

Chapter 12

A national framework: access to information

12.1 Adoption may change a person's legal identity, but there are things it can never change. Mothers forever remember the baby to which they gave birth, and often adopted people grow up wondering about their family of origin, especially their natural mother whom they may never have met. Parents wonder what happened to their children and how they have grown up; children wonder whether they have siblings, or what their cultural background is, or their family's health history. And some adopted people don't wonder—because they are never told the truth about their identity—until they find out by accident the circumstances of their birth, sometimes very late in life.

12.2 When someone—whether a mother, an adopted person, or another family member—decides to find out about their relatives, it is often the beginning of a long, slow and expensive journey of discovery, and one that too often ends in disappointment. Records can be hard to locate, differ from state to state, and seldom include the names of fathers, even when they were known to the women who registering the birth. Some information is subject to vetoes from other parties, while in other cases there can be rules preventing contact, even if information is available.

12.3 Record-keeping, access to information and contact provisions are areas which are all provided for in legislation across Australia, however the extent and exact nature of the provisions vary from state to state. Many submitters suggested that this is an area in which the Commonwealth should pursue a national framework to ensure consistency, and provide better access to information about identity and adoption history.

12.4 This chapter outlines the current situation across the states with regard to birth certification, access to adoption records, and the procedures in place to govern any contact between the relevant parties after adoption has taken place.

Registering births

12.5 The Australian Institute of Health and Welfare's annual publication *Adoptions Australia* summarises how adoption operates in Australia:

When an adoption order is granted, the legal relationship between the child and the biological parents is severed. The legal rights of the adopted child are the same as they would be if the child had been born to the adoptive parents. The legal rights that exist from birth with regard to the birth parents (inheritance and name, for instance) are removed. A new birth certificate is

issued to the child bearing the name(s) of the adoptive parent(s) as the legal parent(s), and the new name of the child, if a change has occurred.¹

12.6 As a result, there generally exist for any adopted person two birth certificates. The first, often secret, and seldom held by either parent or child, is the original birth certificate. The second, and legally current, one is the certificate on which are named only the adopting parents.

12.7 Problems regarding the production and subsequent access conditions for birth certificates were raised repeatedly by submitters to the inquiry. The committee heard evidence from both adopted people and mothers saying that the truthful recording of a birth was fundamental to a person's identity:

The naming of a child is so fundamental a concern that it has been recognised by the United Nations in the Declaration of the Rights of the Child, which states in principle 3:

The child shall be entitled from his birth to a name and a nationality.

The International Covenant on Civil and Political Rights, ratified by Australia in 1996, states in similar terms, in article 24.2:

Every child shall be registered immediately after birth and shall have a name.

As an adoptee, it is hard to feel you belong when you do not look like anybody you live with, and your genetic self does not fit. Then on top of that to have certificates full of lies, mistakes and half-truths adds to the confusion of your identity. Even a prisoner of war has a serial number and a rank that define his identity, and that is respected. My son's right to have his original name on his original birth certificate was finally fulfilled last year. He knows the meaning of his original name and how that ties to his family of origin, me.²

12.8 The committee also heard evidence that the birth certificate provided validation of the woman as the child's natural mother:

I never got a birth certificate. To me, that is acknowledgement that I have given birth, that this child is mine.³

This mother thought she was going mad, and we had to have the counselling team heavily involved. She knew she had a baby but the records said she did not have a baby.⁴

1 For example, Australian Institute of Health and Welfare, *Adoptions Australia 2010–11*, AIHW, Canberra, 2011, p. 1.

2 Ms Therese Hawken, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 29.

3 Ms Mary Wood, *Committee Hansard*, 20 April 2011, p. 41.

4 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

12.9 The practice of producing two birth certificates was undertaken throughout Australia. The committee heard from a number of organisations who thought that this not only caused confusion and difficulty in accessing the records, but also exacerbated the anxiety of the mothers, and children involved. Vanish Inc. suggested that the Commonwealth had a role in this practice:

The Commonwealth has condoned the Australia-wide practice of issuing two birth certificates to adopted persons. Not only does this perpetuate the lie that adopted persons are as if born to their adopted parents but also the two names create identity confusion for adopted persons.⁵

12.10 Adoption Jigsaw concurred with the view:

I think it is also that the Commonwealth showed no leadership in terms of any issue to do with adoption at any time. The example I gave in my submission is the issuing of birth certificates. One assumes that a birth certificate is an honest document. In the case of adoption a new certificate was issued which nominated the adoptive parents as the parents. We at Jigsaw have over the years had many people who did not discover they were adopted until they were 40 or 50 years of age, because they had a certificate that enabled them to believe that and because their parents did not tell them. It seems to me that—whether the state or the Commonwealth—there was no overseeing of birth certificates. They should not be a fiction but in fact should be an honest description of someone's birth. I guess it is very concerning that, to my knowledge, that state still exists in many states, not in Western Australia but in other states around Australia.⁶

12.11 According to evidence it was only the second birth certificate, produced with the names of adoptive parents on it, that was considered legally valid for the purposes of identification. This led to some submitters accusing the system of perpetuating a 'lie' that the birth certificate accurately reflected the details of the birth:

[W]ith the lie that this birth certificate implies that his adopters gave birth to him, with his birth certificate a blatant lie.⁷

If we are going to change things then we are going to say I am her mother in the continuum. Whether somebody else became her mother later is irrelevant. I am that child's mother. I birthed her, I registered her and I should be able to get that birth certificate. In many ways I think it is a sleight of hand almost that the birth certificate gets put away somewhere and the 'real' certificate is that of the adoptive parents—and that continues.⁸

5 Mr Ian (Gary) Coles, Vanish Inc., *Committee Hansard*, 20 April 2011, p. 2.

6 Ms Isabel Andrews, Adoption Jigsaw, *Committee Hansard*, 1 April 2011, pp 19–20.

7 Ms Lynnette Kinghorn, Origins Victoria, *Committee Hansard*, 20 April 2011, p. 17.

8 Ms Kathryn Rendell, *Committee Hansard*, 27 April 2011, p. 4.

12.12 Origins Victoria proposed that the two documents be different and for both to be identifying documents:

[W]e also talked about birth certificates before. Origins lobbies for the original birth certificate and an adoption certificate and for the child or the person who was adopted to use either as legal tender.⁹

12.13 In her thesis *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, Miriam Mandryk considered Article 8: part 2 of the United Nations Convention on the Rights of the Child was relevant to the issue. The section in question states:

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.¹⁰

12.14 Mandryk reasoned that, as some of the actions involved in forced adoption were illegal, governments have a responsibility to help rectify issues with these children's (now adults') identity documentation – in this case, birth certification.¹¹

12.15 The legality of actions around past adoptions is a complex issue, and the committee has not considered this at the level of individual cases. While there were many forced adoptions, some at least of which probably involved breaches of the law, not all were forced. Whatever approach is taken to rectify the situation, one of the challenges is that it must be able to be applied to the records of *all* adoptions.

The inclusion of fathers on birth certification

12.16 The issues of consent and the recording of the father's name on the birth certificate appear to be inextricably linked. The committee received evidence that if the father's name was going to be on the birth certificate then he would have had to consented to the adoption along with the mother. It was suggested that this would have caused delay and potentially substantially more work for the authorities. Origins Victoria submitted that '[s]everal of our members have mentioned that Social Workers failed to acknowledge the fathers or actively removed their names from legal and informational documentation'.¹²

12.17 One of the submitters who maintained that she insisted that the father's name be put on the birth certificate said:

9 Ms Elizabeth Edwards, Origins Victoria, *Committee Hansard*, 20 April 2011, p. 26.

10 Office of the United Nations High Commissioner for Human Rights, *United Nations Convention on the Rights of the Child*, Article 8, part 2, <http://www2.ohchr.org/english/law/crc.htm#art8> (accessed 19 February 2012).

11 Miriam Mandryk, *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, RMIT University, 2011, p. 12.

12 Origins Victoria, *Submission 166*, p. 59.

[T]he birth certificate was bodgied up by the mother and baby home who never put the father's name on a birth certificate—I did not know this but that was normal practice because it was easier for them to then get a signature from one woman and they could just leave the father out of it altogether. I know they deliberately did that because I was adamant his name go on the birth certificate. He visited me. He came there. Still it did not go on.¹³

12.18 It was commonplace for fathers' names to be omitted from birth certificates. This sometimes caused a great deal of pain and anxiety for everyone involved. The evidence the committee received is very similar to that submitted to the NSW Legislative Council's Standing Committee on Social Issues as part of their inquiry into past adoption practices. They cited testimony from the AASW setting out the procedures required for a father to be on the birth certificate:

If she wanted the father's name it would be necessary for the father to sign, I think, a statutory declaration in front of a JP to give his permission for his name to be given.¹⁴

12.19 This process of requiring a separate declaration by the father apparently resulted in a very small number of fathers being recorded on the birth certificate. The NSW Registry of Births, Deaths and Marriages gave evidence that:

[L]ess than two per cent of original birth certificates from the period up until the 1980s included the name of the birth father...[T]his may have been due to the reluctance of fathers to contact a justice of the peace, or their lack of knowledge of this requirement.¹⁵

12.20 Another mother described the indifference of adoption agencies to ensuring that this information was recorded, and highlighted the impact that the omission of the father's name ultimately had on the child:

They had to prove that the father was really the father. If the father was not willing to give information about his name and details, or whatever, to go on the birth certificate they had to then chase them to put it on, but they did not want to. It was too much trouble because they had that many babies pouring through anyhow that it was just extra work for them. But that is a common thing and a lot of adoptees will say that. Their father's name is not on it. A lot of mothers will say, 'But I told them.' That hurt my son a lot, I know.¹⁶

13 Ms Lynne Devine, ARMS WA, *Committee Hansard*, 1 April 2011, p. 46.

14 AASW, cited in NSW Legislative Council's Standing Committee on Social Issues, *Releasing the Past: adoption practices, 1950–1998*, Sydney, 2000, p. 113, para 7.101.

15 NSW Legislative Council's Standing Committee on Social Issues, *Releasing the Past: adoption practices, 1950–1998*, Sydney, 2000, p. 113, para 7.102.

16 Ms Barbara Maison, Apology Alliance, *Committee Hansard*, 20 April 2011, p. 37.

12.21 Consistent with evidence that fathers had to take active steps to be legally recognised, Origins Victoria cited Ingles (1984) who said in his book *Living Mistakes: Mothers who consented to adoption*:

In this atmosphere of punitive moralism, fathers by nature were not fathers in law unless they placed themselves in that situation.¹⁷

12.22 Furthermore, the committee heard from the Tasmanian Government Department of Health and Human Services who said that prior to 1988 there was no process for an unmarried father to have his name put on the birth certificate which would have triggered a requirement for authorities to obtain his consent.

My understanding is that [a father's consent] was only required since the 1988 legislation. It was set out that if a man had done certain things such as put his name on the birth certificate then he had acknowledged paternity and his consent was required.¹⁸

12.23 The general adoption legislative situation in Tasmania has developed over the years, but the issue of consent before 1988 was governed by the *Adoption Act 1920*. This provided very little in way of guidance on the requirements for parental consent, other than to say:

[The Police Magistrate] shall...require the consent of the parents, whether living in or out of the state, or such One of them as is living at the date of the application, or if both the parents are dead, then the legal guardian of the child, or if one of the parents has deserted the child, then the consent of the other parent.¹⁹

12.24 It appears that fathers were often not named on birth certificates, despite their names being provided either by the fathers themselves, or by the mothers. The committee understands that this situation has sometimes caused, and continues to cause, anger and distress for all the parties concerned. The following section explores the evidence the committee received on changing birth certificates to include fathers' names where appropriate.

Changing birth documentation

12.25 A recurring request from submitters to the inquiry was that amending birth certificates and other documentation should be made much easier than it is at present. One of the submitters in Perth recommended that:

[A]dopted adults be allowed to reclaim their true identities, which show that they were born to the natural parent, and be given back their own true

17 K. Ingles, 'Living Mistakes: Mothers who consented to adoption', Allen & Unwin, North Sydney, 1984.

18 Jane Monaghan, Tasmanian Department of Health and Human Services, *Committee Hansard*, 26 October 2011, p. 34.

19 Department of Health and Human Services, Tasmanian Government, answer to question on notice, 10 January 2012 (received 12 January 2012), p. 1.

original birth certificate stating this truth. Substitute parents should have no say in this matter. Other adults in society are allowed to make their own choices and adoptees should not be discriminated against and treated as if they were forever children. Natural fathers who do not have their names mentioned on the original birth certificate should have the right to have their names added now if they so wish.²⁰

12.26 Another submitter described the importance of being able to change the birth certificate to accurately reflect the natural parents:

I applied for her original birth certificate to see what she would see once she applied for it, and I was furious that there was a blank at her father's name...I insisted that they change the birth certificate, which they did. The issues of records are extremely important, and I find it astounding that donor and surrogate children may be in the situation of not being able to find their parents in the future.²¹

12.27 MacKillop Family Services wrote that the ability to correct or amend birth documentation was one of the many unresolved issues for these mothers:

Errors in the recording of information, in particular relating to the circumstances of conception and birth of the child. Mothers have a right to correct these details, and this is an important step in their reclamation of power over the recording and circumstances of their motherhood.²²

12.28 In WA the Association Representing Mothers Separated from their Children by Adoption (ARMS WA) gave evidence that Western Australian legislation has historically prohibited the surname of the mothers being kept, and had also prevented the adopted person from obtaining their original birth certificate with their original details on it:

In 1926 a further amendment was made to the act to prevent adult adoptees from discovering their original identity when they applied for a birth certificate. A provision was made so that the original register of births could not be opened for inspection except with the approval of the Registrar-General.²³

12.29 The Monash University History of Adoption project confirmed this situation, outlining the legislative amendments to the WA Adoption of Children Act in the 1920s:

1921—Major amendment to introduce secrecy. Adopting parents objected to child retaining original surname. Amendment meant that adopted child assumed the adoptive parents surname but kept his/her original first

20 Ms Judith Hendriksen, *Committee Hansard*, 1 April 2011, p. 2.

21 Ms Jennie Burrows, *Committee Hansard*, 29 April 2011, p. 61.

22 MacKillop Family Services, *Submission 86*, p. 3.

23 Ms Shirley (Esme) Moulds, ARMS WA, *Committee Hansard*, 1 April 2011, p. 51.

(Christian) names. Adoption records only open to inspection with permission of the Master of the Supreme Court

1926—Legislation to amend Adoption Act to prevent adopted child from obtaining original birth certificate. Up until then a new registration was not made on adoption—apparently a notation of the adoption was just made on the original birth entry. Hence on applying for a birth certificate adopted children might suddenly realise that they were not the children of those who adopted them, and whom they had always regarded as their parents.²⁴

Committee view

12.30 Allowing subsequent modification of a document as basic as a birth certificate should never be lightly undertaken. However the committee believes there is a strong case in this situation. The committee understands the reasoning behind the production of two birth certificates. Equally, it understands the suggestion put by Origins Victoria, which discussed the possibility of both the original birth certificate and the certificate that represents the transfer of legal responsibility to adoptive parents both be recognised as legal documents of identification by all relevant authorities.

12.31 This is a matter of some legal and technical complexity. For example, risks of security, fraud and identity theft may mean that governments would be very cautious around allowing any individual to have dual, legally valid identity documents that included different names. While the committee sympathises with the objective of ensuring that each person's complete identity is respected, it does not want to support reforms that increased the scope for fraud or identity theft.

12.32 The committee understands that, under its current adoption laws, Western Australia now uses an integrated birth certificate that records all details in one record: original parents, adoptive parents, and the adoption.²⁵ Mandryk suggests that a certificate of this nature be made available to all adopted people who apply for it.²⁶ The committee notes that this would avoid fraud and identity theft issues, and agrees that such a certificate could be made available in all jurisdictions.

24 Monash University, *History of Adoption Project*, <http://arts.monash.edu.au/historyofadoption/records/western-australia.php>, (accessed 15 February 2012).

25 Government of Western Australia, Department for Child Protection, *Information about Adoption: Obtaining adoption information*, <http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx> (accessed 21 February 2012).

26 Miriam Mandryk, *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, RMIT University, 2011, p. 53.

Recommendation 13

12.33 The committee recommends that

- **all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and**
- **jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers.**

12.34 Adding new information to old birth certificates should also be approached with caution, but the committee believes there are cases where it is warranted. Subject to appropriate controls being in place to verify paternity, the committee supports the names of fathers being added to pre-adoption birth certificates. The process of adding a father's name should be rigorous, but not unduly costly or time consuming.

12.35 It may be appropriate that a policy governing the addition of a father's name to a certificate should be applied to certificates registering a birth to any single woman (not only those whose child was then adopted). The committee's recommendation is narrower in scope, simply because it did not receive evidence more broadly.

Recommendation 14

12.36 The committee recommends that:

- **All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and**
- **Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.**

Access to documentation and information management systems

12.37 Access to adoption information, documentation and other records that accompany adoption was of great importance to submitters. Most states have relatively recently established systems around access to information that gives control to the parties involved in the adoption. However these systems are not uniform. Each state has markedly different processes and regulations. The committee examined the provisions in each jurisdiction, in some cases writing to state or territory governments seeking a clearer picture of why they chose to operate systems in a particular way. The information below draws on the work of the Australian Institute of Health and Welfare (AIHW) which collates annual data for adoptions across Australia, as well as from the states' own post adoption services.

12.38 The systems for managing the access to information and potential contact between parties vary across the states and territories. Contact vetoes for example are used in some states. As the term suggests a contact veto allows one party to an

adoption to block contact from another party to the same adoption. Contact vetoes are usually managed within a system that either periodically checks with the interested parties to ensure that a veto is still wanted, and/or involves a mediation service acting as an intermediary to liaise between parties to see if contact would be possible.

12.39 In some states such as South Australia a party to an adoption can veto identifying information being released to another party, and that state does not have any systems to manage contact. In the Northern Territory a party to an adoption can veto the release of information and contact separately.

12.40 A common feature across the country is that different parties to an adoption can have access to differing kinds of information about an adoption. Their identity (and sometimes other facts such as the age of the adopted person) will dictate whether the party receives identifying information such as name and current whereabouts; or whether they receive non-identifying information that gives details of things like occupation, or the religion that a child was raised.

12.41 A number of jurisdictions also use some form of register or message bank that allows parties to an adoption to register their wishes regarding access to information or contact. This is usually managed by a post-adoption service that also may provide mediation and counselling services in conjunction with the management of the information.

New South Wales

12.42 Access to information in NSW depends on whether an adopted person is under or over 18 years old and whether an adoption order was made before or after 1 January 2010. For adoptions that took place before 1 January 2010, an adopted person aged 18 or over is entitled to have access to his or her original birth certificate and to information about his or her origins. Natural parents also have the legal right to identifying information. If the adopted person is under 18 permission of the adoptive parents or guardian is required, and the willingness of the adopted person or natural parents to be contacted is also a factor.²⁷

12.43 The identifying information about a person involved in an adoption and/or an adopted person's siblings can include:

- Name;
- Date of birth; and
- Address.

12.44 Documents that contain identifying information are an adopted person's:

27 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adoption/past_adoptions/pre_2010.html (accessed 16 February 2012).

- Original birth certificate—which has the names and addresses of birth parents and the adoptee's name at the time of their birth
- Amended birth certificate—which has the names and addresses of adoptive parents and the adoptee's name after the adoption
- Birth record and adoption order—which have the adoptee's pre and post adoptive names and the names of all of the people involved in the adoption.²⁸

Contact vetoes

12.45 Where an order of adoption was made before 26 October 1990, natural parents and adult adopted persons are able to lodge a contact veto. On the lodgement of a contact veto, it becomes an offence for the recipient of identifying information to try to make contact with the person who imposed the contact veto. Information about that person can be released if the applicant for the information gives a written undertaking not to use the information to seek contact.²⁹ Contact veto provisions do not apply to adoptions made after 26 October 1990.

Registers

12.46 The Adoption Information Unit of the NSW Department of Health and Community Services manages a number of registers that people can use to convey their wishes and manage their information. These are:

Reunion and information register

Birth parents, adoptive parents, adoptees, their birth siblings, grandparents and relatives can use this register to contact a person from whom they were separated by adoption.

Contact veto register

If the adoption was made before 26 October 1990, and you are an adopted person or birth parent, you can prevent contact from the other party by registering a contact veto. The veto only prevents contact. It does not prevent the release of identifying information about the people involved in the adoption.

Advance notice register

Birth parents, adoptees over the age of 17 years and 6 months and adoptive parents may register if they wish to delay the release of identifying

28 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adopti/on/past_adoptions/pre_2010.html (accessed 16 February 2012).

29 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40. AIHW, Canberra, Appendix B.3, pp 72-73.

information for two months, giving them time to prepare for possible contact.³⁰

Victoria

12.47 Victoria's *Adoption Act 1984* governs access to adoption information.³¹ The locating and provision of family records and information on adoption is facilitated by the Victorian government's Family Information Networks and Discovery (FIND) service.

Access to identifying and non-identifying information

12.48 All parties to an adoption in Victoria can apply for information from the FIND service. An adopted person is entitled to all information contained in their adoption records, including identifying information about the natural parent(s). However if the adopted person wishes to obtain information that is not part of the adoption records concerning the current whereabouts of the natural parent then permission from the natural parent is required.³²

12.49 According to the information on the FIND website any party to the adoption can apply to receive a copy of the adopted person's original birth certificate and adoption records.³³ However, identifying information about an adopted person can only be released with the written consent of the adopted person if he or she is aged 18 or older, or of the adoptive parents if the adopted person is under 18.³⁴ Natural parents are entitled to non-identifying information about their child's placement and relevant adoptive family history, which is obtained from the adoption records.³⁵

30 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adopton/past_adoptions/pre_2010.html (accessed 16 February 2012).

31 Victorian Department of Human Services, *Adoption Records – Family Information Networks and Discovery*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

32 Section 93 of the *Adoption Act 1984* (Victoria).

33 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

34 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 73.

35 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery/information-for-birth-parents> (accessed 16 February 2012).

Contact and information register

12.50 There is no contact veto system in Victoria. However, there are restrictions allowed on the release of identifying information, noted above, which can be placed by adopted persons. This system, operated by FIND, involves maintaining an adoption information register in accordance with the Adoption Act. The register records relevant people's wishes in relation to giving or receiving information and making contact. On registering the contact details, desires about providing information, obtaining information, or meeting other people involved in an adoption are entered onto the Adoption Information Register. All information is kept strictly confidential. Registered applicants can update or cancel the details on the Register at any time.

12.51 Adult adopted people are entitled to receive information about their origins, including the names of their natural parents if available. Other parties may only receive non-identifying information initially. The search and intermediary support that FIND provides may facilitate identifying information being exchanged between parties.³⁶

12.52 The committee sought further information on Victoria's regulatory framework, and the state government responded explaining the reasoning behind their current access to information provisions in the Act:

The Act places restrictions on the provision of identifying information in line with privacy considerations, and established safeguards such as seeking agreement between parties and the provision of counselling by an adoption information service.³⁷

Queensland

Access to identifying and non-identifying information

12.53 The Queensland *Adoption Act 2009* makes different provisions for the release of information depending on whether an adopted person is under or over 18 years old and whether an adoption order was made before or after 1 June 1991. The Queensland Government funds a post adoption support service (PASQ) that assists those people engaging in a search, providing information, counselling and mediation between relatives if required.

12.54 Adopted persons and natural parents are entitled to receive identifying information once the adopted person has reached 18. Queensland has specific criteria in place regarding information to and from natural fathers:

36 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

37 Victorian Government Department of Human Services, response to committee correspondence, received 3 January 2012, p. 2.

Identifying information can be provided to an adopted person about his or her birth father and to the birth father about the adopted person if

- he consented to the adoption, or the need for his consent was dispensed with;
- he is recorded on the birth certificate as the person's father;
- Adoption Services Queensland's records demonstrate he accepted paternity of the adopted person before or at the time of the adoption; [or]
- there is otherwise sufficient evidence to satisfy Adoption Services Queensland that the man is the adopted person's biological father.³⁸

12.55 Eligible relatives of an adopted person or birth parent who signed an adoption consent can also obtain identifying information. This includes siblings of the adopted person who were not themselves adopted.³⁹

Contact vetoes and statements

12.56 Queensland still effectively has a contact veto mechanism in place for adoptions that took place prior to 1991, although the commencement of the Adoption Act brought significant changes to the provision of identifying information. Even if a request for no contact is in place, identifying information can be provided, as long as the person seeking information has signed an acknowledgment indicating that they are aware that a contact statement requesting no contact is in place and that it would be an offence to contact the other person.⁴⁰

12.57 The reason that there is still a veto mechanism in place is that the repealed *Adoption of Children Act 1964* made provision for 'objections to contact', with objections to contact and the disclosure of identifying information to be lodged by adopted people or natural parents affected by an adoption order made before 1 June 1991. Under new legislation that commenced in February 2010, objections to contact have been replaced with 'contact statements'. However, all objections which were in force under the repealed *Adoption of Children Act 1964* continue to operate under the new legislation. They have the effect of a contact statement specifying a request for no contact (thus operating as a contact veto).

38 Queensland Government, Child Safety Services, Adoption Services, *Access to identifying information before an adopted person is 18 years of age*, <http://www.communities.qld.gov.au/childsafety/adoption/past-adoptions/access-to-information/access-to-identifying-information-before-an-adopted-person-is-18-years-of-age> (accessed 16 February 2012).

39 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, pp 73-74.

40 Queensland Government, Child Safety Services, Adoption Services, *Access to identifying information before an adopted person is 18 years of age*, <http://www.communities.qld.gov.au/childsafety/adoption/past-adoptions/access-to-information/access-to-identifying-information-before-an-adopted-person-is-18-years-of-age> (accessed 16 February 2012).

12.58 A contact statement does not need to be renewed: it remains in place unless revoked by the person who lodged the statement or the person dies. Offence provisions with a maximum penalty or imprisonment for two years apply if an adopted person or natural parent affected by an adoption order made before 1 June 1991 contacts another party who has requested no contact.

12.59 The release of identifying information can be restricted only if the Children's Court has made an order preventing the release of identifying information where the release would pose an unacceptable risk of harm.⁴¹

Western Australia

Access to identifying and non-identifying information

12.60 Natural parents, adoptive parents and adopted persons may apply for access to identifying and non-identifying information about the adoption from departmental records. Permission for access is at the discretionary authority of the departmental Chief Executive Officer. The committee did not receive evidence about how this discretion is exercised in practice.⁴²

12.61 Identifying information may contain the names, addresses, ages or dates of birth and occupations of the people involved in the adoption when it took place. Non-identifying information is from adoption records and files, and provides details about a person who is part of an adoption but does not identify that person. This information may include a physical description, hobbies or interests, education or medical details.

12.62 Since 1995, future contact and exchange of information between parties is facilitated by an adoption plan. This must be negotiated between natural parents and prospective adoptive parents before a child is placed. The plan becomes part of the Adoption Order and operates until the adopted person becomes an adult.⁴³

Outreach and messagebox system

12.63 In Western Australia, a 'message box system' operates, which allows anonymous contact between the parties.⁴⁴ Information and contact vetoes in Western

41 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 74.

42 Western Australian Department for Children Protection, *Post Adoption Information and Services*, <http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx> (accessed at 16 February 2012).

43 Western Australian Department for Children Protection, *Post Adoption Information and Services*, <http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx#8> (accessed at 16 February 2012).

44 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 75.

Australia were prohibited under changes to the *Adoption Act 1994* by the *Adoption Amendment Act 2003*. The amendment prohibited the placement of any new information vetoes or contact vetoes on adoptions since that date and existing information vetoes ceased to be effective from 1 June 2005.

12.64 The Western Australian Government's Past Adoption Services provides a limited outreach service or alternatively, a licensed mediator may be able to assist parties to make contact.

South Australia

Access to identifying and non-identifying information

12.65 In South Australia, adopted people aged 18 or over can have access to information in their original birth certificate, as well as the following details:

- The names and dates of birth of birth parents, if known.
- The names of any siblings who were also adopted and who have also reached 18 years of age.
- Any information held on record that relates to the birth parents and the circumstances of your adoption.
- Any message, information or item that has been left by another party.
- The authority to obtain their original birth certificate.⁴⁵

12.66 Once the adopted person reaches 18, the natural parents can have access to the following information:

- The name given to the adopted person by their adoptive parents.
- The names of the adoptive parents.
- Other relevant information relating to the adoptive parents or the adopted person.
- Any message, information or item that another party has left.⁴⁶

12.67 Adoptive parents also have the right to access information relating to the natural parents only if they have the consent from the adopted person. They can also access any message left for them.

45 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption*, Restricting access to adoption information, <http://www.dfc.sa.gov.au/pub/tabId/234/itemId/891/moduleId/871/Getting-adoption-information.aspx> (accessed 20 February 2012).

46 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption*, Restricting access to adoption information, <http://www.dfc.sa.gov.au/pub/tabId/234/itemId/891/moduleId/871/Getting-adoption-information.aspx> (accessed 20 February 2012).

12.68 If a person applies for adoption information and a veto has been placed (see below), the Department can still release non-identifying information. In these circumstances, an adopted person can find out information about their adoption that does not allow the person placing the veto to be traced. Such information could be details about their natural parents interests and backgrounds found on the adoption file or messages left by their natural parents.⁴⁷

Information veto and messaging system

12.69 Vetoes for adoptions completed after 1989 were prohibited by the *Adoption Act 1988*. However if the adoption took place before 17 August 1989 then the parties to the adoption can place a veto on identifying information being given to other parties. A veto lasts for a 5 year period with a reminder being sent to the placer of the veto prior to its expiry. It can be revoked at any time by the party who placed it. The system also allows for a message to be left explaining the reasons for the veto.

12.70 The committee wrote to the South Australian Government seeking information on the background behind the decision to allow an effective veto to be placed on pre-1989 adoptions. The Government of South Australia responded that:

[B]ecause most previous adoptions had been conducted in secret and parties were told that their identities, including the child's, would never be revealed to one another, the South Australia Parliament introduced the concept of the veto system.⁴⁸

12.71 However they also said that the veto was not necessarily insurmountable:

In practice, careful social work intervention can involve the exchange of non-identifying information (such as letters) between parties to an adoption through the Department acting as an intermediary while a veto remains in place. This sometimes leads to parties feeling comfortable enough about the other party to remove the veto and allow direct communication between them.⁴⁹

12.72 Following the enactment of the *Adoption Act 1988 (SA)*, adopted people, natural parents, adoptive parents and certain relatives are legally entitled to get adoption information once the adopted person turns 18 years of age.⁵⁰ Adoptive

47 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption, Restricting access to adoption information*, <http://www.dcsi.sa.gov.au/pub/tabid/234/itemid/869/default.aspx> (accessed 20 February 2012).

48 Government of South Australia, Department for Education and Child Development, response to committee correspondence, received 4 January 2012, p. 1.

49 Government of South Australia, Department for Education and Child Development, response to committee correspondence, received 4 January 2012, p. 2.

50 Government of South Australia, Adoption and Family Information Service (AIFS), *Searching for birth relatives*, <http://www.dcsi.sa.gov.au/pub/default.aspx?tabid=241> (accessed 16 February 2012).

parents are able to lodge a veto to restrict identifying information about themselves being released to the natural parents, with a provision that this does not prevent the adopted person and the natural parent from making contact with each other.⁵¹

Tasmania

Access to identifying and non-identifying information

12.73 In Tasmania, an adopted person aged 18 or over may apply for access to his or her pre-adoption birth record and information from the adoption record. The committee assumes that this would include identifying information of a natural parent.

12.74 Natural parents, natural relatives and lineal descendants of an adopted person may apply for non-identifying information at any time or for identifying information when the adopted person is aged 18 or over. Adoptive parents may apply for non-identifying information at any time, but may receive information that includes the name of a natural parent only with the written permission of the natural parent concerned.

Contact veto

12.75 The Adoption and Permanency Service provides a number of services for those looking for assistance in searching for information about an adoption, albeit at a significant cost. One of their roles is to manage the veto system.⁵²

12.76 The right to information is unqualified, but a contact veto may be registered. Any adopted person, natural parent, natural relative, lineal descendant of an adopted person or adoptive parent may register a contact veto. Where a veto has been registered, identifying information is released only after an undertaking not to attempt any form of contact has been signed. An attempt to make contact where a veto is in force is an offence. A contact veto may be lifted at any time by the person who lodged it.⁵³

51 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 75.

52 Tasmanian Government, Department of Health and Human Services, *Adoption and Permanency Services*, http://www.dhhs.tas.gov.au/service_information/services_files/adoption_and_information_service (accessed on 16 February 2012).

53 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 76.

Australian Capital Territory

Access to identifying and non-identifying information

12.77 The ACT's *Adoption Act 1993*, provides for access to identifying information for adopted people, adoptive parents, natural parents and natural relatives where the adopted person is over 18 years. Before the *Adoption Act 1993*, no provision for accessing adoption information existed. However, the Act is retrospective, so information is now available for adoptions that occurred under the previous Act. The system allows for identifying information to be released but to say no to future contact or communication.

Contact veto

12.78 The Act provides for an unqualified right to information, but also gives the adopted person aged over 17 years 6 months, an adoptive parent, natural parent, adult natural relatives, adoptive relatives and adult children or other descendants of the adopted person the right to lodge a contact veto. The veto has to refer to a specified person or a specified class of persons. On the lodgement of such a veto, it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto. Under the *Adoption Amendment Act 2009* vetoes can no longer be lodged in respect of adoption orders made after 22 April 2010.⁵⁴

Reunion information register

12.79 The ACT government also provides a Reunion Information Register for those who wish to register their wishes to meet other parties to their adoptions.⁵⁵

Northern Territory

Access to identifying and non-identifying information

12.80 Up until 1994 there was no provision in the Northern Territory for the release of information about an adoption to anyone, even those most intimately involved. In 1994 the *Adoption of Children Act 1994* was passed which provided for a more open process, with identifying information being available unless a veto has been lodged. All parties to the adoption are able to apply for:

- Non-identifying information which was recorded at the time of adoption;
- Information which identifies the person/s and their address at the time of adoption;

54 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 76.

55 ACT Government, Department for Health and Community Services, Adoptions and Permanent Care Unit, *Information on post order support services*, http://www.dhcs.act.gov.au/_data/assets/pdf_file/0013/11704/DHC1628_adoptinfopostsupport.pdf (accessed at 16 February 2012).

- Documentation which will allow an adopted person to obtain their original birth certificate.⁵⁶

12.81 Aboriginal and Torres Strait Islander childcare agencies are authorised to counsel for the purpose of supplying identifying information.

12.82 The NT Government Department of Children and Families Adoption Unit provides information and counselling to adopted people, natural parents, adoptive parents, and former State Wards.⁵⁷

Contact and information veto system

12.83 A three-year renewable veto may be lodged by the adopted person or natural parents with respect to adoptions finalised before 1994. There is no veto provision with respect to adoptions finalised under the new Act.⁵⁸ The veto can apply to:

- identifying information to another party to the adoption;
- contact with that party; or
- both contact and identifying information.

Committee view

12.84 From its review of adoption information laws, the committee has observed areas of cross-national consistency. Most jurisdictions operate systems that, for adoptions that occurred since the law reforms (typically in the 1990s), allow full exchange of information once an adopted person is over 18, and allow managed exchange of information before they reach that age.

12.85 For adoptions that took place under the older laws, most jurisdictions, while improving information accessibility for older adoptions, have found ways to maintain restrictions that reflect the past secrecy provisions associated with 'closed adoption'. Every jurisdiction has a mechanism to prevent contact between parties if one of more party wants to prevent it.

12.86 In one important area, however, there are significant differences. Three jurisdictions—Victoria, South Australia and the Northern Territory—have systems that allow some parties to prevent others from obtaining identifying information, not just preventing contact. In each of these jurisdictions, the arrangements are slightly different. Victoria's system was the one about which the committee received most evidence, perhaps reflecting the large number of adoptions that took place in that state, and therefore the large numbers of mothers affected.

56 NT Government, Department of Children and Families, *Adoption Services*, <http://www.childrenandfamilies.nt.gov.au/Adoption/> (accessed 16 February 2012).

57 NT Government, Department of Children and Families, *Application for Identifying Information*, <http://www.childrenandfamilies.nt.gov.au/Adoption/> (accessed 21 February 2012).

58 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 77.

12.87 As noted earlier, under Victoria's rules, an adopted person can put in place a restriction on the adoption information register that prevents natural parents from obtaining identifying information about their child. Origins Victoria were critical of this provision, asking:

why a mother was discriminated against, when for decades adoptive families knew her identity, and the current legislation disenfranchises her right of identifying information of the child she carried and birthed... Origins argue that to deprive a mother of 50-80 years of age of identifying information relating to the person she carried and birthed is not only a veto it is cruel.⁵⁹

12.88 Veto provisions that have similar effects exist in South Australia and the Northern Territory, however in those jurisdictions vetoes must be renewed regularly to maintain their validity. In Victoria this is not required.

12.89 In Victoria, the proportion of cases in which natural parents fail to obtain identifying information about their child is relatively high, despite the efforts of Family Information Networks and Discovery (FIND) in search and mediation services. This is in part because a natural parent cannot get identifying information if FIND fails to locate the adopted person.⁶⁰ Analysis of 2009-10 figures supplied by FIND shows that, of the 70 cases where a natural parent registered and sought information about their child,⁶¹ the majority of these cases did not result in the exchange of identifying information, with over a third of them because the adopted person refused to release it, or because they could not be found.⁶²

12.90 In contrast, the proportion of cases affected by South Australia's veto system appears smaller (though the figures are not directly comparable). South Australia stated that

For approximately the last 5 years, only about 1 to 2 per cent of the applications for adoption information each year have encountered a veto by the other party. At 30 June 2011, 439 adoption information vetoes were in place in South Australia.⁶³

12.91 The total number of South Australian vetoes represents only a few percent of adoptions that took place in that state prior to the introduction of the new legislation in

59 Origins Victoria, *Submission 166*, pp 42–43.

60 Although there is an option to see a court order to release the information.

61 The Victorian data reported on 94 cases in all. The committee's analysis excluded six that had not been concluded, two who had returned to the service for counselling, six who registered with the service but did not then proceed, and ten who left contact details but appeared not to actively request information. This left 70 cases.

62 Correspondence from Victorian Department of Human Services, 23 December 2011, received 3 January 2012.

63 Correspondence from South Australian Department for Education and Child Development, 28 December 2011, received 4 January 2012.

1989. Although there are differences between South Australia and Victoria, in both cases the number of parents affected by the vetoes is relatively small. Evidence received by the committee shows that the impacts on those parents is however very great.

12.92 Victoria argued that its system was the result of a careful balancing of rights, including to privacy:

The Act placed restrictions on the provision of identifying information in line with privacy considerations, and established safeguards such as seeking agreement between parties and the provision of counselling by an adoption information service. With regard to adopted persons, however, the best interests of the child were seen to override such considerations, and identifying information was to be provided to adult adopted persons as a right.⁶⁴

12.93 The committee notes that Victoria maintains a relatively high level of support for parties to adoptions seeking to reconnect with their families. It recognises that Victoria was the first jurisdiction to reform adoption laws, and is to be commended for its early work in this area. However now, a quarter of a century on, it may be time for them to be further reformed.

12.94 Decisions about the information disclosure provisions in Victoria's new legislation were based on the paramountcy of the rights or interests of the child. However, an adopted person over the age of 18 is no longer a child. At that point, the basic legal principle should be that they take on the rights and responsibilities of an adult. These rights and responsibilities extend to the right to manage contact with other people, but also the responsibility of accepting that individuals cannot control all information held about themselves by others, particularly other relatives.

12.95 The committee notes that NSW, Queensland, Western Australia, Tasmania and the ACT between them include the majority of Australia's post-war adoptions. None of these jurisdictions allows an adult party to an adoption to be prevented from having identifying information about other adults. The committee did not receive evidence to suggest that the policies in these jurisdictions caused significant problems for affected individuals. Those problems that it heard about appeared associated with a lack of counselling or preparation, rather than with the receiving of the information itself.

12.96 In any case, the committee questions whether the principle of paramountcy of the interests of the child provides relevant guidance in forced adoption cases, for two reasons. First, in many cases of forced adoption the mother was herself a child at the time. Both were children, and both may seek to claim protection of their rights as children. Second, where adoption was forced, it is not clear why that unethical use of

64 Correspondence from Victorian Department of Human Services, 23 December 2011, received 3 January 2012.

force should be allowed to attenuate the interests of one party (the natural mother) as against the interests of others. In short, the committee does not believe that paramountcy of the rights or interests of the child can provide meaningful policy guidance on how to frame information and contact provisions of adoption laws as they pertain to people who are now adults.

12.97 The active assistance of a service such as FIND in Victoria can sometimes overcome initial resistance that a party to an adoption may have to the release of identifying information. South Australia, when discussing its information vetoes, observed that:

On the whole the current veto provisions, along with careful Social Work assistance for those parties affected by them, have provided good outcomes for parties to adoptions in this State. In most cases the best possible balance is achieved of allowing access to information to those who seek it and respecting the right to privacy for parties who wish to maintain it.⁶⁵

12.98 Effective support by post-adoption services is valuable, but the problematic cases remain those where 'allowing access to information to those who seek it' *conflicts* with 'the right to privacy for parties who wish to maintain it'. The South Australian correspondence provided no information that would show why this conflict should be resolved through an information veto rather than, as in most states, through a contact veto.

12.99 Finally, the committee is aware of concerns around some current 'contact statements' in Queensland, particularly the grandfathered 'objections to contact' that were lodged in conjunction with the first tranche of law reform in Queensland, in 1990-91. The concerns have arisen because of controversy around the passage of the legislation, and the discovery of some fraudulent forms objecting to contact. These forms had been improperly placed on the files of adopted children, preventing contact by natural parents, without the adopted children knowing that the form had been placed there.⁶⁶

12.100 There were also specific concerns around the placement of contact vetoes affecting Indigenous adopted persons:

Another thing that Link-Up finds sometimes is that the no-contact statements that were put in place at the time of the adoption are actually not the wishes of the birth parent. They were the wishes of the authorities that were taking the child away. There was an idea that if they severed the relationship completely, the child would never know their Indigenous parentage.⁶⁷

65 Correspondence from South Australian Department for Education and Child Development, 28 December 2011, received 4 January 2012.

66 Ms Linda Bryant, Origins Queensland, *Committee Hansard*, 27 April 2011, pp 47-49; Dr Trevor Jordan, Jigsaw Queensland Inc., *Committee Hansard*, 27 April 2011, p. 55.

67 Mrs Rosemary Rennie, *Committee Hansard*, 27 April 2011, p. 14.

12.101 Several witnesses called for Queensland's system regulating contact to be reviewed or abolished.

Mrs Rennie: ...Another recommendation that Link-Up would like to make is for a review of no contact statements. I think there is importance in protecting the privacy of birth parents but there is a responsibility to a child as well so that they can have the full understanding of who they are.

Dr Feeney: We definitely, like you, were pointing out about reviewing them. We have talked to Jigsaw about this, but there are a lot of examples where they were not made with the fullest possible understanding.

CHAIR: They were also made a long time ago.

Mrs Rennie: And they just carried on every time the legislation changed.⁶⁸

12.102 ALAS stated:

In 1991 another injustice was done by the Queensland government in setting up the veto system. This system needs to be abolished and there need to be a full investigation into those vetoes that are still current. Some innocent adoptees are waiting for their natural mothers to contact them, when the adoption department has told the mothers that the adoptees do not want contact with them—a waste of valuable time for the sick and aged innocent parties.⁶⁹

12.103 The committee supports harmonisation of adoption legislation across Australia, to provide consistency in the accessibility of information for all parties involved in adoption. It believes changes need to be pursued in some jurisdictions that will allow access to all information, identifying or otherwise, for all parties once they have reached adulthood. The committee is concerned that indefinite contact vetoes (or their effective equivalents, however described) may be inappropriate, and that making them open-ended increases the risks of them being improperly placed, or simply incorrect, such as is the case on some Queensland files.

Recommendation 15

12.104 The committee recommends that the Community and Disability Services Ministers Conference agree on, and implement in their jurisdictions, new principles to govern post-adoption information and contact for pre-reform era adoptions, and that these principles include that:

- **All adult parties to an adoption be permitted identifying information;**
- **All parties have an ability to regulate contact, but that there be an upper limit on how long restrictions on contact can be in place without renewal; and**

68 Mrs Rosemary Rennie, *Committee Hansard*, 27 April 2011, p. 14.

69 Ms Patricia Large, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 27.

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- **All jurisdictions provide an information and mediation service to assist parties to adoption who are seeking information and contact.**

Non-government organisations

12.105 Not all adoption information is contained in the official adoption records held by state authorities. The hospitals, homes or institutions that the women gave birth in, or spent time in as part of their birthing experience, also hold important information such as medication received, or the circumstances that caused the mother to consent to the adoption.

12.106 Information from non-government agencies (NGOs), homes and institutions can often be much more difficult to obtain than officially state held records. Many of the institutions are not operating anymore and the information recorded at the time has been lost. Even if records have been located, their quality can be variable, providing little useful information.

12.107 The NGOs responsible for the operation of institutions that provided care to mothers and babies seem to be in agreement that the exercise of trying to obtain records has been a trying process for all those involved in past adoptions. They agreed that steps should be taken to ease the burden for those attempting to access their records. During the committee's hearing in Hobart the Salvation Army gave evidence that illustrated the problems faced in trying to obtain information:

In today's terms I would call them rather scant records. We have a record of every person who was admitted, when they came in, when they left and when the child was born. There are lot of incomplete records as to the outcome of the birth—whether the child was adopted or taken home with them. We have some idea of the length of time that they remained in the hospital, but that is the limit of the records.⁷⁰

12.108 In response to questions on what kind of medical information would have been recorded in the records that the Salvation Army did have, Major McClimont responded:

[B]ased on information that I have from what are really large ledgers that go back to 1923. The information indicates—certainly, from that changeover brief—that they kept cards on every resident. Now, those cards are lost. I only have a number of cards that indicate what might have been the medical practices at the time. So we have a number of examples of that, but we do not have a complete set of records at all.⁷¹

70 Major Graeme McLimont, The Salvation Army Tasmanian Division, *Committee Hansard*, 16 December 2011, p. 10.

71 Major Graeme McLimont, The Salvation Army Tasmanian Division, *Committee Hansard*, 16 December 2011, p. 10.

12.109 In their written submission Catholic Health Australia accepted that the process of trying to obtain records for homes that they were responsible for has not always been as easy as it should have been:

Our anecdotal experience is that those who do come forward find accessing their records, making contact with their family members, seeking counselling for their grief, and seeking to remedy any wrongs overly complex.⁷²

12.110 The Benevolent Society saw the need for uniform access to information and adoption records. In their submission they recommended that the:

Commonwealth Government drives the national standardisation of legislation and regulation about access to adoption information.⁷³

12.111 They also sought to make the access and search process as easy as possible by removing the costs of information and records access by ensuring that all records and information are made available and that:

That the Commonwealth encourage all state government Registries to consider removing the additional costs associated with applications for birth certificates for those affected by past adoption practices.⁷⁴

12.112 South Australia has a helpful link on its adoption services websites that provides substantial historical information on the homes and institutions that cared for mothers and babies.⁷⁵ However this type of portal does not appear to be available in other states.

Committee view

12.113 The Committee is strongly supportive of proposals to make access to information as easy as possible to those affected by adoption. Following the committee's inquiries into Forgotten Australians and Former Child Migrants, the Commonwealth provided funding to improve access to family tracing and support services for these groups. This service includes a Find and Connect website, which provides information and raises awareness about past policies.⁷⁶ The site is also linked into state and territory services of a similar nature. A service like Find and Connect, applied at both the national and state and territory levels, could assist in record

72 Catholic Health Australia, *Submission 279*, p. 3.

73 The Benevolent Society, *Submission 191*, p. 3.

74 The Benevolent Society, *Submission 191*, pp 9–10.

75 Government of South Australia, Department for Communities and Social Inclusion, *Historical information about homes or institutions (South Australia)* <http://www.dcsi.sa.gov.au/pub/tabid/234/itemid/884/default.aspx> (accessed 2 February 2012).

76 See website homepage, Find and Connect Australia, <http://www.findandconnect.gov.au/> (accessed 2 February 2012).

location, particularly for adoption information other than birth and adoption certificates.

Recommendation 16

12.114 The committee recommends that the Commonwealth provide funding to extend the existing program for family tracing and support services to include adoption records and policies, with organisations such as Link-Up Queensland and Jigsaw used as a blueprint.

Recommendation 17

12.115 The committee recommends that the states and territories extend their Find and Connect information service to include adoption service providers.

Recommendation 18

12.116 The committee recommends that non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information about those institutions and records available to state and territory Find and Connect services, and provide free access to individuals seeking their own records.

Barriers involved in searching for information

12.117 The committee took evidence from a number of post adoption organisations who assist in locating information about births and subsequent events. This includes information relating to the identification of the parties involved such as the mother, father, the adopted person or the adoptive parents, as well as immediate and extended families. Complicating factors surrounding access to information can include uncertainty about when and where the adoption took place, and the situation where an adopted person has two birth certificates that are sometimes not accessible to those conducting the search.

12.118 MacKillop Family Services also emphasised the barriers in place for those trying to obtain information about an adoption:

Difficulties in accessing records and negotiating with the range of organisations that hold the records. There are separate procedures for accessing the actual adoption record and for accessing the record relating to accommodation prior to and post adoption.⁷⁷

12.119 Link-up Queensland described the trauma that engulfed a mother during her search for the records of the birth of her child:

This mother thought she was going mad, and we had to have the counselling team heavily involved. She knew she had a baby but the

⁷⁷ MacKillop Family Services, *Submission 86*, p. 3.

records said she did not have a baby. It was only last week that we finally told her that we found the name that her child was named. She said it was such a relief because she said, 'I have gone through life thinking I was dreaming the fact that I went through labour.' That's a pretty big thing to go through that and then think it never happened. We were going to the authorities and there was no trace of the woman having a baby, even at the hospital.⁷⁸

12.120 They also discussed the impact on the organisation conducting the searches of:

[T]he fact that the name was changed on the birth certificate. In terms of man-hour power—we are a very small unit as an organisation—you can spend weeks, months and up to years trying to track and trace. It gets to the point where you almost need to say, 'Find every single baby that was born in that hospital and trace them to where they ended up and whether there is some connection.'

The things that you are looking at are quite critical to this organisation. They take enormous resources and we only have one research officer to handle all this sort of stuff and who works four days a week. It is pretty huge resource wise.⁷⁹

12.121 Adoption Jigsaw (WA)'s written submission discussed how the laws have developed in various states, but indicated that support services and the administration of records need to adequately support the objectives of the legislation for providing information:

An often essential part of healing is to obtain information and for many reconnection with birth parent(s) or child. This has been legally recognized since 1987, when Victoria became the first state to allow adopted people to obtain their original birth certificate and consequently the ability to start a search. Each state has followed suit and enshrined the principle of a right to information about one's own family, however these laws have not been supported by appropriate access to records.⁸⁰

12.122 The committee heard many comments from submitters about the costs and time involved in trying to obtain information about their own births and the adoption of their own children.

Recommendation 19

12.123 The committee recommends that the Community and Disability Services Ministers Conference, in consultation with non-government organisations that had responsibility for adoption services and hospitals, agree on and commit to a statement of principles for access to personal information, that would include a

78 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

79 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

80 Adoption Jigsaw, *Submission 146*, p. 2.

commitment to cheaper and easier searches of, and access to, organisational records.