



New South Wales

# Adoption Amendment (Institute of Open Adoption Studies) Act 2016 No 43

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# **Adoption Amendment (Institute of Open Adoption Studies) Act 2016 No 43**

Act No 43, 2016

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An Act to amend the *Adoption Act 2000* and the *Children and Young Persons (Care and Protection) Act 1998* to make provision for the disclosure of information for the purpose of research in relation to adoption and out-of-home care; and for related purposes. [Assented to 21 September 2016]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Adoption Amendment (Institute of Open Adoption Studies) Act 2016*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Adoption Act 2000 No 75

### [1] Chapter 4 The adoption process

Omit “temporary authorised carers” from the note to Part 6.

Insert instead “authorised carers”.

### [2] Section 91 Report required before order made for adoption of child

Insert after section 91 (2A) (c):

- (d) a suitably qualified person employed or nominated by an approved organisation to prepare reports in accordance with this section.

### [3] Section 91 (7)

Insert in alphabetical order:

**approved organisation** means an organisation approved by the Secretary from time to time, by order in writing, to provide a report to the Court for the purposes of this section.

### [4] Section 175A

Insert after section 175:

#### 175A Disclosure of information for research purposes

- (1) The Secretary may enter into arrangements with a research organisation for the purposes of permitting the disclosure to the research organisation of information (including health information and personal information) that is held by the Department or an accredited adoption service provider about any of the following persons (an **affected person**):
  - (a) a person involved in an adoption or prospective adoption as a birth parent, adoptive parent or child,
  - (b) a person involved in out-of-home care as an authorised carer or child.
- (2) The Secretary is not to enter into arrangements under this section unless satisfied that those arrangements will ensure that:
  - (a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and
  - (b) information disclosed under the arrangements will be treated by the research organisation as confidential, and
  - (c) as far as is reasonably practicable, no publication that uses or is based on information disclosed under the arrangements will enable the identity of an affected person to be ascertained, and
  - (d) as far as is reasonably practicable, any personal information disclosed under the arrangements will be used or dealt with in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the research organisation were a public sector agency.

**Note.** The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.
- (3) Before entering into arrangements for the disclosure of information under this section, the Secretary must consult with the Privacy Commissioner in relation to those arrangements.

- (4) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.
- (5) The provisions of the *Health Records and Information Privacy Act 2002* apply to health information disclosed under the arrangements as if the research organisation were a private sector person (within the meaning of that Act).  
**Note.** The *Health Records and Information Privacy Act 2002* requires a private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.
- (6) In this section:  
**health information** has the same meaning as in the *Health Records and Information Privacy Act 2002*.  
**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**[5] Section 208 Regulations**

Insert after section 208 (2) (e):

- (f) the disclosure of information under the arrangements referred to in section 175A, including any procedures or requirements in relation to that disclosure and any requirements on any organisation to which the information is disclosed.

**[6] Dictionary**

Insert in alphabetical order:

**research organisation** means an organisation prescribed by the regulations.

## Schedule 2      **Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157**

### [1]      **Section 254A**

Insert after section 254:

#### **254A      Disclosure of information for research purposes**

- (1) The Secretary may enter into arrangements with a research organisation for the purposes of permitting the disclosure to the research organisation of information (including health information and personal information) that is held by the Department, the Children's Guardian, a designated agency or an accredited adoption service provider about any of the following persons (an *affected person*):
  - (a) a person involved in an adoption or prospective adoption as a birth parent, adoptive parent, young person or child,
  - (b) an authorised carer,
  - (c) a child or young person in out-of-home care,
  - (d) a child or young person the subject of a final care order if the Children's Court has determined or accepted the Secretary's assessment that there is no realistic possibility of the child or young person being restored to his or her birth parents or adoptive parents.
- (2) The Secretary is not to enter into arrangements under this section unless satisfied that those arrangements will ensure that:
  - (a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and
  - (b) information disclosed under the arrangements will be treated by the research organisation as confidential, and
  - (c) as far as is reasonably practicable, no publication that uses or is based on information disclosed under the arrangements will enable the identity of an affected person to be ascertained, and
  - (d) as far as is reasonably practicable, any personal information disclosed under the arrangements will be used or dealt with in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the research organisation were a public sector agency.

**Note.** The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.
- (3) Before entering into arrangements for the disclosure of information under this section, the Secretary must consult with the Privacy Commissioner in relation to those arrangements.
- (4) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.

- (5) The provisions of the *Health Records and Information Privacy Act 2002* apply to health information disclosed under the arrangements as if the research organisation were a private sector person (within the meaning of that Act).

**Note.** The *Health Records and Information Privacy Act 2002* requires a private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.

- (6) In this section:

**health information** has the same meaning as in the *Health Records and Information Privacy Act 2002*.

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**research organisation** has the same meaning as in the *Adoption Act 2000*.

**[2] Section 264 Regulations**

Insert after section 264 (1A) (k):

- (l) the disclosure of information under the arrangements referred to in section 254A, including any procedures or requirements in relation to that disclosure and any requirements on any organisation to which the information is disclosed.

## **Schedule 3      Amendment of Adoption Regulation 2015**

### **Clause 132A**

Insert after clause 132:

#### **132A      Research organisations**

The Institute of Open Adoption Studies, University of Sydney, is prescribed for the purposes of the definition of *research organisation* in the Dictionary to the Act.

[Second reading speech made in—  
Legislative Assembly on 22 June 2016  
Legislative Council on 24 August 2016]