



New South Wales

Adoption Amendment (Access to Information) Regulation 2009

under the

Adoption Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Adoption Act 2000*.

LINDA BURNEY, MP
Minister for Community Services

Explanatory note

Provisions of the *Adoption Amendment Act 2008*, which commence on 1 January 2010, establish a new scheme that allows for greater access to adoption information (such as birth certificates and birth records) for adopted persons, adoptive parents, birth parents and siblings in respect of adoptions occurring on or after 1 January 2010. The principal object of this Regulation, which commences on 1 January 2010, is to prescribe additional information that parties to adoptions occurring on or after that date are entitled to receive under the new scheme.

The Regulation also:

- (a) prescribes guidelines for the exercise of discretion by the Director-General of the Department of Human Services in relation to:
 - (i) the issue of an authority to supply adoption information to a birth parent or non-adopted sibling of an adopted person who is less than 18 years of age, and
 - (ii) the supply of adoption information to a person who is not otherwise entitled to receive the information, and
- (b) makes amendments as a consequence of the commencement of the uncommenced provisions of the *Adoption Amendment Act 2008* on 1 January 2010 and amendments of a statute law revision nature.

This Regulation is made under the *Adoption Act 2000*, including section 133, Division 1 of Part 2 of Chapter 8 and sections 136A and 208 (the general regulation-making power).

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Clause 1 Adoption Amendment (Access to Information) Regulation 2009

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1 Name of Regulation

This Regulation is the *Adoption Amendment (Access to Information) Regulation 2009*.

2 Commencement

This Regulation commences on 1 January 2010 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Adoption Regulation 2003

[1] Clause 3 Definitions

Insert in alphabetical order:

non-adopted sibling has the same meaning as it has in section 133G of the Act.

non-identifying background information about a person means information about the physical and intellectual attributes, educational and vocational qualifications, social and cultural background, health and welfare, family and other relationships, religious beliefs, hobbies and interests of the person.

[2] Part 11 Adoption information

Omit the heading to Division 1. Insert instead:

Division 1 Prescribed information

Subdivision 1 General

[3] Clause 45 Prescribed information under section 133

Omit “clauses 46–56”. Insert instead “this Division”.

[4] Part 11, Division 1, Subdivision 2

Insert after clause 45:

**Subdivision 2 Prescribed information for adoptions after
1 January 2010**

Note. Changes to entitlements to adoption information were made by the *Adoption Amendment Act 2008* (commencing on 1 January 2010). This Subdivision sets out the entitlements for parties to adoptions that occur on or after that date. For adoptions that occurred before that date, see Subdivision 3. Other Subdivisions contain further provisions relating to entitlements to adoption information for all adoptions.

45A Application of Subdivision

This Subdivision applies in respect of an adoption to which Division 1 of Part 2 of Chapter 8 of the Act applies.

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45B Entitlement of adopted person—information prescribed under section 133C

- (1) An adopted person is entitled to receive:
 - (a) any non-identifying background information held by an information source about his or her birth parent, sibling, grandparent, aunt or uncle that will give the adopted person knowledge of his or her origins, and
 - (b) any of the following information about the adopted person held by an information source:
 - (i) birth details (including the time of birth and weight and length at birth),
 - (ii) date on which the adopted person was placed with the adoptive parents,
 - (iii) date of the adoption order,
 - (iv) a copy of the adoption order or memorandum of adoption (or both),
 - (v) a copy of the instrument of consent to the adoption and any associated documents relating to the social and medical history of the adopted person provided by a birth parent,
 - (vi) a copy of the request by the consenting birth parent to make arrangements for the adoption,
 - (vii) the reason an adoption decision was made by the birth parents for the adopted person (as stated by the birth parents or recorded by the information source before placement for adoption),
 - (viii) copies of reports of medical examinations of the adopted person carried out before the adoption order was made,
 - (ix) any document certifying particulars of the birth, marriage or death of a birth parent,
 - (x) any message given to the information source for the adopted person if clause 57 is complied with,
 - (xi) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins.
- (2) In addition, an adopted person is entitled to receive:
 - (a) any non-identifying background information held by an information source about his or her non-adopted sibling or adopted brother or sister that will give the adopted person knowledge of that person's life, and

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- (b) any of the following information about his or her non-adopted sibling or adopted brother or sister held by an information source:
 - (i) any document certifying particulars of the birth, marriage or death of a non-adopted sibling or an adopted brother or sister,
 - (ii) any other document, report, photograph or recording relating to a non-adopted sibling or an adopted brother or sister that contains information about that person's life.
 - (3) An adopted person is also entitled to receive any of the following information held by an information source about his or her adopted brother or sister:
 - (a) the adoptive name of the adopted brother or sister,
 - (b) date and place of birth,
 - (c) date on which the adopted brother or sister was placed with his or her adoptive parents,
 - (d) date of the adoption order,
 - (e) a copy of the adoption order or memorandum of adoption (or both),
 - (f) the following details concerning the adoptive parents of the adopted brother or sister:
 - (i) age,
 - (ii) nationality,
 - (iii) ethnic background,
 - (iv) occupation,
 - (v) hobbies and interests,
 - (vi) religion,
 - (vii) composition of adoptive family (including number of children and their age and sex).
 - (4) Despite subclauses (1)–(3), an adopted person is not entitled to receive information that identifies any other person unless the adopted person is otherwise entitled to receive the information under the Act or an access policy.

45C Entitlement of adoptive parent—information prescribed under section 133D

- (1) An adoptive parent of an adopted person is entitled to receive:
 - (a) any non-identifying background information held by an information source about a birth parent, sibling,

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grandparent, aunt or uncle of the adopted person that will give the adoptive parent knowledge of the adopted person's origins, and

- (b) any of the following information about the adopted person held by an information source:
 - (i) birth details (including the time of birth and weight and length at birth),
 - (ii) date on which the adopted person was placed with the adoptive parents,
 - (iii) date of the adoption order,
 - (iv) a copy of the adoption order or memorandum of adoption (or both),
 - (v) the reason an adoption decision was made by the birth parents for the adopted person (as stated by the birth parents or recorded by the information source before placement for adoption),
 - (vi) any message given to the information source for the adopted person or adoptive parents if clause 57 is complied with,
 - (vii) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins.

- (2) Despite subclause (1), an adoptive parent is not entitled to receive information that identifies any other person unless the adoptive parent is otherwise entitled to receive the information under the Act or an access policy.

45D Entitlement of birth parent—information prescribed under section 133E

- (1) A birth parent of an adopted person is entitled to receive:
 - (a) any non-identifying background information held by an information source about an adopted person or his or her adoptive parents that will give the birth parent knowledge of the adopted child's life, and
 - (b) any of the following information about the adopted person held by an information source:
 - (i) birth details of the adopted person (including the time of birth and weight and length at birth),
 - (ii) date on which the adopted person was placed with the adoptive parents,
 - (iii) date of the adoption order,

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- (iv) a copy of the adoption order or memorandum of adoption (or both),
 - (v) a copy of the instrument of consent to the adoption and any associated documents relating to the social and medical history of the adopted person provided by a birth parent,
 - (vi) a copy of the request by the consenting birth parent to make arrangements for the adoption,
 - (vii) copies of reports of medical examinations of the adopted person carried out before the adoption order was made,
 - (viii) any document certifying particulars of the marriage or death of the adopted person,
 - (ix) any message given to the information source for the birth parent if clause 57 is complied with,
 - (x) any other document, report, photograph or recording relating to the adopted person's life.
- (2) Information relating to the health and welfare of an adopted person after placement for adoption is non-identifying background information for the purposes of subclause (1) only if:
 - (a) the information source holding the information is the Department or an accredited adoption service provider, or
 - (b) the information is information referred to in clause 51 (1).
 - (3) A birth parent is entitled to receive any of the following information if it is held by the Department or accredited adoption service provider:
 - (a) advice of the death of the adopted person,
 - (b) advice that the relationship between the adopted person and the adoptive parents has irretrievably broken down and the adopted person is living separately from the adoptive parents.
 - (4) Despite subclauses (1) and (3), a birth parent is not entitled to receive information that identifies any other person unless the birth parent is otherwise entitled to receive the information under the Act or an access policy.

45E Supply of other information to birth parent—information prescribed under section 133F

For the purposes of section 133F (2) of the Act, the following kinds of information are prescribed as information that a birth parent may request the Director-General or a principal officer to

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take action to ascertain from the adopted person's adoptive parents:

- (a) information relating to the health and welfare of the adopted person,
- (b) information relating to the educational progress of the adopted person,
- (c) information relating to the hobbies, sporting and other interests of the adopted person,
- (d) information relating to the general lifestyle of the adopted person and his or her adoptive parents.

45F Entitlement of non-adopted sibling—information prescribed under section 133G

- (1) A non-adopted sibling of an adopted person is entitled to receive:
 - (a) any non-identifying background information held by an information source about an adopted person or his or her adoptive parents and adoptive family that will give the non-adopted sibling knowledge of the adopted person's life, and
 - (b) any of the following information about the adopted person held by an information source:
 - (i) date on which the adopted person was placed with the adoptive parents,
 - (ii) date of the adoption order,
 - (iii) a copy of the adoption order or memorandum of adoption (or both),
 - (iv) any document certifying particulars of the birth, marriage or death of the adopted person,
 - (v) any message given to the information source for the non-adopted sibling if clause 57 is complied with,
 - (vi) any other document, report, photograph or recording relating to the adopted person's life.
- (2) Information relating to the health and welfare of an adopted person after placement for adoption is non-identifying background information for the purposes of subclause (1) only if:
 - (a) the information source holding the information is the Department or an accredited adoption service provider, or
 - (b) the information is information referred to in clause 51 (1).
- (3) Despite subclause (1), a non-adopted sibling is not entitled to receive information that identifies any other person unless the

non-adopted sibling is otherwise entitled to receive the information under the Act or an access policy.

[5] Part 11, Division 1, Subdivision 3

Insert before clause 46:

Subdivision 3 Prescribed information for adoptions before 1 January 2010

Note. Changes to entitlements to adoption information were made by the *Adoption Amendment Act 2008* (commencing on 1 January 2010). This Subdivision sets out the entitlements for parties to adoptions that occurred before that date. For adoptions that occur on or after that date, see Subdivision 2. Other Subdivisions contain further provisions relating to entitlements to adoption information for all adoptions.

46A Application of Subdivision

This Subdivision does not apply to adoptions to which Subdivision 2 applies.

[6] Part 11, Division 1, Subdivision 4

Insert before clause 49:

Subdivision 4 Other prescribed information

[7] Clause 49 Information prescribed under section 137 relating to deceased birth parent

Omit paragraph (a). Insert instead:

- (a) any non-identifying background information held by an information source about an adopted person or his or her adoptive parent that would have given the deceased birth parent knowledge of the adopted child's life after adoption,

[8] Clause 50 Information prescribed under section 137 relating to deceased adopted person

Omit paragraph (a). Insert instead:

- (a) any non-identifying background information held by an information source about a birth parent, sibling, grandparent, aunt or uncle of the adopted person that would have given the deceased adopted person knowledge of his or her origins,

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[9] Clause 51 Additional prescribed information

Omit clause 51 (1). Insert instead:

- (1) Information that is not otherwise prescribed information is prescribed for the purposes of sections 134–137 and 133C–133G of the Act if:
 - (a) the Director-General is satisfied the information is unlikely to be obtained from any other source, and
 - (b) the Director-General is satisfied the information would, if disclosed, promote the welfare and best interests of either or both the person seeking the information and the person affected by the supply of the information, and
 - (c) the information is to be supplied by the Director-General or authorised by the Director-General to be supplied by the Registrar or some other source.

[10] Part 11, Division 1, Subdivision 5

Insert before clause 52:

Subdivision 5 Guidelines for supplying adoption information

[11] Clause 52A

Insert after clause 52:

52A Guidelines for exercise of discretion to issue authority to supply adoption information under section 133E and 133G

- (1) For the purposes of sections 133E (5) and 133G (6) of the Act, the *Guidelines for the Release of Adoption Information* published by the Department of Human Services in the Gazette on the date of publication of the *Adoption Amendment (Access to Information) Regulation 2009* on the NSW legislation website are prescribed.
- (2) The Director-General is to ensure that the guidelines are available on a website maintained by the Department.

Note. The relevant website is www.community.nsw.gov.au.

[12] Clause 53 Guidelines for exercise of discretion to supply adoption information under sections 136A and 140 (1)

Omit clause 53 (1). Insert instead:

- (1) The Director-General is to comply with the guidelines set out in this clause in connection with the supply of adoption information:
 - (a) in accordance with a request made under section 136A of the Act, or
 - (b) under section 140 (1) of the Act.

[13] Clause 54 Guidelines for exercise of discretion to withhold supply of adoption information or supply subject to conditions under section 136A

Omit “section 141” from clause 54 (1). Insert instead “section 136A”.

[14] Clause 54A

Insert after clause 54:

54A Guidelines for exercise of discretion to supply adoption information under section 140 (3)

The Director-General is to consider the following matters when making a decision about whether to supply or authorise the supply of adoption information or other information under section 140 (3) of the Act:

- (a) the circumstances surrounding the request for information,
- (b) the age of the parties to the adoption to which the information requested relates,
- (c) the relationship between the person requesting the information and the parties to the adoption,
- (d) whether a contact veto against contact by the person requesting the information with the person to whom the information relates is in force,
- (e) whether an advance notice registration applies to the information requested,
- (f) the likely effect on the parties to the adoption if the information is supplied.

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[15] Part 11, Division 1, Subdivision 6

Insert before clause 56:

Subdivision 6 Miscellaneous

[16] Clause 57 Messages

Omit “referred to in clause 46, 47 or 48” from clause 57 (1) and (3) wherever occurring.

[17] Clause 57 (1) and (3)

Omit “or birth parent” wherever occurring.

Insert instead “, birth parent or non-adopted sibling”.