sense of identity and can also prevent future anxiety and confusion”.⁷⁴ Clearly this is an important consideration for the small number of Aboriginal adoptees still under 18.

5.197 The Willis Committee concluded that the legislation it proposed “would cater to a very large degree for the expressed interests of the Aboriginal community in NSW”, and the Commission agrees with this. The Committee went further, however and made recommendations for particular provisions relating to Aboriginal adoptees. These were that appropriate Aboriginal organisations be accredited by the Department of Community Services to provide counselling and other adoption-related assistance to Aboriginal parties to adoptions, and that the Director-General be given discretion to waive age qualifications for access to identifying information for Aboriginal adoptees in circumstances of special need, and in that connection that the Director-General seek advice from qualified representatives of appropriate Aboriginal organisations.

5.198 The Commission understands that FIS has been in contact with Aboriginal organisations and that suitable arrangements are being made for their participation in the arrangements for access to information. There were no suggestions from Aboriginal people that these arrangements were not satisfactory. As to the second matter raised by the Willis Committee, the Commission recommends in Chapter 8 that there should be a general discretion to release information in special circumstances. It also recommends that in the guidelines relating to that discretion, attention should be drawn to the special importance of information for Aboriginal parties to adoption, and to the desirability of consulting with Aboriginal organisations about providing access to that information.

MULTICULTURAL ASPECTS

5.199 The review produced little discussion, and virtually no debate, relating to multicultural aspects.⁷⁵ Clearly in some cases, as with Aboriginal adoptees, access to information will be important in allowing people to place themselves within a cultural or other group in the community. It may be, too, that attitudes to contact and information will vary among different groups. However nothing that emerged in the course of the suggested that the Act has not functioned satisfactorily in such cases. Some concern was expressed for the future, however, as the greater number of persons adopted from overseas countries from the mid 1970s on become entitled to information under the Act. Problems in obtaining such information were foreshadowed, and the operation of the legislation in these cases should be kept under review.

FOOTNOTES

1. One form letter used in submissions commenced “I am writing to express my *concern/dismay/horror/unease/outrage* about the Legislation enacted in 1990 regarding adoption ...”.
2. PARC *Submission* at 2.
3. Both these points were emphasised in the submission by PARC.
4. The Post Adoption Resource Centre is described in Chapter 4.
5. The law provides that in some cases, such as child abuse or abandonment, the consent of a parent may be dispensed with by order of the court. Very few submissions, however, involved such cases, whose number is not known.
6. One birth mother concerned that the Act would uncover her past wrote “I was young and just looking for somebody to love me and look after me, I did not want baby’s [*sic*]but I did not know how to prevent them ...”

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

7. NSW Committee on Adoption *Submission* at para 5.1.4.
8. See L Harkness *Looking for Lisa* (Century Hutchinson, Sydney, 1991); K Inglis *Living Mistakes* (George Allen and Unwin, Sydney, 1984); J Shawyer *Death by Adoption* (Cicada, Auckland, 1979); P Bouchier, L Lambert, J Triseliotis *Parting with a Child for Adoption: the Mother's Perspective* Discussion Series 14 (British Agencies for Adoption and Fostering, London, 1991); D Howe, P Sawbridge, D Hinings *Half a Million Women: Mothers Who Lose Their Children by Adoption* (Penguin, London, 1992).
9. For a useful recent review, see F O'Dea and S Midford *Adoption Legislative Review: Access to Adoption Information* Research Paper No 1 (Department of Psychology, University of WA, 1989).
10. R Winkler and M Van Keppel *Relinquishing Mothers in Adoption: Their Long-Term Adjustment* (Institute of Family Studies, Melbourne, 1984).
11. O'Dea and Midford at 21.
12. Mercy Family Life Centre *Submission* at 3. The Centre submitted that its cases pointed to "the readiness of people to respect the privacy of another, to seek professional counselling and to gradually think through their decision. The Centre feels that there are enough safeguards in the Act for the privacy of an individual to be protected without limiting the other party to information about their birth origins as given in the birth certificate."
13. Centacare *Submission* at 11; Obstetric Social Workers Group *Submission* at para 2.1.2.
14. Centacare *Submission* at 9.
15. Centacare *Submission* at 9.
16. O'Dea and Midford at 23.
17. Appendix B at B26-7.
18. As stated in the MSJ Keys Young Report, "contact with their birth child, for many, is essential in healing that loss": Appendix B at B26.
19. The Willis Committee heard evidence from 116 birth mothers, all except one (who wrote anonymously) supported opening up access to birth records: *Willis Report* at 42.
20. Mercy Family Life Centre *Submission* at 7. The Submission recognised the pain and dilemma faced by these birth parents, and recommended the provision of counselling services to assist many of the birthmothers "to resolve and complete an unfinished chapter of their lives". It considered that the veto system offered adequate protection for their rights.
21. See eg the birth father quoted in Appendix B at B 17.
22. PARC *Submission* at 15.
23. PARC *Submission* at 3.
24. This survey is described in the Introduction to this chapter.
25. See eg J Triseliotis *In Search of Origins: the Experiences of Adopted People* (Routledge & Kegan Paul, London, 1973); L Harkness *Looking for Lisa* (Century Hutchinson, Sydney, 1991); D Brodzinsky and M Schechter (eds) *The Psychology of Adoption* (OUP, USA, 1990); C Valentine and P Slaytor *Down the Track* (NSW Committee on Adoption, Paddington, 1990); P Toynbee *Lost Children: the Story of Adopted Children Searching for their Mothers* (Hutchinson, London, 1985).

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

26. Appendix B at B19. Apparent laziness may however be associated with the stress of searching. See B25, where an adoptee says "it's all so emotional and I have to rev up for it ...". Resentment about what the adoptee has been told about the birth parent may also be a factor: see the adoptee quoted at B22 as saying "we were dumped".
27. PARC at 13.
28. R Seale "An Examination of the Experience of 18 Adoptive Parents Whose Adult Adopted Children Have Had a Reunion" (University of New South Wales, Master of Social Work Project, 1992) at 29, citing J Small "Working with Adoptive Families" (1987) Summer *Public Welfare* at 33.
29. Of the 27 adoptees who were "found", as many as six had not known of their adoptive status.
30. See Susan Tabak *Self Search: A Program for Adult Adopted Persons* (Community Services, Victoria, 1990). In this study twenty eight of the 100 adoptees surveyed had not told their own children of the adoptees' adoptive status, and a further 6 had told only some of their children. Some did not want to tell their children while their adoptive parents were alive, for fear that it would affect the children's acceptance of the adoptive parents as grandparents.
31. PARC *Submission*.
32. As the adoption occurred pre-1953 the Department's adoption files would have been destroyed. There would however be Court files still in existence.
33. See E Haines and N Timms *Adoption, Identity and Social Policy: The Search for Distant Relatives* (Gower, Aldershot, 1985).
34. The term was coined by H J Sants in "Genealogical Bewilderment in Children with Substitute Parents" (1964) 37 *British Journal of Medical Psychology* 133.
35. Tabak at 17.
36. It is quite possible that a changing social climate will affect the number of adoptees who go on to seek contact with members of the birth family. It seems likely that given the considerable erosion of prejudice against unmarried mothers and children born outside marriage, increasingly publicity of recent times given to post-adoption reunions, and increasing knowledge of the legislation, attempts by adoptees and birth parents to make contact will become increasingly common, and increasingly seen as 'normal' behaviour.
37. Appendix B at B21.
38. Appendix B at B24-5.
39. The extent to which the law protected secrecy is discussed in Chapter 2.
40. See also Appendix B at B22-23.
41. The submission was given by telephone, and the quotations used are based on notes taken at the time.
42. As stated in the APA submission, "Generally parents were told you should feel entitled to see the child as yours".
43. See eg submission 113, quoted above.
44. One submission from adoptive parents stated that they had advised their children "that our solicitor had been instructed to make their adoption papers available to them if they wished to see them, without further reference to us. We have never asked and have never been told whether they availed themselves of this offer." They went on to say that they were not aware whether there had been a reunion between any of their children and their birth parents.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

45. See below at B22, where an adoptee is quoted as saying "I didn't feel secure enough to offend my adoptive parents by looking".
45. Appendix B at B22.
47. Appendix B at B23-24.
48. J Hale "Support for Adoptive Parents" in P and S Swain (eds) *To Search for Self: The Experience of Access to Adoption Information* (Federation Press, Sydney, 1992) at 70.
49. This problem is discussed in Chapter 8.
50. See generally Appendix B at B28-B30.
51. MSJ Keys Young make the interesting suggestion that reunions between siblings or half-siblings tend to be more "successful" than other reunions: Appendix B at B28.
52. One adoptee who encountered a veto (submission 400) spoke of the "devastation of a second rejection".
53. Appendix B at B29.
54. The issues relating to counselling are carefully considered in the *Willis Report* at 57-61.
55. An example of the latter is described at B29.
56. MSJ Keys Young Report, Appendix B at B25.
57. Submission 760.
58. Submission 801.
59. PARC *Submission* at 3.
60. PARC at 2.
61. See eg the second-hand account of a possible breach referred to in Appendix B at B27.
62. Appendix B at B27.
63. PARC *Submission* at 9.
64. This point is also made in the PARC *Submission* at 10. See also the MSJ Keys Young Report, Appendix B at B25.
65. Appendix B at B21.
66. Appendix B at B21.
67. *Willis Report* at 54.
68. See E Sommerlad "Homes for Blacks: Aboriginal Community and Adoption" in C Picton (ed) *Proceedings of the First Australian Conference on Adoption*, Committee on the First Australian Conference on Adoption (Clayton, 1976) at 160.
69. See eg C Edwards and P Read (eds) *The Lost Children* (Doubleday, 1989).
70. See *Willis Report* at 67-69.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

71. See generally Australia. Law Reform Commission *The Recognition of Aboriginal Customary Laws* (Report 31, vol.1, 1986).
72. Link-Up *Submission* at 2.
73. As indicated in Chapter 8, the law is not quite as narrow as this, but is widely perceived to be.
74. Link-Up *Submission* at 3.
75. A Submission from the Ethnic Affairs Commission included considerable information about multicultural aspects, but did not suggest any changes in the Act.

6. Basic Principles of the Act

6.1 This Chapter sets out what the Commission regards as the basic principles of the *Adoption Information Act* 1990, and discusses whether the review indicates that these basic principles require reconsideration. The *Adoption Information Act* and the *Adoption Information Regulation* are reproduced in full in Appendix A.

BASIC PRINCIPLES OF THE ACT

Information rights for birth parents and adult adopted persons

6.2 The Act includes among its objects giving adopted persons and birth parents “greater access” to information about each other.¹ The Act gives to adult adopted persons the right to obtain the original birth certificate, and the right to prescribed information.² While it is a matter for the Regulation what information is prescribed, the birth certificate itself includes information which will normally allow the adopted person to trace the birth parent. The Act, therefore, embodies the principle that the adopted person has a right to the original birth certificate and to information that is capable of identifying the birth parents. Similarly, the Act gives to birth parents of adult adopted persons the right to obtain the amended birth certificate, and thus to information that would normally enable them to trace the adopted person, through the adoptive parents.³

6.3 These rights to information are absolute in that they are independent of the wishes of other persons. The rights to information do not depend on the prior consent of the person identified, nor do those persons have the legal power to prevent the exercise of the right, although they do, under the contact veto provisions, have the power to forbid contact by the information recipient.⁴

Information rights during adopted person’s childhood

6.4 Under the Act adoptive parents retain full parental rights. Thus they have the same rights as other parents to make decisions about their children, including decisions about what information should be made available to their adopted children under the age of majority. The Act’s objects include the preservation of the adoptive parents’ control over information while their children are under 18.⁵ The Act also gives adoptive parents additional rights, during the child’s minority, to non-identifying information about the adopted child’s biological family.⁶ The law at present does not give to birth parents a corresponding right to non-identifying information about the adopted child. Consistent with the other consequences of majority, once the child turns 18, the adoptive parents have no rights to information or birth certificates (except to the adopted person’s birth certificate, with the consent of the adopted person).

Protecting the privacy of adopted persons and birth parents by the contact veto system

6.5 The Act’s objects include protection of “the privacy of adopted persons and birth parents” by establishing the contact veto system.⁷ As noted above, this does not restrict the information rights created by the Act. The Act thus seeks to protect privacy by forbidding contact with a person who has indicated a wish to prevent contact, but does not restrict the information rights created by the Act.

Protecting the privacy of adoptive parents and others affected by the Act

6.6 The Act also includes an object that applies to persons generally, and would include adoptive parents and other family members. It is to limit “the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy”.⁸ The word “unduly” clearly involves questions of judgment. Clearly disclosure that is necessary as a consequence of specific provisions of the Act, such as the identifying information contained in the birth certificate, cannot be included in the category of information that “unduly” intrudes on privacy, for such an interpretation would frustrate the principal provisions of the Act. The Act seeks to prevent disclosure of personal affairs in a way that would intrude on the person’s privacy and is not necessarily involved in giving effect to the information rights created by the Act.

Information for relatives

6.7 The objects include giving “relatives of adopted persons and birth parents and other persons access to information concerning adopted persons’ origins in special circumstances”.⁹ The Act provides, though in a very limited way,¹⁰ for the discretionary provision of such information to relatives and certain other people after the death of an adopted person or birth parent. The limitations on these provisions would appear to be based on the principle that during the joint lives of adopted persons and birth parents it should be a matter for them to decide what information to reveal to other people, including other family members, but after the death of one of them it might be appropriate to provide information to another member of the family.

Retaining the Adopted Persons Contact Register

6.8 In retaining the Adopted Persons Contact Register (renamed the Reunion Information Register) the Act may be considered to have among its basic principles the facilitation of reunions between people separated by adoption who have indicated their desire to have a reunion.

Summary of basic principles of the Act

6.9 To sum up, the following may be regarded as the basic principles of the Act:

Providing rights to adult adopted persons and birth parents to birth certificates and thus to identifying information about each other, such rights being absolute in that their exercise cannot be prevented or limited by the person to whom the information relates, or by other persons.

Protecting the full parental rights of adoptive parents, and providing, in addition, rights to non-identifying information about the birth family during the adopted person’s childhood.

Protecting the privacy of birth parents and adopted persons by making provision for each of them to forbid unwanted contact resulting from the release of identifying information under the Act.

Protecting the privacy of all persons by limiting the disclosure of information that unduly intrudes on their privacy; this provision would not however limit the disclosure of information which was necessarily involved in giving effect to the information rights created by the Act.

Providing to members of the family, on a discretionary basis, information relating to a deceased adopted person or birth parent.

Facilitating reunions between adopted persons, birth parents, and other people approved by the Director-General, where those persons have indicated their desire for such reunions.

6.10 The implementation of the Act, and its impact on those affected, have been considered in Chapters 4 and 5. In the following sections, the Commission considers whether there is a need to reconsider the basic principles of the Act as a result of:

- (i) any discrepancy between the experience of the Act and the expectations of Parliament;
- (ii) the experience of similar legislation elsewhere; or
- (iii) submissions made to the Commission.

PARLIAMENT’S EXPECTATIONS

6.11 The legislation received the support of all Members of Parliament except one during debates on the *Adoption Information Bill* in 1990. It is useful to consider the extent to which the actual operation and impact of the legislation to date matches the expectations of Parliament. Some submissions argued that the experience since the legislation began indicated that Parliament had seriously miscalculated what would happen. One such view is found in the suggestion that the Act had clearly failed because only a small minority of those entitled to obtain information actually did so. The argument was that Parliament had assumed that a majority of people entitled to information would seek it, and the failure of many to do so showed that the Parliament was mistaken.

6.12 Assessing the opinion or intention behind a decision made by a large body is notoriously difficult, and often artificial. However in the case of the *Adoption Information Act 1990*, the Report of the Willis Committee and the extensive Parliamentary debates in both chambers, indicate a considerable consensus about how the law was expected to operate. It is therefore possible to compare the expectation with the reality, at least to the extent of identifying whether the operation or effects of the Act have differed markedly in important respects.

Adoptees

6.13 Access to information about their origins by adoptees was supported in Parliament on three grounds: a matter of human rights; for their psychological well being; and for practical application in relation to genetic inheritance. The deeply felt emotional and psychological need to know, the phenomenon of genealogical bewilderment in adoptees, was accepted as validity for giving them the opportunity to have information previously withheld. It was expected that the rights would be exercised responsibly by mature decisions of adults and bring consequential benefits to personality, security and happiness.

6.14 It was also accepted that adoptees would seek information about their origins, notwithstanding the appreciation, loyalty and love they felt towards their adoptive parents.

Few, if any, seek replacement parents, financial windfall or access to an alternative lifestyle. Rather, they seek information of a basic nature on the background of their birth parents. In some cases they seek contact, and perhaps friendship.¹¹

6.15 Evidence put to the Commission in this review confirms Parliament's expectations of the legislation as it relates to adoptees seeking information.

Adoptees unaware of their adoptive status

6.16 Parliament and the Willis Committee recognised the implications for adoptees who are unaware that they are adopted, and the dilemma it creates for their adoptive parents. Although there were no statistics available as to the extent of people so affected, Parliament accepted that only a small percentage of adoptees would be in this situation. This may be an underestimation in the light of evidence received by the Commission during this review.

Birth parents

6.17 There is frequent reference to the circumstances in which birth mothers gave up their children for adoption. Many speeches echoed the following statement by the Willis Committee:

Perhaps in the majority of cases women who had given up children for adoption remained emotionally and psychologically scarred and even traumatised by the event and had a deep-seated need at least to know that their child was well, happy and was being raised in an atmosphere of love and security.¹²

6.18 Similarly, there was agreement with the view of the Willis Committee that often birth fathers had been "treated as irrelevant to the adoption decision" and had been "stereotyped as the beneficiaries of a brief and irresponsible sexual relationship and therefore not meriting participation in the adoption process". In fact, in a significant number of cases they "had been involved in long-term relationships which sometimes later led to marriage" and were often interested in information about or contact with the child.

6.19 The majority of birth parents who exercised their rights were expected to achieve peace of mind by access to information about their relinquished children. The results of the Commission's inquiry, set out in Chapter 5, are entirely consistent with these expectations.

Proportions who would exercise rights

6.20 Neither the Willis Committee nor the Parliamentary debates discuss the question of what proportion of adopted persons or birth parents would exercise their rights under the Act. The general nature of the debate related to the right of individuals to have access to information, rather than to the number who would exercise those rights. However the *Willis Report* states that "a significant proportion of adoptees have a deeply felt

emotional and psychological need to know about their origins". The evidence available to the Committee from other jurisdictions and in research literature makes it clear that a minority of people entitled actually exercise their rights. There is no reason to believe that the Parliament's views were based on any particular prediction about the frequency of applications. In particular, there is no reason to think that its decision in any way depended on a prediction that a large proportion of those entitled would seek information. In fact, the use of the legislation in New South Wales is not markedly different from what must have been expected.

Opponents to contact

6.21 The Willis Committee and Parliamentarians assumed that a "relatively small number of birth parents and adoptees" would wish to maintain their privacy and be opposed to contact. This too has been generally supported by the Commission's investigation, although the numbers of adoptees opposed to the release of identifying information about themselves may have been a little higher than expected.

Adoptive parents

6.22 The situation of adoptive parents, especially those who had not told their children they were adopted, was carefully considered in the debates. It was recognised that the Act would trouble some adoptive parents. The Willis Committee wrote:

A major concern was the need to protect the unity and integrity of the adoptive family and to ensure that the security of the adopted child was not threatened by unwanted intrusion from a birth parent. Most also indicated that they were prepared to support and even help their children if they themselves wished to have contact at some point. Adoptive parents constituted the majority of those who opposed granting access to identifying information. Their reasons centred mainly on fear of the emotional turmoil to which adoptees could succumb as a result of awareness that a birth parent, a complete stranger, could appear at any time; fears were also expressed about birth parents suddenly emerging and 'reclaiming' the adoptee. Other reasons presented included the argument that the maintenance of secrecy had been guaranteed at the time of adoption and that such guarantees must continue to be honoured; and that the mere knowledge that a birth parent was seeking identifying information about an adoptee had the potential to disrupt severely the unity of the adoptive family.¹³

6.23 However, the Committee thought that in reality those who oppose granting access "have little or nothing to fear from a liberalisation of the system".

6.24 The evidence available to the Commission on the situation of adoptive parents under the new legislation has been considered in some detail in Chapter 5. Although the evidence strongly supports the view that the vast majority of searchers behave with great consideration for the rights of the persons sought, it also highlights the extreme anxiety with which some adoptive parents, and some adopted persons, regard the possibility of contact. This anxiety, whether justified or not, is itself a cause of considerable distress, for it affects a large number of adoptive parents, and as a result no doubt, members of their families. It is also a factor that is likely to decrease the chances of a positive reunion experience. It is clear that Parliament anticipated that the Act would generate such anxiety, and attempted to respond to it through the contact veto system. In Chapter 7 the Commission proposes a number of additional measures intended to respond to these concerns without significantly undermining the basic principles of the Act.

Nature of contacts and outcome of reunions

6.25 Several contributions to the debate echoed the view of the Willis Committee that most searchers would respect the wishes and rights to privacy of the persons sought: "[t]he great majority of adopted persons will exercise these rights responsibly"¹⁴ and "[t]hose most sensitive to the needs and feelings of the other party in an adoption are those most directly involved."¹⁵

6.26 It was anticipated that vetoes would be complied with in the majority of cases, both because of respect for the other person and because of self-interest: a relinquishing mother who wanted a reunion, for example,

“would not put that opportunity at risk by making the wrong approach”¹⁶ It was predicted, however, that the veto might sometimes be broken. It was expected to work in most cases, except maybe those of “obsessive people”.

6.27 A number of submissions to the Commission complained that media presentation of the laws gave so much attention to happy reunions that it created false optimism. The Willis Committee and the Parliamentary debates, however, indicated an awareness that not all reunions would be positive experiences. The material in Chapter 5 indicates that in the Commission’s view the expectations about contact and reunions generally correspond with experience under the Act.

Conclusions

6.28 The Willis Committee recognised the difficulties in legislating for access to adoption information. “I fully understand that our recommendations will not please all people in all things ... It will be beyond the wit of mere mortals to produce something which satisfies all situations...”¹⁷ In general, the Act has operated very much in the way indicated by the Willis Committee and the Parliamentary debates. This is not surprising, since the Willis Committee drew on considerable research and extensive consultation, and experience in other jurisdictions with somewhat similar laws provided a useful indication of the likely experience in New South Wales. It may be that the extent of anxiety generated among adoptive parents, and among some adoptees, is somewhat greater than expected, and it is possible that the proportion of adoptees who are unaware of their adoptive status is higher than expected. Neither of these matters appears to be crucial in an assessment of the basic principles of the Act; it was always clear that the operation of the Act would be difficult in the case of adoptees who were unaware of their status, and also that there would be considerable opposition and anxiety from many adoptive parents, and some members of all the categories affected by the Act. A comparison between the expectations of Parliament and the actual functioning of the Act, therefore, provides no reason to re-examine the basic principles of the Act.

EXPERIENCE IN OTHER JURISDICTIONS

6.29 Another approach is to consider experience in other jurisdictions which have similar legislation, and ask whether that experience indicates any cause for concern with the basic approach of the New South Wales Act. Although there has been considerable writing about the issues, there is relatively limited research of a kind that might indicate the impact of these laws on the people involved. The most relevant studies are briefly surveyed in this section.

Scotland

6.30 In Scotland, the original birth information of an adopted person is available to that person after attaining the age of 17. The Houghton Committee, which in the early 1970s undertook a comprehensive review of adoption legislation in England, commissioned John Triseliotis to carry out research of the experiences of adopted people exercising their rights under the Scottish system. The results of this research are published in a well known book *In Search of Origins*.¹⁸ The author conducted interviews with a sample of 70 adopted persons (of 98 invited) who had exercised their rights to obtain their birth information. The main purpose of the research was to understand the experiences of the adopted people concerned. Only 11 had traced their birth parents or relatives at the time of the research. Triseliotis found that those adoptees who commenced searches for their original parents “were generally concerned not to do it in a way that might be hurtful or upsetting”.¹⁹

6.31 The experiences of the 11 who succeeded in tracing parents or relatives, were found to be mixed, but in all but two cases, the persons sought were willing to meet the searcher and establish some kind of relationship with them. The study does not include interviews with the persons contacted, but does indicate that the adoptees generally found the experience a positive one even though in many cases they were disappointed at what they found:

[t]hough most of the adoptees who had contact with a birth parent or a relative were disappointed that their ultimate expectations were not fulfilled, nevertheless they felt that finding out and testing reality was a great help to them: “I feel more at peace with myself”, said one of them and another: “I know where I stand” and a third, “I seem to have matured through this process”.²⁰

6.32 Although this research provides very limited information about the impact of the search on persons found, it does suggest that the searchers approached their task with considerable concern for the welfare of the persons sought, and also that searchers typically found the experience worthwhile even where their expectations were unfulfilled. Both these themes emerge strongly from other studies.²¹

England

6.33 Influenced by the 1973 Triseliotis study, s26 of the *Children Act 1975* (UK) provided for access by adult adopted persons in England to their original birth records. Applicants were required to have a meeting with a counsellor when they were obtaining the information. There have been a number of studies of the experience under this legislation. In particular, Day²² studied the first 500 interviews given at the Central Register Office in London. This study has the advantage of being based on what is probably a representative sample, as distinct from a group of people who respond to advertisements in the media. Day reported:

Of those who said that they did intend to try to trace, taking their enquiry as far as possible with a view to arranging a meeting with a natural parent or relative, the great majority accepted the desirability of using an intermediary. A number added the proviso that they would only seek to come face to face if this were also the wish of the other persons concerned ... In view of this, it would seem that ill-considered, unwise, or precipitate confrontations, if the figures are reliable, are not likely to occur on any great scale ... There is no reason to believe ... from what is known thus far, that natural parents are more likely to be disturbed on any significant scale, as a result of the implementation of section 26, than they were before.²³

6.34 Part of the research involved counsellors forming an opinion about whether an applicant gave cause for concern; only 15 applications (3.6% of 500) "gave real cause for concern". The general conclusions expressed by the author include the following:

9. There was compassionate understanding of the situation of the natural mother, both at the time of parting with her child and as affected now by the retrospective legislation.
12. Hostility towards a natural parent was rarely expressed by applicants.
20. For the vast majority of applicants, probably above 90%, the acquisition of birth information did not appear likely to cause undue anxiety or distress either to adopters or the natural parent, where traceable...
21. Primary loyalty to the adoptive parents was a marked characteristic of many applicants. Adoptive parents were not usually aware that the applicant was making an enquiry. Applicants said that their action could be misunderstood.²⁴

6.35 Summarising the available studies in 1984, Triseliotis wrote:

Only a minority of adopted people seek access to their birth records under section 26 of the *Children Act 1975*. The calamities anticipated by sections of the media, politicians, and some organisations, have not materialised. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents. The value of access facility is not now in dispute.²⁵

New Zealand

6.36 It is widely accepted that the most traumatic effects of adoption information legislation are likely to be felt by adoptees who do not know of their adoptive status. Twenty-two such adoptees (1%) were found as a result of the 2,200 applications made by birth mothers under the New Zealand legislation. Mary Iwanek has described the reaction of these 22 adoptees (ages from 20 to 55) who had not been told:

Social workers report that although it was a shock some of the 22 adoptees greeted the news with delight as it reinforced for them ideas that they had already suspected to be the truth. Others faced their adoptive parents with anger for not having been told. However in nearly all the situations the adopted people were able to get through their initial anger and talk with their adoptive parents. The reasons for the child not having been told was [sic] that they feared they would want to make contact and lose them to the birth parents. In only one case that is reported was the adopted person cut off from the adoptive family as a result of the situation.²⁶

Victoria

The Tabak Study

6.37 A research study has been undertaken recently of 'self search' processes used by adult adoptees who received origins information in Victoria.²⁷ The researchers interviewed 100 adoptees, chosen at random from among those who had participated in the mandatory interviews for information recipients between 1 April 1989 and 30 September 1989. The response rate was unusually high: at 80%.²⁸ The interviews were conducted between three and eight months after the mandatory interviews, and thus provide information only about the early experiences of searching and contact. The ages of the adoptees ranged widely: 23 were between 18-25, 52 between 26-40, and 25 were 41 or over. Seventy-four were female, twenty-six were male. The main findings of the research relevant to the present review are noted below.

Family life

6.38 Most respondents perceived themselves to have had a normal family life, and "many were full of praise for their adoptive parents". Seventy-eight felt that they had been "completely accepted" and ten that they had been "considerably accepted" by their adoptive parents. None had completely lost touch with their adoptive families. The author comments that this finding "tends to discredit the notion that adopted people who search have unhappy childhoods".²⁹ Twenty-one percent of the female respondents reported very poor relationships with their adoptive mothers. Eleven respondents reported being victims of mental cruelty or physical abuse; three were removed from their families because of child abuse.

Knowledge of adoption

6.39 Most respondents had "always known" they were adopted, though many had learned later, 23 respondents when they were aged between 11 and 20, and 17 when they were aged over 20. In 49 families, adoption was "never discussed", and discussion was "very limited" in another 12 families. Several had not told their parents they knew they were adopted.

Many respondents reported that considerable deceit had occurred about their status. There was bitterness about this. Two people found their spouse knew about their adoptive status but they themselves did not. Some parents apparently denied the respondent was adopted, even on repeated request.³⁰

6.40 Some respondents previously had been given false information that proved unnecessarily distressing:

This could have serious consequences for the adopted person. Females who had been told their birth mother died in childbirth sometimes suffered during their own pregnancies. Respondents who were not told they were adopted sometimes dreaded passing on conditions present in their adoptive family. One male respondent had feared an early death from hereditary disease of the adoptive parents.³¹

Intentions and motivations

6.41 Twenty intended only to obtain their birth certificate and records; 54 intended to search and 24 had not yet decided whether to search. Sixty-three respondents wanted to find the birth mother first; 10 wanted to find both parents. By the time of the interview, however, the focus had widened: by then 41 wanted to meet their birth fathers. Motivations were reported as follows:

| | |
|--|----|
| Find medical information ³² | 50 |
| Knowledge of family background ³³ | 46 |
| Reason relinquished for adoption ³⁴ | 46 |
| Establishing an identity ³⁵ | 32 |
| Understand oneself better | 31 |
| Find and reassure birth mother | 21 |

Contact and reunions

6.42 Sixty-two respondents had attempted to contact birth relatives at the time of the interview. Thirty-nine had used the telephone, 20 a letter, and two went to the door of the birth relative. Fifty-eight succeeded in making contact.

6.43 Of the 58 relatives contacted, 40 agreed to a meeting and a further 13 agreed to exchange information. Some of the others were considering their response: only five refused all contact. Summarising the result of this study and research on searches through agencies, the author writes:

In the agency program, if only those actually contacted are included for analysis, then 84% of those contacted agreed to contact with registrants. Seventy-nine per cent of those contacted by research respondents agreed to contact. However 6.4% (N = 4) of respondents who contacted a birth relative were still awaiting a decision.³⁶

6.44 The respondents also described the birth relatives' initial responses. Twenty-six reported that it was "instantly overjoyed and welcoming". Twenty "found their birth relative was pleased, but perhaps with some reservations about privacy". Three found the immediate response was "cautious", five that it was "frightened, confused or withdrawing", and five received a "hostile, cold or denying type of response". The author adds that there were no reports of marriages being disturbed, or relationships with other children of the birth parent being damaged; and that there were "a couple of birth mothers in their eighties who had not told their children about the respondent, but managed arrangements for reunions without appearing distressed". There was a high level of acceptance, both by the respondents of their birth relatives, and vice versa.³⁷ Ten respondents found that their birth mother had not told her husband and/or children about the existence of and/or contact by the respondent. Some of these birth mothers agreed to contact.

Other studies

6.45 Similar results to the Tabak study emerge from another Victorian study, a report of the results of research completed into the first two and a half years of operation of the Adoption Information Service conducted by Berry Street Child and Family Care, a major voluntary multi-program agency in inner-urban Melbourne.³⁸ The study analyses 340 registered enquiries from the period between July 1985 to 30 January 1988. Of the completed cases, contact with a biological relative occurred in 52 instances (30.2%). Only in eight cases (4.6%) was contact refused.

6.46 The conclusions from that study that are relevant in the present context are as follows:

The vast majority of adoptees and adults fostered as children who enquire do so out of curiosity and a "need to know" their origins. Although some have had less than ideal adoptive or foster experiences, very few search in order to "re-create" a family experience.

Birth parents - whatever might have been expected of them at the time of relinquishment - do not "forget", but rather most go on wondering and worrying about their child for the rest of their lives. For almost all, the contact with their child brings immense relief. A significant number of birth mothers have no further children after relinquishing. Many of these commented upon being emotionally or psychologically unable to go through the experience (of birth again) because of the continuing distress of the loss of their child...

Very few adoptees or birth parents refuse the opportunity of direct contact with each other. The view that many birth parents would not want contact with their relinquished child is not borne out by practice.

A refusal (of contact), is most likely where an outreach is made to adoptive parents of an under-age adoptee. As a group, adoptive parents seem to be least comfortable with the notion of contact between adoptees and birth family. Whilst it is often supposed that this is due to a fear of loss of relationship with the child, again experience does not support this as a likely outcome from adoptee-birth parent contact. In fact, many adoptees advise that they felt closer to adoptive parents after contact with birth parents occurred.³⁹

6.47 A similar picture also emerges from a study by Picton submitted to the Victorian Government in May 1980, before the law gave access to information about adoption. The researchers interviewed 86 people enlisted through co-operation with Jigsaw, a self-help adoption association. It was therefore not a random sample.⁴⁰ Twenty-two of the respondents had found their natural mothers and two of these had also found their natural fathers. The experiences of these 22 were reported to be as follows:

Thirteen had met with the natural parent more than once and sometimes regular meetings were taking place; seven had had only one contact at the time of the interview; one had still to arrange a meeting; one had not had contact, and one postal respondent did not answer the question.⁴¹

6.48 The author adds the following comments:

The overwhelming impression is of a group of adults who have a need to know facts about themselves that others not adopted, take for granted. Moreover this need to know does not contain overtones that could be construed as either disturbed or punitive.

The general level of concern and compassion for adoptive parents and relinquishing parents was high and lacked any apparent motivation to confront angrily or to condemn. Although both researchers interviewed adoptees who were manifestly distressed by their situation, neither registered the belief that negative outcomes would result from any contact with relinquishing parents. This accords with the low level of concern registered by the counsellors in the recently published General Register Office Survey in Britain. [the Day study referred to above]

A strong indication of the level of concern about the circumstances about the relinquishing original parent(s) is the manner in which the adoptees sought to make contact. Eighteen out of twenty-four made use of an intermediary and then only after careful consideration of possible repercussions. All of the four who had made direct contact without an intermediary said that they felt in retrospect that it had been a mistake in spite of generally positive outcomes. On the other side, relinquishing parents who had been contacted, appreciated the use of an intermediary although one had serious criticisms about the way the intermediary made contact.⁴²

6.49 Picton concludes, referring to research in Britain and the United States:

...[t]hat providing access to information as a right (and the attendant likelihood that information will be used in some cases to contact relinquishing parents), does not produce a significant level of distress or disruption. Presumably this must be due in some measure to the fact that most

adoptees who seek, do so responsibly, and on the other side, most parents who are “found” are willing to let the contact take place...⁴³

United States

6.50 In a well known study⁴⁴ Sorosky, Baran and Pannor interviewed participants of 50 reunions selected at random from among the people who had responded to advertisements. The focus was on 50 adoptees whose searches had resulted in reunions. The study found that 90% of the adoptees were “satisfied” with the outcome of the reunion, “most of them reporting a sense of personal fulfilment, resolution of genealogical concerns, and diminished identity conflicts”.⁴⁵

6.51 It was also found that 82% of the encountered birth parents were “positive and accepting”, and ...only 10% reacted adversely to the reunion with their relinquished child. In contrast, many of the adoptive parents had difficulty in adjusting initially to the experience. 36% of the adoptive parents were co-operative and understanding, 20% were mildly upset, and 10% were quite hurt. In the other cases the adoptive parents had either died or were not told about the reunion in order to spare their feelings.⁴⁶

6.52 The authors conclude this chapter as follows:

What stands out most when we review the data, however, are the positive benefits the majority of the adoptees gain from the successful search. Few regretted the experience, and many were enriched by new meaningful relationships with their genealogical forebears. Significantly, most reported a deeper sense of love and appreciation for their adoptive parents, whom they viewed as their true “psychological parents”. Although some of the adoptive parents were initially upset and hurt by the reunion, permanent damage to the adoptive family relationship resulted rarely. For the majority of the birth parents, the experience provided an opportunity to resolve old guilt feelings and to erase years of questioning about the fate of their relinquished child.⁴⁷

6.53 Another study in the United States attempted to assess reunions between adoptees and birth parents from the point of view of the birth parents.⁴⁸ The sample was drawn from birth parents who responded to advertising or were affiliated with adoptee or birth-parent organisations. The study examined reunions between 170 birth parents and their children. Reunions were initiated by the birth parents in 79% of the cases and by the adoptees in 21%. The reactions of both the seekers and the contacted birth parents were very positive about the initial contact and became more positive over time. Even in the cases where the reunions were not a “success”, the birth mothers involved considered that it had a very positive impact on their lives. The authors summarised their findings as follows:

Contrary to expectation, reunions do not seem to disrupt the lives of the participants. Even birth mothers who did not search and who still would not do so, were pleased to be found. At least from the point of view of the birth parents, the reunion, even if unsuccessful, seems to enhance their lives.⁴⁹

6.54 The same authors carried out a similar study on the experience of adoptees.⁵⁰ The study was based on response to a mail questionnaire from 133 adoptees. Of these, 114 had had reunions. The majority had actively searched for their birth parents but 13 (11.4%) were found as a result of the birth parent’s initiative. The reaction of the birth parents to being found by the adopted person was described as follows:

Many adoption professionals are concerned that a found adoptee or birth parent may feel intruded on. The experience of this sample does not support this concern.

Seventy-five percent (n=75) of birth parents were warm and welcoming at the initial contact; 22 percent (n=22) initially were fearful, reserved, or unsure and only 3 percent (n=3) were described by the adoptee as indifferent, hostile, or rejecting. A similar pattern was found in the responses of the adoptees when they were found.⁵¹

A vast majority, as in the case of the study of the birth parents, said that they would do it all again if they had the chance. Most of those who were not searching said that they would now search if they had the chance over again.⁵²

Conclusions from experience in other jurisdictions

6.55 The studies noted above from the experience in other jurisdictions provide some useful evidence to the Commission, although they do have some important limitations. In particular, some are based on samples that may well not be representative, since they have been recruited from advertising and contact with organisations: it is possible that the people who respond may have had different experiences, or different attitudes towards them, than other adoptees or birth parents. This problem does not arise, at least in an acute form, in the case of studies based on samples which are more random, notably those by Day (England), Triseliotis (Scotland), Iwanek (New Zealand), Tabak (Victoria) and Swain (Victoria).

6.56 It is striking, however, that the general conclusions of all these studies, using different methods and undertaken in different countries, are very similar. Searchers emerge as mainly careful and sensitive to the other person's interests, and the effects of the contact, even in the most worrying cases where the adoptees did not know of their adoptive status, appear to have been very positive for the searchers and positive for the majority of persons found.

6.57 It is important that such research be undertaken in the future on the experience of access to adoption information in *New South Wales*. No doubt further research will add to our knowledge. However, this review of the available research provides a clear answer to the question posed for the purposes of the Commission's inquiry, namely whether what is known about the experience of similar laws in other jurisdictions provides reasons for concern about the *New South Wales Act*. The answer is that it does not. On the contrary, the results of the available research, while not conclusive, are extremely reassuring, suggesting that while the effects of the Act are negative in some cases, they are positive in the great majority of cases. Although the question should be kept under review in the light of further research, particularly that relevant to the New South Wales legislation, the existing research on the experience of other jurisdictions strongly supports the basic principles of the *Adoption Information Act 1990*.

ARGUMENTS ADDRESSED TO THE COMMISSION

6.58 The third step in this assessment of the basic principles of the legislation is to consider whether any views or arguments addressed to the Commission require fundamental reconsideration of those basic principles. In the Commission's view they do not, since in general the arguments were thoroughly considered and dealt with by the Willis Committee.

6.59 The many submissions and comments received by the Commission were of great value in conveying the experiences and reactions of those involved, and they have been extensively used in the preparation of Chapter 5 of this Report. In this section we consider the views and arguments put to us relating to the main principles of the Act, stated at the beginning of this Chapter. Specific matters are dealt with in Chapter 8.

Submissions from organisations

6.60 It was a striking fact that the majority of organisations, especially those having long-standing professional involvement with adoption, strongly supported the legislation. The organisations supporting the legislation included:

Post Adoption Resource Centre (PARC)

Advisory Committee of PARC

NSW Committee on Adoption⁵³

NSW Privacy Committee⁵⁴

NSW Law Society

Barbado's Australia
Centacare Adoption Services
Anglican Adoption Agency
Association of Childrens Welfare Agencies
The Hunter Region Adoption Committee
Mercy Life Family Centre
The Salvation Army Social Services Department
Obstetric Social Workers Group
Link-Up⁵⁵
Adoption Triangle⁵⁶
Mothers for Contact in Adoption
Association of Relinquishing Mothers
Shoalhaven Adoption Support Group
Sutherland Shire Family Support Service
Women's Co-ordination Unit
Ethnic Affairs Commission

6.61 The basic principles of the legislation were opposed, in whole or in part, by four organisations, namely:

Adoption Privacy Protection Group (APPG)
People Concerned for Adoption (Lismore Branch)
Central Coast Friends of Adoption
Adoptive Parents Association (APA)

6.62 It is useful to distinguish between organisations that have a long standing involvement in the administration of adoption and in counselling those affected, and on the other hand organisations formed more recently to lobby for or against the legislation, such as Mothers for Contact, and the APPG. With the exception of the APA, *all of the former groups* supported the legislation, and thus it is clear that the views of those professionally involved in adoption are overwhelmingly in favour of the legislation. It is not surprising that these bodies supported the general policy of granting access to origins information as of right, for this has been the strong view of expert opinion in adoption for many years, but it is notable that these organisations should have consistently approved the basic principles of the NSW Act, including the right of birth parents to information, and the contact veto system.

Arguments in support of the Act

6.63 It is not necessary to deal at length here with arguments in support of the legislation, for they have been presented in detail in the Report of the Willis Committee and in the Parliamentary debates. It will be sufficient to provide a brief summary and some examples.

6.64 Those who supported the legislation stressed the following matters:

That adopted persons should have unconditional rights of access to their original birth certificate and information about their origins: to deny them this was a violation of their human rights, and a form of discrimination against them, since other citizens were entitled as of right to their own birth certificates.

That the circumstances in which many birth parents signed consents to adoption, and the needs of birth parents that have emerged from research in recent years, make it appropriate to provide them with identifying and non-identifying information about the subsequent history of their biological children, and where possible, the opportunity to meet them.

That the contact veto system, while perhaps not a complete guarantee against unwanted contact, constitutes a reasonable compromise between the granting of information rights and protection of privacy.

6.65 More generally, the submissions in favour of the legislation frequently argued that the secrecy associated with adoption was now known to have imposed serious and long-lasting stresses on many of the parties to adoption, and that changes in social attitudes towards birth outside marriage, and towards infertility, had removed or lessened the need for such secrecy. Another related theme was that the maintenance of closed records was inconsistent with the prevailing views relating to privacy and freedom of information, which called for personal information held in official records to be accurate and available to those whom it concerned.

Arguments against the Act

6.66 The arguments against the Act were essentially the same as those addressed to the Willis Committee and discussed in the Parliament. In summary, they were that the Act involves unacceptable violation of the privacy of people involved in adoption, since it departs from guarantees of secrecy which were given at the time of adoption, and since the contact veto system is an inadequate protection.

6.67 To the extent that these arguments are based on factual assertions, they should be assessed in the light of the evidence from the experience of the Act in New South Wales discussed in Chapter 5 and the research on experiences in other jurisdictions, discussed above. It will be recalled that while there is a great deal of anxiety on the part of many adoptive parents, and some adopted persons and birth parents, the majority of searchers are very concerned to act sensitively and respect the wishes and interests of the other parties; very few will break a veto, or indeed act in violation of expressed wishes of the other party.

6.68 The Commission's approach is to re-examine basic principles only to the extent that it is appropriate to do so in the light of the results of the review. Since the main arguments are not essentially new, and since the operation of the Act is generally in accordance with Parliament's expectations, it is not necessary to deal with these arguments in detail. However it may be helpful to discuss some aspects of the arguments addressed to the Commission.

Absolute principles or balancing of interests?

6.69 In the Commission's view, the Act represents the result of a considered balancing of interests of those affected by the Act, and in particular, the interests of some people in information and of others in privacy. Some of the objections to the Act stated or implied that this was the wrong approach, and that there was some factor or factors which led, in an absolute way, to the conclusion that the Act was misguided. Avoiding retrospective effect was one such factor: some submissions suggested that the retrospective character of the Act was inherently objectionable. Some submissions claimed that privacy was entitled to apparently absolute protection, as a basic human right. For example:

The Act represents a serious interference with longstanding vested rights of confidentiality and privacy on the basis of which relinquishing parents based their decisions and adoptive parents made adoptions....⁵⁷

I'm sure you understand that the issue of privacy for all those involved in adoptions is of paramount importance. Presently our rights are not adequately protected. We sincerely hope that you can appreciate the need to ensure that the PRIVACY OF ALL is guaranteed.⁵⁸

6.70 In the Commission's view there is no single absolute principle that points the way to the 'correct' result. The fact that retrospective legislation can operate harshly on people who have arranged aspects of their lives in reliance on previous law is an important matter to be considered, but it can be outweighed by other factors. Again, the fact that privacy might be regarded as a human right does not mean that it must necessarily prevail over other human rights. For example, the contact veto system in the present Act may be defended, even though it violates a well established human right, namely the right (of the person seeking contact) to freedom of association. Informed discussions of human rights issues, both in general and in connection with adoption information law, show the need for a careful weighing up of the various and often inconsistent interests and policies involved.

Retrospectivity

6.71 A number of submissions objected to the Act because of its retrospective operation. Of course the mere fact that an Act changes the previous law, or alters rights and duties that existed under the previous law, does not make it objectionable. For example, the *Adoption Information Act* 1990 creates a new right in adoptive parents to have access to extensive non-identifying information about birth parents. None of those who argued against retrospective legislation appeared to object to this retrospective change in the law. The argument against retrospectivity is more specific than this, namely that the change in the law represents a departure from clear understandings that existed at the time of adoption, understandings that were clearly given by the law and by practice, both to the relinquishing parents and to the adopting parents. These understandings, the argument continues, should be regarded as a contract between the state and the parties to the adoption.

6.72 There are however difficulties with this position. First and most obviously, the adopted child was not a consenting party, and should not be regarded as bound by the arrangements made at the time of the adoption. Second, as explained in Chapter 5, it is artificial to regard all relinquishing parents as fully consenting parties to a 'contract'.⁵⁹ Many of the mothers were under the age at which the law would normally treat them as old enough to make decisions that would be given legal effect. They normally gave their consent at a time of great vulnerability and emotional turmoil, many would have been, as one birth mother told us "overwhelmed by events". In some cases, they were misled as to the documents they were signing, or subjected to improper pressure, or given false information about their rights to revoke consent. Although the Supreme Court had power to set aside consents on such grounds, in practice the proceedings were almost invariably unopposed and the Court normally heard only from the applicant for the adoption order. Evidence was not normally given by the birth mother. In these circumstances, the Court would not have been aware of the pressures she was under, or their effects upon her decision. Of course, there were no doubt some consents that were given without such pressures. But the evidence of the practices of taking consents, and the evidence of the birth mothers, makes it clear that it would be wrong to proceed on the assumption that all or most adoption consents were informed and given freely and with full knowledge of the relevant facts.

6.73 The position of the birth father is also important in this context. Where the child was born outside marriage, his consent was not required. In theory he was entitled to apply to the Court for leave to contest the adoption application, but such applications would have been very unlikely to succeed, and appear to have been uncommon. In practice, the father's name would not be on the birth certificate unless he signed the application to the Registry of Birth, Deaths and Marriages, and he was not encouraged to be involved in the decisions relating to the child. In some cases, he was not aware that the child had been born. Here too, it would be wrong to proceed on the basis that birth fathers were consenting parties to a contract or arrangement which guaranteed privacy.

6.74 Finally, the law and practice of adoption varied over time in relation to privacy. It does seem that the majority of people who surrendered new born babies for adoption by unrelated adoptive parents, and those who adopted them, did so in a climate where they reasonably assumed that adoption would mark the end of all connection between the child and the birth family, and that neither would later be able to obtain identifying information about the other. However as noted in Chapter 2, prior to 1967 protection was based on matters of practice rather than law, and was by no means complete. We cannot be sure exactly what was said to adoptive

parents and birth mothers, especially in adoptions that were privately arranged. Neither can we be sure that each of the parties to any adoption had similar understandings of the degree of confidentiality. Further, the parties' understanding of privacy may well have been different in certain types of adoption, notably adoptions by step-parents and relatives, and adoptions by established foster-parents, who may have been in continuing contact with the birth family. These factors somewhat complicate the claim that adoptions involved a complete guarantee of privacy.

6.75 For these reasons, it is wrong to regard the argument against retrospectivity as decisive. But it does draw attention to an important consideration. The *Adoption Information Act* 1990 involved a dramatic change in the post-adoption relationships between the various people affected by adoption. For some of the participants, the change is very threatening. It involves a state of affairs for which they may not be prepared, and for which they may not have planned. Some adoptive parents have told the Commission that if they had known that the law would change in this way they would never have adopted. Some birth parents, too, have objected to the retrospective operation of the Act, although few have said that they would not have relinquished the child if they had known that the law would change in this way: as we have seen, the majority of birth mothers seem to have felt that they had little choice but to surrender their child for adoption.

6.76 There can be no doubt that adoptive parents who have not told their children of the adoptive status find themselves in a most unenviable position. For some of them, the Act must seem a great injustice. We have heard from some older adoptive parents who say that when they adopted they were advised not to tell the child of the adoption, and they have faithfully followed this advice. They now feel that it is quite unfair for the law to make it possible for the birth parents to receive identifying information, and be placed in a position to expose the adopted person to the multiple shocks of (i) discovering the fact of their adoption, (ii) unexpectedly meeting the birth parent or relative, and (iii) coming to terms with the fact that their adoptive parents have withheld the truth from them for so long.

6.77 Although one must sympathise with the position of such people, some other considerations should be taken into account. First, the operation of the Act was deferred for six months in order to give them time to disclose the adoption, and there was considerable publicity about the rights to information it created. Second, their decision to maintain the secret is a continuing decision over time, not a single act done many years ago. Even though 'not telling' may have been recommended when they adopted their children long ago, since at least the mid-1960s it has been regarded as good adoption practice to tell adoptees of their adoptive status. Further, the 'search for origins' movement has been in existence since at least the mid-1970s.

6.78 These changes have been much discussed in newspapers and magazines, and electronic media, over the years. In addition, the media, cinema and literature have often featured stories about adopted people who as adults discover by chance that they have been adopted. There are now publications on 'late telling', and counselling is available from a number of sources. It is difficult to imagine that adoptive parents who have not 'told' have been so isolated from the community that they would not have been exposed to these ideas and events. While their position deserves consideration and respect, the law should not necessarily override all other considerations to preserve their right to adhere to the practices and beliefs of previous decades. In this context, the 1990 Act, and the experiences of people who have discovered their adoptive status, or been 'found' before the Act took effect, may be seen as changes in society over time that require adjustments. For some people adjusting to social change can be very difficult and painful. Those people can reasonably expect that their situation be given careful attention, and that as far as possible they be protected from unnecessary distress. But they cannot reasonably expect that their unwillingness or inability to adapt to change to be taken as a sufficient reason to prevent the introduction of new laws that are seen as desirable in the present state of knowledge, and the present nature of the community. Accordingly, the Commission has recommended some measures designed to provide additional protection for them without undermining the basic principles of the Act.

Protection of privacy

6.79 There was considerable criticism of the Act on the ground that it constituted an invasion of people's privacy, which many saw as a basic human right. All of the following examples were regarded by at least some of those who made submissions as invasions of privacy:

The Registry of Births, Deaths and Marriages discloses to a birth parent the information contained in the amended birth certificate relating to the adoptive parents without their prior consent.

An adoption agency discloses to a birth parent information on the file of the adoption agency relating to the adoptive parents, including information about such matters as infertility and income.

The Registry of Births, Deaths and Marriages supplies an original birth certificate to an adopted person without having obtained the prior consent of the birth mother.

The Registry of Births, Deaths and Marriages supplies an amended birth certificate of an adopted person to a birth parent, without the prior consent of the adopted person or the adoptive parents.

A birth parent drives past or parks near the home of the adoptive parents, hoping to see the adopted person.

Staff of the Family Information Service tell a person who lodged a veto that there is a message waiting for him or her.

Staff of the Family Information Service ask a person who had lodged a veto whether he or she wishes to withdraw it.

A birth uncle reveals the fact of her adoptive status to an adopted person who had not yet been 'told', and had not yet discovered, that she was adopted.

A birth relative asks for financial assistance from an adopted person with whom he or she has had a recent reunion.

A birth parent or relative writes a letter to, or telephones, adoptive parents or an adopted person, without their prior consent.

6.80 It was apparent from comments made to the Commission that there were differences of opinion about whether some or all of the incidents listed above constituted invasions of privacy. Some people at a public hearing treated number 6 as a clear and gross invasion of privacy, while others could see no possible objection to it. There is a need for some clarification about what is meant by privacy, and what sort of protection it deserves.

6.81 The general literature on privacy provides assistance in assessing the relationship between privacy and the *Adoption Information Act* 1990. Privacy is generally considered by commentators⁶⁰ to involve the following types of interests:

Territorial privacy: the interest in controlling entry to the 'personal place';

Privacy of the person: the interest in freedom from interference with one's person and 'personal space';

Information privacy: the interest of the person in controlling the information held by others about him or her; and

Communications and surveillance privacy: the interest in freedom from surveillance and from interception of one's communications.

6.82 The numbered illustrations given above show that adoption information law involves more than one type of claim to privacy. Numbers 1-4, for example, raise questions about information privacy, while five involves territorial privacy. Privacy interests are protected, in a greater or lesser degree, by law. Thus the law of defamation prohibits some types of invasions of information privacy. Laws relating to assault and other offences protect privacy of the person interests. Laws prohibiting unauthorised phone-tapping, protect communications privacy. The literature also stresses that while privacy is a right the law should respect, it is not an absolute right: it must be balanced against other rights, and the extent to which it should be protected in particular situations requires a process of weighing up competing considerations.⁶¹

6.83 The literature on privacy also indicates no obvious guidelines that are applicable in relation to adoption law. The NSW Privacy Committee has developed principles applicable to situations where personal information is held by officials.⁶² *Principle 10* embodies the idea that such information may be disclosed to others only in

limited circumstances, notably where the person it concerns consented. This principle, however, presupposes that the information is personal to one individual. In relation to adoption information the personal information relates to several individuals, indeed it is about the *relationship between* individuals. The principle does not assist in determining which of those individuals should have access to the information. *Principle 6* is that the person who is the subject of the personal information should be entitled to have access to the record. Again, however, this does not address the question which of the individuals should have access to the records, or what weight should be attached to the fact that some of the individuals believed that the information would be kept inaccessible to others. *Principle 7* requires that the record keeper should take reasonable steps to ensure that the information is accurate, and not misleading. This would suggest that amended birth certificates should not be issued, for they are misleading in that they give the impression that the adoptive parents are the child's biological parents. Again, however, the principle was not intended to deal with the special circumstances of adoption.⁶³

6.84 Privacy, then, is an important consideration, but it refers to a number of different claims. These claims should be respected, but no such claim necessarily has priority over other competing claims or interests. Finally, principles of privacy developed in other contexts do not provide applicable guidelines for the resolution of the issues posed by adoption information law.

Privacy as a claim to maintain the fiction of the biological family

6.85 In its widest form, the claim to privacy seemed to involve the assertion that the law should prevent any person in any way raising questions relating to adoption with a person who had lodged a veto, or (on another view) any person who had not indicated a willingness to deal with the matter. In this form, the claim appeared to be closely associated with the argument against retrospectivity: where a person had adopted on the basis that adoption would mark a complete break with the birth family, *any action that required one of the parties to acknowledge or address any issue arising from the adoption* could be seen as an invasion of privacy. Put another way, it is a claim that the law should protect the right of those involved, if they choose, to maintain the fiction that the child was not adopted but was the natural child of the adoptive parents. For the adopted person and the adoptive parents, the fiction is that the adopted person is the natural child of the adoptive parents, thus related by consanguinity and affinity to the adoptive parent's relations. For the birth parents, the fiction is that they never gave birth to the child. For the birth relatives, the fiction is that they have no biological relationship with the adopted person.

6.86 This 'biological family fiction' is closely associated with the law and practice of adoption in former times. To the extent that adoption practice encouraged all parties to behave as if there was no difference between adoptive families and other families, it encouraged those involved to treat the fiction as fact. There is, therefore, a close link between the wide view of privacy and the argument against retrospectivity. Those who have treated the fiction as fact for many years and have behaved in accordance with the law and practice at the time of the adoption, claim, in effect, a legal right to maintain the fiction indefinitely. For them, if the law fails to prevent any action that undermines this fiction, it thereby facilitates an invasion of the privacy of the person or persons wishing to perpetuate it. Examples 7 and 8, above, would be seen on this view as violating privacy. We have previously said that the argument against retrospectivity deserves careful consideration. But it cannot be elevated to an absolute claim, overriding other considerations, by describing it as a 'right to privacy'.

Privacy implications of access to adoption information

6.87 Some of the feared invasions of privacy do not arise directly from the Act or its administration, but may be indirectly associated with it, in that the Act provides information which may be used by a person 'who invades another's privacy'. If a member of a birth family were to harass adoptive parents whose identity was revealed as a result of obtaining information under the Act, it might be said that the invasion of privacy would not have happened but for the Act. Certainly the Act greatly facilitates the obtaining of such information, although even before the Act it was not uncommon for people to discover identifying information about parties to the adoption.

6.88 Submissions made to the Commission differed on the appropriate response of the law to this situation. Some submissions treated the possibility of invasions of privacy as a reason for repealing or amending the Act, either to prevent access to the information or to erect special provisions against invasions of privacy. Others strenuously objected to this approach, arguing that such a response presumes, without qualification, that parties to adoption seeking information are more likely than other people to invade other people's privacy. The Commission's view is that on the face of it, the ordinary law should apply to possible invasions of privacy that

might be committed by people who have obtained information under the Act. There are general laws that forbid harassment, and they apply to parties to adoption as well as to other people. Harassment may be based on many kinds of information or misinformation; it may be committed by creditors, former lovers, commercial competitors, and so on. The law does not deal with such problems by restricting information, or by treating people as needing special protection against people in these categories. Instead, it provides criminal sanctions and civil remedies against such forms of harassment.

6.89 No reason has been given to the Commission, nor is any such reason apparent, for treating in a different way any invasion of privacy which involves the use of information obtained under the Act. People subjected to harassment or other invasions of privacy should have the same protection as other people subjected to similar behaviour, regardless of the source of the information used by the wrongdoer. In fact, there are detailed provisions in New South Wales law protecting people against harassment and apprehended violence.⁶⁴ It has been said of these provisions:

Harassment or molestation are interpreted broadly and cover a wide variety of annoying, intimidating, troublesome or vexing conduct. The inclusion of these words allows the court to control conduct beyond the reach of either the criminal law or the law of torts ... Examples of such conduct are constantly telephoning, waiting outside the home or place of work, suddenly appearing at a window or repeatedly following in a car.⁶⁵

Privacy implication of administration of the Act

6.90 Some submissions complained of perceived invasions arising from the administration of the Act, while others complained of matters which, if they occurred, would have involved *improper* administration of the Act. Some adoptive parents, for example, expressed concern that members of the birth family might obtain documentation relating to their infertility, or income. The provision of such information would indeed appear to be a clear breach of privacy, but of course neither the Act nor the Regulation provide for the release of such information. A person who obtained such information in the course of administering the Act and provided it to an enquirer would commit an offence under the Act.⁶⁶

6.91 Other submissions appeared to treat the proper administration of the Act as involving unacceptable invasions of privacy. Of course, the fact that these actions are authorised by the Act means that they would not be *illegal* under existing law. The question is one of policy, namely whether aspects of the law should be changed because they involve a breach of privacy that is *unacceptable*. The type of privacy interest involved here is primarily information privacy, although it may also involve communications privacy (to the extent that the system provides for private correspondence to be censored).⁶⁷ As indicated above, there are no applicable privacy principles that can readily be applied to the peculiar circumstances faced by adoption information law. It is obviously true that the operation of the Act can mean that some people will find it more difficult than previously to prevent certain others from obtaining information about their names, whereabouts and circumstances. However it is arguable that this is a necessary consequence of redressing injustices that have arisen through earlier practices of secret adoption. Stating that the Act involves breaches of privacy in this sense only leads back to the familiar debate about the interests and rights of the people involved in adoption and adoption information.

Likely effectiveness of an information veto

6.92 As noted earlier, many of those who argued against the basic principles of the Act suggested that it would be an improvement if the Act provided for an information veto rather than a contact veto: that is, a system whereby a person involved and thereby identified could prevent the issue of a birth certificate and the release of identifying information. This proposal, of course, was carefully considered by the Willis Committee. It is important to note that there were two separate arguments for rejecting it. One was that it was wrong in principle, because "it is in total conflict with the principle that all adoptees should have a right to be entitled to access to their original birth certificate and all birth parents ought to be entitled to identifying information about the child that they relinquished when he or she attains adulthood".⁶⁸ The other reason was that an information veto might not be fully effective. This point, which was largely overlooked in submissions to the Commission, is of some importance.

6.93 The evidence to the Commission strongly suggested that one of the reasons why people seeking to make contact were so ready to respect the wishes of the other parties was that they felt that the balance drawn by the present Act was fair, and that to some extent their concerns had been met by the release of the birth certificate and prescribed information. If the law were to be changed to provide for an information veto, there is a risk that some searchers, feeling unjustly treated, would be less inclined to adhere to the law, and might, as many did prior to the Act, conduct their own investigations to discover the identity of the persons in question. Those investigations could prove more disruptive than the orderly transmission of information provided for in the present Act. The Willis Committee had drawn attention to these problems:

The most extensive evidence relating to [an information veto system] comes from New Zealand where the register has been in operation since March 1986. The Sub-Committee which visited New Zealand was informed that the difficulties experienced included the following:

(a) Some people refuse to accept the validity of the veto and continue to search using the traditional methods of clever detective work.

(b) In some cases the existence of [an information veto] defeats the purpose for which it is set up. There are numerous examples in New Zealand of determined adoptees who, when faced with a veto imposed by a birth parent, turn their efforts to finding other birth relatives, who may in fact be the very people whom the veto was intended to protect⁶⁹

THE COMMISSION'S CONCLUSION

6.94 The Act has functioned very much in the way anticipated by the Willis Committee and by the Parliament. The experience of other jurisdictions with similar legislation, like the New South Wales experience examined in Chapters 4 and 5, suggests that such legislation works satisfactorily. The legislation is overwhelmingly supported by agencies and individuals with long-standing expertise in adoption. The arguments and submissions received by the Commission provide valuable information about the operation of the Act and have greatly assisted the Commission in understanding the range of issues and views involved. However the arguments against the Act are substantially the same as those considered and rejected by the Willis Committee and by Parliament, and they do not indicate that the approach of the Willis Committee or the Parliament was misguided or mistaken.

6.95 The Commission's conclusion is, therefore, that its inquiries and research have revealed no reason to change the basic principles of the Act, after a little more than a year's operation. However the evident anxieties of some people affected by the Act, and the undoubted distress it can cause to some individuals, make it appropriate to recommend as the Commission does in Chapter 7 further provisions for the protection of privacy, which do not significantly erode the basic principles of the Act.

FOOTNOTES

1. *Adoption Information Act* 1990, s3(a), (b).
2. s6.
3. s8.
4. s16-29.
5. s3(c).
6. s7; *Adoption Information Regulation*, cl6.
7. s3(e).
8. s3(f).
9. s3(d).

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

10. This issue is considered in Chapter 8.
11. The Hon D Grusovin, *Hansard* 10 October 1990.
12. *Willis Report* at xi.
13. *Willis Report* at xi
14. The Hon R Webster, *Hansard* 6 September 1990 at 6780.
15. The Hon D Grusovin, *Hansard* 6 September 1990 at 8116.
16. The Hon J Hannaford, *Hansard* 17 October 1990 at 8542.
17. *Willis Report* at i.
18. J Triseliotis *In Search of Origins* (Routledge & Kegan Paul, London, 1973).
19. Triseliotis (1973) at 131.
20. Triseliotis (1973) at 140.
21. eg M Iwanek "Access to Adult Adoption Information" Appendix to *Willis Report* at 20.
22. C Day "Access to Birth Records: General Register Office Study" (1979) 98 (9) *Adoption and Fostering* 17.
23. Day (1979) at 24-25.
24. Day (1979) at 27-28.
25. J Triseliotis "Obtaining Birth Certificates" in P Bean (ed) *Adoption: Essays in Social Policy, Law, and Sociology* (Tavistock Publications, London, 1984) at 51.
26. Iwanek at 39.
27. Susan Tabak *Self Search: A Program for Adult Adopted Persons* (Community Services, Victoria, 1990).
28. Of the remaining 20, most were away or could not be contacted: only four declined to participate.
29. Tabak at 10.
30. Tabak at 11.
31. Tabak at 13.
32. Female respondents often wanted to know about their birth mother's pregnancy before they embarked on pregnancy.
33. The respondents "wanted the truth about their family background, to fill the void of information, or to find someone they resembled. The wish to find someone else like themselves was mentioned by many respondents": Tabak at 15.
34. "For some respondents wanting to know why they were relinquished was very important. The feeling of having been thrown away and discarded can be associated with pain and anger, even if the adoptive experience has been a happy one": Tabak at 15.
35. Described as "feeling a nobody" and "wanting to know who I was": Tabak at 16.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

36. Tabak at 33.
37. Tabak at 34.
38. Philip A Swain "Adoption Information Services: Myths and Realities" in P and S Swain (eds) *To Search for Self; The Experience of Access to Adoption Information* (Federation Press 1992) at 25.
39. Swain (1992) at 31-32.
40. C Picton "Adoptees in search of origins" (1982) 6 *Adoption and Fostering* at 49-52.
41. Picton (1982) at 51.
42. Picton (1982) at 52.
43. Picton (1982) at 52.
44. A Sorosky, A Baran and R Pannor *The Adoption Triangle* (Anchor Press, New York, 1978).
45. Sorosky, Baran and Pannor at 195.
46. Sorosky, Baran and Pannor at 195.
47. Sorosky, Baran and Pannor at 196.
48. P Silverman, L Campbell, C Patti and C Style "Reunions Between Adoptees and Birth Parents: The Birth Parents' Experience" (1988) 33 *Social Work* at 523.
49. Silverman, Campbell, Patti and Style (1988) at 528.
50. L Campbell, P Silverman and P Patti "Reunions between Adoptees and Birth Parents: The Adoptees' Experience" (1991) 36 *Social Work* at 329.
51. Campbell, Silverman and Patti (1991) at 333.
52. Campbell, Silverman and Patti (1991) at 334.
53. The NSW Committee on Adoption is the peak NSW organisation of non-government agencies, representing 20 agencies and organisations.
54. The NSW Privacy Committee did not make a submission to the Commission, but provided a copy of the submission it had made to the Willis Committee in 1989. In that submission it "supports the proposition that natural parents, blood relatives and adopted persons have access to birth and adoption records when the adopted child attains the age of eighteen years." The Committee considered that the objecting party should not be able to prevent the release of identifying information, or forbid contact; instead, it suggested that there be a register of objections to contact, but that register would be "solely to inform the applicant of the objection and does not constitute a veto by either party".
55. Link-Up is an Aboriginal organisation that works with Aboriginal adults who were separated from their original families and communities by the operation of the child welfare system and adoption.
56. Adoption Triangle has for many years assisted persons to search for their relatives separated by adoption.
57. APPG Submission at 4.
58. Central Coast Friends of Adoption *Submission* at 5.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

59. Even if the contract analogy is accepted, reference should be made to principles and statutory provisions by which, especially in decisions about major issues in families, the law sometimes declines to hold parties to agreements. See eg *Family Law Act 1975 (Cth)* s87.
60. See Australia. Law Reform Commission *Privacy* (Report 22 1983) at 46.
61. ALRC Report 22 at 52-54.
62. New South Wales. Privacy Committee "Privacy and Data Protection in NSW: A Proposal for Legislation" (Submission to ICAC, No 63, June 1991) at 74.
63. The Privacy Committee apparently took the same view in its submission to the Willis Committee, for it did not there argue that such principles resolved the issues posed by adoption.
64. See especially *Crimes Act 1900 (NSW)* s562B. Injunctions might also be available under the provisions of the *Family Law Act 1975 (Cth)* s114 or the *De Facto Relationships Act 1984 (NSW)* s53.
65. N Seddon "Domestic Violence" in R Chisholm and J Housego *Australian Family Law: State Legislation* (Butterworths, loose-leaf) at 42, 124.
66. *Adoption Information Act 1990* s15.
67. This aspect is discussed in Chapter 8.
68. *Willis Report* para 7.15.
69. *Willis Report* para 7.17.

7. Additional Protection of Privacy

INTRODUCTION

7.1 In this Chapter the Commission sets out three recommendations which are intended to provide a degree of relief and protection for those who see the information rights created by the *Adoption Information Act 1990* as intruding unjustifiably on their privacy. Two of the recommendations involve minor qualifications to the information rights created by the Act. In the Commission's view these qualifications are warranted by the considerable relief that the recommendations will provide for those who are the subject of identifying information which may be supplied under the Act. It was clear from the evidence that a considerable amount of the anxiety associated with the release of identifying adoption information was related to the possibility of a reunion or contact carried out in a way, or at a time, over which the person with whom contact is sought had no influence or control.

7.2 For some who made submissions to the Commission, the main concern was about the management of the initial contact. They were not necessarily opposed to some form of contact, but they were worried about a situation in which the contact might be made in a way that was completely unexpected and in a manner which might cause them distress or embarrassment. We heard, for example, of an adopted people who were very happy to make contact with their birth mothers, but did not want their adoptive parents to be disturbed by the contact. They would welcome a letter from the birth parent and an opportunity to meet with them privately, but would not want the birth parent to make direct contact with the adoptive parents. Others who spoke to the Commission had a more absolute desire to prevent the release of identifying information and contact. However, these people would often describe their fears in a way that emphasised the impact of an initial uncontrolled and unexpected encounter. Many submissions, for example, expressed the fear that there would be a sudden knock on the door or a sudden telephone call and this would disrupt their lives.

7.3 Some of those who feared invasions of their privacy had more extreme fears, for example that the adopted person or birth parent would wish to harm them. It is possible to imagine, for example, a case where an adopted person has reasonable fears of a birth parent or relative who has abused the adopted person as a child, or a case where a person is mentally unstable and there is a reasonable fear that they might attack the other person. Fear of such situations may well derive from stereotypes, or simple ignorance of the evidence relating to the experience under adoption information laws. It is clear that in fact such cases are very rare. However, like harmful behaviour from members of non-adoptive families, they constitute a *possible* outcome for people affected by the Act.

7.4 This evidence about fears, justified and unjustified, should be considered together with the other evidence already mentioned, namely that the vast majority of persons wanting to make contact appear to be equally anxious that the initial contact should be of a kind that is welcomed, or at least not resented, by the person approached. In many situations, the difficulty is that one person is not in a position to know the attitude and wishes of the other. It is common to use intermediaries whose main task appears to be to try to identify the way the person approached wishes to manage the contact. Both in submissions to the Commission and in the literature there is a strong theme to the effect that it is desirable to use intermediaries. There should be a period before any meeting occurs during which the wishes and attitudes of the two parties can be made known to each other, and where appropriate, a suitable mechanism for meeting put into place.

AN ADOPTION INFORMATION EXCHANGE

Recommendation

An Adoption Information Exchange should be established, to be administered in a manner similar to the Reunion Information Register, on which any person directly involved in the adoption, ie adoptee, birth parent or adoptive parent (or other persons at the discretion of the Director-General) may leave information or messages for any other such person.

7.5 In the Commission's view, it would be possible to ease the anxieties of many of the persons who could be contacted without compromising the basic principles of the Act. We propose that there should be an Adoption Information Exchange. The system we envisage would be administered in a similar way to the Reunion Information Register, and can be regarded as an extension of it. Its main features should be as described below.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

7.6 People who wished to have a degree of control or influence over the behaviour of any person who could be likely to make contact would have the opportunity to place a message, addressed to the relevant person or class of people, on the Adoption Information Exchange. The system would allow for messages to be left not only by birth parents and adopted people but also by adoptive parents. There would be no restriction on the content of such messages.

7.7 There are many situations in which such a facility would be desirable. A message from an adoptee, for example, might be to the effect that he or she would like the birth parent to make contact discreetly by telephoning a particular number or leaving a letter at a post office box. Adoptive parents might leave a message to the effect that the adopted person was taking the Higher School Certificate examinations and requesting that the birth parent delay any action for some period. Again, adoptive parents might ask that the birth parent should contact them before contacting the adopted person to give them an opportunity to explain to the adopted person that he or she had been adopted. They might, alternatively, wish to stay out of the transaction and might give the birth parent the adoptee's current name and address and encourage direct contact with the adoptee.

7.8 Birth parents, too, might use the system. A birth mother might explain that she has not told her husband and other members of her family and would prefer that no contact be made at all. She might, however, add some information that would be of importance to the adopted person, such as the reasons that she signed the consent for adoption. More commonly, perhaps, the birth parent might ask the adopted person to make contact in a particular way that would not disclose to other members of the family the fact that she had given up a child for adoption many years previously. These examples, of course, relate to people who are anxious about the operation of the Act. It may well be that the Adoption Information Exchange system could also be used for messages that reflect no such anxieties, and might, for example, simply register the fact that the person sought would be delighted to be contacted.

7.9 Messages left on the Information Exchange would not in any way be enforceable or affect legal rights. For that reason, they would not affect the basic principles of the Act. In the Commission's view, however, by facilitating communication between people before contact is made, the system would have considerable potential to reduce the amount of anxiety often associated with exercise of information rights under the Act.

7.10 The difficult question of whether messages should be subject to any form of scrutiny or censorship arises under the existing legislation, and is discussed in Chapter 8. The Commission has refrained from making a firm recommendation on this issue, but leans towards the view that messages left on the Exchange should not be open to censorship by officials. It recommends, however, that the law be clear and explicit on this point, and that appropriate counselling, information and support be provided in connection with the transmission of such messages.

7.11 The possibility of adoptive parents leaving messages on the Information Exchange is an important aspect of it. Earlier in this Report the Commission has noted that the Act does involve retrospective legislation of a kind that can prove very difficult for those who have organised their affairs on the basis that adoption would provide a guarantee of secrecy. Although in the Commission's view this fact does not require any change in the basic principles of the Act, it does justify measures designed to protect the privacy rights of those involved to the extent that such measures can be devised consistently with the basic principles of the Act. It is clear that many of the adoptive parents that have spoken to the Commission would have benefited from such a system.

7.12 It could be argued that the proposal is objectionable because it places adoptive parents in a position of power in the relationship between the birth parent and the adopted person, and that this is inappropriate and inconsistent with the fact that the adopted person is an adult. It might also be suggested that the system could be abused by persons placing false messages. Adoptive parents, for example, might leave a message for the birth parent stating falsely that the adopted person is dead or does not wish to make contact with the birth parent.

7.13 In the Commission's view these dangers are real but should not be exaggerated. Evidence to the Commission indicates that in the vast majority of cases people behave decently, sensibly and sensitively and there is no reason to think that their behaviour in relation to the Adoption Information Exchange would be any different. In addition, it would appear to be self-defeating for a person to leave a false message on the Information Exchange. For example, if adoptive parents left a message containing false information about the adopted person in an effort to discourage the birth parent from trying to make contact, the birth parent might disbelieve that message and carry on the search, eventually discovering the adopted person and also revealing to

the adopted person the fact that the adoptive parents had placed the false message. It is reasonably clear from evidence put to the Commission that in many cases, the truth of such statements in messages about other people would not be accepted unquestioningly. Some birth parents, for example, would be reluctant to believe that the adopted person did not desire contact unless they had heard that view directly from the adopted person. In the Commission's view, therefore, the combination of decency and self interest is likely to mean that the vast majority of messages left on the Adoption Information Exchange would be truthful and sensitive and of great benefit to all parties involved.

AN ADVANCE NOTICE SYSTEM

Recommendation

An Advance Notice System should be implemented by which an adopted person, birth parent or adoptive parent could request prior notice that an application had been made for information under the Adoption Information Act and the release of information be made subject to a delay of two months.

7.14 The Commission also proposes a second mechanism designed to reduce the anxiety arising out of access to identifying adoption information. This is a system which would allow persons who were anxious about being identified to ensure that they had prior notice of any release of information. We propose that it should be possible for birth parents, adopted persons and adoptive parents to lodge an Advance Notice Application. Such an application would be noted on the files of the Registry of Births, Deaths and Marriages in the same way as a contact veto. A person applying for identifying information or birth certificate would be informed that an Advance Notice Application had been made and would be told that the release of the certificate or information would be delayed by a particular period (say two months). At the same time notice would be given to the person who lodged the application that identifying information had been requested and that information would be released at the end of the prescribed period. This system, by giving warning that identifying information would be released, would allow the person to take whatever steps they wished to take during that period. They might, for example, leave a message on the Adoption Information Exchange. They might tell members of their family about the situation in a way that would be less traumatic for them than if contact was made without prior notice.

7.15 As with the recommendation for an Adoption Information Exchange, this proposal includes the adoptive parents¹ and is intended to relieve anxiety on their part, as well as on the part of adopted persons and birth parents who would prefer not to be contacted without prior notice. Unlike the Adoption Information Exchange proposal, it does involve a small qualification on the rights of an adopted person or birth parent to identifying information in that it delays the person's access to the information by the prescribed period. In the Commission's view this small modification of the rights of information recipients is not too high a price to pay for the considerable easing of anxiety that this system might provide to a number of persons who will be identified by the release of adoption information. In particular, it may be that adoptive parents who have not told the adopted person of their adoptive status would find this system attractive.²

7.16 The Commission has considered the question of whether the system proposed could be made to apply automatically in all cases. Such a system would involve Departmental officers locating the person about whom information is to be released and asking them if they would wish to defer supply of the information, or put a message on the Adoption Information Exchange, or take any other action. Such a system would be expensive and would be likely to cause delays, as well as considerable distress in situations where the search was not successful or other difficulties arose in the course of administration. It would involve a considerable use of resources which would be unnecessary in the majority of the cases. In addition, the contact made by officers may in some cases be as unwelcome as contact by the adoptee or birth relative, or contact by an intermediary on their behalf. In the Commission's view such a proposal would not be an efficient or appropriate adjustment of the interests of the parties. It is sufficient, in our view, to establish a system which would enable protection to be given to those persons sought who take appropriate action to protect their interests, either by leaving a message with the Adoption Information Exchange or applying for Advance Notice.

DISCRETIONARY POWER TO REFUSE BIRTH CERTIFICATES OR PRESCRIBED INFORMATION

Recommendation

The Adoption Information Act should be amended to give the Director-General a discretion to refuse to supply a birth certificate or prescribed information or to attach conditions to the supply of that information. Adopted persons, birth parents and (with the consent of the adopted person) adoptive parents should be able to apply to the Director-General to exercise the discretion. The power should be limited to exceptional circumstances where it is necessary to avoid serious harm. It should be subject to the Community Welfare Appeals Tribunal.

7.17 It has been stated earlier (in Chapter 6) that the Commission found no reason to overturn the basic principles of the Act, and for this reason does not recommend that there should be a right to prevent the issue of a birth certificate or the release of prescribed information.

7.18 It has, however, been proposed by the Family Information Service for the Department of Community Services that in a very limited class of cases it would be appropriate to limit access to identifying information:

There have been a *very small* minority of cases where it would seem that access to identifying information should not be permitted. However the rights of an adopted person or birth parent to access information under the Act is an entitlement and no capacity exists to deny a person access to identifying information.

It is submitted that a provision should exist allowing discretion to either prevent the issue of a birth certificate or any form of identifying information or to allow issues only after compulsory counselling or other conditions.

Due to the serious nature of denying a person access to rights, the exercise of this discretion should remain at a most senior level (eg Director-General) and be subject to appeal provision.

Such cases may include birth parents who have been found guilty of serious child abuse or situations where the party accessing the information has stated that the information will be used for harmful or illicit reasons.

Where the discretion not to allow access to identifying information is exercised, the client should be informed in writing of the decision and should have the right to appeal against the decision. Appeals should rest with the Community Welfare Appeals Tribunal.³

7.19 The Commission agrees with the substance of this submission.⁴ There should be provision for identifying information to be withheld in exceptional circumstances, where it can be demonstrated that there are sufficient reasons for doing so. The Commission also agrees that it is essential that any such decision should be subject to review by an independent body.

7.20 In light of the seriousness of the matter, in the Commission's view it is arguable that the discretion should be exercisable only by an independent body, such as the Supreme Court or the Tribunal.⁵ On the other hand, there are obvious practical advantages in having the decision exercisable by the Director-General, with a right of appeal to the Community Welfare Appeals Tribunal, as recommended by FIS.

7.21 Accordingly, the Commission recommends that the Act be amended to provide that the Director-General may make an order preventing or deferring the issuing of a birth certificate, and/or the supply of prescribed information, or imposing requirements as to counselling or otherwise, where he or she is satisfied that in the exceptional circumstances of the case, such an order is necessary to protect a person from serious harm.

7.22 It is also desirable that an adopted person or birth parent who feels that there are such circumstances in his or her case should be able to apply to the Director-General for such an order, and should have an appeal to the Community Welfare Appeals Tribunal in the event that the application is refused. Adoptive parents should also be able to make such an application, but only with the consent of the adopted person.

7.23 It is acknowledged that lack of identifying information may make it difficult for the person seeking information to take full advantage of the review procedure before the Tribunal. Being unaware of the identity of the other person, the applicant would not normally be able to cross-examine the person or attack the person's credibility. However, the substance of the matter will be an allegation that supplying the information will place a person at risk of serious harm, and this will normally involve allegations about the recipient of the information, for example that he or she has been guilty of assaults. It will be possible to provide evidence and argument to meet such allegations, without knowing the other person's identity. It will be a matter for the Community Welfare Appeals Tribunal in any such case to devise the procedures that are most appropriate for the particular case. Even if the procedural difficulties lead to a limited contribution from the other person, the process will nevertheless be valuable because it will provide a forum in which the Director-General or the individual applicant will have to convince the Tribunal that on the basis of available material, the discretion should be exercised.

FOOTNOTES

1. There is some similarity between this proposal and a suggestion by the Registry of Births, Deaths and Marriages "that the Commission might consider giving adoptive parents the right to lodge a contact veto on behalf of their adopted son or daughter on the proviso that it is only binding for a period of three months at which stage it then lapses and cannot be extended": Registry of Births, Deaths and Marriages *Submission* at 2.
2. The Commission understands from FIS that in certain cases, as where an adopted person is seriously disabled, co-operation between FIS and Registry of Births, Death and Marriages has led to an arrangement by which the person is given advance notice of a search, and the release of information presumably delayed, so that lodgment of a veto need be considered only where it is necessary. This practice, whether or not authorised under existing legislation, illustrates the need for the Commission's recommendation.
3. FIS *Submission* at 8-9.
4. In England, the Court of Appeal has held that there is room for limiting information in truly exceptional circumstances (in that case a mentally unstable prisoner had murdered his cell mate in the belief that the cell mate was his adoptive mother; the prisoner had given cause for thinking that he would kill again), even where the legislation makes no provision for such cases: *R v Director-General; ex parte Smith* [1991] 2 WLR 782, CA.
5. If the power is given to the Tribunal, there should be a right of appeal on the merits to the Supreme Court.

8. Particular Matters

8.1 In the course of the review, the Commission formed the view that there are a number of other aspects of the *Adoption Information Act* 1990 and the *Adoption Information Regulation* 1990 which should be addressed. Many of these matters were raised in submissions, both from the general public and from the administrative agencies with functions under the Act. This Chapter presents the Commission's views and recommendations on these matters.

BIRTH CERTIFICATES AND PRESCRIBED INFORMATION

Recommendation

The Act should be amended to give the Director-General a discretionary power to supply birth certificates, identifying and other information in situations falling outside existing statutory entitlements.

8.2 Adopted persons and birth parents must respectively obtain the original and amended birth certificate of the adopted person before they are entitled to prescribed information.¹ There may be practical advantages in this restriction, since it requires all applicants for information to make an initial application for the birth certificate, on which is noted any veto. However the rule creates problems in the case where a person cannot obtain the birth certificate. The clearest case of this problem was provided in a submission to the Commission from a person who was a foundling, and had no original birth certificate.² A less serious problem is that the provision does not cater for a person who wants prescribed information, perhaps of a quite limited kind, but does not want to obtain the relevant birth certificate. In some cases, the applicant already knows the identity of the person in question. Sometimes the applicant has possession of the order of adoption, which reveals the identity of the birth parents, and in others, for example in adoptions by relatives, the applicant will know the identity of birth relatives from other sources.

8.3 The Act already provides, in s12, a discretionary power to supply prescribed information to a person who has not obtained a birth certificate, but does not specify any guidelines for the exercise of the discretion. The Commission recommends that the Act or the Regulation be amended to make more explicit provision for the supply of birth certificates or prescribed information in circumstances where it is impracticable for the applicant to apply for a birth certificate, or where the applicant does not wish to apply for a birth certificate, or in other circumstances where the Director-General considers it appropriate. In all such cases, it is necessary to bring any contact veto to the notice of the applicant, and, while this could be done administratively, it is desirable that it be expressly required by an amendment to the Act or Regulation.

8.4 It would be possible to go further and reconsider the merits of the basic system of building entitlement to prescribed information on the acquisition of the birth certificate. Some submissions indicated that problems had arisen in this regard. However the strategy used by the Act has significant advantages, and in the Commission's view it would be premature to change the approach of the Act at this stage. However this aspect of the legislation should be kept under review, and may need to be reconsidered if problems persist after the implementation of the above recommendation for the clarification of s12.

BIRTH FATHERS

Recommendations

The legislative provisions relating to birth fathers should be clarified in order to implement more fully the objects of the Act.

Clause 12 of the Regulation (which prohibits release of information identifying an unacknowledged birth father) should be repealed.

8.5 The legislation contains puzzling provisions in relation to paternity. A man claiming to be a birth father and seeking an amended birth certificate under s8 must either be shown on the birth certificate as the father or be presumed to be the father under the *Children (Equality of Status) Act* 1976 (NSW). This Act creates presumptions of paternity (and maternity) in a range of situations.³ A man who wishes to lodge a contact veto

must merely show that he is a "birth parent",⁴ and the Act does not require that he be shown on the birth certificate or presumed to be a father under the 1976 Act. The test is different again in the context of protecting privacy. The Regulation includes a guideline⁵ restricting the supply of information relating to "unacknowledged birth fathers", defined as birth fathers who are not shown on the birth certificate, or presumed to be fathers under the 1976 Act, or presumed to be fathers under the *Family Law Act 1975* (Cth) (which contains similar but not identical presumptions of parenthood). The complexity of these provisions suggests that there is a need to examine the position of birth fathers with some care.

Birth fathers' rights to information

8.6 The Willis Committee considered that birth fathers should have the same rights to information as birth mothers.⁶ The Committee thought, however, that it would be best to require those birth fathers whose names were not on the original birth certificate to take appropriate steps to have their names put on the Register of Births. This can be done in two ways. First, the father can sign a paternity acknowledgment, and either have it countersigned by the mother or seek to have it recorded in the Register of Parentage Information. The Principal Registrar, if satisfied by appropriate evidence of paternity, and after complying with certain procedures, may then enter the man's name as father. Second, the father can apply to the Supreme Court for a declaration of paternity: if the evidence is such as to lead the Supreme Court to make the declaration, the name is then entered on the certificate. The Willis Committee, therefore, recommended that birth fathers should have information rights under the Act, and for this purpose "the birth father shall be the father who is lawfully noted on the adoptee's original birth certificate either at the time of registration or subsequently".

8.7 The *Adoption Information Act* departs slightly from this approach, in that under s8 the birth father has a right to information if he is either shown on the birth certificate *or is presumed to be the father under the Children (Equality of Status) Act 1976*. Perhaps this provision was designed to remove the necessity for the father to have his name put on the Register. Where one of the presumptions under the *Children Equality of Status Act* applies, it may have been thought that proof of paternity was relatively simple⁷ and there was no reason why the Director-General should not act on the basis of that presumption. A father who is neither on the Register nor assisted by a presumption under the 1976 Act should therefore take the appropriate steps, as noted above, to have his name placed on the Register.

8.8 The Commission's inquiries suggested that the effect of these provisions was not widely understood. Many people seemed to believe that if the father's name had not originally been placed on the birth certificate, he had no rights under the Act. The Commission recommends that in order to clarify the position an explanation of the law and procedures should be prepared and made available to applicants, and indeed to anyone interested in the legislation. The information sheet should point out prominently that there is an appeal to the Community Welfare Appeals Tribunal from the refusal of the Director-General to supply a birth certificate.⁸

8.9 Further, the Commission suggests that consideration might be given to amending s8 to provide (i) that information rights are given to birth fathers; and (ii) that in determining whether a man is a birth father the Director-General may act on any of the presumptions arising out of the *Children (Equality of Status Act) 1976*, including the presumption arising from the entry of the applicant's name on the birth certificate.

Where birth father's identity is sought

8.10 It is necessary to consider separately the situation where identifying information about a birth father is sought by an adopted person. It is clear that, as explained above, the Act gives to adopted persons the right to their original birth certificate and to prescribed information which is capable of identifying both of the birth parents. In the vast majority of cases, the mother's name and then-current address will be on the birth certificate,⁹ and the father's name will not. In practice, the adopted person will usually be able to learn the present identity and whereabouts of the birth mother, but, because of the limited information recorded, tracing the father will frequently be more difficult. However it is clear that the legislative intention was that in relation to the birth father, as much as the birth mother, the adopted person was to have the right to identifying information, and the contact veto should be available to birth fathers who did not wish to be contacted.¹⁰

8.11 In practice, because the birth father's name is rarely on the birth certificate, the adopted person's search will sometimes depend on whether identifying information can be obtained through the prescribed information. In

some cases, of course, the father's identity will be revealed by the mother, or by some other relative, or by some documents held by them. In many cases files held by FIS or another adoption agency will contain identifying information about the birth father.

8.12 The Regulation contains a number of provisions relevant to this situation. First, the prescribed information available to the adopted person does not include the birth parent's last known name and address, except where it was obtained at or before the making of the adoption order, or the person concerned has consented to its being supplied.¹¹ Second, the Regulation provides in clause 12 that an information source is not to supply information which would identify an "unacknowledged" birth father, defined as one who is not on the birth certificate or presumed to be the father under the *Children (Equality of Status) Act 1976* or the *Family Law Act 1975* (Cth).¹²

8.13 The effect of these provisions appears to be to prevent adopted persons from identifying their birth fathers except where the birth fathers are on the birth certificate or fall within a presumption of paternity. It is difficult to see the justification for this, for it is inconsistent with the basic principle that adopted persons should have the right to identify their birth parents.¹³ It also appears to discriminate between birth mothers and birth fathers, both technically and in substance. The technical discrimination is that there is nothing to prevent prescribed information from identifying a birth *mother* whose name was not on the birth certificate, a rare but possible occurrence (as where the wrong name is on the birth certificate). The substantive discrimination is that in practice the effect of the Regulation is to create a situation in which adopted persons have access to records which allow them to identify their mothers but are prevented from having access to records which would allow them to identify their fathers. Whether one regards this as a discrimination against mothers or against fathers might be a matter of debate, although it is arguably a discrimination against mothers, since fathers usually can, if they wish, have their name placed on the birth certificate, while it is not possible for birth mothers, whose names are normally on the certificate, to have their names *removed* from the certificate. The practical result is that in many cases fathers may, by declining to take action, frustrate the intended operation of the Act in providing to adult adopted persons information that identifies their birth parents. and prevent the adopted person from exercising their rights under the Act.¹⁴ To the extent that the system allows some birth fathers to conceal their identity, it gives them, in effect, the opportunity to impose an information veto; yet, as we have seen, it is a basic principle of the Act that the adopted person's access to identifying information should not be subject to the consent of the birth parents, their rights being sufficiently protected by the contact veto system.

8.14 Mr Malcolm Squire and others have identified a dilemma facing a birth father whose name is not on the birth certificate.¹⁵ Assume that man is said to be the father in some records associated with the adoption, or is known to be the father by some relative. Assume also that he does not want to be identified or contacted. If the man lodges a contact veto, his identity must be disclosed to the searching adopted person, since otherwise that person would not know who it is that must not be contacted. On the other hand, if he fails to do so, he runs the risk that the adopted person will discover his identity in some other way, and, unrestricted by a veto, make unwelcome contact with him. This dilemma does indeed arise, but to see it as posing a legal problem appears to presuppose that the father *should* be entitled to keep his identity secret from the adopted person. This is, however, contrary to the basic principles of the Act, under which he, like the mother, is entitled to use the contact veto system, but not to prevent the searching adopted person from discovering his identity. It follows that in the Commission's view the Regulation should be amended in this area. Clause 12 should be repealed.

8.15 Clause 14 is not vulnerable to the same criticisms, since it applies to birth parents equally. The Commission is of the view, however, that on other grounds clause 14 should be repealed. This matter is dealt with later in the Chapter.

Contact vetoes

8.16 Birth fathers, like birth mothers, are entitled to lodge a contact veto. A man who wishes to lodge a contact veto must therefore satisfy the Director-General that he is a birth father. Curiously, in this context the legislation makes no reference to presumptions of paternity. In the Commission's view, however, the relevant provisions should be the same as those relating to establishing status as a birth parent for the purpose of information rights, a matter which has been discussed above.

Adoption Information Exchange

8.17 The Commission's recommended Adoption Information Exchange will of course be available to fathers who do not wish to be contacted, or wish to keep their identity secret. The father can put on the Information Exchange an unsigned note explaining his desire that his paternity remain secret, and, if he chooses, can provide non-identifying information, or express any wishes he has relating to the matter. As noted elsewhere, the evidence strongly suggests that such wishes will be respected in the vast majority of cases.

ATTAINING MAJORITY

8.18 Different views were expressed in submissions, as they had been in evidence to the Willis Committee, on whether eighteen years was the most appropriate age at which to treat the adopted person as an adult for the purposes of the Act. There was considerable support for the present position, but also for some later age. Very few argued that an age below eighteen years was appropriate.¹⁶ The arguments in favour of raising the age stressed that at 18, many young people were studying for the Higher School Certificate, and more generally were at a stage in their lives that was fraught with new challenges and uncertainties associated with the transition to adulthood. The assertion was that 18 year olds should not have to address the difficult issues relating to adoption information at this stage in their lives. It would be better, on this view, to defer until later the difficult choices involved in exercising rights under the Act. The main argument in favour of 18 years is, of course, that this is the age of majority for other purposes and it would be wrong to deny to people who are otherwise regarded as adults the opportunity to exercise rights under the Act.

8.19 In the Commission's view, it is clearly right to set 18 years as the age at which the adopted person may exercise information rights under the Act. It is a different issue, however, whether the law could set a later age for the purpose of protecting the adopted person against unwanted contact. It would be possible, for example, for the law to provide that although an 18 year old adopted person could apply for his or her birth certificate, there should be some limit on contact by a birth parent, or perhaps some restriction on the release of identifying information until the person reached the age, say, of 20. An example of such a provision would be a rule that a birth parent could not make contact with the adopted person until the age of twenty, unless the adopted person had expressed willingness for contact to be made.

8.20 In the Commission's view, however, any such restriction would have to make provision for the 18 year olds who did *not* want to have such a restriction imposed. It would follow that all 18 year old adopted persons would have to be told of their rights to make this choice and would therefore have to give consideration to the issues. Such proposals would therefore be little different from the present system, in which the adopted person must give consideration to whether to lodge a contact veto.

8.21 On this issue, therefore, the Commission's conclusion is that the age of 18 is the appropriate age for creation of rights under the Act, both in relation to information and in relation to the contact veto system. It is recognised that difficulties can arise from the fact that 18 year olds might be studying for the Higher School Certificate, or are for other reasons unready for contact. These should normally be appropriately dealt with by the recommended Adoption Information Exchange and Advance Notice System which have been recommended by the Commission. Together they would allow these matters to be drawn to the attention of a birth parent before contact is made, and would give the adopted person or the adoptive parents a "breathing space" before contact occurs.

BIRTH PARENTS' CLAIM TO NON-IDENTIFYING INFORMATION DURING CHILDHOOD

Recommendation

Birth parents should have a statutory right to non-identifying information about the adopted person during their childhood corresponding to the existing rights of adoptive parents to such information about the birth parents.

8.22 A number of submissions¹⁷ urged that during the childhood of the adopted person, the birth parents should have the right to non-identifying information, corresponding to the adoptive parents' rights to non-identifying information about the birth family.¹⁸ Unlike most of the issues dealt with in this Report, this issue relates to the adopted person's childhood, and involves issues of current adoption practice which are peripheral to the main issues raised in this review. For this reason, the Commission's views on this matter are tentative only.

8.23 A distinction should be drawn between the rights of the adoptive parents and those of birth parents: the rationale for providing information to the adoptive parents is to promote the welfare of the child, whose interests, at least during childhood, are to be regarded as the paramount consideration.¹⁹ Nevertheless, it is strongly arguable that the child's short-term and long-term interests will be served by respecting the interests and dignity of the birth parent, and avoiding the apparent discrimination involved in the present law, which denies the birth parent a legal right to information about the welfare of the child. Provision of non-identifying information would be greatly desired by most birth parents, and would arguably contribute to the welfare of all concerned, and, in the future, facilitate a harmonious relationship with the adult adopted person, if that is desired. The Commission's view, therefore, is that it would be appropriate to create for birth parents a right to non-identifying information about the health and welfare of the adopted persons during their childhood.

BIRTH PARENTS' RIGHTS TO IDENTIFYING INFORMATION

8.24 The granting of information rights to birth parents is a basic principle of the Act and has been considered above in Chapter 6. The Commission found that experience under the Act provides no reason to re-examine this principle. Here we consider the narrower question whether the nature and extent of the birth parents' rights are appropriate.

8.25 Under the Act, the rights of the birth parent are a mirror image of those of the adopted person: each may obtain a birth certificate, in one case the original and in the other the amended version, and prescribed information. The Commission's research indicated that this approach has several important advantages. At a practical level, it is workable, and conveniently linked with the contact veto system: in each case, the person is made aware of any veto at the time of applying for the birth certificate. At a symbolic level, the equivalence of the rights of both parties is widely perceived to express a public recognition of the information needs of the birth parents and the appropriateness and "normality" of their wishing to identify and/or contact the adult adopted child. This perceived public recognition obviously meant a great deal to many of the birth mothers who made submissions to the Commission.

8.26 On the other hand, the strategy has some disadvantages. In particular, the amended birth certificate reveals information about the adoptive parents, although the interest of the birth parent is essentially in identifying the adopted person. Adoptive parents have said, with some justification, that the law is unfair in that it gives the birth parents identifying information about them, but gives them no equivalent rights to identifying information about the birth parents.²⁰ To the extent that the law provides the birth parent with personal information relating to the adoptive parents, it is arguably a departure from one of the objectives of the Act, namely to avoid undue intrusion on privacy.

8.27 It might be thought that the law should, instead, provide the searching birth parent only information identifying the adopted person. In practice, however, such a provision is not without difficulty. Information about the *present* name and whereabouts of the adopted person is not normally held by the Registry of Births, Death and Marriages or the Family Information Service. Providing it would require, in most cases, a search to be made by staff at one or other of those agencies. It would thus involve considerable additional expense, and would undermine one of the intended characteristics of the present system, namely that the exercise of the rights created by the Act is a matter for the individuals involved. A further complication is that many adoptive parents, and indeed some adopted persons, would prefer that the birth parent first made contact with the adoptive parents. A system that required staff to make the initial approach would mean that they would have to deal with this sometimes delicate question, and it is not unlikely that in some cases the handling of the situation would give rise to complaints by some of the parties involved.

8.28 The present system, therefore, has significant practical and symbolic advantages, although it has the disadvantage that it has the potential to expose adoptive parents to what they might reasonably regard as undue intrusions on their privacy. This disadvantage is one of the matters intended to be addressed by the Commission's recommendations relating to the Adoption Information Exchange and the Advance Notice System. If these recommendations are adopted, and function as expected, adoptive parents who wish to avoid disclosing information about themselves will indicate this in messages left for searching birth parents, the vast majority of whom, as previously indicated, will respect such wishes. Such a system would very largely address the disadvantage identified above. Ideally, the system will operate so that in the majority of cases the parties will be aware of each others' wishes before decisive steps are taken.

8.29 The Commission's view, therefore, is that at this stage there should be no change in the law relating to the rights of the birth parent to identifying information. It would, however, be appropriate to keep this matter under review, especially in the light of the functioning of the proposed Advance Notice System and Adoption Information Exchange.

PEOPLE WITH DISABILITIES

Recommendation

The Adoption Information Act 1990 and the Disability Services and Guardianship Act 1987 should be amended to give the Guardianship Board necessary powers to allow it to make appropriate orders where, because of disability, it is impossible or unreasonable for people to exercise rights under the Adoption Information Act personally.

8.30 A number of submissions addressed difficulties arising where persons having rights under the Act suffered from intellectual or emotional disabilities which made it impossible or unreasonable²¹ for them to exercise their rights. The problem was most often put in connection with adopted persons with disabilities, and in relation to the use of the contact veto, but it arises equally in relation to the exercise of rights to information. It was also noted in relation to birth parents whose disabilities preclude them from exercising their rights under the Act. The Guardianship Board has also drawn the Commission's attention to some aspects of all the relevant legislation, ie the *Disability Services and Guardianship Act 1987* and the *Adoption Information Act*, which require clarification and minor amendment in relation to exercise of rights created by the *Adoption Information Act*.

8.31 In the case of younger adopted persons or birth parents, some submissions argued that the right to lodge a veto should be exercisable by their parents. It is of course strongly arguable that in these situations the parents will usually know more, and care more about, the person than anyone else, and would exercise the rights with his or her interests at heart. Two issues arise, however. First, to grant such parents a general right to exercise rights on behalf of an adult adoptee or a birth parent would violate the basic principles of the Act, and it is therefore necessary to determine whether, in a particular case, it is impossible or unreasonable for the person to exercise his or her own rights. Second, if that is established, the question arises whether the law should presume in all cases that the parents are the most appropriate people to exercise rights on behalf of the person.

8.32 In the Commission's view the first question should be determined by the Guardianship Board. It is arguable that the same Board should also determine the second question: this would be highly convenient, since a great deal of the evidence obtained by the Board would be relevant to both issues. On the other hand, the Board may not have expertise in relation to the *Adoption Information Act 1990*. On the whole, the Commission's view is that the Act (and if necessary the *Disability Services and Guardianship Act 1987*) should be amended to provide that on application made by any person with a proper interest, the Guardianship Board should consider whether a person having rights under the Act has a condition or disability which would make it impossible or unreasonable for the person to exercise rights under the Act. In that event, the Board may either exercise rights on behalf of the person, appoint another person or person to do so, or refer the matter to the Director-General. There should be provision for appeal, in the case of decisions by the Director-General to the Community Welfare Appeals Tribunal.

8.33 Concern has also been expressed in relation to people whose disabilities are not such as to bring them within the jurisdiction of the Guardianship Board, but nevertheless create some practical problems in the exercise of their rights under the *Adoption Information Act*. The Commission has noted the procedures operating informally to provide a measure of security to the relatives of these people, usually the adoptive parent. The Commission's recommendations for an Advance Notice System should formalise the position. This mechanism will give the relatives of any adopted person or birth parent with a disability an opportunity to approach the Guardianship Board for an appropriate order, or to take any other steps which would be necessary or useful (including placing a message on the Adoption Information Exchange or seeking professional assistance in dealing with the matter) to manage the future relationship of their relative and the person who is getting identifying information about them.

RELATIVES' ACCESS TO INFORMATION

Recommendation

The Act should be amended to allow, subject to the Director-General's discretion, the rights to information and to place a veto of an adopted person or a birth parent to be inherited by relatives on that person's death. The contact veto system should be extended to cover such applicants.

During the lives of the parties

8.34 Consistently with the intentions of the Willis Committee,²² the Act limits rights to identifying information to the adopted person and the birth parents during the lives of the parties; it will be a matter for them whether they share the information with other members of their families.

8.35 This policy has caused apparent frustration in some cases, especially for siblings. The Registry has commented that:

[c]urrently there is no provision for non-adopted siblings to have access to information on adopted siblings. The Registry has had many requests from people seeking information on adopted siblings particularly from children of a relinquishing mother who are aware of the existence of an adopted brother or sister, but because the birth mother is not interested in contact they can not proceed any further. The adopted person also may not be interested in contact with their natural mother but would possibly be interested in contact with a full brother or sister if they knew such a person existed.²³

8.36 As the Registry also points out, there is a striking contrast here with the rights of *adopted* persons, who can usually obtain identifying information about their birth siblings, because this is included in the prescribed information to which they are entitled.

8.37 In the Commission's view, this is a difficult issue. Expanding the class of birth relatives who have information rights exposes members of the adoptive family to further contacts, which in some cases will be unwelcome. The present law establishes primary rights to identifying information for birth parents and adopted persons, and it may be too early to recommend a significant expansion of the categories of persons having information rights. At present, the community is adjusting to the situation created by granting of information rights to birth parents, a recent development for which many people are unprepared. It may well be that such expansion is appropriate at some future time, but the Commission does not recommend it at this stage. Birth siblings who cannot persuade their parents to exercise their information rights under the Act may take some comfort from the fact that they will be found if the adopted person searches for them, and that they may leave messages for their birth siblings on the proposed Adoption Information Exchange.

Information rights after death of a party

8.38 The question arises, however, what information rights exist after the death of an adopted person or birth parent. The Willis Committee recommended that "in the event of a birth mother, birth father or adoptee's death, other relatives inherit the right of access to information in the order laid down by the *Wills, Probate and Administration Act 1898* s61(b), and any further access shall be at the discretion of the Director-General of Family and Community Services".²⁴

8.39 Curiously, the first and major part of this recommendation has not been implemented, although s9, apparently based on the second part of this recommendation, gives the Director-General certain discretionary powers to supply information to relatives. Even these discretionary powers, however, are not available in the situation envisaged by the Willis Committee. They allow information to be provided relating to a deceased person, but do not apply to allow information relating to a surviving person to be obtained by relatives of a deceased person. For example, where an adopted person has died, s9 allows the discretionary release of information to birth relatives (the birth *parents*, of course, retain their rights under s8). But the Act does not provide, even on a discretionary basis, for information to be provided to members of the birth family if the adoptee is still alive and the birth parent has died.²⁵

8.40 Although there appears to be no difficulty with the general intention of this recommendation in the *Willis Report*, it has been pointed out to the Commission that it involves apparently insuperable difficulties in practice,

especially since there may be several people equally eligible as next of kin. FIS has accordingly recommended²⁶ that instead of the system of strict entitlement by priority suggested by the Willis Committee, there should be a discretion in the Director-General as to which relatives should receive the information. The Commission agrees with this, although it is desirable that the provision should indicate that the Director-General should normally reflect the priorities set out in the *Wills Probate and Administration Act*. It is therefore recommended that s9 should be amended accordingly.

8.41 A particular aspect of this problem was identified in submissions which argued that the Act was defective in that where a birth parent has died, the Act fails to give information rights to birth siblings about any birth sibling who has been adopted, although it gives information rights to adopted brothers and sisters. This criticism is well founded. On the death of a birth parent, the adopted person is entitled to prescribed information which includes the death certificate and information about the birth parent's other children.²⁷ However because the Act does not implement Recommendation 7 of the Willis Committee, those children have no right to obtain information relating to a birth sibling who has been separated from them by adoption. It was clear from the Commission's inquiries that adoption information was often of great interest and importance to birth siblings, and that amendment of s9 is a matter of considerable urgency.

Contact veto

8.42 The creation of "inherited" information rights on the death of a birth parent or adopted person should be accompanied by appropriate modifications to the contact veto system: clearly people should have this protection in the case of undesired contact by birth relatives as well as by adopted persons or birth parents.²⁸ Relatives obtaining information will be affected by any existing veto.²⁹ It may be, however, that in some cases the veto-lodger failed to refer to relatives because he or she knew that they had no information rights under the Act. To cater for that situation, it may be appropriate for the Director-General to contact veto-lodgers and inquire if they wish to amend the veto accordingly.³⁰

8.43 In some cases people have refrained from lodging a veto because they know that the other person has died.³¹ It would therefore be appropriate for implementation of the Commission's recommendation to be deferred for a period during which appropriate public education would take place.

8.44 The Commission agrees with the submission³² that since the right to information is intended to be coupled with the right to impose a contact veto, it would be appropriate to provide that on the death of a person, the next of kin having information rights should also have the right to lodge a contact veto.

LAST KNOWN NAME AND ADDRESS

Recommendation

Clause 14 of the Regulation (which prescribes when information as to "last known name and address" can be released) should be repealed.

8.45 A number of information sources³³ submitted that the restriction on release of information relating to a person's "last known name and address" in clause 14 posed some dilemmas. It seemed unnecessarily frustrating to a person trying to locate a parent or child to proscribe release of relevant information held by the information source because it did not satisfy the requirements of clause 14. It was a matter of chance whether the information was readily available or on the public record or otherwise.

8.46 It has also been pointed out that there is an inconsistency between the Regulation of Births, Deaths and Marriages relating to information about the last known name and address of a person, and the *Registration Act* and Registry policy regarding release of registered information³⁴ An adopted person is entitled, among other things, to any marriage certificate or death certificate of the birth parents. Such certificates will normally be issued by the Registry containing the address at the time of registration. However cl14 provides that the "last known name and address" can be released only in limited circumstances.

8.47 In the Commission's view it is difficult to see why, consistently with the basic principles of the Act, adopted persons searching for their birth parents should not have the benefit of any information about recent

addresses of their birth parents that is held by an information source, and vice versa for birth parents. The practical effect of this provision may be to encourage some searchers to trace their parents or child through other relatives, which can lead to difficulties and is inconsistent with the general aim of the legislation to give primary information rights to adopted persons and birth parents. It is accordingly recommended that the Regulation be amended so that it does not exclude information about the last known address of a person. If, however, it is to be retained, then it would appear necessary to amend the Regulation to provide that the address of the person should be removed from the copy of any certificate issued as prescribed information under the Act.

PERUSAL OF MAIL BY FIS

Recommendation

The legislation should clearly prescribe the circumstances in which FIS staff have the right or obligation to examine messages they pass between people associated with adoption. Furthermore, guidelines should ensure appropriate procedures are followed in relation to taking and giving such messages, and are made known to senders and recipients of messages.

8.48 It is the practice of FIS to read mail which it is asked to pass on between parties, and this has led to some criticism. Messages are left with contact vetoes, and also by people the subject of a veto and on the Reunion Information Register. In its submission, FIS states that it considers itself under a legal obligation to do so, in order to prevent breaches of the Act.³⁵ A message may contain, for example, information which would identify an unacknowledged birth father (cl12), lead to the harassment of a person who has lodged a veto (s28), or contain confidential information (cl11). FIS considers that in forwarding correspondence it is acting as an information source releasing information, and "this implies that FIS as an information source is responsible for the content of the information". Furthermore, they consider themselves to be acting responsibly in ensuring that the person receiving the information is not distressed by the content or the manner in which it is given.

8.49 The Commission is fully aware of the serious and legitimate concerns of FIS in this matter, which it understands to have been much discussed by staff. However in the Commission's view it is by no means evident that FIS has general legal responsibility relating to the contents of private correspondence passed on through it, or any corresponding obligation or entitlement to peruse such correspondence. It is doubtful whether in passing on such correspondence, FIS is acting as an information source. Differing views could be taken about the applicability of clause 11 to all situations where FIS is transmitting messages between people, since it is not clear that FIS is engaged in supplying a birth certificate or prescribed information. It is at least arguable that the contents of such letters do not constitute "prescribed information" and that FIS is not "supplying" the information by simply passing on a letter to its intended recipient. There is nothing in the legislation that expressly requires or entitles FIS staff to examine such correspondence to see if contains information which is distressing, or which involves a breach of the Act. Obviously such messages could also be passed through personal communications.

8.50 In the Commission's view, it is important that the law should be explicit about this matter. It should state whether some or all FIS staff are entitled to, or required to, examine messages and correspondence. If there is to be such an entitlement or obligation, the law should set out the basis on which it is to be exercised, and what action should be taken where the message is found to breach the relevant guidelines or rules.

8.51 The Commission received no detailed submissions on this difficult issue, and is reluctant to make a firm recommendation on what the law should be. On one hand, it has been pointed out that the content of messages can be highly distressing, and can involve disclosures of personal information that breach the spirit if not the letter of the Act. Such messages may stem from malice, or from misinformation, or from bad advice about the law. It is arguably highly desirable that in this situation FIS should be able to exercise a measure of control, declining to pass on messages that, deliberately or inadvertently, involve unnecessary distress or disclosures that violate persons' privacy and are not authorised by the Act.

8.52 On the other hand, some would say that it is inappropriate that FIS staff be placed in such a powerful position, and that there is insufficient reason to depart from the general position that officials have no general right to peruse confidential communications. It could be pointed out that there is no such scrutiny of oral or written direct communications between the parties: for example, where an adopted person meets a birth parent, there is no restriction on what they can say to each other about the identity or character of other people, such as the birth

father or other relatives. A distinction could be drawn between supplying information held by agencies and other "information sources": it is reasonable for the law to lay down what parts of such information may or may not be supplied. But it is not reasonable, on this view, for the law to go further and censor communications between adults associated through adoption. This argument supports the view that in facilitating communications between adults, FIS is not acting as an "information source" and has no more right to read the correspondence directed through it than it does to intercept telephone conversations or open letters sent through the ordinary mail.

8.53 If the view is taken that these communications should not be scrutinised by FIS staff, it is particularly important that the administration of the system should address the concerns expressed by FIS, and reflected in clause 11(b), that appropriate counselling should be available to persons who receive such correspondence, and also to those who send messages. In the event that these communications are to be treated as confidential, the Commission suggests procedural guidelines include the following measures:

At the place where correspondence may be left, there should be posters and/or brochures explaining the system and drawing people's attention to issues arising from such communications, such as the likely effect of distressing information on the recipient, and the need to comply with the provisions of the legislation. The literature should also draw attention to alternative approaches, and to sources of advice, support, and information.

Similar literature, and immediate counselling, should be available at the place where messages are received.

There should be a requirement that messages be left, and received, in person, either at Departmental offices or, where this is not convenient, in some other place where the persons involved can be provided with the literature and assistance referred to above.

If it be thought that the above proposal is unduly expensive or inconvenient, an alternative proposal is that persons wishing to send messages by ordinary mail could be given the option of doing so *on the basis that the messages would be read by FIS staff*, who could decline to send messages by mail where they thought that this should not be done. In this way, the system would provide appropriate protection for recipients of clearly distressing information, while providing a simpler form of transmission in relation to less sensitive messages. This system, however, would be less protective than the system in the last paragraph, because it may be difficult for FIS staff to predict the effect of information on the recipient: an apparently "matter of fact" message may prove distressing to a particular recipient. For this reason, the Commission's preferred option is that messages be received in a place where appropriate support and information is provided.

8.54 The Commission's view may be summarised as follows. The law should make specific provision about whether in any circumstances FIS staff should have the right or obligation to examine messages sent between adults associated through adoption, and if so, what action they may take. If there is to be any such right or obligation, it should be made clear to persons sending and receiving messages. If there is not, it is particularly important that arrangements for the transmission of messages should ensure the availability of appropriate support and counselling services.

ENDING OF CONTACT VETO SYSTEM: s29

Recommendation

The Act should be amended so that the Contact Veto Register terminates only if Parliament so decides.

8.55 Many of those who were concerned that the Act invaded their privacy were naturally concerned about the prospect of the closure of the contact veto system foreshadowed by s29. This section allows the Minister, on a report by the Director-General, to close the Contact Veto Register, with the result that all vetoes cease to have effect.

8.56 The main purpose of s29 appears to have been to serve notice that the veto system was seen as a temporary measure, and that after 10 years it would be appropriate to terminate it, as was recommended by the Willis Committee. However in the Commission's view this approach might be usefully be reconsidered. First, the effect of the section is that the decision to end the system is placed in the hands of the Minister on the basis of an inquiry and report by the Director-General. The Commission has become aware that among those concerned about privacy, there is a perception that staff of the Registry of Births, Death and Marriages and the Department of Community Services are enthusiastic supporters of information rights, and less sensitive to privacy rights. This perception, whether right or wrong,³⁶ must lead to considerable anxiety about the basis on which the power under s29 might be exercised. Further, in the Commission's view the contact veto system is correctly perceived as a basic principle of the Act, and an important protection for privacy rights. In the Commission's view it should be removed only if that is the decision of the Parliament. If it is to remain, the section should either be repealed or amended accordingly.

8.57 In the Commission's view, there may be little advantage in a section which foreshadows that the veto system may be abolished after 10 years. If, as may well be likely, the number of vetoes falls as people become more familiar with the operation of the Act, there may be little need to repeal it. If it continues to be used, this would be an indication that those who use it wish to continue to exercise their rights to prevent contact. In this event there is much to be said for preserving this protection. In light of the remarkable success of the contact veto system, it does not seem appropriate to pre-empt what the decision might be so far in the future. Public announcements and publicity at the appropriate time would more effectively give notice of any proposed repeal or modification to the system.

FOOTNOTES

1. *Adoption Information Act* 1990 Section 6(3), Section 8(3).
2. A person in this position must apply to the Supreme Court under s14.
3. Presumptions of paternity arise under s10 where the mother is married (the husband is presumed to be the father) and where the mother has cohabited with a man at any time during a period of 24 weeks commencing with the 44th week before the birth. A presumption arises under s11 from a paternity acknowledgment that is either countersigned by the mother or registered with the Registry of Births, Deaths and Marriages. By s12, a presumption arises where a man has been ordered to pay maintenance as father of a child. By s13, an application may be made to the Supreme Court for a declaration of paternity: such a declaration creates a presumption of paternity. There are provisions for the use of blood tests (s19-22). The presumptions created by s10-12 are rebuttable by evidence to the contrary, but the presumption arising from a Supreme Court declaration of paternity under s13 is not. Where more than one rebuttable presumption applies, the presumption prevails which seems most likely, in all the circumstances, to be correct: s18(3). Rules relating to paternity arising from artificial conception are dealt with in the *Artificial Conception Act* 1984 (NSW), and s18A of the *Children (Equality of Status) Act* 1976.
4. s16, defined in s3 to mean a "biological parent" of the adopted person.
5. Provided for in s13.
6. Recommendation 6.
7. In many cases this will be so, but there may well be cases where the determination is difficult. It should be remembered that the presumptions under the *Children (Equality of Status) Act* 1976 (other than the presumption arising from a Supreme Court declaration) are rebuttable by other evidence, and that more than one of them can apply. For these reasons it is important that there be an avenue of appeal against refusals, as there is in s 36.
8. s36.
9. In some cases tracing the birth mother will be difficult or impossible because of errors in the information shown on the certificate: the Commission heard of several cases in which the wrong information was

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

- supplied, and recorded, relating to such matters as the date of the birth and the mother's name and address.
10. Recommendation 1 of the Willis Committee was that adoptees on reaching adulthood "have an unqualified right to their original birth certificates and such additional information as may be necessary to establish their origin and identity at birth *and the identity of their birth parents*" (emphasis added).
 11. This is a summary of the provisions of cl5(a) and 14.
 12. FIS has suggested that the definition in cl12 should be clarified. However in the light of the Commission's view about cl12 it is not necessary to consider this suggestion.
 13. It is therefore arguable that these provisions, and especially cl12, are invalid on the ground that they are inconsistent with the Act.
 14. Of course as noted above, their identity will in some cases be disclosed by the mother, or someone else.
 15. M Squire "Adoption Information: Coming to terms with the Unknown" (1991) (7) *Law Soc J* at 56. The problem was also referred to in the submissions of FIS and the Registry.
 16. Association of Childrens Welfare Agencies *Submission*. This submission emphasised the importance of recognising the autonomy and rights of children. However it would be outside the scope of this Report to examine the law on parental rights and responsibilities: it is sufficient to say that the Commission sees no reason to propose that the rights and responsibilities of adoptive parents relating to the care of their children should be any less than those of other parents. Parental rights are not unlimited and their exercise is subject to any order of a court relating to the welfare of a child: see *Secretary, Dept Health & Community Services v JMB and SMB* (1992) 15 Fam LR 392 (HC).
 17. FIS *Submission* at 6.
 18. s7(1), 9(b).
 19. See *Adoption of Children Act 1965* s17. Although technically this section may not apply to this issue, it seems generally accepted that it should be regarded as the guiding principle. It is less obvious that the principle should continue to influence law reform issues relating to the period after the child's majority. Arguably after this period the law should balance the interests of all the adult parties involved, rather than giving priority to the interests of the adopted person.
 20. The point of the criticism is the apparent unfairness, not the need for information: in general, adoptive parents do not appear to claim the right to identify the birth parents. It should be added that in practice, until 1967, adoptive parents were made aware of the identity of the birth parents (in practice, usually only the birth mother), because they were given a copy of the Order of Adoption, which identified the birth parents. See Chapter 2.
 21. This expression is used to include the case of a person whose disability is such that while intellectually capable of making a decision, the person suffers from a condition such that his or her health or welfare could be damaged by having to confront the issue.
 22. *Willis Report* para 6.57.
 23. Registry of Births, Deaths and Marriages *Submission* at 3.
 24. *Willis Report* Recommendation 7.
 25. It might be arguable that s34 provides a basis for the discretionary release of information, and the Commission has been informed that this is currently being tested in proceedings before the Community Welfare Appeals Tribunal. Clearly, however, that section was not intended to cover the situation under discussion, and the limitations expressed in s34(4) are inappropriate.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

26. Comments made at meeting between the Commission and Ms Wendy Williamson and Malcolm Squire, 26 June 1992.
27. cl5(a).
28. FIS *Submission* at 7.
29. No information is released at the discretion of the Director-General without an undertaking being signed.
30. It would be wrong to provide the for automatic extension of the veto, for this would be to extend the criminal liability of the searcher, who would be entitled to assume until otherwise notified that the scope of the veto was not wider than it had been at the time he or she was made aware of it, and signed the required undertaking.
31. FIS *Submission* at 7.
32. FIS *Submission* at 8.
33. See eg Anglican Adoption Agency *Submission*.
34. FIS *Submission* at 5; Registry *Submission* at 4.
35. FIS *Submission* at 14-16.
36. In the Commission's view this perception is incorrect, since Departmental staff have generally been very concerned to protect people's privacy: see Chapter 4. It seems likely that the perception derives from perceived discouragement of persons wishing to lodge a veto, and also, perhaps, from the simple fact that the Department has the role of administering a law which involves disclosure of identifying information.

Appendix A - Adoption Information Act 1990 and Adoption Information Regulation 1991

ADOPTION INFORMATION ACT 1990 No. 63 NEW SOUTH WALES

[STATE ARMS]

TABLE OF PROVISIONS

PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Objects
4. Definitions
5. Prescribed information

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

6. Adopted person's rights
7. Adoptive parent's rights
8. Birth parent's rights
9. Access to adoption information by relatives and others after death of adopted person or birth parent
10. Application for supply of birth certificate or prescribed information
11. Persons designated to deal with applications
12. Discretion to supply prescribed information
13. Guidelines for release of prescribed information etc.
14. Access to court records
15. Unauthorised disclosure of information

PART 3 - CONTACT VETOES

16. Adopted person or birth parent may lodge contact veto
17. Contact veto may be lodged only for adoptions before this Act
18. How contact veto is lodged
19. Contact Veto Register
20. Director-General to advise Principal Registrar

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

21. Principal Registrar etc. to endorse details of contact veto on birth certificates
22. When contact veto takes effect
23. Expiration of contact veto
24. Arrangements to confirm, cancel or vary contact veto at request of person seeking contact
25. Notification to person who lodged contact veto of request for information
26. Notification to person affected by contact veto of cancellation or variation
27. Undertakings not to contact person who has lodged contact veto
28. Veto on contact - offences
29. Closure of Contact Veto Register

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

30. Definition
31. Reunion Information Register
32. Persons eligible to have their names entered in the register
33. Arrangements for reunion of registered persons
34. Location of persons not registered

PART 5 - MISCELLANEOUS

35. Fees and charges
36. Appeals to Community Welfare Appeals Tribunal
37. Manner of giving notice
38. False statement in application etc.
39. Impersonation
40. Proceedings for offences
41. Regulations
42. Repeal of regulations relating to Adopted Persons Contact Register
43. Consequential amendment of other Acts
44. Savings, transitional and other provisions

SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

ADOPTION INFORMATION ACT 1990 NO. 63

NEW SOUTH WALES

[STATE ARMS]

Act No. 63, 1990

An Act to allow greater access to information relating to adoptions; and for other related matters. [Assented to 26 October 1990]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Adoption Information Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Parts 1 and 5 and sections 15-20 commence on the date of assent.

Objects

3. The Objects of this Act are:

- (a) to give adult adopted persons greater access to information concerning their origins; and
- (b) to give the birth parents and adoptive parents of adult adopted persons greater access to information concerning their children; and
- (c) to preserve controls adoptive parents have over the access of adopted children to information concerning their origins while recognising the paramount interests of adopted children; and
- (d) to give the relatives of adopted person, birth parents and other persons access to information concerning adopted person's origins in special circumstances; and
- (e) to protect the privacy of adopted persons and birth parents by establishing a system of vetoes against contact with persons identified through access to information concerning persons adopted before the date of assent to this Act; and
- (f) to limit the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy; and
- (g) to make provision for the continued use of the Adopted Persons Contact Register.

Definitions

4. In this Act:

"**adopted brother or sister**", in relation to an adopted person, means another adopted person who has or had at least one parent (whether biological or adoptive) who is or was a birth parent of the adopted person;

"**adopted person**" means a person:

- (a) an order for whose adoption was made under the Adoption of Children Act 1965 or a former Act within the meaning of that Act; or

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

- (b) whose adoption in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having the same effect as if an order for adoption had been made under that Act;

“adoptive parent” means a person who becomes the parent of an adopted person by adoption;

“amended birth certificate”, in relation to an adopted person, means a certified copy of the recording relating to the birth of the person based on the registered memorandum relating to the adoption of the person kept under the Registration of Births, Deaths and Marriages Act 1973;

“birth parent” means a biological parent of an adopted person;

“contact veto” means a veto against contact registered under Part 3 and in force;

“Director-General” means the Director-General of the Department of Family and Community Services;

“hospital” means:

- (a) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (b) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929 or a hospital specified in the Fifth Schedule to that Act; or
- (c) a private hospital within the meaning of the Private Hospital and Day Procedure Centres Act 1988;

“information source” means:

- (a) the Department of Family and Community Services; or
- (b) the Department of Health; or
- (c) a private adoption agency; or
- (d) a hospital; or
- (e) the Office of the Principal Registrar; or
- (f) the Supreme Court; or
- (g) any other institution, body or person prescribed as an information source for the purposes of this Act;

“Original birth certificate”, in relation to an adopted person, means:

- (a) if the person’s birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - a certified copy of the recording relating to the birth of the person made under section 11 of that Act; or
- (b) if the person’s birth is not so registered - a copy of any similar document relating to the adopted person identifying the birth parents of the person and contained in records relating to the adoption of the person that are held by an information source;

“prescribed information” has the meaning given by section 5;

“Principal Registrar” means the Principal Registrar of Births, Deaths and Marriages;

“private adoption agency” means a charitable organisation for the time being approved as a private adoption agency under Part 3 of the Adoption of Children Act 1965;

“**relative**” means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person:

- (a) whether the relationship is of the whole blood or half blood or by marriage; and
- (b) whether the relationship is natural or depends on the adoption of a person.

Prescribed information

5. (1) For the purposes of this Act, prescribed information is information of a kind prescribed by the regulations.

(2) Different kinds of information may be prescribed:

- (a) for different classes of persons to whom the information relates; or
- (b) for different classes of person to whom the information is supplied under this Act.

(3) Subsection (2) does not limit the different kinds of information that may be prescribed.

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

Adopted person’s rights

6. (1) An adopted person is entitled to receive (subject to this Act):

- (a) the person’s original birth certificate; and
- (b) any prescribed information relating to the person’s birth parents held by an information source; and
- (c) any prescribed information relating to an adopted brother or sister of the person held by an information source.

(2) An adopted person who is less than 18 years old is not entitled to receive his or her original birth certificate or prescribed information except with the consent of:

- (a) his or her surviving adoptive parents and surviving birth parents (as shown on the original birth certificate); or
- (b) The Director-General if there are no surviving adoptive parents or birth parents (as so shown) or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.

(3) An adopted person is not entitled to receive any prescribed information held by an information source unless:

- (a) the adopted person produces to the information source his or her original birth certificate (being a certificate supplied under this Part); or
- (b) his or her original birth certificate is held by that information source and will be supplied together with the prescribed information.

Adoptive parent’s rights

7. (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):

- (a) the adopted person’s original birth certificate; and
- (b) any prescribed information relating to the adopted person held by an information source.

(2) The adoptive parent is not entitled to receive the original birth certificate unless the adopted person is 18 or more years old and consents to the adoptive parent receiving it.

Birth parent's rights

8. (1) A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to this Act):

- (a) the amended birth certificate of the adopted person if a memorandum of the adoption of the person is registered under the Registration of Births, Deaths and Marriages Act 1973; and
- (b) any prescribed information relating to the adopted person or the adoptive parents held by an information source.

(2) A man who claims to be the birth parent of an adopted person is not entitled to receive an amended birth certificate or prescribed information under this section unless:

- (a) he is shown on the adopted person's original birth certificate as the person's father; or
- (b) he is, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person.

(3) A birth parent is not entitled to receive any prescribed information held by an information source unless the birth parent produces to the information source the amended birth certificate of the adopted person (being a certificate supplied under this Part).

Access to adoption information by relatives and others after death of adopted person or birth parent

9. (1) The Director-General may:

- (a) supply to a relative, spouse or other person the original or amended birth certificate of, or prescribed information relating to, a deceased adopted person or a deceased birth parent; or
- (b) after such consultation with the Principal Registrar or other information source concerned as the Director-General considers necessary, authorise the Principal Registrar or other information source to supply such a birth certificate or such information to a person nominated by the Director-General.

(2) The Director-General must not supply a birth certificate or prescribed information to a person other than a relative or spouse (or authorise such action to be taken by an information source) unless:

- (a) the person had a de facto or other close personal relationship with the deceased person; and
- (b) the Director-General has taken into account any likely detriment to the welfare and best interests of any adopted person, birth parent, relative or spouse of the deceased person then surviving the deceased person or the other person if the birth certificate or information is supplied.

(3) An information source so authorised by the Director-General to supply a birth certificate or prescribed information must supply that certificate or information to the person nominated by the Director-General.

(4) This section does not apply to prescribed information held by the Supreme Court.

Application for supply of birth certificate or prescribed information

10. (1) An application for the supply of an original birth certificate under this Part is to be made in writing to:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - the Principal Registrar; or
- (b) if the person's birth is not so registered but his or her original birth certificate is held by an information source - that information source.

(2) An application for the supply of an amended birth certificate under this Part is to be made in writing to the Principal Registrar.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

(3) An application for the supply of prescribed information held by an information source is to be made in writing to the information source.

(4) The regulations may make provision for or with respect to the making of applications under this Part.

Persons designated to deal with applications

11. (1) An application for the supply of a birth certificate or prescribed information under this Part is to be dealt with by the designated person.

(2) The designated person is required to supply the birth certificate or prescribed information if satisfied that the applicant is entitled under this Act to receive it.

(3) This section does not apply to the Supreme Court.

(4) In this section, “**designated person**” means:

(a) in relation to the Department of Family and Community Services - the Director-General; or

(b) in relation to a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986 - the chief executive officer of the area health board for the area health service; or

(c) in relation to the Department of Health or a hospital specified in the Fifth Schedule to the Public Hospitals Act 1929 - the Director-General of the Department; or

(d) in relation to an incorporated hospital or a separate institution (within the meaning of the Public Hospitals Act 1929) - the chief executive officer of the hospital or institution; or

(e) in relation to a private adoption agency - the principal officer (within the meaning of the Adoption of Children Act 1965) of the private adoption agency; or

(f) in relation to a private hospital (within the meaning of the Private Hospitals and Day Procedure Centres Act 1988) - the licensee of the private hospital; or

(g) in relation to the Office of the Principal Registrar - the Principal Registrar; or

(h) in relation to an institution, body or person prescribed as an information source for the purposes of this Act - the person prescribed as the designated person for that institution, body or person,

and includes a person to whom a function under this section has been duly delegated by the designated person and a person authorised by the designated person in accordance with the guidelines prescribed by the regulations.

Discretion to supply prescribed information

12. (1) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information before an entitlement to the certificate or information arises under this Part if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.

(2) The Director-General may act under this section in any case in which an entitlement to prescribed information has not arisen because of the failure to obtain a birth certificate under this Part.

Guidelines for release of prescribed information etc.

13. An information source which supplies any birth certificate or prescribed information pursuant to an application under this Act is required to comply with any relevant guidelines prescribed by the regulations.

Access to court records

14. (1) A person is not entitled to receive prescribed information under this Act from records of proceedings in the Supreme Court relating to the adoption of a person, except as provided by this section.

(2) A person may apply to the Supreme Court for an order for the supply of the information.

(3) The Supreme Court may, if it is satisfied that the person has taken all reasonable steps to obtain the information from other information sources, order that the information be supplied to the person.

(4) Rules of court may be made for or with respect to orders under this section.

Unauthorised disclosure of information

15. (1) A person must not disclose any information relating to an adopted person, birth parent or adoptive parent obtained in connection with the administration or execution of this Act, except:

(a) in connection with the administration or execution of this Act; or

(b) as authorised or required by law.

(2) In any proceedings concerning this Act before any court or tribunal, the court or tribunal may make an order forbidding publication of all or any of the information mentioned in the proceedings relating to an adopted person, birth parent, adoptive parent, relative or other person.

(3) A person must not publish information in breach of an order made under this section.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

PART 3 - CONTACT VETOES

Adopted person or birth parent may lodge contact veto

16. The following persons may lodge a contact veto:

(a) an adopted person who has reached the age of 17 years and 6 months;

(b) a birth parent.

Contact veto may be lodged only for adoptions before this Act

17. A person may lodge a contact veto only if:

(a) the order for adoption of the adopted person was made under the Adoption of Children Act 1965 (or a former Act within the meaning of that Act) before the date of assent to this Act; or

(b) the adoption of the adopted person in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having been effected before the date of assent to this Act.

How contact veto is lodged

18. (1) A person entitled to lodge a contact veto may do so by notifying the Director-General in writing that he or she objects to contact being made with him or her by a person or any class of persons referred to in the notification.

(2) The notification is to be in a form approved by the Director-General.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

(3) A contact veto is not duly lodged unless the person provides the Director-General with proof (to the satisfaction of the Director-General) of his or her identity.

Contact Veto Register

19. (1) The Director-General is to establish and maintain a Contact Veto Register.

(2) There is to be entered in the Contact Veto Register:

- (a) the name of each person who has duly lodged a contact veto; and
- (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made; and
- (c) the date and place of birth of the person; and
- (d) the persons or class of persons with whom the person objects to contact; and
- (e) the name and address for notification of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

Director-General to advise Principal Registrar

20. The Director-General is to advise the Principal Registrar of the details of each contact veto entered in the Contact Veto Register.

Principal Registrar etc. to endorse details of contact veto on birth certificates

21. (1) The Principal Registrar is required to endorse details of each contact veto on the original birth certificate or amended birth certificate of the adopted person to whom the contact veto relates that is supplied by the Principal Registrar under this Act.

(2) An information source (other than the Principal Registrar) which is requested to supply an original birth certificate under this Act is required:

- (a) to ascertain from the Director-General whether there is a contact veto relating to the adopted person concerned; and
- (b) if so, to endorse details of the contact veto on the original birth certificate before it is supplied under this Act.

When contact veto takes effect

22. (1) In this section, “**relevant period**” means the period of 5 working days or, if a different period is prescribed by the regulations, that period.

(2) A contact veto takes effect on the expiration of the relevant period after it is duly lodged.

(3) However, a contact veto that is entered in the Contact Veto Register earlier than the relevant period before the commencement of this section takes effect on that commencement.

Expiration of contact veto

23. (1) A contact veto expires if:

- (a) the Contact Veto Register is closed under section 29; or
- (b) the person who lodged the contact veto cancels it by notification in writing to the Director-General; or

(c) the person who lodged the contact veto dies.

(2) The Director-General is to advise the Principal Registrar of the expiration of a contact veto unless it is caused by a death of which the Director-General is not aware.

Arrangements to confirm, cancel or vary contact veto at request of person seeking contact

24. (1) The Director-General may, at the request of a person who has been refused contact under a contact veto, approach the person who lodged the contact veto and ask the person whether he or she:

(a) wishes to confirm the contact veto; or

(b) wishes to cancel the contact veto; or

(c) wishes to vary the contact veto in so far as it relates to contact with the person who has made the request.

(2) The Director-General is not to approach the person who lodged the contact veto unless the Director-General:

(a) is of the opinion that circumstances exist that justify the approach in order to promote the welfare and best interests of either or both of the parties concerned; and

(b) has consulted the Director-General of the Department of Health and any other relevant authority the Director-General believes may be of assistance in assessing the merits of the request for the person to be approached.

(3) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.

(4) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

Notification to person who lodged contact veto of request for information

25. The Director-General is required to notify a person who has lodged a contact veto of an application under this Act for the supply of a birth certificate or prescribed information made by any person with whom contact is refused, unless the Director General is unaware of the application or it is not reasonably practicable to notify the person.

Notification to person affected by contact veto of cancellation or variation

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

Undertakings not to contact person who has lodged contact veto

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

(a) contact or attempt to contact the person who has lodged the contact veto; or

(b) procure another person to contact or attempt to contact the person.

(2) An information source is not to supply any prescribed information to an adopted person relating to an adopted brother or sister unless the Director-General is notified of the application for the information and is given an opportunity to ascertain whether a contact veto has been lodged in relation to contact with the adopted person.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

(3) If such a contact veto has been lodged, an information source is not to supply the information unless the applicant has signed an undertaking of the kind referred to in subsection (1).

(4) The Director-General may, as a condition of the supply to a person of any certificate or information under section 12 which is subject to a contact veto, require the person to sign an undertaking of the kind referred to in subsection (1).

Veto on contact - offences

28. (1) An information recipient must not:

(a) contact or attempt to contact the person who lodged a contact veto against contact by the information recipient; or

(b) procure another person to contact or attempt to contact that person.

(2) An information recipient must not:

(a) use information obtained under this Act to intimidate or harass the person who lodged a contact veto against contact by the information recipient; or

(b) procure any other person to intimidate or harass that person by the use of that information.

(3) A person is not to claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to contravening this section.

(4) In this section:

“**information recipient**” means an adopted person, adoptive parent, birth parent, relative or other person:

(a) who has received an original birth certificate or amended birth certificate endorsed with a contact veto against contact by him or her (being a contact veto that remains in force); or

(b) who has had disclosed to him or her prescribed information under this Act and who has knowledge that a contact veto against contact by him or her is then in force.

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

Closure of Contact Veto Register

29. (1) As soon as practicable after the expiration of 10 years after the commencement of this section, the Director-General is to report to the Minister on whether the Contact Veto Register should be closed.

(2) The Director-General is to give notice of the proposed report, and advice as to where and by what date written submissions concerning the matter may be lodged by the public, in at least one newspaper circulating throughout New South Wales.

(3) The Director-General is to make his or her report after:

(a) considering any written submissions received from the public concerning the matter; and

(b) consulting the Director-General of the Department of Health and any information source the Director-General believes may be of assistance in assessing the merits of the closure or continuation of the Register.

(4) If the Director-General reports that the Contact Veto Register should be closed, the Minister may, by notice published in the Gazette, order that the Register be closed on the date specified in the notice.

(5) On the closure of the Contact Veto Register any contact veto recorded in the Register expires.

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

Definition

30. In this Part:

“**register**” means the Reunion Information Register established under this Part.

Reunion Information Register

31. (1) The Director-General is to establish a Reunion Information Register.

(2) There is to be entered in the register the name of every person who has duly applied for entry of his or her name in the register with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption.

(3) Application for entry in the register is to be made in the form approved by the Director-General.

Persons eligible to have their names entered in the register

32. (1) The following persons are eligible to have their names entered in the register:

(a) an adopted person;

(b) a birth parent;

(c) any other person having an interest in an adopted person or birth parent (including a relative) who, in the opinion of the Director-General, ought to have his or her name entered in the register.

(2) A person who is less than 18 years old is not eligible to have his or her name entered in the register, except as provided by this section.

(3) An adopted person who is less than 18 years old is eligible to have his or her name entered in the register if:

(a) the adopted person is 12 or more years old and the person’s adoptive parents have consented in writing to his or her name being entered in the register; or

(b) the adopted person is 16 or more years old and is living separately and apart from his or her adoptive parents;
or

(c) the adopted person is 12 or more years old and, in the opinion of the Director-General, special circumstances exist which make it desirable that his or her name should be entered in the register.

(4) However, the Director-General is not to enter in the register the name of an adopted person who is less than 18 years old unless the Director-General is of the opinion that to do so will promote the welfare and best interests of the adopted person.

(5) The consent of an adoptive parent is not required under subsection (3) (a) for the entry in the register of the name of an adopted person who is less than 18 years old if the adoptive parent:

(a) is dead; or

(b) cannot, after due search and inquiry, be found; or

(c) is, in the opinion of the Director-General, incapable of giving consent.

(6) The name of a person may not be entered in the register by another person on his or her behalf.

Arrangements for reunion of registered persons

33. (1) If the names of an adopted person and of a birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(2) If the names of an adopted person or birth parent and of a relative or other person having an interest in the adopted person or birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(3) The Director-General is not to arrange a reunion involving an adopted person who is less than 18 years old if an adoptive parent refused to consent to the entry of the name of the adopted person in the register, unless:

(a) the adoptive parent consents in writing to the reunion; or

(b) the Director-General gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.

(4) The Director-General must notify any person whose name is entered in the register of the entry in the register of the name of any other person from whom that person has been separated as a consequence of adoption.

Location of persons not registered

34. (1) If the name of an adopted person has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate a birth parent or relative of the adopted person or any other person with whom the adopted person wishes to be reunited, so as to ascertain whether any such person wishes to be reunited with the adopted person.

(2) If the name of a birth parent has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate the adopted person, so as to ascertain whether the adopted person wishes to be reunited with the birth parent.

(3) If the name of a relative or other person having an interest in an adopted person or birth parent has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate the adopted person or birth parent, so as to ascertain whether the adopted person or birth parent wishes to be reunited with the relative or other person.

(5) The Director-General may take action to locate a person under this section only if the Director-General is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so:

(a) on medical, psychiatric or psychological grounds relating to one of the registered parties; or

(b) on any other ground relating to unusual or extreme circumstances affecting the interests or welfare of a party.

(4) The Director-General may take action to locate a person under this section even though the person has not, by entering his or her name in the register, expressed a desire to be reunited with the person whose name is entered in the register.

PART 5 - MISCELLANEOUS

Fees and charges

35. (1) The Director-General or other information source may demand fees and charges in respect of the supply of documents or information, or the provision of services, under this Act.

(2) The Director-General is to notify, in the Gazette, the fees or charges payable under this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

(3) The Director-General or other information source may waive or reduce any fees or charges payable under this Act.

(4) The fees or charges for the supply of a birth certificate under this Act are payable to the Director General and are in addition to any fees or charges payable under the Registration of Births, Deaths and Marriages Act 1973 or to an information source which supplied the certificate.

(5) The regulations may make provision for or with respect to fees and charges payable under thi the Act.

Appeals to Community Welfare Appeals Tribunal

36. An appeal may be made to the Community Welfare Appeals Tribunal against a refusal or failure of the Director-General:

- (a) to supply any birth certificate or prescribed information to a person, or to authorise the Principal Registrar or another information source to do so under this Act; or
- (b) to enter the name of any person in a register under this Act; or
- (c) to arrange a reunion or take action to locate a person under Part 4; or
- (d) to approach a person who has lodged a contact veto in accordance with a request made under section 24.

Manner of giving notice

37. (1) Any notice required to be given to a person by the Director-General under this Act may be given personally or by post.

(2) If any such person has duly nominated an address at which the person is to be notified, the notice may be given to the person only at that address.

False statement in application etc.

38. (1) A person who makes any statement which the person knows to be false for the purposes of or in connection with:

- (a) an application for the supply of a birth certificate or prescribed information under this Act; or
- (b) the lodging of a contact veto under Part 3; or
- (c) an application for entry of the person's name in the Reunion Information Register under Part 4; or
- (d) any other request under this Act,

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) This section applies to statements made in writing or orally.

Impersonation

39. (1) A person who impersonates an adopted person, birth parent, adoptive parent, relative or other person having an interest in an adopted person in connection with any matter under this Act is guilty of an offence.

(2) A person who impersonates a person engaged in the administration or execution of this Act is guilty of an offence.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

40. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against section 28 (Veto on contact - offences) may be instituted only with the written consent of the Attorney General.

(3) In any proceedings referred to in subsection (2), a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

Regulations

41. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of regulations relating to Adopted Persons Contact Register

42. Part 5A of the Adoption of Children Regulations is repealed.

Consequential amendment of other Acts

43. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings, transitional and other provisions

44. Schedule 2 has effect.

SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 43)

Adoption of Children Act 1965 No. 23

(1) Section 67 (Restriction on inspection of records):

After "regulations", insert "and the Adoption Information Act 1990".

(2) Section 73 (Regulations):

Omit section 73 (1) (f1) and (f2) (i).

Freedom of Information Act 1989 No. 5

Schedule 1 (**Exempt documents**):

At the end of clause 20, insert:

; or

(c) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the Adoption Information Act 1990.

Registration of Births, Deaths and Marriages Act 1973 No. 87

Section 46 (Copy of recording in register of adoptions):

(a) Omit section 46 (1) (a), insert instead:

(a) the person is given the copy in accordance with the Adoption Information Act 1990;

(b) Omit section 46 (2), insert instead:

(2) If a certified copy is authorised to be furnished under subsection (1):

(a) section 44 (1) does not authorise the Principal Registrar to refuse to furnish the certified copy;
and

(b) section 44 (2) does not authorise the Principal Registrar to furnish instead a certified extract.

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENT ON THE ENACTMENT OF THIS ACT

Definition

2. In this Part:

“repealed Regulation” means Part 5A of the Adoption of Children Regulations as in force immediately before its repeal by this Act.

Saving of Adopted Persons Contact Register

3. The Adopted Persons Contact Register established under the repealed Regulation is to form part of the Reunion Information Register established under Part 4 of this Act.

Saving of action commenced under repealed Regulation

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4. Anything done or commenced under the repealed Regulation which could have been done or commenced under this Act (if this Act had been in force when it was done or commenced) has effect on or after the repeal of the repealed Regulation as if it had been done or commenced under this Act.

1991 - No.111

ADOPTION INFORMATION ACT 1990 - REGULATION

(Adoption Information Regulation 1991)

NEW SOUTH WALES

[STATE ARMS]

[Published in Gazette No. 41 of 8 March 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Adoption Information Act 1990, has been pleased to make the Regulation set forth hereunder.

ROBERT WEBSTER

Minister for Family and Community Services.

PART 1 - PRELIMINARY

Citation

1. This Regulation may be cited as the Adoption Information Regulation 1991.

Commencement

2.(1) This Regulation commences on 2 April 1991, except as provided by subclause (2).

(2) This Part and clause 16 commence on the day on which this Regulation is published in the Gazette.

Definitions

3. In this Regulation:

“**adoptive family**” means adoptive parents and their children, whether natural or adopted;

“**document**” includes:

- (a) any paper or other material on which there is writing or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any disc, tape or other article from which sounds, images or messages are capable of being reproduced;

“**the Act**” means the Adoption Information Act 1990.

PART 2 - PRESCRIBED INFORMATION TO WHICH PERSONS ARE ENTITLED

Purpose of this Part

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

4.(1) This Part prescribes the additional information relating to adoptions which certain persons are entitled to receive under and subject to the Act.

(2) The Act prescribes the circumstances in which the original or amended birth certificates of adopted persons may be supplied.

Entitlement of adopted person - information prescribed under section 6

5. An adopted person is entitled to receive (subject to the Act) the following information held by an information source:

(a) information relating to a birth parent, being:

- . age
- . date of birth
- . place of birth
- . nationality
- . ethnic background
- . marriage certificate
- death certificate
- . level of education (including information as to the number of years at school and qualifications obtained)
- . occupation
- . physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
- . hobbies and interests
- . religion
- . medical history before the adoption order was made (being details of the birth of the adopted person or information relevant to the current or future physical or mental health of the adopted person)
- . other children (including number of children and their age and sex)
- . reason the person was adopted (as stated by the birth parent or assessed by the information source before placement for adoption)
- . length and status of relationship of the adopted person's birth parents
- . last known name and address (being information referred to in clause 14)
- . date on which birth parent placed child for adoption
- . date of adoption order
- . copies of medical reports of examinations of the adopted person made when the child was in the custody of birth parent

**NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT
1990**

. the following information concerning parents, brothers and sisters (that is, the adopted person's grandparents, aunts and uncles):

date of birth

nationality

ethnic background

level of education (including information as to the number of years at school and qualifications obtained)

occupation

physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)

hobbies and interests

medical history before the adoption order was made (being information relevant to the current or future physical or mental health of the adopted person)

. the following information concerning parents (that is, the adopted person's grandparents):

age at the time of birth of the adopted person whether alive or deceased

. the following information concerning brothers and sisters (that is, the adopted person's aunts and uncles)

number of brothers and sisters

age at the time of birth of the adopted person whether alive or deceased

. photographs and other documents and messages given to the information source by a birth parent for the adopted person if clause 15 is complied with;

(b) information relating to an adopted brother or sister of an adopted person who is 18 or more years old:

. adoptive name

. date of birth

. place of birth

. date of placement for adoption

. date of adoption order

. copy of adoption order

. the following details concerning adoptive parents:

age

nationality

ethnic background

occupation

hobbies and interests

religion

composition of adoptive family (including number of children and their age and sex);

(c) information relating to a birth parent or adopted brother or sister referred to in clause 10.

Entitlement of adoptive parent - information prescribed under section 7

6. An adoptive parent of an adopted person is entitled to receive (subject to the Act) the following information relating to the adopted person held by an information source:

(a) if the adopted person is less than 18 years old:

. the following details concerning birth parents, grandparents, aunts and uncles:

age

nationality

ethnic background

level of education

occupation

physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)

hobbies and interests

. religion of birth parents

. medical history of birth family (being persons related by blood to the adopted person) before the adoption order was made (being details of the birth of the adopted person or information relevant to the current or future physical or mental health of the adopted person)

. copies of medical reports of examinations of the adopted person conducted before placement for adoption (excluding any information that could be used to identify a birth parent, grandparent, aunt or uncle)

. date of placement for adoption

. date of adoption order

. reason the person was adopted (as stated by the birth parent or assessed by the information source before placement for adoption)

. length and status of relationship of the adopted person's birth parents

. whether the birth parents have or had any children other than the adopted person

. whether a birth parent was fostered or adopted

. photographs and other documents and messages given to the information source by a birth parent for the adopted person if clause 15 is complied with;

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

(b) information relating to the adopted person referred to in clause 10.

Entitlement of birth parent - information prescribed under section 8

7. A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to the Act) the following information held by an information source:

(a) information relating to the adopted person, being:

- . birth details (including the time of birth and weight and length of the person at birth)
- . date of placement for adoption
- . date of adoption order
- . copy of adoption order
- . last known name and address (being information referred to in clause 14)
- . marriage certificate
- . death certificate
- . health and welfare of the adopted person after placement for adoption
- . photographs and other documents and messages relating to the adopted person and adoptive family given to the information source for the birth parent if clause 15 is complied with.

(b) information relating to an adoptive parent, being:

- . age
- . nationality
- . ethnic background
- . physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
- . occupation
- . hobbies and interests
- . religion
- . composition of family (including number of children and their age and sex);

(c) information relating to an adopted person or adoptive parent referred to in clause 10.

(2) Information relating to the health and welfare of an adopted person after placement for adoption is prescribed information for the purposes of subclause (1) (a) only if:

- (a) the information source holding the information is the Department of Community Services or a private adoption agency; or
- (b) the information source holding the information has obtained the consent of the adopted person to the supply of the information to his or her birth parent.

Information prescribed under section 9 relating to deceased birth parent

8. A relative, spouse or other person having a de facto or other close personal relationship with a deceased birth parent may be supplied with the following information relating to the deceased birth parent:

- . information described in clause 7 (a) relating to an adopted person of any age
- . adoption consent given by the birth parent
- . request to arrange adoption made by the birth parent
- . information relating to a deceased birth parent referred to in clause 10.

Information prescribed under section 9 relating to deceased adopted person

9. A relative, spouse or other person having a de facto or other close personal relationship with a deceased adopted person may be supplied with the following information relating to the deceased adopted person:

- . information described in clause 5 (a) relating to the birth parent
- . information relating to a deceased adopted person referred to in clause 10.

Additional prescribed information

10. (1) The following information is prescribed as information for the purposes of sections 6-9 of the Act, namely, information:

- (a) that is supplied by the Director-General or authorised by the Director-General to be supplied by the Principal Registrar or some other information source; and
- (b) that the Director-General is satisfied would, if disclosed, promote the welfare and best interests of either or both the party seeking the information and the person affected by the supply of the information; and
- (c) that the Director-General is satisfied is unlikely to be able to be obtained from any other source.

(2) Information prescribed by this clause is not to be supplied unless:

- (a) the Director-General has notified the person affected by the supply of the information of the intention to supply the information, but only if it is reasonably practicable to do so; and
- (b) a period of not less than 7 days has expired since the person was so notified; and
- (c) the Director-General has considered any submissions received from the person concerning supply of the information before the expiration of that period.

General guidelines under section 13 for release of prescribed information etc.

11. (1) An information source is to comply with the following guidelines in connection with the supply of any birth certificate or prescribed information under the Act:

- (a) the information source must make reasonable inquiries to confirm the applicant's identity and relationship to the person to whom the information relates; and
- (b) the information source must not supply confidential information unless the information source has obtained and taken into account the advice of the Director-General as to whether the information should be supplied and as to the provision of appropriate counselling for the person to whom it is supplied.

(2) In this clause:

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

“**confidential information**” means information indicating that an adopted person was conceived as a result of an incestuous relationship between his or her birth parents or the sexual assault of his or her birth mother.

Guidelines under section 13 for release of prescribed information relating to unacknowledged birth fathers

12. (1) In this clause:

“**unacknowledged birth father**” means the birth father of an adopted person who:

- (a) is not shown on the adopted person’s original birth certificate as the person’s father; or
- (b) is not, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person; or
- (c) is not, under the Family Law Act 1975 of the Commonwealth, to be presumed to be the father of the adopted child.

(2) An information source is not to supply prescribed information relating to an unacknowledged birth father if, in the opinion of the information source, the information could be used to identify the unacknowledged birth father or his parents, brothers or sisters, except with the consent of the unacknowledged birth father.

Guidelines under section 13 for exercise of discretion to supply a birth certificate or prescribed information under section 12

13. (1) The Director-General is to comply with the guidelines set out in this clause in connection with the supply of a birth certificate or prescribed information before an entitlement to the certificate or information arises under Part 2 of the Act.

(2) The Director-General is not to supply a birth certificate or prescribed information to an adopted person who is less than 18 years old against the wishes of a birth parent until such period (being a period of not less than 7 days) after the birth parent’s refusal to consent to the supply as will, in the opinion of the Director-General, enable the birth parent (if he or she so wishes) to lodge a contact veto.

(3) The Director-General is to supply a birth parent with an amended birth certificate or prescribed information relating to an adopted person who is less than 18 years old only if:

- (a) the relationship between the adopted person and the adoptive parents has broken down and the adopted person is living separately from the adoptive parents; or
- (b) the adoptive parents support the supply of the birth certificate or prescribed information; or
- (c) the adoptive parents have died,

and, in the opinion of the Director-General (supported by expert opinion) it is unlikely that any detriment to the welfare and best interests of the adopted person or his or her adopted family will result from the supply of the certificate or information.

(4) The Director-General may supply or authorise an information source to supply any prescribed information to a person who is not entitled to receive it because of a failure to obtain a birth certificate only if:

- (a) there is no contact veto in force against contact by the person with the person to whom the information relates; and
- (b) in the opinion of the Director-General, the information could not be used to identify the person to whom it relates.

Information as to “last known name and address”

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

14. The last known name and address of a person held by an information source is prescribed information only if:

- (a) the information was obtained by the information source before the person was placed for adoption, on placement of the person for adoption or from or in connection with the making of the adoption order in relation to the person; or
- (b) the person concerned has consented in writing to the supply of the name and address to the person seeking the information; or
- (c) the person concerned has entered his or her name on the Reunion Information Register.

Photographs and other documents and messages

15. (1) A photograph or other document, or a message, referred to in clause 5 (a), 6 (a) or 7 (1) (a) that is given to an information source after the commencement of this clause for an adopted person or birth parent is not prescribed information unless the person giving the photograph, document or message to the information source has signed a release (in a form approved by the Director-General) consenting to the supply of all such photographs, documents or messages.

(2) A release signed by the person giving a photograph, document or message to the information source is not required if the person:

- (a) is dead; or
- (b) cannot, after due search and inquiry, be found; or
- (c) is, in the opinion of the Director-General, incapable of giving consent.

(3) A photograph or other document, or a message, referred to in clause 5 (a), 6 (a) or 7 (1) (a) that is given to an information source before the commencement of this clause for an adopted person or birth parent is not prescribed information unless, in the opinion of the Director-General, the records of the information source concerned clearly indicate that the person intended the photograph, document or message to be supplied to the adopted person or birth parent.

PART 3 -CONTACT VETOES

Access to information about a contact veto

16. (1) An application may be made to the Director-General by an adopted person who is 18 or more years old or a birth parent of such a person or a relative, spouse or other person referred to in section 9 of the Act for the Director-General to supply:

- (a) a statement as to whether a veto objecting to contact by the person with an adopted person or a birth parent has been entered in the Contact Veto Register; and
- (b) if a veto has been entered, details of the date of birth of the person who objects to contact and the relationship of the person to the applicant; and
- (c) if a message has been left for the applicant by the person who objects to contact, a copy of the message.

(2) An application under this clause:

- (a) is to be made in a form approved by the Director-General; and
- (b) is to be accompanied by proof (to the satisfaction of the Director-General) of identity of the applicant; and

**NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT
1990**

(c) is to be accompanied by the fee or charge payable for the supply of such information or, if the applicant wishes the fee to be waived or reduced by the Director-General, a statement as to why it should be waived or reduced.

(3) The Director-General is not to supply any information under this clause if, in the opinion of the Director-General, the information could be used to identify the person who objects to contact or a parent, brother or sister of that person, except with the consent of the person.

Guidelines under section 24 for request to confirm, cancel or vary contact veto

17. Unless the Director-General considers that the circumstances are exceptional, the Director-General is not to deal with an applicant's request under section 24 of the Act to approach a person who has lodged a contact veto if:

- (a) the request is made within 6 months after the contact veto took effect; or
- (b) the person who lodged the contact veto was approached by the Director-General on a previous occasion at the request of the applicant and gave no indication that he or she might be willing in specified circumstances to cancel or vary the contact veto; or
- (c) the person was so approached and gave such an indication but the circumstances have not arisen or are not, in the opinion of the Director-General, likely to arise.

PART 4 - INFORMATION SOURCES

Information sources prescribed under paragraph (g) of definition of "information source" in section 3

18. The following institutions, bodies and persons are prescribed as information sources for the purposes of the Act:

Briarways Private Hospital, Guildford

Burnside

Dalmar Child and Family Care

Mercy Family Life Centre

Salvation Army Post-Adoption Service

Scarba Family Centre

Designated persons

19. (1) The person prescribed under section 11 (4) (h) of the Act as the designated person to deal with an application to an institution, body or person (prescribed under clause 18) for the supply of a birth certificate or prescribed information under Part 2 of the Act is the chief executive officer, by whatever title he or she is known, of the institution, body or person.

(2) The guidelines to be followed by a designated person in relation to an information source in authorising another person to exercise a function of the designated person are:

- (a) the person must be a senior officer or member of the information source; and
- (b) the person must, in the opinion of the designated person, have sufficient capacity to understand and responsibly exercise the functions of the designated person under the Act.

Exchange of information between information sources

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

20. (1) If a person who is entitled to receive information under the Act:

- (a) made an application for the supply of the information to an information source which does not hold the information; and
- (b) the information source knows of another information source which does hold the information,

the information source to whom the application is made may request the other information source to supply it with the information to enable it to supply it to the person.

(2) An information source is not to supply another information source with such information unless the other information source has forwarded to it:

- (a) a copy of the application made by the person; and
- (b) a request signed by the person for the information source to supply the information.

Appendix B - Report: Survey and Qualitative Research

REVIEW OF ADOPTION INFORMATION ACT

REPORT: SURVEY AND QUALITATIVE RESEARCH

Prepared for:

New South Wales Law Reform Commission

Prepared by:

MSJ Keys Young

35 Richards Avenue

Surry Hills NSW 2010

Telephone: (02) 361 4301

May 1992

CONTENTS

1.0 INTRODUCTION

2.0 METHODOLOGY

2.1 QUANTITATIVE SURVEY: PUBLIC AWARENESS OF LEGISLATION

2.2 QUALITATIVE RESEARCH: IMPACT OF THE LEGISLATION

3.0 DISCUSSION OF SURVEY FINDINGS: LEVELS OF PUBLIC AWARENESS

3.1 UNDERSTANDING OF THE ADOPTION INFORMATION ACT

3.2 ACCESS TO INFORMATION

3.3 PERSONAL INVOLVEMENT IN ADOPTION

3.4 ROLE IN ADOPTION AND UNDERSTANDING OF THE ACT AND INFORMATION RECEIVED

3.5 SUMMARY OF SURVEY RESULTS

4.0 RESULTS OF THE QUALITATIVE RESEARCH: IMPACT OF THE ACT

4.1 TYPES OF INFORMATION ABOUT ADOPTION

4.2 AWARENESS OF THE ADOPTION

4.3 INFORMATION ABOUT THE ADOPTION AND KNOWLEDGE OF PARTIES TO THE ADOPTION

4.4 EXPERIENCE OF ADMINISTRATIVE ASPECTS OF THE INFORMATION ACT

4.5 CONTACT VETOES

4.6 SUMMARY OF QUALITATIVE RESEARCH: THE IMPACT OF THE ACT

1.0 INTRODUCTION

The New South Wales Law Reform Commission has been reviewing the Adoption Information Act 1990. Their task was to gather information regarding the implementation and administration of the Act, which it did by direct consultation with people and groups affected, receiving written and verbal submissions and holding public hearings across the State. In carrying out this review the Commission was, in particular, to consider:

(i) the implementation, public awareness and administration of the legislation and

(ii) the impact of the legislation on birth parents, children surrendered for adoption, adopting parents and the extended families of all parties.

The research firm MSJ Keys Young was commissioned to assist in this review, in particular, by carrying out a modest piece of research to assess one) the level of public awareness of the Act and two) the human impact of the Act on the people involved in adoption.

This report describes the methodologies used in this research, the results of a survey assessing the level of public awareness of the Act and the results of the qualitative research into the human impact of the Act.

2.0 METHODOLOGY

The two streams of research were sufficiently different in nature to require markedly different approaches. These are described below.

2.1 QUANTITATIVE SURVEY: PUBLIC AWARENESS OF THE LEGISLATION

The first term of reference of this review required the Commission to consider, amongst other things, the public awareness of the legislation. To be able to assess "public awareness" with any confidence it was essential to survey a sample of people who were representative of the adult population of New South Wales. It was decided to utilise an 'omnibus' survey for this purpose - an omnibus being a compilation of questions, from varying clients, which are asked in the same survey. By sharing costs in this manner, a relatively simple but large scale survey can be carried out at a lower cost. In this instance the Roy Morgan Research Centre carried out the fieldwork.

The sample consisted of 1,102 adults (18 years or older), including 664 Sydney residents and 438 non-Sydney residents from across New South Wales. The survey was carried out over two consecutive weekends in late April of this year and involved face-to-face interviews.

Three questions were asked of people (as well as basic descriptive demographic questions). The first question attempted to assess whether people had an accurate understanding of the essential rights to information created by the Act. The second question asked about people's exposure, in the past year, to anything about adoption information rights. The third question asked people about any personal involvement they might have in relation to adoption, to assess the extent to which the law is known by those affected by it. (The actual questions asked are set out in Section 3, in conjunction with the discussion of survey results.)

2.2 QUALITATIVE RESEARCH: IMPACT OF THE LEGISLATION

The second stream of the research was directed at exploring the human impact of the legislation on the people most central to adoption - birth parents, children who were adopted, the adopting parents and other family relations of these parties. A considerable amount of thought and consideration was undertaken by the Law Reform Commission to determine the best means of carrying out this aspect of the research. This process included the circulation of a preliminary paper to key actors in the adoption field and to selected researchers,

relating the information needed and possible strategies for gathering relevant information. The range of research strategies was refined and then reviewed by the Law Reform Commission before any decision was made as to the preferred approach. The principal issue under consideration was the need to assure that the privacy of people was protected and that no one felt any compulsion to take part in the research. At the same time, it was intended (or hoped) that the research would complement the consultation activities of the Commission (ie public hearings, written and telephone/face-to-face submissions etc). These consultation activities, of course, constitute research in their own right. However the consultation was dependent on members of the public coming forth to express their views and there is no way of determining how representative these people were of the wider group of people affected by the legislation. The result is a tension between the need to protect people's privacy and a need to ensure that as wide a range of views and experiences are investigated as is possible. From a research point of view a random sample of people who, say, have applied for a birth certificate or who have lodged a veto would best serve the need for a representative sample. To use such records or data files for research could, however, be seen as constituting an invasion of privacy. Moreover the reluctance of some or many of those contacted in this way to participate in any research would undoubtedly still result in a sample that was skewed or distorted in some manner. As a result a decision was made to reach as broad a range of people as possible but to rely on their voluntary cooperation and to accept the limitation this placed on the research.

A combination of group discussions and in-depth individual interviews was used. Participants were contacted in a number of ways. *First*, people who made contact with the Family Information Service (FIS) of the NSW Department of Community Service at the time the study began were asked if they would be willing to take part in research being conducted in association with the review of the Adoption Information Act. As FIS is responsible for handling all general inquiries relating to adoption information, as well as monitoring both the Reunion Information Register and the Contact Veto Register they were felt to come in contact with the broadest range of people affected by the Act. A representative of FIS indicated they generally averaged about 250 inquiries of various kinds each week; over a period of about a fortnight approximately 70 people indicated a willingness to participate in the research. To continue to protect people's privacy those who had agreed to participate and who resided in metropolitan Sydney were sent a letter from the Department of Community Services (see Appendix 1) asking them to make contact with the researchers. Approximately 30 people did make contact and were invited to take part in one of a series of three group discussions. These group discussions were approximately two hours in length and were held in both Sydney and Parramatta. It is highly likely that this group of respondents differs in some way (or ways) from the broader group of people contacting FIS, but it is not possible to know with confidence how they might differ in their attitudes and experiences.

This group of respondents included birth parents, adopted people and adopting parents, and reflected various stages in the information search (or non-search). However there was no one in this group who had applied a contact veto.

As those on the Contact Veto Register represent a very important group of people in relation to adoption information it was decided to take further steps to reach these people. Thus a *second* approach was taken which was publicity advertising for anyone who had placed, or been the subject of, a contact veto to telephone the researchers. The advertisement was placed in the *Sun Herald* and read as follows:

ADOPTION & CONTACT VETO

An independent social research group, *MSJ Keys Young*, is working on a review of the *Adoption Information Act*, and wishes to contact anyone who has ever placed a contact veto or been the subject of a veto. The researchers assure complete privacy to all willing to express their views about contact vetoes and the adoption information procedure generally.

Please call Susan Young ASAP 361 4301

This was supplemented, to a modest degree, by referrals from the Post Adoption Resource Centre (PARC) a major information, support and counselling organisation. Clients who had an experience with a veto were told of the research and given an opportunity to contact the researchers if they chose. Those contacted through the advertisement or through PARC numbered approximately 30 people and they were interviewed primarily by telephone. In a few situations people chose to remain anonymous and these were people who were involved, directly or indirectly, in the placement of a veto. In one case contact was made by a parent whose adult child has not yet been told he was adopted. Two or three people who were associated with or represented organised

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

groups (eg Jigsaw, Adoption Privacy Protection Group) contacted the researchers. Thus the research did include the contributions of the widest possible range of people - from those for whom the relevant adoption was still a secret to those whose personal concerns had been the basis of a public or political position.

3.0 DISCUSSION OF SURVEY FINDINGS: LEVELS OF PUBLIC AWARENESS

This section discusses the results of the quantitative survey regarding the public level of awareness of the Act.

The value of the precise sampling is that the survey results should be representative of the adult population of New South Wales. Therefore, a finding here of, say 15% of the respondents in the sample could be extrapolated to reflect 15% of the adult population of the State.

3.1 UNDERSTANDING OF THE ADOPTION INFORMATION ACT

The first question asked of people was the following:

*Thinking about adoption. There are at least 3 parties directly involved in an adoption. The **child** who is adopted, the **natural parents**, and the **adopting parents**, that is, those who adopted the child.*

To the best of your knowledge, would you say the following statement is true or false.

*In New South Wales adopted people aged 18 or older, and people who have given their child up for adoption now have the right to receive identifying information about each other. By 'identifying information' we mean having access to the **original** birth certificate issued when the child was born and/or the **amended** birth certificate issued at the time the child was adopted.*

This statement is an accurate precis of the Act.

General results:

Overall 73% of respondents answered that the statement was true, 12.5% that it was false and 14.5% said they did not know. Thus the great majority of the public appears to have an accurate understanding of the essential nature of the Act.

Place of residence:

Rather surprisingly, more non-Sydney residents (78%) said the statement was true than Sydney residents (70%). Conversely more Sydney residents said the statement was false (13%) than did non-Sydney residents (11%).

Gender:

More women (75%) than men (71%) said the statement was true and somewhat fewer women (14%) than men (15%) said they didn't know. (The qualitative aspects of the research showed a very strong gender bias in that only a handful of males made contact with the researchers suggesting that the issue is more salient for women, hence they are more accurately informed.)

Age:

Across all respondents, the age group that was most likely to say the statement was true was the 35 to 49 year old (80%) in contrast to the group least likely to say the statement was true, which was the younger 18 to 24 year old group (68%). The oldest respondents, those aged 50 and over, were most likely to say they didn't know if the statement was true (20%) in contrast, to say, the 35 to 49 year olds (9%). In general the older a person was - up to the age of 50 - the more likely he or she was to say the statement was true and less likely to say he or she didn't know. The converse was true of the over 50's. This pattern generally held true for both men and women. However the group most likely to say they didn't know if the statement was true were young men - the 18 to 24 year olds (25%) who were more than twice as likely than young women of the same age (12%) to give this answer.

Educational and occupational level:

The educational level of the respondents does not appear to bear any strong relationship on their answers to these question although tertiary educated people are somewhat more likely to say the statement was true (75% compared to 73% overall) and less likely to say they didn't know (12.5% compared to 14.5%).

A similar relationship exists between occupational level and people's responses - that is professionals/managers are most likely to say the statement is true (76%) and least likely to say they don't know (9%) in contrast to semi and unskilled workers where 70% said the statement was true and 17% said they didn't know.

3.2 ACCESS TO INFORMATION

The second question asked of people was:

In the last 12 months, have you read, seen or heard anything about the rights to identifying information by people directly involved in adoption?

General results:

Overall, two-thirds of respondents (65.5%) said they had read, seen or heard something about information rights, while 31% said they had not. Only 3% said they couldn't say. There is an implied discrepancy in the results of this question and the results of the previous one in that the statement put to people in the first question has only been true in the past year since the passage of the Adoption Information Act. It follows, logically, that anyone who found the statement in the first question to be true, and was doing so on an informed basis, would have heard or read some information on the matter in the past 12 months. In fact some 7% fewer people said they had heard or seen information about adoption rights than said the statement was true. However the results to the two questions are, in general terms, consistent.

Place of residence:

Sydney residents were somewhat more likely to say they had had information in the past year (66%) than the non-Sydney residents (64%) and the latter group were more likely (34%) than the Sydney residents (30%) to state they had not had any information. As the Sydney residents were marginally more likely to say they had received information it might be expected that they would be more likely to agree that the statement was true - but this was not the case. Most importantly, though, it does not appear that the non-Sydney residents suffer any marked disadvantage in terms of access to information. (It should be noted that at the time the survey took place, only one country based public hearing of the Law Reform Commission had taken place, whereas the public hearing in Sydney had already taken place. In short, the modest advantage that Sydney residents had to information may well have been reduced after the series of public hearings in the country.)

Gender:

Women were a good deal more likely to say they had seen or heard information about adoption information (70%) than were the men (61%). This is not surprising if the subject matter is more salient or interesting to women.

Age:

Generally, the youngest age group (18 to 24 years) is the one least likely to say had received any information (51%) compared to (65.5%) overall. Younger singles (under 35) without children were the least likely of any of the life-cycle groups to have recalled receiving any information (55%). Again, this probably reflects on the relative lack of salience of adoption-related issues to younger, childless people.

Educational and occupational level:

Generally, the higher the educational level of the respondent the more likely he or she was to say they had read, seen or heard information about adopting rights. Thus 52% of those with a primary level education and up to 74% tertiary educated respondents said they had been informed. This, most likely, reflects different propensities to be

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

informed about public issues in general. No clear relationship existed between the response to this question and occupational level.

3.3 PERSONAL INVOLVEMENT IN ADOPTION

A third question was asked of people which was:

To the best of your knowledge, do any of the following statements apply to you? Any others?

(Respondents were shown a card and asked to just read out the number after any appropriate answer; multiple responses were permitted. The card was used to protect people's privacy as no one but the interviewer would know what answer was given.)

I am a person who has been **adopted**..1

I am a parent who has **given up** a child for adoption..2

I am a parent who has **adopted** a child..3

I am a person who has a brother/sister who was **given up** for adoption..4

I am a person who has a brother/sister who was **adopted** into my family..5

I am a spouse/partner of an **adopted** person..6

I am another relative of a person who was **given up** for adoption (for example, a grandparent, aunt or uncle etc)..7

I am another relative of a person who was **adopted** into my family (for example, a grandparent, aunt or uncle etc)..8

This question was included to determine the levels of awareness of the legislation among those people directly affected by adoption.

However, the results also allow a check on how representative the sample is, based on estimates of the numbers of adopted people in the general population. Official records indicate that approximately 80,000 people have been adopted in New South Wales who would be 18 years or older at this time. Assuming two birth parents (160,000) and two adopting parents (160,000) this adds up to 400,000 people who are most immediately involved in adoption. The existence of other relatives (siblings, grandparents, spouses etc) with a potential interest in adoption could take the numbers up to, say, one million. The results of this survey question, presented in terms of the numbers of adults in New South Wales that they represent are as follows:

adopted person - 67,000

birth parent of adoptee - 49,000

adopting parent - 125,000

As can be seen, it appears the incidence of adoptees in the survey fairly closely approximates the incidence in the general population based on official records. It can be expected that the number of adoptees taking part in the survey would, if anything, be less than the predicted number of adoptees as there would be some attrition due to death etc, as adoption records go back to 1923. As well it is possible that a portion of adoptees still do not know of their status. The number of adopting parents in the survey is consistent with the number of adoptees - that is, there are approximately twice the number of adopting parents as adoptees. The interesting figure is that of the birth parents participating in the survey, as it is well below the notional estimates in the population. Not only is

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

the ratio of birth parents to adoptees less than 2 to 1, the absolute number of birth parents is less than the number of adoptees.

There are a number of possibilities that might explain this. Almost certainly this reflects the 'absent father' in many early adoption situations and, in fact, over three times as many female respondents as male respondents indicate they were a parent of a child who was adopted out. There would have been some attrition through death etc among this group and any multiple adoption out of siblings would mean there would be more adoptees than relinquishing parents. It is also quite likely however, that there was an under enumeration of birth parents because some respondents chose not to disclose this information. A few respondents refused to answer this question - whereas there were no refusals in regard to the other two questions. (Those refusing to answer were disproportionately women.)

Further results to this question, presented in terms of the numbers of adults that they represent, are as follows:

sibling of a person adopted out - 46,000

sibling of a person adopted into family - 100,000

partner/spouse of an adopted person - 60,000

another relative of a person adopted out - 121,000

another relative of a person adopted into the family - 336,000

On the basis of the survey results, some 815,000 adults in New South Wales would have a fairly immediate interest in adoption. Again, this is likely to be an understatement due to a lack of knowledge, in some cases, of the adoptive status of a family member.

An interesting finding is that relinquishing parents were more likely to reside in areas outside Sydney (1.6%) than in Sydney (0.8%). As a consequence other relatives of a person adopted out are also more prevalent in non-Sydney areas. This might reflect greater social pressures that existed, historically, in country areas around such issues as ex-nuptial pregnancies etc. In any case it does underline the importance of information and services being available in non-capital city areas. It may also explain the finding that non-Sydney residents were somewhat more likely to be accurately informed about the Act than Sydney residents.

3.4 ROLE IN ADOPTION AND UNDERSTANDING OF THE ACT AND INFORMATION RECEIVED

The proportion of respondents saying that the statement about adoptions information was true varied in relation to the role they had in regard to adoption. The results in Table 1 (over page) reveal some interesting findings.

Curiously, those involved in an adoption situation were more likely to answer "false" (15.5%) than those not in an adoption situation (12%). A greater proportion of those not in an adoption situation "did not know" (15%) compared to those in an adoption situation (11%).

As can be seen the least well informed group was adoptees, with 64% finding the statement to be correct, and over one-quarter saying they didn't know. Conversely, siblings of an adoptee were best informed, with over 90% finding the statement to be correct and none reporting he or she didn't know. It is unfortunate, and rather inexplicable, that a key group in the adoption triangle - the adoptees - should prove to be relatively unaware of the nature of rights to adoption information.

The finding that siblings of adoptees were well informed is consistent with the qualitative research, in which a number of siblings expressed strong feelings about their lack of rights to identifying information on an adopted brother or sister.

Table 1 - Right to identifying information by role in regard to adoption

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

| Response to statement | Adopted person % | Partner of adopted person % | Gave child for adoption % | Adopted a child % | Sibling given for adoption % | Other Rel. given adoption % | Sibling adopted into fam. % | Other rel. adopted into fam. % | Total in adoption situation % | Not in adoption situation % | Total % |
|-----------------------|------------------|-----------------------------|---------------------------|-------------------|------------------------------|-----------------------------|-----------------------------|--------------------------------|--------------------------------------|-----------------------------|----------------|
| True | 63.9 | 70.5 | 76.3 | 75.0 | 90.2 | 79.4 | 69.3 | 73.3 | 73.5 | 73.1 | 73.1 |
| False | 9.3 | 12.2 | 15.5 | 15.7 | 9.8 | 15.0 | 18.3 | 15.3 | 15.5 | 11.9 | 12.5 |
| Don't know | 26.8 | 17.3 | 8.2 | 9.3 | - | 5.6 | 12.4 | 11.4 | 11.0 | 15.1 | 14.5 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

[\[Link to text only version of table 1\]](#)

Table 2 - Whether read, seen or heard information by role in regard to adoption

| Seen information | Adopted person % | Partner of adopted person % | Gave child for adoption % | Adopted a child % | Sibling given for adoption % | Other rel. given adoption % | Sibling adopted into fam. % | Other rel. adopted into fam. % | Total in adoption situation % | Not in adoption situation % | Total % |
|------------------|------------------|-----------------------------|---------------------------|-------------------|------------------------------|-----------------------------|-----------------------------|--------------------------------|--------------------------------------|-----------------------------|----------------|
| Yes | 70.4 | 79.6 | 69.0 | 76.7 | 80.5 | 72.9 | 74.8 | 80.7 | 75.9 | 63.3 | 65.5 |
| No | 29.6 | 20.4 | 31.0 | 23.3 | 19.5 | 27.1 | 21.4 | 19.3 | 23.7 | 32.9 | 31.1 |
| Can't say | - | - | - | - | - | - | 3.8 | - | 0.5 | 3.7 | 3.4 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

[\[Link to text only version of table 2\]](#)

Much less variability between sub-groups was found in relation to the question on whether respondents had read, seen or heard anything about adoption information in the last 12 months (see Table 2). As might be expected, a greater proportion of those respondents involved in an adoption situation had remembered being exposed to information regarding adoption legislation. Some 70% of adoptees said they had been exposed to information, which is slightly higher than the proportion saying the statement about adoption rights was correct. What this highlights is the fact that exposure to information does not necessarily equate with being correctly informed.

This issue was examined by looking at people's judgements on the correctness of the statement in relation to their access to information. The results are shown in Table 3 below.

Table 3 - Right to identifying information by whether read, seen or heard information

| Response to statement | | | | Read, Seen or Heard Information |
|-----------------------|-------|-------|-------------|---------------------------------------|
| | Yes % | No % | Can't say % | Total % |
| True | 79.6 | 64.1 | 27.7 | 73.1 |
| False | 11.1 | 16.7 | - | 12.5 |
| Don't know | 9.2 | 19.3 | 72.3 | 14.5 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 |

[\[Link to text only version of table\]](#)

These results indicate that there is a general likelihood that people who recall hearing or seeing some information are more likely to say the statement was true. The most telling finding is that over 72% of those who weren't able to say if they had seen or heard any relevant information answered that they didn't know if the statement was correct or not.

3.5 SUMMARY OF SURVEY RESULTS

The majority of the public appears to be aware of the essence of the Adoption Information Act - that adopted people and the birth parents who surrendered them for adoption now have the right to identifying information about each other. Also, a smaller majority recall having read, seen or heard something about adoption information rights in the past year. There was variability within the public as to how well informed people were along demographic lines, place of residence etc.

Among the sub-groups of people with a personal interest in adoption, the siblings of adoptees were the most likely to correctly understand the current provisions regarding adoption information; adoptees as a group were the least well informed. The survey results suggest that something in the order of 815,000 adults in New South Wales have a personal interest in adoption in some manner.

4.0 RESULTS OF THE QUALITATIVE RESEARCH: IMPACT OF THE ACT

This section reports on the findings of the group discussions and the in-depth individual interviews. The section on methodology makes clear that the qualitative phase of the research cannot, and was not intended to, be construed as representative of people involved in adoption. Qualitative research is directed at *understanding* a phenomenon, not at measuring the *incidence* of the phenomenon in the way qualitative research does. Therefore the results discussed below describe the experiences, views, attitudes of individuals; someone describing his or her reaction to a contact veto, say, is describing a unique experience. Thus this discussion reflects a range of genuine responses as reported by various individuals - it does not tell the whole story of adoption and the impact of the Act.

4.1 TYPES OF INFORMATION ABOUT ADOPTION

Adoption information sought by people proved to be of three kinds:

awareness of the adoption per se, that is, that an adoption had taken place;

information *about* the adoption (generally, non-identifying information);

knowledge of parties to the adoption (generally contact in some form).

The Adoption Information Act has apparently been instrumental in changing people's access to information at all three of these levels, with quite different consequences for various individuals. These are discussed here.

4.2 AWARENESS OF THE ADOPTION

The fact that a person has been adopted is not always known to the person and, certainly, not always known to close family members - either of the relinquishing or adopting families. The secrecy or 'shame' that often surrounded adoption in the past still continues among some families and with some individuals. Some of the issues facing family members other than the adoptee are raised elsewhere in this report - here the focus will be on the adoptees themselves. The research showed that adoptees generally experienced one of the following situations.

4.2.1 Always Known

A number of those interviewed indicated they had 'always known' they were adopted or that they had been told at a very young age. Those who said they had always known may have experienced some difficulty with the fact of being adopted, but none experienced any upset around being told of being adopted. Those who recall learning about their own adoption at a given point in time tended to experience some trauma. As one young man reported *"I was told at a fairly young age and remember feeling the shock - I felt betrayed, rejected, cast out"*. He went on to say, of his adoptive parents *"It was all pretty new to them - they didn't talk about it much. Eventually we came to talk about it more as a family. It was better for my younger brother and sister who were also adopted."* On the other hand, an adoptive mother reported that her daughter, being told of her adoption at the age of ten or so, simply said *"I have no other mother"*.

All of the adoptees who participated in the research said that knowing that they were adopted required, at the very least, some adjustment or working through on their part. Many felt that being adopted meant that they were different in some regards and relate picking up numerous hints and clues to their status. One adoptee, for example, recalls being shown a portrait of a family ancestor of some fame and thinking *"But he wasn't from my family"*. Others who were ignorant of their adoption recall feeling different but in a more pejorative manner - one remembers family members mysteriously saying *"She wouldn't understand, she's not really family"*. Another relates her own *"lack of identity"*; stating that *"society looks down on adopted kids as second rate"*. A woman recalls the neighbourhood children being forbidden to play with her after their families learned she was adopted.

4.2.2 Informed Under Duress

A few people, both adoptees and adopting parents, indicated that the adopted person was informed because the existence of the Act made it necessary. For the adoptees this was generally traumatic and the adopting parents experienced this as a marked violation of their rights and of their control over private family matters and decisions. Others however had a different response. One adoptee recounted *"I was almost 40 when my adopting mother told me - because of the change in the legislation. It was a relief to know they weren't blood relatives - it was such a dysfunctional family. For a start I think they were ashamed of not having their own child and my father, in particular, was not happy about the adoption - regarding me as tainted goods. My mother said she hadn't wanted other people to know about the adoption because they might mistreat me"*. In some families, the immediate family had knowledge of a person's adoptive status but it remained a secret to the extended family and to people outside the family.

Any distress experienced by people who learned of an adoption under these circumstances reflected the shock of having their reality overturned - often fairly late in life. There was a sense of betrayal expressed by a number of people - that their families had lived a lie in relation to them. As one woman said *"What staggers me is that there were many opportunities when they could have told me. For example when I was trying to have a family and was experiencing trouble getting pregnant. The notion of adoption came up in discussion with my mother - why didn't she say something then?"*.

Similarly some adoptive parents also expressed a sense of betrayal - by the state that changed the rules and forced them into a disclosure that they had never intended would occur.

4.2.3 Learned by Accident

Numerous adoptees related that they had learned of their own adoption in, as one woman said *"A way I shouldn't have"*. In her case she learned, at the age of 17, when her adoptive mother died and she was informed of her adoptive status by the family solicitor. She asked her adoptive father who confirmed she was adopted, but gave

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

her no other details. Another learned of her own adoption when the family solicitor went bankrupt and the records he kept were returned to the client families. Another woman was 58 when *"I found out because my daughter-in-law became interested in tracing the family tree after reading a book on how to do family research. This led to my discovery. It was devastating to me - 12 month passed before I could tell my children"*.

For adoptees to learn about their own adoption through some mishap appeared to be the most traumatic way of learning in that the relationship to the adopting parents continued - until disclosure - to be based on a fiction.

The shock of learning was worsened in one case by the adoptive mother's attitude when confronted by this knowledge *"She became very agitated and nasty and said 'I took you when your own mother didn't want you' ."* This same mother had told the adoptee's "sister" some 15 years earlier about the adoption to explain why the two were treated differently in regard to the distribution of family possessions following the death of the respondent's adoptive father.

4.2.4 Still a Secret

Research into effects of the Adoption Information Act would find it very difficult to reach people for whom an adoption still remained a family secret. By definition, the adoptee would not know and family members who were holding such information would be most apprehensive about discussing the matter and would not be in contact with any of the adoption services. However the advertisement that was placed during the course of this research did result in one such adoptive parent making contact with the researchers. This took the form of a brief anonymous letter from a mother describing the circumstance of her adoptive son - now 45 years old. She concluded *"If he had these ties broken with us he would be destroyed. No one would be hurt except him! And no one would gain from exposure!"*.

Almost certainly there are numerous families in which an adoption still remains a secret, and this letter provides some insight into the emotional cost of maintaining this secret now that the Act has threatened people's ability to secure this information. As adoptive parents have no ability to place a contact veto they live with the anxious awareness that a birth relative could, at any time, make contact with their child. Moreover this parent, at least, saw the consequence as being cataclysmic - as destroying the child and the bonds between the parents and their child.

In summary, it appears clear that when adoptees are able to remember a point in time when they learned about their adoptive status (as opposed to "always knowing") the experience resulted in a good deal more trauma. This is compounded when the truth was learned by accident, and not directly from the adoptive parents. Similarly, when the Adoption Information Act served to force the hand of some adopting parents who had not disclosed their child's adoptive status the result was often more trauma yet for the child and parents alike. Those who have still not disclosed to their children their adoptive status are caught in an extremely anxious situation in which they have little control over a very fundamental aspect of their family life.

4.3 INFORMATION ABOUT THE ADOPTION AND KNOWLEDGE OF PARTIES TO THE ADOPTION

4.3.1 Varying Needs for Identifying and Non-identifying Information

In this report, a distinction is made between information about an adoption (information that could be described as factual and non-identifying) and knowledge of parties to the adoption that is seen as offering the possibility of contact between a member of a birth family and an adoptee. Some people participating in the research were quite clear as to which sort of information they sought whereas others were not. Moreover, people's need for information and possible contact was highly changeable over time - often reflecting events in their lives or their personal development. Certainly the need for at least non-identifying information is greatest amongst adoptees, as information on their birth families constitutes a basic element in their own self-identity. Many of the respondents expressed an acute "need to know" as much as possible about their birth parents and the events surrounding their adoption. As one young man said *"I have lots of questions. What do they look like? Do I have cousins? What did my parents enjoy doing? What kind of work did they do? Who was the family drunk?"*. He knew enough to be sure his mother was unmarried but asked *"Perhaps my father was married at the time? Maybe he was a sailor"*. Other relate how their differences from their adoptive families stirred their curiosity - of having olive skin in a pale-skinned family; of being creative and artistic in a down to earth, practical family etc.

Some participants in the research indicated they had sought non-identifying information before the current Act had come into being and how, in the words of one adoptee, "*It helped my self-understanding*".

Birth parents also expressed a need for factual information, but certainly the need was not as acute. For them, the information needs tended to be about how their children had fared, what they had become in life, what they looked like as adults etc. However important this was, though, the information was not critical to their own self-identity. This differential need for information is reflected in the statistics on the applications received by the Registry of Births, Deaths and Marriages for original and amended birth certificates. As of February 1992 some 70% of applications were received from adoptees and 30% were received from birth parents.

In our research it appeared that for many birth parents, the search for information about their children was less motivated by a need for information per se, than the hope that the information gained might lead to a reunion. Birth fathers face some particular problems in seeking information. The only birth father to take part in the research indicated he had certainly participated in the decision to have his son adopted out but that he and the birth mother drifted apart after that. (He attributed the failure of the relationship to the fact that the birth mother herself was an adoptee and could never "*solidify*" a relationship.) He "*has always remembered my son's birthday*" but it was only a year ago that he was prompted to search for him. It was the experience of a friend who himself had just learned at age 43 that he was adopted that moved the father to begin a search. However "*I was stunned to learn my name wasn't even on the birth certificate. It was as though I was the dirty male, saying you don't matter*". He had to re-establish contact with the birth mother to get her permission to have his name put on the birth certificate, which was awkward. A number of relinquishing mothers indicated they were actively dissuaded from including the father's name on the birth certificate by hospital staff.

Siblings of a child adopted out form the third major group with a strong need for information. If they themselves had been adopted out their needs were similar to other adoptees. However in a number of cases the sibling had not been adopted and often was seeking to make contact with a full or half brother or sister. In these cases non-identifying, factual information was of little interest yet such siblings are not entitled to identifying information under the Adoption Information Act. For example, one woman in her 40's is now searching for her younger brother. At six months of age her mother left her in the care of grandparents and after giving birth to her brother, had him adopted out. This woman only discovered she had a brother ten years ago when her half sister (eg her mother having remarried) related this "secret". The woman has approached her mother who has refused to give any more information, saying "*she didn't remember*", and is thwarted in her search for her brother as she has no legal access to identifying information. Her only hope is that her mother will relent and seek to apply for her brother's amended birth certificate.

Similarly, a brother and sister are seeking information on their younger sister who was adopted out at birth when their mother died. As their father is now also deceased there is no one who has the authority to access the information needed to track their sister. They both express anger and frustration at being unable to do anything more. In most cases such siblings have put their names on the contact register while recognising that their sibling may not even be aware he or she is adopted. A glaring anomaly faces these siblings in that a brother or sister who is adopted out can seek information on them, and contact with them but they are prohibited from doing the same. Many of these siblings are desperate to have the same rights to identifying information that adoptees and birth parents have.

4.3.2 Factors Influencing the Need for Information

Participants in the research ranged from adoptees who have not even sought their original birth certificate to adoptees and birth mothers who have expended small fortunes to track and locate family members. Thus the Adoption Information Act was of great importance to some people and of no interest to others. The factors that seemed to determine people's level of interest in information included at least the following:

Gender - Most of the people involved in the research were women, although this may not reflect the gender of those actually seeking information on adoption in NSW. (Previous research, however, confirms that seekers of information are disproportionately women.) Moreover, adoptees were more likely to be seeking information on their mother rather than their father.

Life events - Often circumstances in a person's life alters his or her interest in seeking information and/or opening up the possibility of contact. One mentioned by a number of people is the *birth* of their own children which often

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

triggers in adoptees the need to know more about their own background. As one adoptee said "*I wanted to see the continuity of mum, me and the kids*". One woman participating in the research was motivated by the fact that her husband was also adopted which meant that their children had no natural grandparents in their lives. Also holidays and anniversaries often stirred people to take steps to acquire information or make contact.

Medical reasons - The need for medical information was frequently mentioned - either in relation to an adoptee's own health condition or in reference to his or her natural born children. Generally medical information was sought as factual, non-identifying information but this was not always the case. In at least one case a health condition present in an adoptee made her want to locate and inform her mother in case the mother was similarly afflicted but unaware of the genetically determined illness.

Loss - Death or another form of loss sometimes led people to seek information on a family member lost through adoption. One woman, for example, began to seek a brother who had been adopted out only after a crisis had developed in her own family's life (her ten year old daughter had been raped and made pregnant by a relative of her husband causing the family to cut off all relations with her husband's side of the family). The experience of death sometimes produced a sense of urgency around the need for information "*before it was too late*".

Circumstances of the adoption - Among birth mothers (only one birth father having participated in the research) the factor that seemed to influence them most in their drive for information and possible reunion was the circumstance of their child's birth and subsequent adoption. Although all birth parents recalled similar circumstances of a lack of personal, social and financial support that made it difficult or impossible for them to keep their children, differing levels of perceived choice or compliance around the adoption seem to affect attitudes much later in life. Those women who appear to have experienced the adoption as a particularly abusive situation seem to be more motivated to seek information and/or contact. Examples included a birth mother who had been promised support by her (country dwelling) parents to help her care for her child. She recounted "*Two days before the birth I received a letter from them saying that if I returned home with the child I would be on my own - I felt that is what they always intended to do and did it to ensure I didn't make any other provisions*". Within the week that the Act was passed this woman applied for her daughter's amended birth certificate and put her name on the Contact Register only to learn her daughter had placed a contact veto. This reawakened the pain of the original loss and her feeling of betrayal by her own parents - it has now been a year since communication with her mother ceased.

Another grandmother of a child adopted out spoke bitterly of the physician, social worker and nursing sister who brought pressure on her 16 year old daughter, her husband and herself to have the grandchild adopted. She deeply regrets her failure at that time to resist this pressure which came at a time of other upheavals in the family. Further injury was expressed in relation to the adopting situation the infant was taken into "*The adopting mother was an adoptee herself and never wanted to see her mother. She went back to work while the baby was still young, which she wasn't to do. We even asked that the child go to a family in a leafy suburb - we all love gardens and that didn't happen either. The deal hasn't been kept*" (This woman has privately traced her grandchild and says she is "*keeping a watchful eye on the family*".)

Personality differences - Various people expressed different levels of interest and curiosity regarding their own background. One adopted man stated "*When the Act was passed I felt I was happy with my life and didn't want to do anything. I don't know the people on the other side - they could be quite nice people*". Another young woman, who hasn't even applied for her original birth certificate said "*I'm a wimp. I guess I'm lazy and a bit fearful of taking on a search. What if I get so far and couldn't find them? If someone else did the work I feel I would fit into a search but I don't have the need to do it myself*". Another woman, who learned at age 17 that she was adopted, didn't start to search for ten years. She said "*I don't know why I left it so long - it just didn't mean anything to me. I also can't pinpoint what made me look for her but I wanted to ask her why she gave me up*".

Current relationships - Numerous people indicated that their current relationships with other people were a major influence on their willingness or unwillingness to undertake an information search. One adoptee reveals putting her name on the contact register and not telling her adoptive parents that she was searching for her natural mother until she knew she had found something. "*I was protecting myself and them. I didn't want them to feel rejected and I was protecting myself from their possible rejection - I wasn't going to burn my bridges if nothing was going to come of it*". This woman also acknowledged that being married and in a stable family relationship which would not reject her if she started looking for her mother was also critical to her decision to search.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Even the woman who described herself as a wimp and too lazy to undertake a search indicated she was also concerned about hurting her adoptive parents. The death of her mother partially liberated her from this concern, but she is still careful not to be hurtful to her father. She recalls shouting "*You're not my real father*" in her (typically) troublesome teenage years, and a search now would seem to confirm that this is how she feels when in fact "*I've always felt a part of my family*".

One birth mother indicated that while her husband of many years has always known about her relinquishing a child "*he made me promise not to look for her. He certainly didn't want to bring up someone else's child - he didn't want to know about her. So even though I promised not to search I had no intention of keeping my word but it meant I had no one to talk to about it*".

Another adoptee described the cold, loveless and rejecting family into which she was adopted, asking "*Don't they ever check on families after an adoption takes place*". Her emotional distance from her family was instrumental in her search for information. Despite her parents' continued denial the adoptee suspected from the age of nine that she was adopted. She married twice but neither husband shared her belief about her being adopted. Finally when the Act passed she was able to verify - much to her relief - that she was adopted although her 37 year old sister was devastated to learn that she also was adopted.

4.4 EXPERIENCE OF ADMINISTRATION ASPECTS OF THE INFORMATION ACT

The task of this research was not to assess the manner in which the Act has been administered, however some relevant information naturally arose in the course of the work. This is briefly described here

Role of government agencies - Two key government bodies - the Family Information Service (FIS) and the Registry of Births Deaths and Marriages were often mentioned by people. FIS was generally seen by those seeking information to be helpful and sensitive to their situation. Only a few criticisms were voiced - "*The bureaucracy don't understand*"; "*Depends on who you talk to - they won't give their names so you have to go through the whole story each time*"; "*Fantastic - I asked for something and got it immediately*". Another said she wrote a letter and "*One whole year later and I still haven't heard back*". Those who have used the Guide to Searching Adoption produced by FIS generally found it invaluable with the exception of information and guidance on contact vetoes, which was generally felt to be inadequate.

The responses to the Registry were less frequent although those (particularly those subject to a contact veto) who were in contact with the Assistant Registrar Bob Miller found him to be totally supportive and understanding. The Post Adoption Resource Centre (PARC) was generally used by those who required more emotional support around adoption issues, and people generally found them the most professional, and experienced helpers.

Those whose role in relation to the Act has been primarily to place a veto often found the adoption agencies "*biased*" and "*pushing contact*".

Services in the country/out of State/overseas - Relatively few non-Sydney people took part in the research, but the few who did suggested that it is particularly hard to manage a search process from a distance - mentioning lost or unanswered letters etc. One birth mother from the country said "*I would come back and forth to Sydney all the time and finally came to Sydney and worked so that I could be here to expedite matters*". In another case, a sibling now living in WA has engaged the help of her sister-in-law in the search she is undertaking for a lost brother as she felt so ineffective working at a distance.

One adoptee from the UK initially found her attempts to trace her mother in the UK were blocked by the British requirement that she undergo counselling before being given certain information - she felt that FIS assisted her greatly in dealing with the British welfare agency and in overcoming the need to return to England simply to fulfil their requirements.

Fees - As might be anticipated numerous complaints were raised in relation to fees. These ranged from the "package" fee of \$120 payable by every applicant for a birth certificate, in that some queried why a normal Registry search fee is not sufficient. One adoptee had been sufficiently constrained by the size of the fee that she did not undertake a search until she received a small inheritance "*I felt free to spend that money on myself, because I knew I wasn't taking it away from the family*". The most contentious issue, of course, is the fee

charged to those placing a contact veto. As will be discussed more fully later, this compounds the sense of injustice and injury often experienced by those who are hostile to the changes brought by the Act.

Age of 18 - The age of 18, at which people are deemed by the Act to be adults in terms of adoption information is felt by some to be too young. This view was largely held by adoptive parents who felt this created enormous pressure on their children at a vulnerable time and by birth mothers who had experienced a contact veto. The latter sometimes attributed the placement of the veto to the fact that their children were insufficiently mature to understand and/or unduly under the influence of their adopting parents.

4.5 CONTACT VETOES

The research involved numerous people who had either placed a contact veto or been the subject of a contact veto. Some of the strongest feelings expressed in the course of the research related to the placement of a contact veto. Contact vetoes will be discussed from the perspective of adoptees, and birth parents in relation to both the placement of a veto and being subject to a veto. The views and experiences of adopting parents are also presented.

4.5.1 Adoptees and the Placement of a Contact Veto

Those adoptees who have placed a contact veto (and in some cases, their adoptive parents) express a deep anger about the need to place a veto. As one man said "*I had resolved matters in my own head and didn't want to take any action in regard to my own adoption. I never sought any information. The law forced me to think about it all again and then to make a response*".

Another adoptive parent whose son has placed a contact veto says "*The change in the legislation has completely altered our family life. We have always had a happy family life and our son didn't want to know. He said - 'You're my mum and dad - I don't want any contact with anyone else. My younger daughter then got upset and asked if they were going to take her away. It's all my wife and I talk about any more - our life is our children. We're probably more sensitive to this than my son is, but he's indicated that he wants his privacy and to be left alone'*". This father acknowledged that he would feel a bit upset if his son undertook a search and, when asked why some adoptees *do* seek contact with birth parents, he said it probably meant they hadn't been happy in the adopting family.

Another adopting parent of a young woman who had placed a contact veto says her daughter does not wish to have contact of any kind. She stated "*We objected to the release of our address even though she put a veto on. I don't want her or me to go through all of this again. We get very nervous if a car is parked outside - the first few months in particular we were quite jumpy and tense*". The mother was clear that "*There is no way we would have adopted if this law was there then - we would not have gone into adoption*". The mother did not know what decision her daughter was going to make when she sat down with the social worker and was very relieved to know that her daughter didn't want to leave anything for, or have any contact with, the birth mother. The mother says she did not try to influence her daughter although, she states "*It would be sharing her - giving her away - it wouldn't be the same if she were shared*".

The fear expressed by some adoptive parents that their adopted children could be lost to them if they attempted to search for their birth families was echoed by some of the adoptees who did undertake a search. As one adoptee said "*I didn't feel secure enough to offend my adoptive parents by looking*". She was afraid her adoptive mother might feel she was ungrateful for all the parents had done for her and can now see that "*My adoptive mother is frightened of losing me. My father is more open about the whole situation and gave me my adoption papers to start the search*". Another young male adoptee also said his mother was threatened by the process of his search but his father was "*OK about things*". His mother was able to tell him that she felt threatened but never deviated from assuring him that "*he would always belong to this family*". As these and earlier comments indicate, the fear of loss following a decision to search can be experienced by both the adopting parents and the adoptee. (One adoptee said that in fact her adopting mother did indeed reject her for a period after she started to look for her birth mother but that things were alright again now.)

A contrasting attitude was expressed by some other adoptive parents. For example one adoptive mother said "*Everyone has a right to know - I'm keen for my two children to find out and then be relaxed about things*". Her daughter has just received her birth certificate and finding that her certificate did not have her father's name on it

upset her. Her son has the attitude that "*We were dumped*", so doesn't want to talk to his birth parents. This parent spoke of the contact veto placed by her 24 year old son saying "*I don't particular agree with his reasons for doing so, but I respect his right to decide for himself*". She herself wouldn't mind if her son met his mother and he did discuss the matter with them before placing the veto. Her adoptive daughter hasn't placed a veto - "*Girls often feel differently*". The mother's concern is that the children not experience any rejection by the birth parents but strongly believes the process of coming to terms with the birth families is important for her children.

FIS has recently become responsible for managing the first contact register for overseas adoptions - in this case Sri Lankan adoptions. One adoptive mother of a young Sri Lankan girl said "*I've been trying for some years to find a way of establishing contact with her birth family that protects that family. I know that contact is very important for my daughter. When I started to get all of her papers and documentation together to begin the new contact procedure, however, I started to feel a bit scratchy about the process. Here I was, about to give the Department information that it didn't even have only to have them 'own' it and control the process thereafter. I began to understand a little better people's feeling about government being intrusive. Nonetheless I'm still grateful that something has been set up*".

Another adoptive mother (with three natural born children) related the search undertaken for her adopted daughter's birth family. The search went on for many years - starting long before the 1990 Act came into force and which was only successful after the new Act led to identifying information. Her daughter, even as an infant displayed behaviour that was variously diagnosed as schizophrenia or autism. As this highly troubled, runaway child grew up, the adoptive mother persisted in trying to locate the birth mother - in part because she believed the mother's health records would help explain the daughter's behaviour and, in part, because her daughter was desperate to find her birth mother. A severe car accident left the girl badly injured and wanting only her birth mother. Reunion between the girl and her mother (now deceased) and her brothers seems to have had a major beneficial effect on the girl. The adopting mother said "*We didn't have one day's happiness when she was growing up but we never ever regretted adopting her*".

When this adoptive mother was asked how she accounted for the markedly different attitudes between adoptive families in regard to contact with their children's birth parents she said "*I don't know. But I do believe our children are just on loan*". Her observation seemed particularly apt in that families' suffering perceptions about what it means to be a family often seem to determine their response to possible contact with birth families.

It is useful to draw on some theoretical concepts from the field of family therapy, here. There is an approach termed "structural family therapy" which views the family structure along a continuum (see S Minuchin *Families and Family Therapy*, Cambridge, Harvard University Press, 1974). At one end are families with very diffuse boundaries - who are very open to people and influences outside the family and have an insufficiently developed sense of autonomy or separateness. At the other end of the scale are families with very rigid boundaries, who are autonomous and isolated from outside sources of support and control and where family members are very enmeshed with each other. It would stand to reason that adopting families that have more open or closed structures would react quite differently to the perceived intrusion of outsiders - most particularly birth parents.

Thus those families that are the most "closed" clearly find the potential intrusion of the birth family destructive and very anxiety provoking. It is doubly injurious to have "the law/the state" be the instrument of this intrusion. The criticism of some birth mothers (who have had contact vetoes placed on them) that adopting parents bring pressure on their children to place vetoes may not be accurate. Generally members of a closed family share similar attitudes towards outsiders.

Having said this, it is clear that many adoptees are influenced by the belief that undertaking a search would distress their adoptive parents. Some adoptees do not undertake a search for this reason, while others proceed and then seek to resolve problems arising with their adoptive parents. As one adoptee said "*I feel I'm lucky to have two sets of parents and do not see any need to choose between the two*".

In some families however, having two sets of parents is unthinkable and this appears to be the most deeply felt issue in regard to the placement of contact vetoes by adoptees.

Unfortunately for some families, adoption has changed over the decades. Whereas once a "closed" family was the norm and was supported in the community's view of adoptions, now adoptions are expected to take place only where an open system can be sustained. Would-be adoptive parents for whom this is unacceptable would be

screened, or screen themselves, out of any adoption today. As the adoptive mother said, had this legislation been in place at the time she adopted she would have chosen not to adopt. Thus the issue of "retrospectivity" reflects the tragedy whereby some families who are almost constitutionally unable to work as "open families" are threatened in a very deep and fundamental way with being forced to do so. This is particularly true where the belief is held, whether by some adoptees or adoptive parents, that a search for birth parents implies that the adoption has failed in some way - that children raised in a happy family would not have any need to search.

Other issues, however, were also identified by adoptees and/or adoptive parents around the placement of a contact veto, including:

the perceived pressure of social workers, etc to have the child *not* place a contact veto, or if he or she did, to pressure for a letter/photo etc to be lodged at the same time;

the intrusion of the law into such important family decisions - particularly when the rules have been changed;

the need to pay a fee to lodge a contact veto, thus paying to guarantee a right that should be freely available;

the belief that a fine is insufficient to restrain someone seeking to override a veto (as the adoptive mother of a young woman who applied a contact veto, said "*If I was a birth mother I'd want to find out*" and another adoptive mother said "*All breakdowns in confidentiality are due to human contrariness- you can't stop them finding out*";

that adoptive parents have no rights - that pressure groups have highjacked the debate leading to the current legislation;

that birth mothers had ample protection at the time of adoption, chose to give the child up, therefore lost any moral rights to the child. "*The mother had six months to change her mind*" said one adoptive mother.

that information about the changes in the legislation was inadequate and the legislation slipped through.

4.5.2 Adoptees Subject to a Contact Veto

Numerous adoptees who were subject to a contact veto took part in the research. Their backgrounds and experiences were very diverse, but certain themes did emerge in relation to their searches and the veto experience.

First, the process of undertaking a search for information, which might or might not lead to contact with birth family members, is a highly charged, emotional experience. A mix of fantasies and dreams, of dread and apprehension are often faced by adoptees. As one woman described the process "*It's all so emotional and I have to rev up for it. I only pick up the search when I feel I can carry it for a while*". Others remark on the joy and sense of discovery they experience as each new piece of information about themselves comes to light.

Many adoptees attempt to prepare themselves for the possibility that they may exhaust the search and come to a dead end or that a contact veto might be placed on them. As one young man said "*I received a letter from the Department and held off opening it. I had an idea a veto have been placed. When I finally opened the letter and found my mother had placed a veto I felt ... I felt like my right arm had been ripped off*". After some consideration he added "*I didn't feel a sense of rejection*". Even after he left a letter that his mother did not pick up he said "*I didn't feel a sense of rejection. I'm sure she had valid reasons for not wanting to make contact with me - it is a great deal of emotional upheaval for someone to go through in her 60's*". He believes the contact veto is a good system because he feels his mother needs this to protect herself.

Another woman in her 40's who learned she was adopted only in the past year immediately began to try to locate her birth family only to come up against a veto. She experienced this as another rejection which, in combination with a divorce and children leaving home resulted in a breakdown. Having taken the veto very badly, she was grateful for the support offered by people like Bob Miller (of the Registry of Births) and organisations like PARC.

Another woman who learned of her adoption in her late 50's, also found her attempts to contact her mother "blocked" by a veto. Through her search she learned of the existence of a half-sister and with nothing to stop her,

made contact with her. She "*accepted me*". As her half-sister had known nothing about the adoption, they both presumed the mother (who is now widowed) is protecting herself in relation to her second family by the veto. The second family, in turn, is experiencing difficulty in keeping the new "auntie" a secret from the mother, least she be upset. Oh what tangled webs we weave

Adoptees who are subject to a contact veto face some of the same problems that birth parents do when *they* come up against a veto. However adoptees are doubly disadvantaged, as a veto often means that the information and understanding of their origins are lost to them. This includes factual information about their genetic, medical and social etc background but, often more importantly, the answer to the all important question "why me?" That is, how come my mother gave me up? For any child growing up it would be difficult to avoid believing, at least in part, that he or she was an unwanted child if given up for adoption. As adults, though, most of those participating in the research expressed an understanding of the likely social situation facing their birth mothers and were less likely to be condemnatory of them nor to see the adoption as an act of rejection. Nonetheless, they still sought to understand. Some expressed concern that rape or incest may have been a factor.

While being aware that those placing a contact veto were encouraged to leave a message or information for their child a number of adoptees felt that this should be strengthened. Some talked of a "questionnaire" that a parent could fill out, many spoke of the need for a medical history at least and some spoke of making it mandatory that information a photo, or a message be left. For some, a new question has emerged "Why is it impossible for you to see me now?"

4.5.3 Birth Parents Subject to a Contact Veto

The issues facing birth parents when confronted by a contact veto tend to be of a different order than those facing adoptees. Birth parents, for example, don't have the same need for some kinds of factual information - medical history, for example. Instead, the search (at least by those parents taking part in this research) was much more related to the sense of loss they experienced as a consequence of the adoption. Thus contact with their birth child, for many, is essential in healing that loss.

Most of the birth parents (and one grandmother) experienced the adoption as a time when they had little power or control over the circumstances, when officials and loved ones may have betrayed them or let them down. In retrospect, many now view the adoption as a political or social phenomenon in which they and their child were victims. As one mother said "*Our babies were taken away from us, not given. We never relinquished them. Adoptive parents are thieves, little more!*"

One can only imagine, then, the feelings of a birth parent who has experienced a great sense of loss compounded by anger and a sense of injustice about how that loss came to be when faced by a contact veto placed by that lost child.

They spoke of the "*devastation*", the "*opening up of old pain*", the "*destruction of our lives*", of "*heartache*". One mother, for example, who had been searching for her child for years before the new Act, said she always held a week of her annual leave aside each year in case she was able to locate and contact her daughter. The Act finally enabled her to find her daughter - only to learn she had placed a contact veto. Her bitter words were "*The adoptive parents have benefited from my loss*".

In a few cases, birth mothers expressed dismay that their child had not been placed with the kind of family they anticipated "*If I had kept her I could have given her as much. She lived in a house with no garden, no roses*". Or as the birth grandmother said of her grandson's adoption "*The deal hasn't been kept*".

Often anger was expressed towards the adopting parents and it was generally felt that they were influential in the placement of the veto by the child. As one birth mother saw it "*There's been a shift in power. Once we were the ones stripped of rights and now **they** (the adoptive parents) are disempowered because the birth parents now have some rights*". The angry tone of messages left by some children in association with their vetoes makes it clear to their birth mothers that their child believes their birth mother rejected them. The experience of some adoptees of having their adoptive parents tell them their birth mothers hadn't wanted them indicates this message is given to some adoptees. This contrasts so sharply with the truth as the birth mothers know it that they feel an even greater need to contact their child and explain that they *were* wanted.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Some birth mothers facing a contact veto, and feeling that their children may have been pressured to place a veto or did so out of a misunderstanding of the circumstances of the adoption argued for stronger measures around the veto. This includes making it compulsory that a person leave a reason for applying a veto, that he or she be made see the other person through a one-way glass when a veto is received, or making it mandatory that the adoptee have at least one face-to-face contact with the birth parent, under supervision.

No birth parents who had applied a contact veto participated in the research.

4.5.4 Honouring of Contact Vetoes

As discussed earlier adoptees (and their parents) who have placed contact vetoes have little faith that the \$2,500 fine and/or six months in gaol is a sufficient penalty to deter people from breaking the veto. One related an incident said to have happened to a friend who is a relinquishing mother who had placed a veto. Married to a "strict, bigoted born-again Christian" who knows nothing about the adopted child, her friend is reported to have received a phone call from a (well-meaning) person asking if she wanted to meet her son. She is now living in a highly anxious state, leaving work early to intercept any mail and phone calls. She is now sick with fear as she feels that disclosure would mean the end of the marriage. A number of adoptees or their parents were angry about the fact that a contact veto was not permanent - that they remain in force only until the year 2000.

In contrast, all of the adoptees and birth parents who participated in the research and have been subject to a contact veto indicated that they had no intention of violating the veto. This was not due to any penalties applying but rather because they felt that the only value of contact was when the other party wanted contact to be made. Most of them were certainly hoping that the person placing the contact veto would, over time, lift the veto. In this regard quite a few people discussed their experience with, or need for, a system whereby the person lodging the contact veto could be re-contacted to determine whether he or she might reassess the veto. While many were aware that this could be done, through FIS, the level of understanding of how this could be done was generally low. They were unsure how often this could be done, under what conditions, how much discretion FIS had etc.

Only one person, a "relinquishing grandmother" indicated any willingness to consider breaking the veto. She believes that she might do this if her own parents were in any danger of dying before meeting their great grandchild or if her daughter continued to be distraught over the child. This grandmother believed that she was under no obligation - having signed no agreement - not to contact her grandson, who is currently under the age of 18. (With minors there is a total prohibition on contact with an adoptee without agreement of the adoptive parents.) The research suggests that it is probably more likely to be an interested - but less central - party to an adoption that, if anyone, is likely to break a veto. The adoptees and relinquishing parents who were talked to, considered a forced contact destructive of the very relationship they were seeking. Also, without exception those people subject to a veto supported the need for a veto provision. There was agreement that all parties deserved the right - however misguided - to protect themselves from contact. (The same scrupulousness was not as generally apparent in relation to accessing information about a person being tracked. A number of people made reference to gaining information illegally eg "*I happened to be working in the right place at the right time - knowing people in other places also helped, such as information in police computers*".)

The whole issue of vetoes is so important and touches on such emotional areas that it is critical that people be as well informed as possible. Some respondents felt that the Guide to Searching Adoption produced by the Department of Community Services needed to include more information on vetoes. The fact that some people affected by a contact veto appeared to go into a state of shock upon learning of the veto means that any information given to them at that time - particularly if given verbally - is often not retained. As well as factual information, as much help as possible is needed to assist people in their emotional adjustment. (PARC has produced a two-page document directed at birth parents explaining a contact veto in an attempt to meet this need - wider distribution of this and similar documents would be valuable.)

4.5.5 Reunions

Some of the participants in the research had already been reunited with birth family members. The resulting experience of those involved in reunions was quite variable. If any generalisation is possible it probably is that reunion between sibling and half-siblings tend to be more consistently "successful", than reunion between a parent and child possibly because the former are less emotionally demanding ones. Also the fact that siblings are of the same generation makes it somewhat more likely that there will be common interests, life situations etc.

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

Contact between birth parents and birth children generally involves a great number of highly emotional issues - as would be expected. Not only does the relationship between two people have to be developed, but also relationships with other, significant people of the two individuals. Their spouses, other children, adoptive parents etc must also come to terms with the reunion. For example, one adoptee says she has a "*fabulous*" relationship with her natural mother and is getting along well with her mother's husband. He hadn't known about the adoption and "*it took him a while to accept me*".

Another birth mother described the reunion with her son, saying they got on very well initially. Plans were made for her to meet the adoptive parents and then there was a cooling off period. She says "*I'm not sure what is next - maybe the parents got cold feet. But I'll wait to hear from him again - even if I never see him again I'm pleased to have met him at least the one time*".

Even where people are not legally prohibited from contacting a party they tend to exercise great discretion in doing so. For example one adoptee (who accidentally learned of her own adoption as a teenager) has since met and established a "*fantastic*" relationship with her birth mother. The adoptee's concern now is to be reunited with her half brother who is 37. She knows where he is but is waiting in the hope that his adoptive father will tell him he is adopted before contacting him. If the father does not eventually tell him, she is prepared to make contact.

Some of the respondents do confess to seeking to sight or to gain informal information on a birth relative who has placed a contact veto.

One birth mother described going to the street where her daughter lived at the instigation of a friend. While viewing a house for sale in the street she is sure she sighted her daughter but did not approach. She was so shaken by the experience and felt so guilty about feeling she had violated the spirit of the contact veto that the experience was quite negative.

People appear to have varying understandings of what constitutes "no contact". The woman described above saw going into the same street as her daughter as possibly breaking the veto whereas an ex-member of Link-Up stated "*It's OK to meet and get to know someone who has put on a contact veto - the only thing you can't do is tell them that you are the person they are related to*".

Another relinquishing mother, who has had a contact veto placed on her and has since set up a support group for birth mothers, says of reunions "*Oh, everything is comfortable in the beginning. Then the child starts calling her birth mother "mum" and the adoptive parents become threatened*". In short, after what may have been a search of many years with a single goal of reunion, many people find that achieving the goal doesn't mean the process is complete. An extended period of adjustment is often needed even with 'successful' reunions and not all of them are successful.

In some cases the reunion has led to quite serious problems. One middle-aged woman participating in the research had a complex story. She herself was adopted out at the age of three and her siblings were separately adopted out. As a young woman she herself adopted out a child. She described the situation "*Suddenly out of the blue I got a phone call from this sister I didn't even know I had. She had all the information on me - even had the adoption orders for the kids. My own family (she was then married with children) didn't know anything about my prior history but I had to tell them once my sister showed up. My sister has paid people for information - the law's OK - it's the manipulation by persistent and clever people that is wrong*". Not only did the sister stumble into the family but the daughter who had been adopted out also did. The daughter is on drugs and has been very disruptive - calling at all hours to be helped and rescued from situations. As the respondent says "*I've got the worst of all worlds - my daughter and sister are harassing me and I can't get anywhere about trying to find my mother which I need to do for medical reasons*". This woman and a number of other respondents (including adoptive parents) called for a more realistic portrayal of what reunion can be like. Even those who have experienced a relatively successful reunion share this view, in that a fantasy picture of what a reunion will be like sets people up for disappointment and failure if they fall short.

4.6 SUMMARY OF QUALITATIVE RESEARCH: THE IMPACT OF THE ACT

Clearly, all aspects of adoption have very strong emotional impacts on parties involved, so that the Act touches on the most deep-felt and basic of human feelings. Few adoptees face the knowledge that they are adopted without some emotional cost. It would appear, however, that the earlier a child is told of his or her adoptive status

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

the better the adjustment. Many adoptees who had not been informed indicated that they picked up many clues throughout their childhood which said they were different. Although the Act has forced the hand of adoptive parents to disclose that their child was adopted there is evidence that "secrets" are always vulnerable to disclosure though accidental, well-meaning or malicious acts. The Act has not changed that.

It seems that the later in life that a child learns of his or her adoption the more traumatic it is; similarly if he or she learns from a source other than the parents. Birth parents who have kept an adoption secret from their current family also face anxiety about disclosure, but at least they are in a position to apply a contact veto if they choose.

For some adoptees, the motivation to seek their birth families springs from an unhappy family situation, but as many adoptees from happy family situations also express a need to know. The metaphor of a jigsaw is very apt - many felt that information gave them back pieces of themselves. The search for information was almost always very emotionally charged and draining because it was so central to the adoptees' sense of self and because it had implications for the closest of their family relationships. Similarly with birth parents, the search often reopened the pain and loss experienced at the time of adoption.

Generally, people searching for a birth family member found the services of the government and non-government bodies to be useful and supportive although occasional complaints of "cold bureaucracy" or a lack of timely responses etc were made.

There were numerous factors that seemed to influence people's desire or reluctance to seek information - gender, losses, the acceptance of the adoption circumstances, current relationships etc. The latter was one of the most critical, as often adoptees and birth parents felt that a search potentially endangered relationships with their current families. This was most strongly felt in regard to adoptees and their adoptive parents. A notion of a "closed" or "open" family system - where the boundaries between a family and the rest of the community are more rigid or more diffuse - is useful in understanding various adopting families' responses to the Adoption Information Act. "Closed" families naturally feel extremely threatened and anxious when they have thrust upon them the requirement to be accessible to the birth families. They quite rightly state that they adopted when the ethos and rules about adoption were consistent with their needs.

Equally painful is the experience of having a search end in a contact veto. For adoptees it may mean the loss of opportunity to gain information as well as contact with their birth families. For a birth parent it means the loss of contact as well as the chance to redress the notion that their child was unwanted. Almost everyone experiencing a contact veto, however, supported the need for a veto. They did not intend to violate the veto - not because of any penalties applying - but because they knew it was necessary for the other party to *want* contact with them. People were generally hopeful that a contact veto would be lifted in time so that the ability of a mediator to have the veto applicant review the situation is critical.

When reunions took place, the process of adjustment was still not over. People may experience joy and they may experience regret and pain after a reunion. The limits placed on siblings having access to identifying information was consistently a source of frustration and outrage. There is some indication that reunions between siblings are the easiest to accommodate - possibly because the emotional associations of the relationship are not as heightened.

The diversity of people's needs and situations, their values and roles in relation to adoption clearly makes it impossible to satisfactorily meet and resolve these conflicts of interest. To a great degree, though, these conflicts are being carried by a generation or two of people born into one social view of adoption, only to live to see another notion of adoption prevail. Hopefully today adoptees, adopting families and birth families will avoid the worst of the pain.

ATTACHMENT 1

LETTER FROM NSW DEPARTMENT OF COMMUNITY SERVICES

ADOPTION BRANCH

Level 4

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

31-39 Macquarie Street

PARRAMATTA 2150

PO Box 3485

PARRAMATTA 2124

OR DX 8250 PARRAMATTA

Dear Client,

Recently you contacted the *Family Information Service*, and at that time you indicated a willingness to participate in research in regard to adoption. A review of the *Adoption Information Act* is being undertaken and the *NSW Law Reform Commission* has appointed *MSJ Keys Young*, an independent firm of social researchers, to assist in this. They are seeking the participation of a range of adopted persons, adopting parents, birth parents and immediate relatives of families which include adoptees over 18 years.

A number of small group discussions will be held at a convenient time and location for people to informally talk about their experiences with or attitudes to, adoption and in particular about attempts to gain information related to an adoption. In the interests of your privacy, *Family Information Service* will not make names available to the research company so it would be up to you to contact *MSJ Keys Young* should you be interested in expressing your views. Names and addresses are only used to contact people so identities are not revealed in the groups or anywhere else and protection of privacy is assured.

It is anticipated that the group discussions will take place from 21 to 24 April, the week after Easter. If you are interested in taking part or would like more information, please phone *MSJ Keys Young* **361 4301** and ask for Susan Young or Lynda Jones who can tell you about this important project. The time available to organise appropriate groups is quite limited and it would be appreciated if you could contact the researchers as soon as possible.

Yours sincerely

Harvey Milson

Manager

ADOPTION SERVICES

Appendix C - Schedule of Fees

Adoption Information Regulation 1991

| DESCRIPTION | FEE |
|--|-------|
| Application to Principle registrar by an asopted person or otherwise for supply of original birth certificate (s10(10)). | \$100 |
| - where application is made following an application under Clause 16 of the Regulation | \$90 |
| Application to Principle Registrar by a birth parent for supply of amended birth certificate (s10(2)). | |
| where application is made in respect to one certificate | \$100 |
| where application is made in respect or two or more certificates: | |
| - for first certificate | \$100 |
| - for each subsequent certificate | \$20 |
| -where applicataion is made following an application under Clause 16 of the Regulation | |
| - for first certificate | \$90 |
| - for each subsequent certificate | \$20 |
| Application to Director-General for supply of prescribed information (s10(3)) | |
| - regarding person in respect of whom an original or amended birth certificate has been obtained | |
| -where an original or been amended birth certificate has not been obtained: | NIL |
| up to 1 page | \$35 |
| up to 2 pages | \$50 |

NSW Law Reform Commission: REPORT 69 (1992) - REVIEW OF THE ADOPTION INFORMATION ACT 1990

| | |
|--|------|
| more than 2 pages | \$65 |
| Lodge contact veto with Director-General (s18(1)) | \$50 |
| Application for Information about Contact Veto (Ref cl 16) | \$25 |
| Application to Director-General for entry of name into Reunion Information Register (s31(2)) | |
| - if made within 6 months of obtaining an original or amended birth certificate under sections 10 or 12 | NIL |
| - if made in association with a Contact Veto registration | \$25 |
| - if made otherwise | \$50 |
| Attendance at an Information Meeting (s25(1)): | |
| - where an original or amended birth certificate has been obtained | NIL |
| - where an original or amended birth certificate has not been obtained | \$10 |
| - where an original or amended birth certificate has not been obtained and two or several members of a family attend | \$20 |
| Supply of an Information kit (s35(1)) | |
| - where an original or amended birth certificate has been obtained | NIL |
| - where an original or amended birth certificate has not been obtained | \$25 |