

Adoption Regulation 2003

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New South Wales

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New South Wales

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Adoption Regulation 2003



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Adoption Regulation 2003*.

2 Commencement

This Regulation commences on 1 February 2003.

3 Definitions

In this Regulation:

access policy means any policy maintained by the Registrar concerning access under the Act to information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995*.

adoption register means the register kept under clause 18.

NSW Adoption Standards means the document prepared by the Director-General under the title *NSW Adoption Standards*, as published in the Gazette on 1 July 2005.

prescribed selection criteria means the criteria referred to in clause 12.

relevant decision-maker means:

- (a) in the case of an application to adopt a child made to the Director-General—the Director-General, or
- (b) in the case of an application to adopt a child made to an accredited adoption service provider—the principal officer of the service provider.

Reunion and Information Register means the register established under Part 5 of Chapter 8 of the Act.

the Act means the *Adoption Act 2000*.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Accredited adoption service providers

5 (Repealed)

5A Applications for accreditation

- (1) An application for accreditation as an adoption service provider must be in a form approved by the Director-General.
- (2) Without limiting section 12 (3) of the Act, any document or information required by any such form is taken to be required by the Director-General under that subsection.

5B Adoption services that may be accredited

For the purposes of section 13 (2) (a) of the Act, the classes of adoption services that may be accredited are as follows:

- (a) domestic adoption services, being adoption services that are not intercountry adoption services,
- (b) intercountry adoption services, being adoption services that are provided in connection with the adoption of children who are not Australian citizens and who have been brought into Australia, or are proposed to be brought into Australia:
 - (i) for the purpose of their being adopted under the laws of Australia, or
 - (ii) for the purpose of their adoptions under the laws of a foreign country being recognised under the laws of Australia.

5C Accreditation standards

For the purposes of section 13 (2) (b) of the Act, the standards to be complied with by an applicant for accreditation are the NSW Adoption Standards.

5D Conditions of accreditation

For the purposes of section 17 (1) (a) of the Act, the conditions to which accreditation as an adoption service provider is subject include:

- (a) compliance with the NSW Adoption Standards, and
- (b) the conditions set out in Schedule 1.

5E Preservation of records of former accredited service providers

As soon as practicable after it ceases to be accredited as an adoption service provider or

otherwise ceases to provide adoption services, an organisation must ensure that all records kept by it for the purposes of the Act are lodged with the Director-General.

Maximum penalty: 25 penalty units.

Part 3 Selection of prospective adoptive parents

6 Form of expression of interest

- (1) An expression of interest to adopt a child is to be made in the form approved by the Director-General.
- (2) An expression of interest is effective for a period of 12 months after it is submitted to the Director-General or the principal officer.

7 Information to be provided to persons submitting expressions of interest

- (1) The Director-General or the principal officer is to supply every person who submits an expression of interest with information about the following:
 - (a) if the person is interested in adopting a child from New South Wales—the estimated number of and information about children needing adoptive placement through the Department or accredited adoption service provider, respectively,
 - (b) if the person is interested in adopting a child from overseas—the estimated number of and information about children needing adoptive placement from overseas,
 - (c) the education, assessment, approval and selection processes,
 - (d) criteria for approval and selection of applicants,
 - (e) fees and the reduction or waiver of fees,
 - (f) the rights and responsibilities under the law of New South Wales of applicants, adoptive parents, adopted persons and birth parents or former adoptive parents of adopted children.
- (2) The information may be communicated to a person verbally or in writing or by such other means as the Director-General or the principal officer thinks fit.

8 Adoptive parent education and training

The Director-General or principal officer may, at any time following submission of an expression of interest to adopt, require the person who submitted it to attend an adoptive parent education and training course provided by the Director-General or principal officer. Costs of attendance at courses are to be at the person's expense.

9 Form of application to adopt

An application to adopt a child is to be made in the form approved by the Director-General.

10 Documents to accompany application to adopt

(1) An application to adopt a child is to be accompanied by the following:

- (a) a statement made by each applicant as to the physical and mental health of the applicant, and a medical report in respect of the applicant, in the form approved by the Director-General,
- (b) a certified copy of every marriage registration (if any) relating to the applicant issued by the Registry of Births, Deaths and Marriages or, if the applicant was married in another jurisdiction, a certified copy of an equivalent document issued by the authority responsible for the registration or recording of marriages in that jurisdiction,
- (c) a certified copy of every decree absolute in divorce (if any) relating to the applicant,
- (d) a certified copy of the birth registration relating to the applicant and proof of any amendment to the registration of birth, if applicable.

(2) If a document referred to in subclause (1) (b) is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Director-General.

11 Action to be taken by relevant decision-maker after receipt of application to adopt

- (1) The relevant decision-maker must acknowledge receipt of each application to adopt a child made to the relevant decision-maker.
- (2) In addition to the medical report accompanying the application, the relevant decision-maker may obtain such other medical reports as he or she thinks fit in respect of an applicant.
- (3) Any medical report referred to in this clause is to be obtained at the applicant's expense.

12 Criteria for assessment of applicants

For the purposes of section 45 (1) (a) of the Act, the relevant decision-maker is to have regard to the following matters when assessing the suitability of a person to be approved to adopt, and in the selection of a person to adopt, a child under the Act:

- (a) the person's health, including emotional, physical and mental health,

- (b) the person's age and maturity,
- (c) the person's skills and life experience, in relation to the person's ability to undertake parenting tasks and attend to the specific needs of an adopted child,
- (d) the person's capacity to provide a stable, secure and beneficial emotional and physical environment during the child's upbringing until the child reaches social and emotional independence,
- (e) the person's financial circumstances, in relation to the person's capacity to adequately provide for the child's needs,
- (f) the person's capacity to support the maintenance of the child's cultural identity and religious faith (if any),
- (g) the person's appreciation of the importance of and capacity to facilitate:
 - (i) contact with the child's birth parents and family, and
 - (ii) exchange of information about the child with the child's birth parents and family,
- (h) the general stability of the person's character and the person's criminal history (if any),
- (i) the stability and quality of the person's relationship with his or her spouse (if any) and between the person, his or her spouse (if any) and other members of the person's family and household,
- (j) the criminal history (if any) of the person's spouse (if any) and other members of the person's household,
- (k) if the person has had the care of a child before the application, whether the person has shown an ability to provide a stable, secure and beneficial emotional and physical environment for the child.

13 Assessment of applicants for adoption in NSW

- (1) The relevant decision-maker may:
 - (a) decline to assess, or
 - (b) approve or approve subject to conditions, or
 - (c) decline to approve,an applicant as suitable to adopt a child or a particular child.

Note—

Clause 72 prescribes the above decisions as reviewable decisions for the purposes of Chapter 10 of the Act.

- (2) Without limiting subclause (1), the relevant decision-maker may decline to assess, or decline to approve, an applicant or applicants as suitable to adopt a child if the applicant or applicants have made an application to another relevant decision-maker and that other decision-maker:
 - (a) is assessing the suitability of the applicant or applicants to adopt the child or a particular child, or
 - (b) has approved, or approved subject to conditions, the applicant or applicants as suitable to adopt a child or particular child.
- (3) In assessing the suitability of applicants to adopt, the relevant decision-maker is to have regard to the provisions of Part 1 of Chapter 4 of the Act (so far as they are relevant) and to the prescribed selection criteria.
- (3A) If the relevant decision-maker is a principal officer, the relevant decision-maker may (instead of having regard to the prescribed selection criteria) have regard to any criteria to assess the suitability of applicants to adopt a child notified to the Director-General in accordance with clauses 16 and 16A of Schedule 1.
- (4) In assessing the suitability of applicants to adopt, the relevant decision-maker must take into account whether any other person who resides in the home of the applicant is of good repute and is a fit and proper person to associate with a child.
- (5) The relevant decision-maker must decline to approve an application made jointly by a husband and wife or by de facto partners if the relevant decision-maker determines that either of them is not suitable to adopt a child.
- (6) If the relevant decision-maker is a principal officer, he or she must:
 - (a) promptly advise the Director-General of decisions taken by the decision-maker under subclause (1), and
 - (b) furnish the Director-General with such particulars relating to any such decision as the Director-General may require.

14 Notification of assessment of applicants for adoption in NSW

- (1) The relevant decision-maker is to advise the applicant of the decision by notice in writing served personally or by post.
- (2) The notice is to be accompanied by a copy of any assessment report or other report concerning the applicant (other than any criminal record check or confidential referee report) considered by the relevant decision-maker in assessing an applicant.
- (3) An approval (or approval subject to conditions) has effect for the period of 4 years (or such longer period as may be determined by the relevant decision-maker) after the applicant is advised of the approval.

15 Approvals subject to conditions

Without limiting the conditions that the relevant decision-maker may impose under clause 13, conditions may be imposed that:

- (a) limit the duration of the approval, or
- (b) limit the approval to adopt to a nominated child or a child from a specified age group or of a specified sex, or
- (c) limit the approval to adopt to a child from a specified country or to a child of a specified race or ethnic group, or
- (d) require an applicant approved as suitable to adopt to confirm or update the particulars of the application for approval on a periodic basis or at the request of the relevant decision-maker, or
- (e) require an applicant to notify the relevant decision-maker (if not already notified by some other person) as soon as practicable after the applicant becomes aware that the applicant or the applicant's spouse or de facto partner is pregnant, or
- (f) require an applicant to notify the relevant decision-maker of any other significant change in the applicant's circumstances that might affect the approval (for example, if the applicant suffers a deterioration in health or changes his or her marital status) as soon as practicable after the change occurs, or
- (g) require an applicant to confirm or update the particulars of the application (and to undergo such medical examinations for the purposes of medical reports and supply copies of such documents of a kind referred to in clause 10 as may be required by the relevant decision-maker) if a child is not placed with the applicant within a period of 4 years after the applicant is advised of the approval.

16 Advice to be given of decision and right to apply for reasons for, and review of, decision

The relevant decision-maker must:

- (a) advise an applicant of a decision to decline to approve an applicant as suitable to adopt a child, or to approve the applicant subject to conditions, as soon as practicable after the decision is made, and
- (b) give the applicant written advice of the applicant's right to request reasons for, and apply for a review of, the decision under Chapter 10 of the Act.

Note—

Clause 72 prescribes a decision to decline to approve an applicant as suitable to adopt a child as a reviewable decision for the purposes of Chapter 10 of the Act.

17 Revocation of approval

- (1) The relevant decision-maker may at any time revoke approval of an applicant as suitable to adopt a child.
- (2) The relevant decision-maker must:
 - (a) advise an applicant of a decision to revoke an approval as soon as practicable after the decision is made, and
 - (b) give the applicant written advice of the applicant's right to request reasons for, and apply for a review of, the decision under Chapter 10 of the Act, and
 - (c) if the relevant decision-maker is the principal officer of an adoption service provider—notify the Director-General in writing of the decision to revoke the approval as soon as practicable after the decision is made.

Note—

Clause 72 prescribes a decision to revoke the approval of an applicant as suitable to adopt a child as a reviewable decision for the purposes of Chapter 10 of the Act.

Part 4 Adoption register

18 Adoption register

The Director-General is to keep an adoption register in which is to be entered the following:

- (a) the name of every person who has submitted an application to adopt a child,
- (b) the name of every person approved as suitable to adopt a child,
- (c) if a person is approved as suitable to adopt a particular child, the names of the person and of the child,
- (d) the cultural identity of every person approved as suitable to adopt a child,
- (e) details of any condition to which an approval is subject and of any information that the relevant decision-maker has been notified of in accordance with a condition of an approval,

Note—

See clauses 13 and 15.

- (f) such other particulars as the Director-General may determine.

19 Content of adoption register

The adoption register is to indicate, in the manner considered appropriate by the Director-General, the following:

- (a) the full name of each person approved as suitable to adopt a child from New South Wales and the date of the approval,
- (b) the full name of any person approved as suitable to adopt a child from overseas and the date of the approval,
- (c) whether the approval concerned was given after application to an accredited adoption service provider or the Director-General,
- (d) if the application was made to an accredited adoption service provider—the name of the service provider.

20 Removal of names from adoption register

- (1) The name of a person is to be removed from the adoption register:
 - (a) on the making of an adoption order or interim order in favour of that person, or
 - (b) on receipt by the Director-General of a notice in writing from that person requesting the removal of the person's name, or
 - (c) if, after reasonable inquiry, the person cannot be found, or
 - (d) if, because of a change in the circumstances of the person existing at the time when the relevant decision-maker approved the person as suitable to adopt a child, the person is, in the opinion of the Director-General, no longer suitable to adopt a child, or
 - (e) following a decision to decline to assess or approve, or a revocation of approval of, the person as suitable to adopt the child, or
 - (f) in such other circumstances as the Director-General considers appropriate.
- (2) If a name removed at the request of the person concerned is the name of a person who applied jointly with another person for approval to enter his or her name in the adoption register, the name of that other person is, at the same time, to be removed from the adoption register.

21 Effect of having name on register

Nothing in this Regulation:

- (a) requires the relevant decision-maker to place a child for the purposes of adoption with an applicant whose name is on the adoption register, or
- (b) gives an applicant whose name is on the adoption register any right or entitlement to the placement of a child for the purposes of adoption.

Part 5 Placement for adoption

22 Certain reports required before placement of child

- (1) The relevant decision-maker must not transfer or cause to be transferred care responsibility for a child to another person with a view to the adoption of that child by that other person unless the relevant decision-maker:
 - (a) has obtained a report, in the form approved by the Director-General, by a registered medical practitioner as to the health of the child, and
 - (b) has obtained, or made reasonable attempts to obtain, a social, developmental and medical history of the child and of the child's parents and of their immediate families,

to assist the relevant decision-maker in selecting an approved person considered suitable by the relevant decision-maker to adopt that child having regard to all relevant considerations, including those specified in sections 26–28 of the Act.

- (2) The relevant decision-maker must not transfer or cause to be transferred the care responsibility for a child who is resident or domiciled in the State to another person with a view to the adoption of that child in a place outside Australia by that other person unless the Director-General has prepared a report as referred to in section 40 of the Act.

23 Selection of applicants for adoption order

Applicants for adoption orders in respect of particular children who may be adopted through an accredited adoption service provider are to be selected by the Director-General or principal officer from the persons whose names are indicated in the adoption register as persons who have been approved as suitable to adopt by that service provider.

24 Entitlement of approved person to adopt child

- (1) An approved person is not entitled to be the applicant for an adoption order in respect of a particular child available for adoption unless in the opinion of the relevant decision-maker the person is suitable to adopt the child.
- (2) A child must not be placed in the care of a female approved person, or her husband or de facto partner, for the purposes of adoption if, to the knowledge of the relevant decision-maker, the female approved person is pregnant.

25 Placement of child for adoption in conformity with religious upbringing intentions

The relevant decision-maker is to make all reasonable efforts to place the child with an approved person whose expressed intention for the religious upbringing of that child is in accordance with any wish expressed by a parent or guardian of the child (whether in the adoption plan or when consenting to the adoption, or both).

26 Placement of child for adoption in conformity with wishes as to cultural heritage, identity or ties

Subject to Part 2 of Chapter 4 of the Act, the relevant decision-maker is to make all reasonable efforts to place the child with an approved person:

- (a) who has the cultural heritage, identity or ties expressed by a parent or guardian of the child in consenting to adoption of the child or in the adoption plan, or both, as being the cultural heritage, identity or ties which the parent or guardian wishes a person adopting the child to have, or
- (b) whose domestic arrangements accord with the wishes so expressed by a parent or guardian.

27 Placement where compliance with expressed wishes of parent or guardian impracticable

- (1) Despite clauses 25 and 26, if compliance with an expressed wish of a parent or guardian referred to in those clauses is impracticable, the relevant decision-maker may give written authorisation for the placement of the child with another approved person.
- (2) The relevant decision-maker must:
 - (a) inform, or make reasonable efforts to inform, the parent or guardian before placing the child, and
 - (b) if the relevant decision-maker is unable to inform the parent or guardian before placement, continue to make reasonable efforts to inform the parent or guardian until filing of the application for an adoption order in respect of the child, and
 - (c) include in the relevant decision-maker's report to the Court under section 91 of the Act a statement of the reasons why he or she authorised such a placement and of the efforts made to inform the parent or guardian.

28 Confidentiality of adoption proceedings

- (1) The relevant decision-maker must not disclose any confidential adoption information to any person not directly associated with the proceedings for the adoption of any child, except:
 - (a) in accordance with Chapter 8 of the Act, or
 - (b) in such circumstances as may be approved by the Minister.
- (2) A person to whom confidential adoption information is disclosed must not disclose it to any person, except:
 - (a) in accordance with Chapter 8 of the Act, or

(b) in such circumstances as may be approved by the Minister, or

(c) with the consent of the person to whom it relates.

Maximum penalty: 25 penalty units.

(3) The person from whose care a child is transferred to a proposed adoptive parent or parents is not, by reason only of the transfer, entitled to receive information that will enable that person to identify or locate all or any of the parties to the adoption.

(4) In this clause:

confidential adoption information means:

(a) the name or address of the applicant for an adoption order or interim order in respect of a child, or

(b) any other matter reasonably likely to enable that applicant, the child or the father or mother or a guardian of the child to be identified.

Part 6 Adoption plans

29 Particulars to be contained in plan

For the purposes of section 47 of the Act the following are the required particulars:

(a) a statement of the means and nature by which contact between the child and the child's family and siblings is to be maintained, including people authorised to have contact with the child, purposes of the contact, frequency of contact and location of contact,

(b) details of the ways in which the child is to be assisted to develop a healthy and positive cultural identity and of ways in which links with the child's cultural heritage are to be fostered,

(c) a description of the type of information to be exchanged under the plan,

(d) a statement of the frequency of exchange of information,

(e) details of provision to be made for any financial and other assistance arrangements that the Director-General has agreed be included in the plan under section 201 (2) of the Act,

(f) a statement of the period for which the plan is to have effect.

30 Review of adoption plans

An application for review of an adoption plan is to be made as provided by rules of court, or, if no provision is made by rules of court, in the form approved by the Director-General.

Part 7 Consents to adoptions

31 Counsellors

- (1) For the purposes of the definition of **counsellor** in section 57 of the Act, a counsellor is a person whose name is on the register of counsellors kept under clause 32.
- (2) For the purposes of the definition of **counsellor** in section 57 of the Act, the prescribed qualifications are that a person:
 - (a) has at least 2 years of experience within the last 5 years in providing (whether on a full or part-time basis) adoption, out-of-home care services or family services as an employee of, or contractor with, the Department, an accredited adoption service provider or a body of a kind approved by the Director-General for the purposes of this paragraph, and
 - (b) is one or both of the following:
 - (i) an employee of the Department, an accredited adoption service provider or a body or class of body approved by the Director-General for the purposes of this paragraph,
 - (ii) a member of a professional association approved by the Director-General for the purposes of this paragraph, and
 - (c) is the holder of a qualification in the social sciences conferred by a university (whether within or outside New South Wales) after the equivalent of at least 3 years full time study.
- (3) In addition to any functions conferred on a counsellor by the Act, a counsellor who provides counselling to a person under 16 years of age in relation to the adoption of the person's child must give a written report on the capacity of the person to understand the effect of signing an instrument of consent to the adoption.

32 Register of counsellors

- (1) The Director-General is to establish a register of counsellors.
- (2) The name of every person who is eligible to have his or her name entered in the register as a counsellor and who has duly applied for entry of his or her name in the register is to be entered in the register.
- (3) A person is eligible to have his or her name entered in the register if the person:
 - (a) has the qualifications prescribed by clause 31 (2), and
 - (b) has no relevant criminal record.
- (4) Application for entry in the register is to be made in the form approved by the

Director-General.

- (5) A person whose name is entered on the register must undertake such courses or training as are relevant to carrying out the functions of counsellors as may be required by the Director-General by notice in writing.
- (6) The Director-General is to remove the name of any person from the register who:
 - (a) dies, or
 - (b) ceases to possess or does not possess the qualifications in respect of which the person was registered, or
 - (c) requests that his or her name be removed, or
 - (d) becomes a mentally incapacitated person, or
 - (e) becomes a person with a relevant criminal record, or
 - (f) fails, without reasonable excuse, to undertake the training referred to in subclause (5),
 - (g) has been the subject of disciplinary action for a breach of professional standards or improper or unethical conduct, that, in the opinion of the Director-General, demonstrates that the person is not suitable to be a counsellor.
- (7) In this clause:

relevant criminal record means the criminal record of a person with respect to an offence against the Act, the [Adoption of Children Act 1965](#) or any other law relating to the adoption of children or any offence involving an assault or other offence against the person:

- (a) that was committed in New South Wales and that was punishable by imprisonment for 12 months or more, or
- (b) that was committed elsewhere and that would have been an offence punishable by imprisonment for 12 months or more if it had been committed in New South Wales.

33 Mandatory written information

- (1) For the purposes of paragraph (g) of the definition of **mandatory written information** in section 57 of the Act, the following are prescribed matters:
 - (a) information concerning arrangements that could be made for temporary care of the child,
 - (b) information as to arrangements for the care of the child during the revocation

period,

(c) information on the effects, if any, adoption may have on the child's cultural identity and cultural heritage.

(2) A principal officer is to give mandatory written information in the form approved by the Director-General.

34 Form of consent

(1) For the purposes of section 61 of the Act, the instrument for general consent to the adoption of a child (other than a consent referred to in subclause (2) or (3)) is to contain the following information:

(a) the full name of the person consenting to the adoption,

(b) the address of that person,

(c) the relationship of the person to the child (mother, father or guardian),

(d) the full name of the child,

(e) the date and place of birth of the child,

(f) a statement as to whether the person consenting to the adoption requests and authorises the Director-General (or, if applicable, a principal officer) to make arrangements for the adoption of the child,

(g) a statement of the right of the person to revoke his or her consent and:

(i) if the person is a child—a statement that he or she may revoke consent at any time before the adoption order is made, and

(ii) if the person is an adult—a statement that he or she may revoke consent only within the period of 30 days beginning on the day on which he or she signs the instrument and the date on which that period ends,

(h) a statement as to when the Director-General or appropriate principal officer gave the person the mandatory written information,

(i) if the person is consenting to the adoption of an Aboriginal child or a Torres Strait Islander child—a statement of when the person received the adoption counselling, or information, referred to in section 64 (1) or 65 (1), respectively, of the Act,

(j) a statement as to when the person was counselled in accordance with section 63 of the Act.

Note—

Under section 63 of the Act a person must be counselled on the legal effect of signing the consent and the

procedure for revoking consent before signing the consent form. The counsellor is required by section 61 of the Act to certify on the form of consent that the person has been counselled and that the counsellor is of the opinion that he or she understands the effect of signing.

- (2) For the purposes of section 61 of the Act, the instrument for general consent to the adoption of a non-citizen or other child of whom the Director-General has guardianship (otherwise than under section 75 (7) of the Act) is to contain the following information:
 - (a) the full name of the child,
 - (b) the date and place of birth of the child.
- (3) For the purposes of section 61 of the Act, the instrument for specific consent to the adoption of a child is to contain the following information:
 - (a) the full name of the person consenting to the adoption,
 - (b) the address of that person,
 - (c) the relationship of the person to the child (mother, father or guardian),
 - (d) the full name of the child,
 - (e) the date and place of birth of the child,
 - (f) the full names and addresses of the person or persons who are specified as the adoptive parent or parents of the child and a description of their relationship to the child,
 - (g) details of how long, and the period during which, the specified person or persons have cared for, lived with or had a relationship with the child,
 - (h) a statement of the right of the person consenting to the adoption to revoke his or her consent and:
 - (i) if the person is a child—a statement that he or she may revoke consent at any time before the adoption order is made, and
 - (ii) if the person is an adult—a statement that he or she may revoke consent only within the period of 30 days beginning on the day on which he or she signs the instrument and the date on which that period ends,
 - (i) a statement as to when the Director-General or appropriate principal officer gave the person the mandatory written information,
 - (j) if the person is consenting to the adoption of an Aboriginal child or a Torres Strait Islander child—a statement of when the person received the adoption counselling, or information, referred to in section 64 (1) or 65 (1), respectively, of the Act,
 - (k) a statement as to when the person was counselled in accordance with section 63

of the Act.

Note—

Under section 53 of the Act, specific consent to the adoption of a child by the persons having the following relationships to the child may be given:

- (a) a specified adoptive parent who is a relative of the child,
- (b) 2 specified adoptive parents, one of whom is a parent or relative of the child,
- (c) a specified adoptive parent who is a step parent of the child,
- (d) a specified adoptive parent who is a foster parent who has had the care of the child for 2 years or more.

35 Classes and descriptions of persons who may witness consents

- (1) For the purposes of section 62 (3) of the Act, the following classes or descriptions of persons are prescribed as persons who can be witnesses to the signing of an instrument of consent:
 - (a) if the instrument is signed in New South Wales:
 - (i) the Director-General,
 - (ii) an independent lawyer,
 - (iii) a principal officer,
 - (iv) a counsellor (not being the counsellor of any person signing the instrument or a person who is not independent of such a counsellor),
 - (b) if the instrument is signed in another State or Territory—a person authorised by the law of that State or Territory to witness a consent to the adoption of a child,
 - (c) if the instrument is signed in another place:
 - (i) an Australian Consular Officer as defined in section 26 of the *Oaths Act 1900*,
 - (ii) a judge of a court or magistrate of that place,
 - (iii) a person authorised by the law of that place to attest to a consent to the adoption of a child.
- (2) An instrument of consent to the adoption of a child may not be witnessed by any person referred to in subclause (1) if the person is an officer of the Department or an employee of an accredited adoption service provider or private foster agency who is the caseworker for a person adopting the child.
- (3) In this clause:

independent lawyer means a barrister or solicitor who is not the legal

representative of a person adopting the child concerned, or a partner or employee of such a legal representative.

36 Witnessing a consent

- (1) Before a person witnesses the signing of an instrument of consent, the person must:
 - (a) satisfy himself or herself as to the identity of the person signing the instrument, and
 - (b) ensure that the person signing the instrument has been given ample opportunity to read, and understands the effect of signing, the instrument.
- (2) Before witnessing the signing of the instrument of consent, the witness is to sign a statement on it certifying that he or she has done the things referred to in subclause (1).
- (3) For the purposes of section 185 (c) of the Act, a person must not witness the signing of an instrument of consent by a person who he or she has reason to believe is less than 16 years of age unless he or she is satisfied that a registered psychologist or other appropriate expert has prepared a report stating that, in the opinion of the expert, the person is capable of understanding the effect of the consent.

37 Notice of signing of general consent

- (1) If the signing of a general instrument of consent to the adoption of a child is witnessed by an officer of an accredited adoption service provider, the principal officer of that service provider must give the Director-General:
 - (a) notice of the signing, and
 - (b) if the adoption service provider has been requested to make arrangements for the adoption of the child, a statement indicating whether or not the service provider is willing to make such arrangements.
- (2) A person, other than an officer of an adoption service provider or an officer of the Department, who signs a general instrument of consent to the adoption of a child as a witness to the signing of the instrument, must give the Director-General notice of the signing.
- (3) A notice under subclause (1) or (2):
 - (a) must be in the form approved by the Director-General, and
 - (b) must be given within 7 days after the general instrument of consent is signed.
- (4) If the person witnessing the signing of a general instrument of consent to the adoption of a child is not an officer of an adoption service provider or an officer of the Department, the person signing the instrument must, within 7 days after the signing:

- (a) give the Director-General the instrument together with a request, in the form approved by the Director-General, to make arrangements for adoption of the child, or
 - (b) give the principal officer of an accredited adoption service provider the instrument together with such a request and send a notice of the signing of the instrument, in the form approved by the Director-General, to the Director-General.
- (5) The principal officer of an adoption service provider that is unwilling to make arrangements for the adoption of a child as requested under subclause (1), must, as soon as practicable but within 14 days of receiving the request, give the Director-General notice, in the form approved by the Director-General, that the service provider is unwilling to make the arrangements.
- (6) The service provider is to forward to the Director-General, with the notice, any instrument of consent and any request to make arrangements with a view to adoption of the child relating to that child that is held by the service provider.
- (7) Any notice required to be given under this clause may be served personally or by post.

38 No fees payable to witness to consent

No fees are payable to a person for witnessing a consent to adoption.

39 Period in which person giving consent must be counselled

For the purposes of section 63 of the Act, the prescribed period is:

- (a) except as provided by paragraph (b), not more than 30 days or less than 72 hours before the instrument of consent is signed, or
- (b) in the case of counselling given to the birth mother of a newborn child—not earlier than 5 days after the birth of the child and not more than 30 days or less than 72 hours before the instrument of consent is signed.

Part 8 Preliminary hearings

40 Matters in relation to which preliminary hearings can be held

For the purposes of section 80 (1) of the Act, decisions about the following are prescribed matters:

- (a) the identity of a child as an Aboriginal child or Torres Strait Islander child,
- (b) the validity of a consent to the adoption of a child,
- (c) the provision of contact with a child,

- (d) the allocation or exercise of parental responsibility for a child,
- (e) dispensing with consent,
- (f) matters relating to a child's revocation of consent before the making of an adoption order.

Note—

Some relevant matters may be dealt with by other laws—for example, if parentage is in issue see the [Status of Children Act 1996](#).

41 Persons who may apply for a preliminary hearing to be held

For the purposes of section 80 (3) of the Act, the following classes of person are prescribed:

- (a) parties to an adoption,
- (b) any person approved by the Court as having sufficient interest in an adoption.

Part 9 Adoption orders

42 Prescribed particulars relating to application for adoption order

For the purposes of section 88 (1) of the Act, the following are the prescribed particulars:

- (a) the full name and date of birth of the child,
- (b) the date on which the application was made,
- (c) the provisions of the adoption plan (if any),
- (d) advice about the right of the person given the notice to oppose the application,
- (e) information about how the person given the notice may become a party to the application.

Part 10 Records of adoptions

43 Prescribed particulars and information

(1) For the purposes of sections 130 (a), 131 (4) and 132 (2) of the Act, the following are the prescribed particulars and information relating to an adoption order:

- (a) the following particulars of the child prior to adoption:
 - (i) the surname and other names of the child,
 - (ii) the sex of the child,
 - (iii) the date and place of birth of the child,

- (iv) the surname and other names of the child's father (if known),
 - (v) the occupation of the father,
 - (vi) the age and place of birth of the child's father,
 - (vii) the maiden surname and other names of the child's mother,
 - (viii) the occupation of the mother,
 - (ix) the age and place of birth of the child's mother,
 - (x) date and place of marriage (if any) of the child's parents,
 - (xi) details of previous children (if any) of the parents' relationship,
 - (xii) the name of the informant,
 - (xiii) particulars of the registration,
- (b) the following particulars of the child after adoption:
- (i) the surname and other names of the child,
 - (ii) the sex of the child,
 - (iii) the date and place of birth of the child,
 - (iv) the surname and other names of the child's adoptive father,
 - (v) the occupation of the adoptive father,
 - (vi) the age and place of birth of the child's adoptive father,
 - (vii) the married name (if any) and maiden surname and other names of the child's adoptive mother,
 - (viii) the occupation of the adoptive mother,
 - (ix) the age and place of birth of the child's adoptive mother,
 - (x) date and place of marriage (if any) of the child's adoptive parents,
 - (xi) details of previous children (if any) of the adoptive parent's relationship,
 - (xii) the name of the informant,
 - (xiii) particulars of the registration.

- (2) For the purposes of sections 130 (a), 131 (4) and 132 (2) of the Act, the following are the prescribed particulars and information relating to a discharge order:

- (a) the name of the child,
- (b) the date and place of birth of the child,
- (c) the names of the adoptive parent or parents,
- (d) the number and date of the discharge order,
- (e) any ancillary order made by the Court.

44 Form of records

Any record required to be given by a nominated officer under Chapter 7 of the Act is to be in a form approved by the Registrar.

Part 11 Adoption information

Division 1 Prescribed information to which persons are entitled

45 Prescribed information under section 133

For the purposes of the Act, prescribed information is the information (being information in addition to that which persons are entitled to receive, or may in certain circumstances be supplied with, under and subject to the Act) that a person is entitled to receive under clauses 46–56.

46 Entitlement of adopted person—information prescribed under section 134

Note—

This clause does not cover all information that an adopted person may be able to receive, or be supplied with, under the Act. Several other provisions of this Regulation give further entitlements to, or limit entitlements of, an adopted person to prescribed information. See clauses 51–57. Under section 134 (3) of the Act, an adopted person who is less than 18 years old will generally be entitled to receive prescribed information only with the consent of his or her adoptive parents.

(1) An adopted person is entitled to receive:

- (a) any relevant information that is held by an information source 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 a birth parent, sibling, grandparent, aunt or uncle of the adopted person and that will give the adopted person knowledge of his or her origins, and
- (b) any of the following information held by an information source:
 - (i) date on which the person was placed with adoptive parents,
 - (ii) date of adoption order,

- (iii) copy of the instrument of consent to the adoption,
 - (iv) copy of the request to make arrangements for the adoption,
 - (v) copy of adoption order or memorandum of adoption (or both),
 - (vi) reason the person was given up for adoption (as stated by the birth parent or recorded by the information source before placement for adoption),
 - (vii) copies of medical reports of examinations of the adopted person made before the date of the adoption order,
 - (viii) a document certifying particulars of the birth of a birth parent,
 - (ix) a document certifying particulars of the marriage of a birth parent,
 - (x) a document certifying particulars of the death of a birth parent,
 - (xi) messages given to the information source by a birth parent for the adopted person if clause 57 is complied with,
 - (xii) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins.
- (2) An adopted person is entitled to receive the following information held by an information source relating to an adopted brother or sister of the adopted person who is 18 or more years old:
- (a) adoptive name,
 - (b) date of birth,
 - (c) place of birth,
 - (d) date of placement for adoption,
 - (e) date of adoption order,
 - (f) copy of adoption order or memorandum of adoption (or both),
 - (g) a document certifying particulars of the marriage of the adopted brother or sister,
 - (h) a document certifying particulars of the death of the adopted brother or sister,
 - (i) the following details concerning adoptive parents:
 - (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).

(3) Despite subclause (1), an adopted person is not entitled to receive:

- (a) information about a birth parent, sibling, grandparent, aunt or uncle that identifies any other person if the information is information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* unless the information is information that the adopted person is otherwise entitled to receive under the *Adoption Act 2000* or an access policy, or
- (b) information consisting of the family name of a birth parent, sibling, grandparent, aunt or uncle unless that information is information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* that the adopted person is otherwise entitled to receive under the *Adoption Act 2000* or an access policy.

Note—

Subclause (3) (a) prevents the supply of information about persons such as marriage celebrants or witnesses involved in events that are required to be registered under the *Births, Deaths and Marriages Registration Act 1995*.

47 Entitlement of adoptive parent—information prescribed under section 135

Note—

This clause does not cover all information that an adoptive parent may be able to receive, or be supplied with, under the Act. Several other provisions of this Regulation give further entitlements to, or limit entitlements of, an adoptive parent to prescribed information. See clauses 51-57.

- (1) An adoptive parent of an adopted person who is less than 18 years old is entitled to receive:
 - (a) any relevant information that is held by an information source 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 a birth parent, sibling, grandparent, aunt or uncle of the adopted person and that will give the adoptive parent knowledge of the adopted person's origins, and
 - (b) any of the following information held by an information source:
 - (i) date of placement for adoption,

- (ii) date of adoption order,
 - (iii) reason the person was given up for adoption (as stated by the birth parent or recorded by the information source before placement for adoption),
 - (iv) messages given to the information source by a birth parent for the adopted person or for the adoptive parent if clause 57 is complied with.
- (2) Despite subclause (1), an adoptive parent is not entitled to receive information consisting of the family name of a birth parent, sibling, grandparent, aunt or uncle unless that information is information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* that the adoptive parent is otherwise entitled to receive under the *Adoption Act 2000* or an access policy.

48 Entitlement of birth parent to information prescribed under section 136

Note—

This clause does not cover all information that a birth parent may be able to receive, or be supplied with, under the Act. Several other provisions of this Regulation give further entitlements to, or limit entitlements of, a birth parent to prescribed information. See clauses 51-57.

- (1) **Information about adult adopted person** A birth parent of an adopted person who is 18 or more years old is entitled to receive:
- (a) any relevant information that is held by an information source 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 an adopted person or his or her adoptive parent and that will give the birth parent knowledge of the adopted child's life after adoption, and
 - (b) any of the following information held by an information source:
 - (i) birth details (including the time of birth and weight and length of the person at birth),
 - (ii) date of placement for adoption,
 - (iii) date of adoption order,
 - (iv) copy of the instrument of consent to the adoption and of any associated documents relating to the social and medical history of the adopted person provided by a birth parent,
 - (v) copy of the request to make arrangements for the adoption,
 - (vi) copy of adoption order or memorandum of adoption (or both),

- (vii) copies of medical reports and examinations of the adopted person made before the date of the adoption order,
- (viii) a document certifying particulars of the marriage of the adopted person,
- (ix) a document certifying particulars of the death of the adopted person,
- (x) messages relating to the adopted person and adoptive family given to the information source for the birth parent if clause 57 is complied with,
- (xi) any other document, report, photograph or recording relating to the adopted person.

(2) **Information about adopted person who is a child** A birth parent is entitled to receive the following information about an adopted person who is less than 18 years old held by an information source:

- (a) birth details (including the time of birth and weight and length of the person at birth),
- (b) date of placement for adoption,
- (c) date of adoption order,
- (d) copies of medical reports or examinations of the adopted person made before placement for adoption,
- (e) information relating to the health and welfare of the adopted person after the date of placement for adoption,
- (f) information about adoptive parents that does not identify the parents.

Note—

Under section 136 (3) of the Act, information referred to in this subclause may only be supplied to a birth parent if the birth parent produces an authority authorising the supply of the information from the Director-General. However under section 136 (4), a designated person may supply the information without such an authority or an amended birth certificate if the designated person is of the opinion that the information could not be used to identify the adopted person or his or her adoptive parents.

(3) Information relating to the health and welfare of an adopted person after placement for adoption is prescribed information for the purposes of subclauses (1) and (2) 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).

(4) For the purposes of section 136 (5) 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 take action to ascertain from the child's adoptive parents:

- (a) information relating to the health and welfare of the child,
 - (b) information relating to the educational progress of the child,
 - (c) information relating to the hobbies, sporting and other interests of the child,
 - (d) information relating to the general lifestyle of the child and the child's adoptive parents.
- (5) A birth parent whose name is entered in the Reunion and Information Register 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.
- (6) Despite subclause (2), a birth parent is not entitled to receive information consisting of the family name of an adopted person who is less than 18 years old or of his or her adoptive parent unless that information is information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* that the birth parent is otherwise entitled to receive under the *Adoption Act 2000* or an access policy.

49 Information prescribed under section 137 relating to deceased birth parent

A relative, spouse or other person who had a de facto or other close personal relationship with a deceased birth parent may be supplied with the following information relating to the deceased birth parent:

- (a) information described in clause 48 (1) (a) relating to an adopted person,
- (b) information relating to a deceased birth parent referred to in clause 51,
- (c) a copy of the adoption order or memorandum of adoption.

50 Information prescribed under section 137 relating to deceased adopted person

A relative, spouse or other person who had a de facto or other close personal relationship with a deceased adopted person may be supplied with the following information relating to the deceased adopted person:

- (a) information described in clause 46 (1) (a) relating to the birth parent,
- (b) information relating to a deceased adopted person referred to in clause 51,

- (c) a copy of the adoption order or memorandum of adoption.

51 Additional prescribed information

- (1) The following information is prescribed as information for the purposes of sections 134-137 of the Act:
 - (a) information that is supplied by the Director-General or authorised by the Director-General to be supplied by the Registrar or some other information source,
 - (b) information that the Director-General is satisfied 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,
 - (c) information that the Director-General is satisfied is unlikely to be able to be obtained from any other source.
- (2) Information prescribed by this clause is not to be supplied unless:
 - (a) the Director-General has notified the person affected by the supply of the information of the intention to supply the information, and
 - (b) a period of not less than 7 days has expired since the person was so notified, and
 - (c) before the expiration of that period, the person has consented to supply of the information or the Director-General has considered any submissions received from the person as to why the information should not be supplied.
- (3) Information prescribed by this clause may be supplied even though the person affected by the supply has not been notified as required by subclause (2) if:
 - (a) in the opinion of the Director-General, it is not reasonably practicable to notify the person, or
 - (b) the whereabouts of the person are unknown and the Director-General has been unable to discover them after making such inquiries as are reasonable in the circumstances.

52 General guidelines under section 142 for release of birth certificate and prescribed information

- (1) An information source is to comply with the following guidelines in connection with the supply of any birth certificates or prescribed information under the Act:
 - (a) the information source must make reasonable inquiries to confirm the applicant's identity and relationship to the person to whom the information relates,
 - (b) the information source must not supply confidential information unless the information source has obtained and taken into account the advice of the Director-

General as to whether the information should be supplied and as to the provision of appropriate counselling for the person to whom it is supplied,

- (c) the information source must not supply confidential information about a birth parent whose name is entered in the Reunion and Information Register unless the information source has taken such action as is reasonable in the circumstances to ascertain whether the birth parent wishes to supply the information personally.

(2) In this clause:

confidential information means:

- (a) information indicating that an adopted person was conceived as a result of incest or the sexual assault of his or her birth mother, and
- (b) information indicating that an adopted person has an hereditary condition seriously affecting the current, or that could seriously affect the future, physical or mental health of the adopted person or any descendant of the adopted person.

53 Guidelines for exercise of discretion to supply a birth certificate or prescribed information under section 140 or 141

- (1) The Director-General is to comply with the guidelines set out in this clause in connection with the supply of a birth certificate or prescribed information:
 - (a) under section 140 of the Act before an entitlement to the certificate or information arises under Part 2 of Chapter 8 of the Act, or
 - (b) in accordance with a request made under section 141 of the Act.
- (2) The Director-General is to seek the consent of the birth parent of an adopted person who is less than 18 years old to the supply of such a birth certificate or prescribed information that could be used to identify the birth parent.
- (3) The Director-General is not to supply such a birth certificate or prescribed information that could be used to identify the birth parent to an adopted person who is less than 18 years old against the wishes of a birth parent until such period (being a period of not less than 7 days) after the birth parent's refusal to consent to the supply as will, in the opinion of the Director-General, enable the birth parent (if he or she so wishes) to lodge a contact veto.
- (4) The Director-General is to supply a birth parent with an amended birth certificate or prescribed information relating to an adopted person who is less than 18 years old only if:
 - (a) 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, or

(b) the adoptive parents support the supply of the birth certificate or prescribed information, or

(c) the adoptive parents have died,

and, in the opinion of the Director-General (supported by expert opinion) it is unlikely that any detriment to the welfare and best interests of the adopted person or his or her adoptive family will result from the supply of the certificate or information.

(5) The Director-General may supply, or authorise an information source to supply, any prescribed information to a person who is not entitled to receive it because of a failure to obtain a birth certificate only if:

(a) there is no contact veto in force against contact by the person with the person to whom the information relates, and

(b) in the opinion of the Director-General, the information could not be used to identify the person to whom it relates,

and, in the opinion of the Director-General (supported by expert opinion) it is unlikely that any detriment to the welfare and best interests of the person to whom the information relates, or his or her family, will result from the supply of the information.

54 Guidelines for exercise of discretion to withhold supply (or authorise the withholding of supply) under section 141

(1) The Director-General may obtain advice from such persons as the Director-General thinks may be of assistance to the Director-General in forming his or her opinion as to whether exceptional circumstances exist that make it necessary to refuse to supply a birth certificate or prescribed information under section 141 of the Act.

(2) The advice may include advice from the following:

(a) a medical practitioner,

(b) a person who is a member, or who is eligible for membership, of the Australian Association of Social Workers,

(c) a person having knowledge or experience in adoption work,

(d) a person who, in the opinion of the Director-General, has other suitable qualifications or experience.

55 Guidelines under section 142 for the release of prescribed information relating to unacknowledged birth fathers

(1) In this clause:

unacknowledged birth father means the birth father of an adopted person who:

- (a) is not shown on the adopted person's original birth certificate as the person's father, or
 - (b) is not a person whom the Director-General, Registrar or another information source is entitled to presume, under any law (including a law of another State or Territory or the Commonwealth) to be the adopted person's birth father.
- (2) An information source must, if it considers it to be necessary or appropriate to do so, obtain assistance from the Director-General or the Registrar to assist in its determination of whether it is entitled to presume a person to be an adopted person's birth father.
- (3) An information source is not to supply prescribed information relating to an unacknowledged birth father if, in the opinion of the information source, the information could be used to identify the unacknowledged birth father or a relative of the unacknowledged birth father, except with the consent of the unacknowledged birth father.

56 Information as to "last known name and address"

The last known name and address of a person held by an information source is prescribed information only if:

- (a) the information was obtained by the information source before the person was placed for adoption, on placement of the person for adoption or from or in connection with the making of the adoption order in relation to the person, or
- (b) the information is information that must or may be included in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* that the person is otherwise entitled to receive under the Act or an access policy, or
- (c) the person concerned has consented in writing to the supply of the name and address to the person seeking the information, or
- (d) the person concerned has entered his or her name on the Reunion and Information Register.

57 Messages

- (1) A message referred to in clause 46, 47 or 48 that is given to an information source for an adopted person, adoptive parent or birth parent after the commencement of this Regulation is not prescribed information unless the person giving the message to the information source has signed a release (in a form approved by the Director-General) consenting to the supply of all such messages.
- (2) A release signed by the person giving a message to the information source is not required if the person:

- (a) is dead, or
 - (b) cannot, after due search and inquiry, be found, or
 - (c) is, in the opinion of the Director-General, incapable of giving consent.
- (3) A message referred to in clause 46, 47 or 48 that is given to an information source for an adopted person, adoptive parent or birth parent before the commencement of this Regulation is not prescribed information unless:
- (a) in the opinion of the Director-General, the records of the information source concerned clearly indicate that the person intended the message to be supplied to the adopted person, adoptive parent or birth parent, or
 - (b) the Director-General is satisfied that the welfare and best interests of one or both persons concerned would be promoted by the passing on of the message.
- (4) In this clause:
- message** means the following:
- (a) a message left under section 147 (4) of the Act by a person who has lodged an advance notice request,
 - (b) a message left under section 156 (4) of the Act by a person who has lodged a contact veto,
 - (c) a message left by a person whose name is entered on the Reunion and Information Register under section 168 of the Act,
 - (d) a photograph or other document left by such a person.

Division 2 Information sources

58 Information sources prescribed under paragraph (g) of definition of “information source” in Dictionary

The following institutions, bodies and persons are prescribed as information sources for the purposes of the Act:

The Benevolent Society

Post Adoption Resource Centre

Scarba Family Centre

Burnside

Link Up (NSW) Aboriginal Corporation

Salvation Army Post-Adoption Service

Wesley Dalmar Child and Family Care

59 Designated persons

- (1) The person prescribed under paragraph (h) of the definition of **designated person** in the Dictionary to the Act as the designated person to deal with an application to an institution, body or person (prescribed under clause 58) for the supply of a birth certificate or prescribed information under Part 2 of Chapter 8 of the Act is the chief executive officer, by whatever title he or she is known, of the institution, body or person.
- (2) The guidelines to be followed by a designated person in relation to an information source in authorising another person to exercise a function of the designated person are:
 - (a) the person must be a senior officer or member of the information source, and
 - (b) the person must, in the opinion of the designated person, have sufficient capacity to understand and responsibly exercise the functions of the designated person under the Act.

60 Supply of birth certificate or prescribed information

- (1) An information source (other than the Supreme Court) must not supply an amended birth certificate or any prescribed information under the Act to a person unless the information source has ascertained:
 - (a) whether the birth certificate or prescribed information is affected by an advance notice registration, and
 - (b) whether the birth certificate or prescribed information is affected by a contact veto registration relating to the person.
- (2) Subclause (1) does not apply to the supply of an amended birth certificate or prescribed information by an information source if that supply is authorised by, and is in accordance with any conditions of, a supply authority issued by the Director-General.

Note—

The Director-General is required to advise the Registrar of Births, Deaths and Marriages of each entry made in the Advance Notice Register and of each contact veto entered in the Contact Veto Register (see sections 148 (3) and 157 of the Act). An information source is required by the Act to ascertain whether a contact veto has been entered before supplying an original birth certificate (see section 158 (2)).

61 Exchange of information between information sources

- (1) If a person who is entitled to receive information under the Act:
 - (a) makes an application for the supply of the information to an information source

that does not hold the information, and

- (b) the information source knows of one or more other information sources that do hold the information,

the information source to whom the application is made may request the other information source or sources to supply it with the information to enable it to supply it to the person.

- (2) An information source is not to supply another information source with such information unless the other information source has forwarded to it:
 - (a) a copy of the application made by the person, and
 - (b) a request signed by the person for the information source to supply the information.

Division 3 Contact vetoes

62 Director-General to endorse details of contact veto on authority to supply adoption information

The Director-General is to endorse details of a contact veto lodged by an adopted person on the birth record of the person supplied by the Director-General.

63 Access to information about a contact veto

- (1) An application may be made to the Director-General by an adopted person who is 18 or more years old, a birth parent of such a person or a relative, spouse or other person referred to in section 137 of the Act for the Director-General to supply:
 - (a) a statement as to whether a veto objecting to contact by the person with an adopted person or a birth parent has been entered in the Contact Veto Register, and
 - (b) if a contact veto has been entered, details of the relationship of the person who lodged the contact veto to the applicant, and
 - (c) if a message has been left for the applicant by the person who has lodged the contact veto, a copy of the message.
- (2) An application under this clause:
 - (a) is to be made in the form approved by the Director-General, and
 - (b) is to be accompanied by proof (to the satisfaction of the Director-General) of the identity of the applicant, and
 - (c) is to be accompanied by the fee or charge payable for the supply of such

information or, if the applicant wishes the fee or charge to be reduced or waived by the Director-General, a statement as to why it should be reduced or waived.

- (3) The Director-General is not to supply any information under this clause if, in the opinion of the Director-General, the information could be used to identify the person who objects to contact or a parent, brother or sister of that person, except with the consent of the person.

64 Guidelines under section 161 for request to confirm, cancel or vary contact veto

Unless the Director-General considers that the circumstances are exceptional, the Director-General is not to deal with an applicant's request under section 161 of the Act to approach a person who has lodged a contact veto if the request is made within 6 months after the contact veto took effect.

Division 4 Advance notice

65 Advance notice period

- (1) For the purposes of paragraph (a) of the definition of **advance notice period** in section 145 of the Act, the period of 2 months after an application for personal information relating to a person is made is the prescribed period.
- (2) For the purposes of paragraph (b) of the definition of **advance notice period** in section 145 of the Act, a period not greater than 4 months after an application for personal information relating to a person is made may be specified by the Director-General.

Division 5 Reunion and Information Register

66 Definition

In this Division:

message means:

- (a) a message left under section 147 (4) of the Act by a person who has lodged an advance notice request, or
- (b) a message left by a person whose name is entered on the Reunion and Information Register under section 168 of the Act, or
- (c) a photograph or other document left by such a person.

67 Information to be updated

A person whose name is entered on the Reunion and Information Register or who has left a message must notify the Director-General of:

- (a) any change in his or her name or address, or
- (b) any change of circumstances known to the person that substantially affects the content of the message.

Note—

Under this clause a person whose name is entered on the Register might be required, for example, to notify the Director-General if a person referred to in a message dies or leaves Australia permanently.

68 Leaving and delivery of messages

- (1) A message may be left by a person by leaving it at, or by sending it by post to, an address advised by the Director-General.
- (2) The Director-General:
 - (a) is to offer to deliver the message to the person for whom it has been left on entry of the person's name in the Reunion and Information Register if the person is willing to receive the message, or
 - (b) if the person's name is not entered in the Register or if the person for whom it has been left refuses to accept the message, is, if reasonably practicable, to return the message to the person who left it.
- (3) The Director-General may deliver a message:
 - (a) by delivering it to the person for whom it has been left at the address entered on the register, or
 - (b) if the person for whom it has been left advises the Director-General that he or she wishes to collect the message personally or to authorise another person to collect the message, by delivering it to the person or the other person authorised to collect it.

69 Delivery of messages

The Director-General must not give a person a message that the Director-General has opened and inspected and that the Director-General knows identifies, or believes could be used to identify, the person who left the message, or a relative of the person, unless the person who left the message has given consent (either at the time of leaving the message or at a later time) to the identifying information being given.

70 Document left before the commencement of the [Adoption Information Amendment Act 1995](#)

- (1) This clause applies to any document left with the Director-General before the commencement of the amendments to Part 4 of the [Adoption Information Act 1990](#) made by the [Adoption Information Amendment Act 1995](#) by a person whose name

was entered on the Reunion Information Register established under that Act as then in force.

(2) The Director-General may:

- (a) approach the person who left a document to which this clause applies, or
- (b) take such other action (including opening and inspecting the document) as is reasonable in the circumstances,

to ascertain whether the document should be treated as if it were a message for the purposes of Part 4 of the *Adoption Information Act 1990* as in force after the commencement of the amendments made to Part 4 by the *Adoption Information Amendment Act 1995*.

(3) The Director-General is not to treat a document as if it were a message unless the person indicates, or the document or records in relation to the leaving of the document clearly indicate, that the person leaving the document intended it to be delivered to an adopted person, birth parent, adoptive parent or some other specified person.

71 Offence

A person whose name is entered on the Reunion and Information Register must not leave any message for a person concerned in or affected by an adoption with the intention of intimidating, harassing or threatening the person.

Maximum penalty: 5 penalty units.

Part 12 Miscellaneous

72 Reviewable decisions

The following classes of decision of the Director-General or a principal officer are prescribed for the purposes of paragraph (b) of the definition of **reviewable decision** in section 189 of the Act:

- (a) a decision to decline to assess an applicant as suitable to adopt a child or a particular child,
- (b) a decision to decline to approve the applicant as suitable to adopt a child or a particular child,
- (c) a decision to revoke the approval of the applicant as suitable to adopt a child or a particular child,
- (d) a decision to approve the applicant as suitable to adopt a child or a particular child subject to conditions.

73 Case records

- (1) The Director-General and the principal officer are to maintain a case record of:
 - (a) each person and that person's child adopted under arrangements made by the Director-General or the accredited adoption service provider, and
 - (b) each person who has requested the Director-General or the accredited adoption service provider to make arrangements for the adoption of a child by the person.
- (2) Despite section 194 (1) of the Act, the records are open to inspection by the following:
 - (a) the Court,
 - (b) an officer of the accredited adoption service provider or any consultant appointed by the adoption service provider,
 - (c) the Director-General or any other person authorised in writing to inspect any such record by the Court or by both the Director-General and the principal officer of the accredited adoption service provider.
- (3) The case records are not to be destroyed.

74 Restrictions on inspection of documents

Despite section 194 (1) of the Act, the records of any proceedings under the Act or a memorandum sent to the Principal Registrar by the Deputy Registrar of the Supreme Court in accordance with section 130, 131 or 132 of the Act are open to inspection by the following:

- (a) officers of the Court,
- (b) the Director-General,
- (c) the principal officer of an accredited adoption service provider in respect of proceedings in which the service provider was involved.

75 Fees and charges

Any fee or charge in relation to the provision of a service, or supply of a document or information, is payable before the provision of the service or supply of the document or information.

76 Expenditure relating to intercountry adoptions

An applicant for an adoption order in respect of the intercountry adoption of a child must pay any expense associated with the application.

77 Provision of financial and other assistance to certain children

For the purposes of section 201 of the Act, the following classes of children are prescribed:

- (a) children who, in the opinion of the Director-General, are intellectually disabled,
- (b) children who, in the opinion of the Director-General, have a substantial physical, emotional or sensory disability,
- (c) any other children whose circumstances are such that, in the opinion of the Director-General, their best interests would be served by the Director-General entering into an agreement referred to in section 201 of the Act.

78 Proceedings for offences

For the purposes of section 204 (5) of the Act, the Director, Legal Services of the Department is prescribed as a relevant authorised officer.

79 Savings

- (1) Without limiting Schedule 3 to the Act or section 30 of the [Interpretation Act 1987](#), anything done or commenced under the repealed regulation which could have been done under the Act (if the Act had been in force when it was done or commenced) has effect on or after the repeal of the regulation as if it had been done or commenced under the Act.
- (2) Without limiting subclause (1), an expression of interest submitted under the repealed regulation is taken to be a submission of interest submitted under this Regulation.
- (3) Any proceedings with respect to review of a decision of the Director-General that had been commenced but not finally determined immediately before the repeal of the [Adoption of Children Act 1965](#) may be continued as if that Act had not been repealed.
- (4) In this clause:

repealed regulation means the [Adoption of Children Regulation 1995](#) as in force immediately before its repeal.

Schedule 1 Conditions of accreditation for adoption service providers

(Clause 5D)

1 Definition

In this Schedule, a reference to a **member of staff** of an adoption service provider includes a reference to:

- (a) a member of its governing body, and
- (b) any person whom it employs in connection with its provision of adoption services, and

- (c) any person whom it engages (whether on a paid or voluntary basis) to assist it in the provision of adoption services, and
- (d) any person whom it engages (whether on a paid or voluntary basis) to provide adoption services on its behalf.

2 Negotiations for intercountry adoption services

- (1) On being accredited, an adoption service provider must give an undertaking to the Director-General to the effect that, during the period of its accreditation, it will not:
 - (a) enter into any agreement with any authority of a foreign country for the establishment of arrangements to facilitate the adoption of children from that country by persons who reside, or are domiciled, in New South Wales, or
 - (b) participate in negotiations for entering into such an agreement.
- (2) Subclause (1) does not prevent an adoption service provider from entering into an agreement with any such authority for the adoption of children in accordance with arrangements that have been duly established between Australia and the foreign country concerned.

3 Provision of domestic adoption services in NSW

An adoption service provider that is accredited to provide domestic adoption services must not, in New South Wales, provide domestic adoption services to persons who neither reside, nor are domiciled, in New South Wales.

4 Provision of intercountry adoption services in NSW and abroad

An adoption service provider that is accredited to provide intercountry adoption services in relation to a specified foreign country must not, in New South Wales, provide intercountry adoption services to persons who neither reside, nor are domiciled, in either New South Wales or the country so specified.

5 Sharing of accommodation with other associations and organisations

- (1) An adoption service provider that is accredited to provide domestic adoption services must not share premises with any association of adoptive parents or any organisation established to represent adoptive parents.
- (2) An adoption service provider that is accredited to provide intercountry adoption services must not share premises with:
 - (a) any association of adoptive parents, or
 - (b) any organisation that has among its objects the object of soliciting aid for, or providing aid to, persons or organisations in a foreign country.

6 Appointment of principal officer

An adoption service provider must not appoint a person as its principal officer unless the person:

- (a) has obtained a university degree, whether in Australia or overseas, and
- (b) has, within the previous 10 years, had experience for a period of, or for periods totalling, 5 years (whether on a full or part-time basis) in the provision of adoption services, family services or out-of-home care.

7 Appointment of acting principal officer

An adoption service provider must not appoint any person to act in the office of principal officer unless the person:

- (a) has obtained a university degree, whether in Australia or overseas, and
- (b) has, within the previous 5 years, had experience for a period of, or for periods totalling, 2 years (whether on a full or part-time basis) in the provision of adoption services, family services or out-of-home care.

8 Code of conduct

An adoption service provider for which a code of conduct is approved in accordance with the NSW Adoption Standards must ensure that its staff are made aware of, and comply with, that code.

9 Undertakings

An adoption service provider must comply with any undertakings it gives to the Director-General, including undertakings given pursuant to its application for accreditation and undertakings given pursuant to the conditions of its accreditation.

10 Provision of information to prospective adoptive parents

An adoption service provider must provide each prospective adoptive parent with whom it deals with a document that sets out the criteria against which prospective adoptive parents are assessed as to their suitability as adoptive parents.

11 Fees

An adoption service provider must ensure that its scale of fees is made public, either by means of a notice displayed in each of the premises from which it provides adoption services or else by means of brochures made available at those premises.

12 Entry to premises and inspection of records

An adoption service provider must allow the Director-General, and any public servant authorised by the Director-General in that regard:

- (a) to enter any premises from which it provides adoption services, and
 - (b) to inspect such of its records as relate to the provision of adoption services,
- and must provide the Director-General, and any such public servant, with such assistance as is reasonably necessary for the purposes of any such inspection.

13 Provision of reports to Director-General

An adoption service provider must provide the Director-General with the following documents:

- (a) a copy of its annual report, to the extent to which that report deals with its provision of adoption services,
- (b) such reports with respect to its provision of adoption services as the Director-General may from time to time require,
- (c) a copy of any report that, pursuant to any law, it is required to provide to any authority (including an authority of a foreign country) in relation to its provision of adoption services.

14 Conflicts of interest

- (1) As soon as practicable after it becomes aware that any member of its staff has an interest, or is associated with anyone who has an interest, that could affect that member's conduct with respect to its provision of adoption services, an adoption service provider must cause written notice of that fact to be given to the Director-General.
- (2) If as a consequence of such a notice the Director-General gives any written direction to the adoption service provider as to how it should deal with the matter, the adoption service provider must take all reasonable steps to ensure that the direction is complied with.

15 Appointment of foreign representatives

An adoption service provider that is accredited to provide intercountry adoption services must not appoint any person to act on its behalf in relation to adoption proceedings in a foreign country unless the Director-General has approved the proposed appointment.

16 Notification of certain changes

- (1) An adoption service provider must notify the Director-General of any change in the address from which it operates within 14 days after the change occurs.
- (2) An adoption service provider must notify the Director-General of the following particulars within 28 days after the change occurs:

- (a) any change in the terms of the documents that govern its constitution,
- (b) any change in the terms of any trust that it has established in connection with its provision of adoption services.
- (c) any change in the criteria that are used to assess the suitability of applicants to adopt a child.

16A Notification of criteria for assessment of applicants for adoption

- (1) An accredited adoption service provider must notify the Director-General of particulars of the criteria used to assess the suitability of applicants to adopt a child (if different from the prescribed selection criteria).
- (2) An accredited adoption service provider that was accredited before the commencement of the *Adoption Amendment Regulation 2009* must comply with subclause (1) within 28 days of that commencement.
- (3) Until the date that is 28 days after the commencement of the *Adoption Amendment Regulation 2009*, a reference in clause 13 (3A) to criteria notified to the Director-General is taken to include criteria referred to in clause 5 (3) of this Regulation as in force immediately before the commencement of the *Adoption Amendment Regulation 2009*.

17 Notification of inability to comply with conditions of accreditation

An adoption service provider that becomes unable to comply with the conditions of its accreditation must notify the Director-General of that fact as soon as practicable after that fact becomes apparent.