



New South Wales

# Adoption Amendment (Institute of Open Adoption Studies) Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Adoption Act 2000* (the *Adoption Act*) and the *Children and Young Persons (Care and Protection) Act 1998* (the *Care and Protection Act*) to make provision for the disclosure of information relating to certain persons involved in adoption and out-of-home care to a prescribed research organisation, and
- (b) to amend the *Adoption Regulation 2015* to prescribe as a research organisation the Institute of Open Adoption Studies, University of Sydney, and
- (c) to amend the *Adoption Act* to enable a suitably qualified person employed or nominated by an approved organisation to provide the Children's Court with a report in relation to the adoption of a child.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1 Amendment of Adoption Act 2000 No 75

**Schedule 1 [4]** inserts proposed section 175A into the *Adoption Act* to enable the Secretary of the Department of Family and Community Services (the *Department*) to enter into arrangements with a prescribed research organisation for the purposes of permitting the disclosure to the organisation

of information held by the Department or an accredited adoption service provider about an affected person. An affected person is a person who is involved in an adoption or prospective adoption as a birth parent, adoptive parent or child, or a person involved in out-of-home care as an authorised carer or child.

The Secretary is not to enter into those arrangements unless satisfied that the arrangements will ensure that reasonable steps will be taken to de-identify information disclosed under the arrangements, that the information will be treated by the research organisation as confidential, that (as far as is reasonably practicable) no publication that uses or is based on the information will enable the identity of an affected person to be ascertained and that (as far as is reasonably practicable) any personal information disclosed under the arrangements will be used or dealt with in accordance with certain information protection principles set out in the *Privacy and Personal Information Protection Act 1998*. **Schedule 1 [6]** inserts a definition of **research organisation** as being an organisation prescribed by the regulations.

**Schedule 1 [5]** amends section 208 of the Adoption Act to enable regulations to be made for or with respect to the disclosure of information under the arrangements referred to in proposed section 175A, including any procedures or requirements in relation to that disclosure and any requirements on any organisation to which the information is disclosed.

**Schedule 1 [2] and [3]** amend the Adoption Act to enable a suitably qualified person employed or nominated by an approved organisation to provide the Supreme Court with a report in relation to the adoption of a child. An approved organisation is an organisation approved by the Secretary of the Department from time to time, by order in writing, to provide that report to the Supreme Court.

**Schedule 1 [1]** amends the note to Part 6 of Chapter 4 of the Adoption Act to make it clear that a child can be placed with the authorised carer of the child, rather than a temporary authorised carer, in the period commencing when consent to adoption is given and ending when an adoption order is made.

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

**Schedule 2 [1]** inserts proposed section 254A into the Care and Protection Act to enable the Secretary of the Department of Family and Community Services to enter into arrangements with a prescribed research organisation for the purposes of permitting the disclosure to the organisation of information held by the Department, the Children's Guardian, a designated agency or an accredited adoption service provider about an affected person. An affected person is a person who is involved in an adoption or prospective adoption as a birth parent, adoptive parent, young person or child, an authorised carer, a child or young person in out-of-home care or a child or young person the subject of a final care order if there is no realistic possibility of the child or young person being restored to his or her birth parents or adoptive parents (an **affected person**).

The Secretary is not to enter into those arrangements unless satisfied that the arrangements will ensure that reasonable steps will be taken to de-identify information disclosed under the arrangements, that the information will be treated by the research organisation as confidential, that (as far as is reasonably practicable) no publication that uses or is based on the information will enable the identity of an affected person to be ascertained and that (as far as is reasonably practicable) any personal information disclosed under the arrangements will be used or dealt with in accordance with certain information protection principles set out in the *Privacy and Personal Information Protection Act 1998*.

**Schedule 2 [2]** amends section 264 of the Care and Protection Act to enable regulations to be made for or with respect to the disclosure of information under the arrangements referred to in proposed 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**

**Schedule 3** inserts proposed clause 132A into the *Adoption Regulation 2015* to prescribe the Institute of Open Adoption Studies, University of Sydney, as a research organisation for the purposes of the Adoption Act.



New South Wales

# Adoption Amendment (Institute of Open Adoption Studies) Bill 2016

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
<b>Schedule 1</b> <b>Amendment of Adoption Act 2000 No 75</b>	<b>3</b>
<b>Schedule 2</b> <b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	<b>5</b>
<b>Schedule 3</b> <b>Amendment of Adoption Regulation 2015</b>	<b>7</b>



New South Wales

# Adoption Amendment (Institute of Open Adoption Studies) Bill 2016

No. , 2016

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## A Bill for

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.

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

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**1 Name of Act**

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

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Adoption Act 2000 No 75</b>	1
<b>[1] Chapter 4 The adoption process</b>		2
	Omit “temporary authorised carers” from the note to Part 6.	3
	Insert instead “authorised carers”.	4
<b>[2] Section 91 Report required before order made for adoption of child</b>		5
	Insert after section 91 (2A) (c):	6
	(d) a suitably qualified person employed or nominated by an approved organisation to prepare reports in accordance with this section.	7 8
<b>[3] Section 91 (7)</b>		9
	Insert in alphabetical order:	10
	<i>approved organisation</i> 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.	11 12 13
<b>[4] Section 175A</b>		14
	Insert after section 175:	15
<b>175A Disclosure of information for research purposes</b>		16
(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 <i>affected person</i> ):	17 18 19 20 21
	(a) a person involved in an adoption or prospective adoption as a birth parent, adoptive parent or child,	22 23
	(b) a person involved in out-of-home care as an authorised carer or child.	24
(2)	The Secretary is not to enter into arrangements under this section unless satisfied that those arrangements will ensure that:	25 26
	(a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and	27 28
	(b) information disclosed under the arrangements will be treated by the research organisation as confidential, and	29 30
	(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	31 32 33
	(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 <i>Privacy and Personal Information Protection Act 1998</i> as those principles would apply if the research organisation were a public sector agency.	34 35 36 37 38 39
	<b>Note.</b> The <i>Privacy and Personal Information Protection Act 1998</i> requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.	40 41 42
(3)	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 <i>Health Records and Information</i>	43 44 45

	<i>Privacy Act 2002</i> or the <i>Privacy and Personal Information Protection Act 1998</i> .	1 2
(4)	The provisions of the <i>Health Records and Information Privacy Act 2002</i> apply to health information disclosed under the arrangements as if the research organisation were a private sector person (within the meaning of that Act). <b>Note.</b> The <i>Health Records and Information Privacy Act 2002</i> requires a private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.	3 4 5 6 7 8
(5)	In this section: <b>health information</b> has the same meaning as in the <i>Health Records and Information Privacy Act 2002</i> . <b>personal information</b> has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> .	9 10 11 12 13
<b>[5]</b>	<b>Section 208 Regulations</b>	14
	Insert after section 208 (2) (e):	15
	(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.	16 17 18 19
<b>[6]</b>	<b>Dictionary</b>	20
	Insert in alphabetical order:	21
	<b>research organisation</b> means an organisation prescribed by the regulations.	22



## 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)      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*.

(4)      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.

- (5) In this section: 1  
*health information* has the same meaning as in the *Health Records and* 2  
*Information Privacy Act 2002.* 3  
*personal information* has the same meaning as in the *Privacy and Personal* 4  
*Information Protection Act 1998.* 5  
*research organisation* has the same meaning as in the *Adoption Act 2000.* 6

**[2] Section 264 Regulations** 7

Insert after section 264 (1A) (k): 8

- (l) the disclosure of information under the arrangements referred to in 9  
section 254A, including any procedures or requirements in relation to 10  
that disclosure and any requirements on any organisation to which the 11  
information is disclosed. 12

**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.

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