



Commissioner for Children and Young People
Western Australia

Speaking Out About Adoption

The views of children and young people with experience of adoption in WA

May 2019

Recognising Aboriginal and Torres Strait Islander people

The Commissioner for Children and Young People WA acknowledges the unique contribution of Aboriginal people's culture and heritage to Western Australian society. For the purposes of this report, the term 'Aboriginal' encompasses Western Australia's diverse language groups and also recognises those of Torres Strait Islander descent. The use of the term 'Aboriginal' in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, though similarities do exist.

Disclaimer

This report has been prepared by the Commissioner for Children and Young People and is intended to provide the views of the young people who participated in the consultation. Any errors of omission or commission are the responsibility of the Commissioner for Children and Young People.

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Message from the Commissioner

Over the last decade my office has consulted with over 10,000 children and young people on issues that impact on wellbeing. Above all else, WA children and young people consistently say that the single most importance factor for their wellbeing is a loving and supportive family.

Families come in many different forms. For those children and young people who are adopted, this has a significant lifelong impact on them, their parents (both birth and adoptive) and their broader families.

The recent review of the *Adoption Act 1994* was an opportune time to seek input from children and young people themselves on adoption processes – something which has not previously occurred in the 25 year history of this legislation.

Children and young people have the right to have a say in issues that affect them and have valuable insights. Without exception, the children and young people who came forward to take part in my consultation have had positive experiences of adoption, with stable, loving families who have always been open about their adoption.

These young people said that a safe, nurturing family, respecting the wishes and views of the child as well as openness and honesty about their adoption were important to them.

Even when adoption is a positive experience, issues such as having good information, or parties that do not participate in adoption plans, can impact the identity development of children and young people.

People who have been adopted often have a natural desire to want to understand who they are, why they may be different from their adoptive families and why they were adopted.

After hearing the views of children and young people in our consultation I have made recommendations to enhance and strengthen the rights of children and young people within the *Adoption Act 1994* and across adoption process in Western Australia.

The voices of the young people with experience of adoption are clear and are directly linked to my suggested areas for improvement.

Adoption legislation and adoption processes need to better support the participation of adopted children and young people and support the efforts of adoptive parents to assist their children to be active participants.

I have recommended that concerted efforts should be made by the Department of Communities to ensure that children and young people with experience of adoption

be consulted in future reviews of the *Adoption Act 1994* and in particular to seek feedback from young people who have been adopted by a step parent, another family member, foster carer or who were adopted as a young adult over 18 years, and young people who have relinquished a child for adoption, as their views are not captured within this report.

I thank the 17 young people who shared their experiences and I commend their families who have ably supported them in speaking out.

Colin Pettit

Commissioner for Children and Young People

May 2019

Role of the Commissioner

The Commissioner works closely with children and young people, their families, community and government to improve the wellbeing of children and young people up to the age of 18 years across Western Australia (WA). To do this, the Commissioner undertakes consultations, projects and research and publishes reports and resources to positively influence legislation, policy, services and attitudes impacting children and young people.

The work of the office is guided by a set of principles as outlined in the *Commissioner for Children and Young People Act 2006*, which states that:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people to the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

The Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC) and give special consideration to children who are Aboriginal or Torres Strait Islander and those who are vulnerable or disadvantaged for any reason. One of the key functions of the office is to ensure that all children and young people have the opportunity to participate in the making of decisions that affect their lives, and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity.

The Commissioner also has roles in monitoring the way in which government agencies investigate or otherwise deal with a complaint made by a young person, and in monitoring and reviewing written or draft laws, policies, practices and services that affect the wellbeing of children and young people.

In line with the office's statutory functions and in order to ensure the voices of local young people are considered in the implementation of the Statutory Review of the *Adoption Act 1994* (the Act) recommendations, the Commissioner consulted with WA children and young people who have experienced adoption.

This report summarises their insights and feedback. This feedback will be provided to the Minister for Child Protection, the Department of Communities, service providers and stakeholders.

Project overview

Adoption practices in Australia have varied over time. Today there are three categories of adoption in Australia:

- intercountry adoptions of children from countries other than Australia
- local adoptions of children born or permanently residing in Australia
- known child adoptions of children born or permanently residing in Australia who have a pre-existing relationship with the adoptive parent(s), these include adoptions by step-parents, other relatives and carers and may include adult adoptions of a person who is 18 years or more of age.

In 2016–17 the Department of Communities¹ reported there were 37 adoptions in Western Australia, 65 per cent of these were known child adoptions.

Adoption orders granted by the Family Court or country of origin, by type of adoption

Type of adoption	2017-18
Adult	14
Carer	3
InterCountry	11
Local	2
Step-parent	7
Total	37

Review of the *Adoption Act 1994*

In March 2018 the Department for Communities began a Statutory Review of the *Adoption Act 1994* (the Review) on behalf of the Minister for Child Protection, the Honourable Simone McGurk MLA. A reference group was established to support the operation of the Review and 39 written submissions were received.

Overall the Review found:

the Act is functioning well and the recommendations focus on continuing to ensure the wellbeing and best interests of the child is the primary consideration in all adoptions, strengthening aspects of the adoption process,

¹ Department of Communities (2018) *Child Protection Activity Performance Report 2017–2018*

providing improved guidance for decision makers and ensuring the legislation delivers adoption functions effectively in today's contemporary society.²

The Review process included an invitation to adoptees to meet with the reference group; however, no adoptees accepted the invitation, although one 13 year-old shared written information with the reference group on her experience of adoption. No other children or young people were consulted during the Review, and the Commissioner was advised that no previous consultations have occurred with children and young people during past reviews of the Act.

Based on this information and to uphold the rights of young people to contribute, make decisions and be listened to³, the Commissioner undertook a consultation with young people with experience of adoption, focusing on the recommendations made within the Review that directly impact them.

In total 31 recommendations were made in the Review's final report⁴, which was released in November 2018.

The recommendations cover various aspects of adoption, including but not limited to:

- paramount considerations, guiding principles and best interests of the child
- adoption plans
- representation of children in adoption processes
- access to information
- adoption of Aboriginal and Torres Strait Islander children and young people.

The Commissioner acknowledges the particular views of Aboriginal and Torres Strait Islander people about adoption and notes these are recognised in the Act:

adoption is not part of Aboriginal or Torres Strait Island culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.⁵

The Commissioner supports the recommendations of the Review focused on respecting the views and culture of Aboriginal and Torres Strait Island people (recommendations 2, 31) and recommendations 12, 13 and 14 that the legislation

² Department of Communities (2018), *Statutory Review of Adoption Act 1994*, Government of Western Australia, pg.ii

³ Commissioner for Children and Young People (2018) *Statement of Commitment to Western Australia's children and young people*

⁴ Department of Communities, *Statutory Review of Adoption Act 1994*, Government of Western Australia

⁵ *Adoption Act 1994*, Western Australia, Section 3

and adoption processes must ensure that adopted Aboriginal and Torres Strait Islander children and young people are well supported in adoption plans to maintain a strong connection to culture, community and family.

This report focuses on the views of children and young people about adoption and is not a full report of the Commissioner's views on each of the 31 recommendations of the Review.

Thirteen of the 31 recommendations were canvassed with the children and young people during the consultation, listed below. These particular recommendations impact children and young people directly, as compared to other recommendations related to consent or dispensing of consent of birth parents, the Adoptions Committee, website information and record keeping.

Recommendation 1 – The wellbeing and best interests of a person who is an adoptee or a prospective adoptee should be the sole paramount consideration in the administration of the Act.

Recommendation 3 – A set of guiding principles should be developed and included in the Act.

Recommendation 4 - The Act should include a range of factors that must be taken into account by decision makers when determining what is in a child's best interests.

Recommendation 5 – Children 12 years of age or more who are required to consent to their adoption must be provided with relevant counselling prior to consent.

Recommendation 11 – The way in which a child's cultural identity can be promoted and developed a matter that should be specifically referred to in section 46 (2).

Recommendation 12 – The Act should be amended to provide that the requirement to have an adoption plan cannot be dispensed with in the case of an adoption of an Aboriginal or Torres Strait Islander child.

Recommendation 13 – Every Aboriginal or Torres Strait Islander child must have separate representation for the purposes of negotiating an adoption plan.

Recommendation 14 – An adoption plan for an Aboriginal or Torres Strait Islander child, must specify how the child's cultural identity and connection will be developed, preserved and maintained (including the child's language, family, community, connection to country and culture).

Recommendation 16 – The way in which contact with a child's current (and future) siblings can be facilitated or maintained is a matter that should be specifically referred to in section 46 (2).

Recommendation 17 – Birth parents, adoptive parents and adoptees (of an appropriate age) are provided with information in writing regarding the review, variation and enforcement of adoption plans when the plan is being negotiated and at the time the adoption order is finalised.

Recommendation 18 – The Act should be amended to provide the CEO with the capacity to refer a breach or potential breach of an adoption plan to the Court for enforcement under section 72, despite the CEO not being party to the plan.

Recommendation 19 -Schedule 2 should be reviewed and updated to have an increased focus on the child's rights and needs.

Recommendation 21 – The Act should be amended to require that a child over 12 years of age consenting to their own adoption must be provided with separate legal representation at all relevant stages of the adoption process, including consent and adoption plan phases. Any child proposed to be adopted by a step-parent must have separate legal representation at all stages of the adoption process, including consent and adoption plan phases.

Commissioner's consultation in Western Australia – the views of children and young people

The Review of the *Adoption Act 1994* represented a timely opportunity to consult with children and young people on the recommendations and to provide an opportunity for them to raise any issues about adoption. This was particularly important considering that children and young people with an experience of adoption have not been consulted in the 25 years since this legislation was enacted.

The Commissioner invited children and young people between the ages of 12 and 25 years to have their say about their experiences of being adopted. The consultation was promoted widely throughout December 2018 and January 2019 via the Commissioner's newsletter which is sent to more than 3,000 subscribers, on the Commissioner's website, through direct contact with relevant stakeholders seeking their promotion of the opportunity and through local media.

An information sheet for children and young people was produced, outlining various ways in which children and young people could choose to be involved.

Seventeen children and young people took part in the consultation, using various methods to share their views. Some took part in face-to-face or phone interviews and others completed written responses.

The Commissioner was also contacted by six adults, who were adopted as children, ranging in age between 40 and 75. They expressed interest in having their views heard and were unaware of the Review and the previous opportunity to make submissions to the Department of Communities. These community members were

offered the opportunity to complete the online survey and were advised that whilst reflections were of interest they would not be included in this report.

Who participated?

The 17 children and young people who took part in the consultation ranged in age from eight to 22 years and were all from the metropolitan area.

Thirteen of the young people were born overseas and four were born in Perth. All of the young people were adopted when they were under the age of five years: nine before the age of one; four before they turned two; three before the age of three and one young person was four years when adopted.

Fifteen of the young people have birth parents who were not born in Australia, one had an Aboriginal birth parent and one had birth parents born in Australia but were not Aboriginal.

All of the young people who participated have happy and stable family lives and positive experiences of adoption.

Three young people have contact with their birth mothers and one young person has regular contact with both birth parents and each of their extended families.

Many of the children born overseas had visited their countries of birth with their adopted families.

There were no expressions of interest in the consultation from young people who were adopted by a step parent, by another family member, a foster carer, or who were adopted as a young adult over 18 years. There was also no participation from young people who have relinquished a child for adoption.

Reflections on being adopted

Children and young people taking part in the consultation had very similar adoption experiences. The majority were adopted from overseas, reporting happy and stable family lives and largely positive experiences. All of the young people had information and knowledge about their cultural backgrounds, and their adoptive parents had been open about their adoption and were supportive of seeking information about or establishing/maintaining contact with birth parents, previous foster parents or staff of orphanages where possible and according to the young people's wishes.

Adoptees felt their views were listened to and they were involved in matters relating to their adoption.

"My family has often been open and welcoming to any questions that I may have about my adoption. They also have given me an enormous amount of support too if I needed it."

"I see adoption as a big part of me and if it didn't I wouldn't be here and I'm very grateful that I am."

"I now see adoption as more meaningful as someone had to give up their own baby because they couldn't raise him or her."

"I am so grateful for adoption because it's given me so many opportunities and I know that I wouldn't ever have this kind of life if I stayed where I was born."

"The only life I have known is life in Australia, I haven't really thought about being adopted much. Being adopted is just like a fact about me, I haven't had any difficulties about it."

"I don't focus on adoption I am just who I am."

Challenges

The participants were asked if there were any issues that had made adoption tricky or complicated for them. Nine participants spoke about some of the challenges they faced. Some children had learning difficulties or felt they didn't fit in at school, while others had difficulties searching for or making contact with birth parents (more detail on page 21).

"My parents videoed everything... [they] are good to look back on, they videoed me learning to cut, learning to chew, they didn't teach me those things in the orphanage."

"I had language delay when I was adopted, I never learnt my first native language properly so that made it harder to learn my new language, English. I got violent, angry and frustrated at times because I couldn't express myself."

"Family activities in class where you write your family tree and also look at what traits you have acquired from your parents [made adoption tricky...]."

"It would have been nice to find my birth mother and been able to see and talk to her. The thought of what she is thinking is always lingering in my head."

"I often had learning issues with not writing well or having complete concentration. I have also had difficulty being social with my peers but all have improved with time."

Adoption processes

Children and young people were asked their views about a number of adoption processes in WA, including adoption plans, participating in decisions and what factors they thought should be considered when determining their best interests.

The 'best interests' principle

The best interests principle is widely used in State and Commonwealth legislation, but it is not well understood and inconsistently applied; indeed, the *Adoption Act 1994* does not provide any guidance about matters to be considered when determining a child's best interests.

Participants were asked what they think the statement 'the wellbeing and best interests of a person who is an adoptee' meant. They responded:

"What is best for the adopted child should be done."

"My needs and views are respected and I have complete support in regards to my adoption."

"How you are physically and mentally."

"Making your own choices and these being listened to, being able to speak freely, being respected by both the birth and adopted families."

"Think about the adopted child first and their mental health."

"Being safe and protected and having the best start in life."

"If they want information they should be able to get it."

"That the person being adopted is the most valued in any scenario, and their wellbeing should be important."

The Review's first recommendation states that the 'wellbeing and best interests of a person who is an adoptee or a prospective adoptee should be the sole paramount consideration in the administration of the Act'⁶. This recommendation echoes the views of the young participants.

The young people were asked for their own ideas about what should be taken into account when deciding what is in a child's best interests. They said:

"It should be about is it suitable, liveable for the child and do they have the infrastructure they need, education, transport, support, doctors. Whatever the adopted person wants or needs for support they should get the priority to have it, the best interests and wellbeing are smooched into one."

"Spending time with my family, good education, food and sleep."

"The love and support of an adoptive family, and support to make the change in family."

⁶ Department of Communities (2018), *Statutory Review of Adoption Act 1994*, Government of Western Australia, p. viii

"Family, friends and electronics... a good education too."

"Health, education, safety, socialisation – interacting with other adoptive kids. Background information about the birth parents, as much as possible. Being open about the adoption, able to ask any questions they want to."

"Their health should definitely be taken into account as well as their personality even if they're young they still have a personality...so if they seem to be active they should be put with an active family."

"When people are deciding about a child's best interests they must consider the background that the child may have and their issues or trauma associated with that."

After being asked for their own ideas on the factors they think should be considered by decision makers, young people were shown a list of 14 factors, drawn from the review report and from legislation in different states across Australia. They were asked which of the 14 factors must be considered when deciding a child's best interests.

All of the 17 young people in the consultation agreed that the following factors must be considered:

- the wishes and views of a child about the adoption
- a child's needs for physical, emotional, intellectual, educational development
- a child should be cared for in a safe, stable and nurturing family
- a child should be cared for in a family that promotes openness and honesty about the adoption.

Sixteen young people agreed that the following factors must be considered:

- any disability the child has
- the relationship a child has with each proposed adoptive parent
- the attitude of each adoptive parent to a child and to the responsibilities of parenting
- any adopted person (regardless of the type of adoption) should receive the same protection and support
- best interests should include thinking about these throughout childhood and into adult life.

Fifteen young people agreed that the following factors must be considered:

- the wishes and views of a child about the adoption plan
- a child's characteristics – age, stage of maturity, gender, sexuality, cultural background, language
- a child's need to maintain contact with birth parents, siblings, other relatives or any other significant people.

Participants had more diverse views on two of the 14 factors.

Thirteen young people agreed a child's cultural, ethnic or religious identity (including those of Aboriginal and Torres Strait Islander people) must be considered in determining best interests. Some of the comments made about this factor include:

"Culture is important but not essential as children can learn about their birth culture within other families, and also can adopt new cultures of the adopted family and have two cultures or religions."

"Some religious or cultural practices are not good for children like religions that won't allow blood transfusions for the children or that allow arranged marriages, I don't think children should be adopted into those practices."

"Cultural background is important but the other needs of the child may be more important."

"If the child is old enough to already be Buddhist this should be respected and they should not be forced to change but otherwise it's not so important, most Chinese people are Buddhist and I'm Christian and I am ok with that."

Only six young people said that any wishes expressed by either or both of a child's birth parents were important to consider in determining a child's best interests. The majority of participants **did not think it must** be considered. Their views included:

"The birth parents wishes can be considered within reason like the name of the child, and general wishes but not specific details about the adoptive parents."

"I think they can wish for the child's happiness but when the child is a part of the adoptive family it is up to what the adoptive family wants to do."

"Birth parents can have some say as long as it's not too restricting, they can ask for a safe and stable home but shouldn't be able to say about race, sexuality of the adoptive parents or what jobs they have."

"The general hopes of birth parents should be considered such as 'I want my child to be successful' but not specific things because if they don't want to keep the child they shouldn't be able to have the final say on what happens to the child."

"I think if the birth parent is giving up the child then the focus is more about the child and their needs and the birth parent gets less say and shouldn't restrict what the best options are for the child. For example I don't think a birth parent should be able to say that gay people cannot adopt my child. Gay people can be great parents."

Recommendation four of the Review states that “the Act should include a range of factors that must be taken into account when determining what is in a child’s best interests”.⁷ The views and consideration of the young people in the consultation should inform this list of factors. The majority of participants agreed with 13 of the 14 factors presented to them. The majority were also firm in their views that the wishes expressed by either or both of a child's birth parents were not essential to deciding what was in the child’s best interests.

The young people were clear whilst the birth parents’ general wishes may be considered, other factors were more important to a child’s best interests, such as a safe, nurturing family, the wishes and views of the child and openness and honesty about the adoption.

Participation of children and young people who are adopted

The Review acknowledged that ensuring children’s views and wishes are taken into account in the adoption process is particularly important.⁸ The Review noted:

Some submissions made particularly strong representations that all children involved in adoption proceedings should be represented by a legal practitioner. The submission from the Family Inclusion Network WA (FINWA) asserts that “the voice of the adoptee appears to be absent in legislative, policy and practice reform, and no independent mechanisms exist to represent children in the adoption application process.”⁹

Recommendations made by the Review address some aspects of the participation of children and young people in adoption processes. These include:

- Mandatory counselling and separate legal representation at all relevant stages of the adoption process for children over 12 years of age who are consenting to their own adoption (recommendations 5 & 21).
- The way in which contact with a child’s current (and future) siblings can be facilitated or maintained is a matter that should be specifically referred to in section 46(2) (recommendation 16).
- Every Aboriginal or Torres Strait Islander child must have separate representation for the purposes of negotiating an adoption plan (recommendation 13).
- Schedule 2 *Rights and responsibilities to be balanced in adoption plans* should be reviewed and updated to have an increased focus on the child’s rights and needs (recommendation 19).

⁷ Department of Communities (2018), *Statutory Review of Adoption Act 1994*, Government of Western Australia, p. 9

⁸ Department of Communities (2018), *Statutory Review of Adoption Act 1994*, Government of Western Australia, pg.iv

⁹ Ibid p31

- Birth parents, adoptive parents and adoptees (of an appropriate age) are provided with information in writing regarding the review, variation and enforcement of adoption plans when the plan is being negotiated and at the time the adoption order is finalised (recommendation 17).
- Birth parents, adoptive parents and adoptees are provided with information in writing regarding accessing adoption support services when the adoption placement supervision is concluding and the adoption order is finalised (recommendation 20).
- The Act should be amended to enable an adoptee, who is 16 or more years of age, to make a request for information under section 86 (recommendation 29).

Mandated counselling

The young people in the consultation expressed concern about recommendation 5, which states that 'children 12 years of age or more who are required to consent to their adoption must be provided with relevant counselling prior to consent'.

Only **four of the 16** young people agreed with this. While none of the participants had experienced adoption at a later age and may have their own perceptions of what constitutes 'counselling', in general they said that counselling should be offered, but the child should have a choice; it should not be mandatory. The comments from young people included:

"If counselling means an opportunity to discuss their adoption through with an independent person, then yes that's important during that stage of development."

"I think this is a good idea at that age but they should have a choice, and also a choice about the counsellor and they can change if they don't like the counsellor."

"Counselling, yes if they want it, but they might have already had it or not need it."

"If they need it and want it, they should have a choice about the counselling and need to feel comfortable."

"They should have their own lawyer but optional counselling."

"Counselling should be optional. Some like to dig deep where others like to forget. But it should always be open."

A child's view in all matters

Having a say and being able to make decisions was extremely important to the children and young people in the consultation. The concept of best interests was closely linked with being able to exercise choice and control in adoption matters.

The feedback from the participants suggests the recommendations of the review should go further, as they strongly supported the idea of the adoption law including a specific section about listening to and involving children and young people, of all ages, in decisions about their adoption.

All but one of the young people agreed there should be a specific section of the legislation that is clear about the rights of children to participate in adoption decisions.

The one young person who said this wasn't needed, clarified her views by saying "*if it is in the law generally then that should be enough.*"

When asked why they thought the legislation should have a specific section on participation, some comments included:

"Because it would be more organised and easier for the everyday person to understand not just lawyers, and to see how important it is and it can't be skimmed over."

"One sentence like [the child's views regarding the adoption should be taken into account]; can be viewed a lot of different ways and someone might take it one way and someone else a different way. It is better to be specific what this means."

When asked what specifically should be included in a section about participation, **all of the 16** young people who agreed a separate section was needed, said that it should identify that:

- a child has the opportunity to talk about their views freely
- a child is given information about the outcome of the decisions and reasons for the decisions.

Fifteen of the 16 young people said that the section should identify that:

- a child is given enough information (and in a way they can understand) about decisions being made
- a child is given the help they need for them to understand the information and to express their views.

The UNCRC states that - in adoption decisions - 'the "best interests" of the child cannot be defined without consideration of the child's views'. The UNCRC Committee

urges that if possible, the child is informed about the effects of adoption and that legislation ensures that the views of the child are heard.¹⁰

The Commissioner acknowledges recommendation 3 of the Review, which states that a set of guiding principles should be developed and included in the Act. This recommendation notes that 'the child's views regarding the adoption should be taken into account' is one of the principles to be included.

After examining the various guiding principles that are in operation in other jurisdictions, and after listening to the strong views of the young participants in the consultation, the Commissioner supports their view that clearly articulated principles of participation should be included as part of a set of guiding principles, or in the Act's preliminary material. These principles should outline how the participation of children and young people will be actively upheld throughout any stage of the adoption process.

An example of clear participation principles is provided in New South Wales legislation, which states:

*if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances.*¹¹

The New South Wales legislation also outlines a number of important factors in ensuring children and young people are able to participate effectively, including:

- Adequate information, in a manner and language that the child can understand, concerning the decision.
- The opportunity to express his or her views freely, according to his or her abilities.
- Information about the outcome of the decision and an explanation of the reasons for the decision.
- Any assistance that is necessary for the child to understand the information and to express his or her views.

¹⁰ United Nations Committee on the Rights of the Child, *General Comment No 12 (2009): The Right of the Child to be Heard*, 51st sess, CRC/C/GC/12 (20 July 2009) [2], cited in Victorian Law Reform Commission, *Review of the Adoption Act 1984: 3 Participation of the child in adoption decision making*, accessed 14 March 2019 from <https://www.lawreform.vic.gov.au/content/3-participation-child-adoption-decision-making#toc-age-based-approach-to-rights-UL5LW1FS>

¹¹ NSW Adoption Act 2000 No 75, <https://www.legislation.nsw.gov.au/#/view/act/2000/75/chap2>

- Appropriate counselling when the child's consent is required to his or her adoption.¹²

Each of the young participant's felt their views have been heard by their adoptive families in decisions such as searching for information about their birth parents, contact with birth families and exchange of information. The adoptive parents have positively supported their participation in developmentally appropriate ways.

The adoption legislation and adoption processes need to support the participation of children and young people who are adopted and support the efforts of adoptive parents to assist their children to be active participants.

This includes all children and young people, from those adopted at a young age who are not able to participate in decisions at the time of adoption but will want to contribute later (e.g. seeking a review of their adoption plan), to young people over the age of 12 years required to give formal consent who should be offered appropriate counselling and legal representation.

The Commissioner supports increasing the rights of children and young people, including their right to participate in decisions affecting them. This should be throughout the Act in the areas identified by the Review (recommendations highlighted above), within Schedule 2 (relevant to adoption plans only), and by inserting articulated principles of participation into the Act that guide all aspects of the adoption process.

Access to information

Throughout the consultation the young people also highlighted how important it was for them to have access to information and accurate records about their past, so they could make decisions and choices about their future and about any information shared about them.

"Get as much information as possible from the country about the birth parents – who they are, where they lived, the reason why the child needs to be adopted, also the religion and culture of the birth parents. So the adopted person gets to know as much as they can about where they came from."

"Specific information should be noted on adoption papers and should be honest."

"Background information about the birth parents, as much as possible."

"I have been to [country of birth] many times and we always visit my foster parents and the social workers who made decisions about me... When I go

¹² NSW Adoption Act 2000 No 75,
<https://www.legislation.nsw.gov.au/#/view/act/2000/75/chap2>

there I feel like its where I belong and I see my people and I feel happy. I don't have much information about my birth family, it would be good to have some more, but I can always get it when I am older."

"My parents used a private investigator to find out as much as they could about my family for me. I have a file I keep in my room with everything they could find, and they are happy for me to add to it if I am able to find out more when I'm older. In [country of birth] you have to be careful though because of the corruption, you can pay people to find out information and what they give you might not be true or accurate but they give you something so you will pay them."

It was very positive to hear about the open and active ways in which adoptive parents of young participants had supported their children to gain as much information and knowledge as they could about their birth families.

The Commissioner supports the rights of children and young people to access information and records about themselves, and the right to know and be connected to their country, culture or community. The Department of Communities' work with birth families and/or the overseas countries from which many children come from is crucial in obtaining as much accurate information as possible during the adoption process.

Recommendation 29 of the Review suggests the age at which an adoptee can make a request for information under section 86 be lowered from 18 years to 16 years. This recommendation is supported by the Commissioner.

However the views of the participants emphasise the importance to them of accurate, pertinent information throughout their lifetime. This issue was not addressed by the Review. The Commissioner recommends the Department of Communities review their information collection and information sharing processes throughout the adoption processes to ensure that are working to maximum effect for adoptees. As one young person succinctly said:

"The government should get as much information as possible from the overseas governments, get the file, so that when the child is ready and wants the information they can have it and don't have to do all the work to get the file off their birth country."

Adoption plans

The four young people born in Perth had adoption plans in place. They used other language within their families to describe and discuss the plan, such as *"we have legal papers about contact and information"* or *"I have contact with my birth mother but I don't think I have an adoption plan"*.

For some the planned arrangements were working very well and were skilfully supported by adoptive parents who had worked with birth parents to establish levels of contact that worked well for everyone.

"I have lots of contact with my birth mother and see her every couple of months, she comes here for dinner or we go there. I had a sleep over with [my older brother] last week at her place and stayed up till midnight. If I want to see her I ask mum about that and then she says she will contact her to arrange a date and it happens. All the contact and knowing everyone works for me."

"My family have always been very open about my adoption, I've have a good amount of information and have met my birth mother, I've seen her at a park or at home. When she's free she contacts us and then we make a time. My mum will work it out with her and I get to have a say about the visits. We send emails, school reports and photos to her as well. I have one half sibling who is in [another country]."

"I have an older sister and two younger brothers but my birth mother hasn't told them about me. My mum sends her emails and videos, mum starts them and sometimes I write something in them too. I haven't met my birth mother, one day she came to my house to drop in some presents but I was at school... I can talk to my mum about having contact with her or the information we send at any time. I'm ok with it as it is at the moment."

"I see my birth mother every now and then, it's good that it is just every now and then. I have a say about it, my mum talks to me and asks me about it and is not forcing me. It's been good for me to understand about my birth mother's circumstances, we give her a folder of photos on visits and I'm ok with that and will tell her about what I've been up to."

Where the sharing of information is not reciprocated by birth parents, this can be challenging:

"I haven't had any contact or information from my birth father. We have sent him information twice a year for 14 years and he has never replied not even to say he got the information. I've asked for a photo but he's never replied... Sometimes I think it is unfair that I don't have information about him. We've talked about stopping sending information to him. He hasn't replied in 14 years so I'm not sure if I want to keep sending. My mum has said that I could write to him and say that because I haven't heard from you I am not going to send you any more information. I'm not sure that I want to do that yet."

"The child should have the major say in the amount [of information] shared because it's all about them."

Recommendation 17 of the Review states 'birth parents, adoptive parents and adoptees (of an appropriate age) are provided with information in writing regarding the review, variation and enforcement of adoption plans when the plan is being negotiated and at the time the adoption order is finalised.'¹³

While this recommendation is supported by the Commissioner, it is recommended that the efforts to provide information about the Review, variation and enforcement of adoption plans to children and young people go further. This information:

- should be provided directly to the adoptee regardless of age so young people can be clear these avenues are open to them too
- is in a format that is able to be understood by children and young people
- tells them about the support services available to them during these processes
- should also be available directly to children and young people on the Department of Communities website.

Final considerations

The Commissioner is broadly supportive of the recommendations put forward in the Review, and encourages further consultation with children and young people with an adoption experience as recommendations are implemented. More specifically, the Commissioner recommends:

1. Increase the rights of children and young people, including their right to participate in decisions affecting them, throughout the *Adoption Act 1994* and in all areas of the adoption process.
2. Within the development of a set of guiding principles to be included in the Act (recommendation 3 of the Statutory Review), the principles of participation of children and young people should clearly articulate how this will occur throughout all stages of the adoption process, where appropriate to the age and developmental capacity of the child.
3. Children and young people with an experience of adoption be involved in the development of the guiding principles.
4. The views and considerations of the young people in this consultation should inform this list of factors to be developed to guide decision makers when considering what is in the child's best interests (recommendation 4 of the Statutory Review).
5. The Department of Communities undertake meaningful consultations with children and young people each time the *Adoption Act 1994* is reviewed, to ensure their views and ideas are considered.

¹³ Department of Communities (2018), *Statutory Review of Adoption Act 1994*, Government of Western Australia

6. The Department of Communities proactively plan to consult with children and young people involved in step-parent adoptions, and those who are adopted after 18 years about their experiences during the adoption process. This consultation could occur during the Department's contact with these young people and inform subsequent reviews.
7. The Department of Communities review their information collection and information sharing processes to ensure that they are working to maximum effect for adoptees.
8. The Department of Communities strengthens the efforts to provide information about the review, variation and enforcement of adoption plans to children and young people in ways that are accessible to them.

Ongoing role of the Commissioner

The Commissioner will monitor implementation of the recommendations of the Review of the Adoption Act within Western Australia and the recommendations made in this report.