

# Adoption Regulation 2015

[2015-490]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Electronic Transactions Legislation Amendment \(Government Transactions\) Bill 2017](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Adoption Regulation 2015



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Adoption Regulation 2015*.

### 2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Adoption Regulation 2003*, which is repealed on 1 September 2015 by the *Subordinate Legislation Act 1989*.

### 3 Definitions

In this Regulation:

**accredited adoption service provider check** means a check with an accredited adoption service provider as to a person's suitability to adopt a child.

**approved identity information** means documents that can be used to establish the identity of a person or of persons of a specified class that are of a kind approved by the Children's Guardian by an order published in the Gazette.

**Community Services check** means a check of such information held by the Department as is determined by the Secretary.

**designated agency** means a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

**designated agency check** means a check with a designated agency as to a person's suitability to care for a child or to reside at a home where care is provided to a child.

**prescribed selection criteria** means:

- (a) in relation to the selection of prospective adoptive parents under Part 3 of Chapter 4 of the Act—the criteria set out in clause 45, or

- (b) in relation to the selection of authorised carers as adoptive parents under Part 3A of Chapter 4 of the Act—the criteria set out in clause 59.

**relevant decision-maker** means:

- (a) in the case of an application to adopt a child made to the Secretary—the Secretary, 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.

**Secretary** means the Secretary of the Department of Family and Community Services.

**the Act** means the [Adoption Act 2000](#).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

#### 4 Notes

Notes included in this Regulation do not form part of this Regulation.

## Part 2 Adoption service providers

### Division 1 Accreditation

#### 5 Adoption services that may be specified by Children’s Guardian

The Children’s Guardian may specify either or both of the following as adoption services that may be provided by an accredited adoption service provider:

- (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.

#### 6 Application for accreditation

- (1) A charitable or non-profit organisation (an **applicant**) may apply in writing to the Children’s Guardian for:

- (a) accreditation as an accredited adoption service provider to provide domestic adoption services or intercountry adoption services, or both, or
  - (b) the renewal of accreditation as an accredited adoption service provider for such services.
- (2) An application is to:
- (a) be made in the form approved by the Children's Guardian, and
  - (b) be accompanied by such information as the Children's Guardian may reasonably require to assist in the determination of the application, and
  - (c) specify the full name of the individual proposed to be the applicant's principal officer on accreditation, and
  - (d) specify the corporate and business name and ABN (if any) of the applicant, and
  - (e) specify the street and postal address of the applicant, and
  - (f) specify the telephone number and email address (if any) of the applicant.
- (3) The Children's Guardian may require an applicant to provide to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to assess the applicant's suitability to be an accredited adoption service provider.
- (4) Any information that is required under subclause (3) must be provided to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.

## **7 Taking over an application for accreditation**

- (1) An application made by an organisation for accreditation as an accredited adoption service provider may be taken over by another organisation only in accordance with this clause.
- (2) The Children's Guardian may authorise an organisation (***the successor***) to take over an application for accreditation as an accredited adoption service provider made by another organisation (***the predecessor***), by notice in writing given to the successor.
- (3) The Children's Guardian must not authorise a successor to take over an application unless:
  - (a) the predecessor has requested that action, and
  - (b) the successor has given the Children's Guardian a written undertaking that it will operate in the manner proposed in the application or as otherwise agreed in writing by the successor and the Children's Guardian, and

- (c) the successor has, by notice in writing given to the Children's Guardian, specified the full name of the individual proposed to be the successor's principal officer on accreditation.

**Note—**

The process of accreditation of an organisation that takes over an application under this clause may also be subject to conditions imposed under clause 27 (Conditions on accreditation and process of accreditation).

- (4) A copy of the notice under subclause (2) must be given to the predecessor, if the predecessor continues to exist, and, on and from receipt of the notice, the predecessor is taken not to be an applicant for accreditation as an accredited adoption service provider.
- (5) Unless prohibited by or under any Act, the Children's Guardian may disclose to the successor any information in his or her possession regarding the predecessor.
- (6) A condition imposed on the process of accreditation in respect of an application for accreditation continues to apply to the process despite the application being taken over under this clause.
- (7) An adoption service provider accredited by way of an application under this clause must not contravene an undertaking given by the provider under subclause (3) (b).

**8 Deferral of determination of application to renew accreditation**

- (1) If an accredited adoption service provider has applied for the renewal of an accreditation, the Children's Guardian may, by notice in writing to the provider, defer determining the application.
- (2) The deferral has effect until a notice given under clause 10 in respect of the application takes effect.
- (3) The deferral does not affect any requirement made under clause 6 (3) to provide information in respect of the application, whether the requirement was imposed before or during the deferral.
- (4) If the Children's Guardian defers determining the application for 6 months or more from the date the deferral took effect, the Children's Guardian must inform the Minister in writing of the deferral.

**Note—**

The accreditation period of an accredited adoption service provider whose application for renewal of accreditation has been deferred is extended under clause 24 until the application is determined.

**9 Determination of application for accreditation**

- (1) The Children's Guardian may grant accreditation as an accredited adoption service

provider to an applicant and specify the adoption services that the accredited adoption service provider may provide if, in the opinion of the Children's Guardian, the applicant wholly or substantially satisfies the accreditation criteria referred to in section 13 of the Act.

- (2) The Children's Guardian may come to the opinion that an applicant satisfies a particular accreditation criterion if a body, recognised by the Children's Guardian for the purposes of this subclause, has determined that the applicant meets a standard or other criterion recognised by the Children's Guardian for the purposes of this subclause in respect of the accreditation criterion.
- (3) The Children's Guardian may grant the following accreditation:
  - (a) if the applicant provided adoption services in accordance with the Act and the regulations at any time during the period commencing 12 months before the application was made and ending when the application is determined—**full accreditation**,
  - (b) in any other case—**provisional accreditation**.
- (4) The Children's Guardian may at any time following accreditation vary the specification of the adoption services that may be provided by the accredited adoption service provider by notice in writing given to the provider.

**Note—**

Accreditation is subject to conditions—see clause 27.

## **10 Accreditation notice**

- (1) As soon as reasonably practicable after determining an application for accreditation, the Children's Guardian must inform the applicant of the following by notice in writing:
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) if accreditation is granted—whether full or provisional accreditation is granted,
  - (d) if accreditation is granted—the adoption services that may be provided on accreditation,
  - (e) if accreditation is granted—any conditions imposed in relation to the accreditation,
  - (f) the reasons for the decision,
  - (g) how the applicant may apply for a review of the decision.
- (2) If an applicant is granted accreditation but did not wholly satisfy the accreditation criteria, the notice must also specify the accreditation criteria that were not wholly

satisfied and the reasons for the Children's Guardian's opinion that the criteria were not wholly satisfied.

### **11 Public information about accreditations**

- (1) The Children's Guardian is to publish the following information on a website maintained by the Children's Guardian as soon as practicable after granting accreditation to an organisation:
  - (a) the corporate name, business name and ABN (if any) of the accredited adoption service provider,
  - (b) whether the provider is fully or provisionally accredited,
  - (c) the adoption services that may be provided by the provider,
  - (d) the conditions imposed on the accreditation,
  - (e) the period of accreditation,
  - (f) the street and postal address of the principal office of the provider,
  - (g) the general telephone number and email address (if any) of the provider,
  - (h) the full name of the principal officer of the provider.
- (2) The Children's Guardian is to keep the information up to date.

### **12 Children's Guardian may set aside decision not to accredit**

- (1) If the Children's Guardian is satisfied that an application for accreditation as an accredited adoption service provider should not have been refused, the Children's Guardian may withdraw the refusal under clause 10 and issue a notice granting accreditation.
- (2) The notice may provide that accreditation is taken to have had effect on and from the date the previous decision not to accredit took effect, or such later date as may be specified in the notice.

### **13 Requirements where only provisional accreditation granted**

- (1) An organisation granted provisional accreditation must notify the Children's Guardian in writing when the organisation first provides adoption services after being accredited.
- (2) The notice must be given by the next working day after adoption services are first provided.

#### **14 Progression from provisional accreditation to full accreditation**

- (1) A notice given under clause 13 is taken to be an application under clause 6 for full accreditation.
- (2) The Children's Guardian may, by notice in writing, waive any requirement imposed by or under clause 6 in respect of such an application if the Children's Guardian is satisfied that the requirement was met by the adoption service provider in the course of being granted provisional accreditation.
- (3) Without limiting clause 6 (3), the Children's Guardian may require the applicant to provide to the Children's Guardian such information as to the applicant's practice and other matters as the Children's Guardian may reasonably require in order to assess the applicant's suitability to be granted full accreditation.
- (4) Any information that is required under subclause (3) must be provided to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (5) The Children's Guardian must not determine the application within 12 months of the applicant first providing adoption services after being granted provisional accreditation.
- (6) The provisional accreditation of an adoption service provider taken to have made an application under this clause ceases on the determination of the application taking effect.

**Note—**

Clause 22 provides for the accreditation period for provisional accreditation to be 3 years.

#### **15 Accreditation criteria must be wholly satisfied**

- (1) An adoption service provider granted accreditation under this Regulation that did not wholly satisfy the accreditation criteria that applied to the adoption service provider in respect of its application for accreditation must wholly satisfy the accreditation criteria:
  - (a) in the case of an adoption service provider granted full accreditation—within 12 months of its accreditation, or
  - (b) in the case of an adoption service provider granted provisional accreditation—within 12 months of the date the provider first provided adoption services after its accreditation.
- (2) The Children's Guardian may, by notice in writing given to the adoption service provider, specify a shorter period for the purposes of subclause (1) (a) or (b).

## **Division 2 Transfer of accreditation**

### **16 Application of Division**

The accreditation of an adoption service provider may be transferred only in accordance with this Division.

### **17 Application for transfer of accreditation**

- (1) An application for approval to transfer accreditation from an accredited adoption service provider (***the transferor***) to another organisation (***the transferee***) that is not an accredited adoption service provider may be made by a transferor to the Children's Guardian in the form approved by the Children's Guardian.
- (2) The Children's Guardian may require a transferor or transferee to provide to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to determine the application.
- (3) Any information that is required under subclause (2) must be provided to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (4) Unless prohibited by or under any Act, the Children's Guardian may disclose any information about the transferor to the transferee.

### **18 Transfer guidelines**

- (1) The Children's Guardian may issue written guidelines in respect of the exercise of functions under this Division including, but not limited to, the following:
  - (a) the granting of approvals,
  - (b) the imposition of conditions on the process of accreditation and on accreditations.
- (2) Without limiting subclause (1), the Children's Guardian is to have regard to the following matters in carrying out functions under this Division:
  - (a) whether, for the purposes of continuity of adoption services, the transferor and transferee have made all reasonable efforts to vest in the transferee the assets, rights and liabilities related to those adoption services that are vested in the transferor,
  - (b) whether, for the purposes of continuity of adoption services, the transferor and transferee have made all reasonable efforts to provide for individuals employed by the transferor for the purposes of the provision of those adoption services to be employed by the transferee,
  - (c) whether a proposed transfer will prejudice any legal proceedings or proposed legal proceedings to which the transferor is, or is likely to become, a party and whether



the transferor and transferee have taken all reasonable steps to ensure that this does not occur.

## **19 Transfer of accreditation**

- (1) The Children's Guardian may, by notice in writing, approve or refuse the application to transfer accreditation.
- (2) The Children's Guardian must not approve the application if:
  - (a) the transferor and the transferee are in contravention of any guidelines issued by the Children's Guardian under clause 18 that apply in respect of the application, and
  - (b) the transferor is in contravention of any condition of its accreditation, and
  - (c) the transferor and the transferee are in contravention of any condition on the process of accreditation under this clause.
- (3) The Children's Guardian is to consult with the Department and the Ombudsman before determining the application and, in the case of a transferee which will be providing intercountry adoption services, the Commonwealth Central Authority within the meaning of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth.

## **20 When transfer takes effect**

- (1) A transfer of accreditation approved under clause 19 takes effect on the later of the following days:
  - (a) when the transferee accepts the transfer by notice in writing given to the Children's Guardian,
  - (b) on the date specified in the Children's Guardian's approval.
- (2) If the transferor ceases to exist before the transfer takes effect, the transfer is taken to have had effect when the transferor ceased to exist.
- (3) When a transfer takes effect:
  - (a) the transferor ceases to be accredited as an accredited adoption service provider, and
  - (b) the transferee is accredited as an accredited adoption service provider, and
  - (c) the transferee's accreditation is taken to be the accreditation granted to the transferor.

## **21 Consequences of transfer of accreditation**

- (1) This clause applies to an accreditation that has been transferred under clause 19.
- (2) The specification of adoption services that may be provided by the transferor that applied before the transfer took effect applies to the transferee's accreditation, subject to any variation of the specification by the Children's Guardian pursuant to this Regulation.
- (3) The accreditation period that applied to the transferor applies to the transferee and is taken to have started on the date the transferor was accredited.
- (4) Any condition on the transferor's accreditation that was in force immediately before the transfer took effect applies to the transferee's accreditation, subject to any variation or revocation of conditions by the Children's Guardian pursuant to this Regulation.
- (5) For the purposes of clause 28, the transferee is taken to have satisfied the accreditation criteria that the transferor satisfied to be accredited.
- (6) The transferee must adopt the policies, procedures and practice of the transferor that, immediately before the transfer, related to the predecessor's provision of adoption services.
- (7) Any act, matter or thing done by the transferor immediately before the transfer with respect to the provision of adoption services that the transferor may provide continues to have effect in relation to the continued provision of the adoption services concerned by the transferee.

## **Division 3 Accreditation administration**

### **22 Form and accreditation period**

- (1) An accreditation of an adoption service provider is to be in such form as the Children's Guardian may approve.
- (2) The Children's Guardian may grant an accreditation period of 1, 3 or 5 years to an accredited adoption service provider being granted full accreditation if the provider did not hold provisional accreditation immediately before being granted full accreditation.
- (3) The Children's Guardian may grant an accreditation period of 1 or 3 years to an accredited adoption service provider being granted full accreditation if the provider held provisional accreditation immediately before being granted full accreditation.
- (4) The Children's Guardian may grant an accreditation period of 3 years to an accredited adoption service provider being granted provisional accreditation.

- (5) The Children's Guardian may vary the periods referred to in subclauses (2)-(4) so as to grant an accreditation period to an adoption service provider that is also a designated agency that is commensurate to the accreditation period granted to the designated agency under the *Children and Young Persons (Care and Protection) Regulation 2012* and ending on the date on which that accreditation period ends.
- (6) The date the accreditation period of an accredited adoption service provider ends is not extended by a suspension of accreditation under clause 28.

### **23 Accreditation extended after adoption service provider becomes a designated agency**

- (1) The Children's Guardian may grant an extension of the accreditation period of an accredited adoption service provider which becomes a designated agency under the *Children and Young Persons (Care and Protection) Regulation 2012* after being accredited as a provider so that it ends on the date on which its accreditation period as a designated agency ends.
- (2) The date the accreditation period of an accredited adoption service provider ends is not extended by a suspension of accreditation under clause 28.

### **24 Accreditation extended on deferral until application to renew determined**

- (1) This clause applies to an accredited adoption service provider that has made an application to renew its accreditation if the determination of the application is deferred under clause 8.
- (2) The accreditation period is extended until the notice given under clause 10 in respect of the application takes effect.

### **25 Accreditation extended until decision not to re-accredit takes effect**

- (1) This clause applies to an accredited adoption service provider that has had its accreditation renewal application refused and where the decision to refuse the application has not taken effect.
- (2) The accreditation of the adoption service provider ends when the decision takes effect.

### **26 Accreditation extended to accommodate changes**

The Children's Guardian may, by notice in writing given to an accredited adoption service provider, extend the accreditation period of the provider to the date specified in the notice if the Children's Guardian is of the opinion that changes or proposed changes to the administration of adoption services under the Act or the administration of out-of-home care under the *Children and Young Persons (Care and Protection) Act 1998* make the extension appropriate.

## **27 Conditions on accreditation and process of accreditation**

- (1) An accreditation is subject to the conditions set out in Schedule 1.
- (2) The Children's Guardian may impose such other reasonable conditions as the Children's Guardian sees fit on an accreditation, and may vary or revoke such conditions, by notice in writing given to the accredited adoption service provider.
- (3) The Children's Guardian may impose such reasonable conditions as the Children's Guardian sees fit on the process of accreditation (including accreditation by way of a transfer under clause 19), and may vary or revoke such conditions, by notice in writing given to the applicant.
- (4) If an accreditation is transferred, a copy of the notice given under subclause (3) is to be given to the transferee.
- (5) An accredited adoption service provider that becomes unable to comply with the conditions of accreditation or process of accreditation must notify the Children's Guardian of that fact as soon as practicable after that fact becomes apparent.
- (6) A condition imposed under this clause may authorise any matter or thing to be from time to time determined or applied by any specified person or body.

### **Note—**

Contravention of a condition of accreditation is not an offence but is grounds for shortening the accreditation period, or suspending or cancelling the accreditation, of an accredited adoption service provider.

## **28 Accreditation—shortening, suspension and cancellation**

- (1) The Children's Guardian may, by notice in writing given to an accredited adoption service provider:
  - (a) shorten the accreditation period of the provider to a date specified in the notice, or
  - (b) suspend the accreditation of the provider for the period specified in the notice or until a specified matter has been completed, or
  - (c) cancel the accreditation of the provider from the date specified in the notice.
- (2) The Children's Guardian may give a notice under subclause (1) to an accredited adoption service provider if the Children's Guardian is satisfied of any of the following:
  - (a) that the provider made a statement or provided information in connection with the administration of the Act that the provider knew to be false or misleading in a material particular,
  - (b) that the principal officer of the provider made a statement or provided information in connection with the administration of the Act that the principal officer knew to

be false or misleading in a material particular,

- (c) that the provider failed to comply with any condition of accreditation imposed on the provider's accreditation,
- (d) that the provider failed to comply with any obligation or restriction imposed on the provider by or under the Act,
- (e) that the principal officer of the provider failed to comply with any obligation or restriction imposed on the principal officer by or under the Act,
- (f) that the provider failed, while the provider had been accredited less than 12 months, to substantially satisfy the accreditation criteria that applied to the provider in respect of its application for accreditation,
- (g) that the provider failed, at any time after the provider had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the provider in respect of its application for accreditation.

(3) If the Children's Guardian is satisfied that a notice under subclause (1) should not have been given to an accredited adoption service provider, the Children's Guardian may, by notice in writing given to the provider:

- (a) withdraw the notice and reinstate the accreditation, or
- (b) in the case of a shortening of an accreditation period, reinstate the accreditation period of the accredited adoption service provider,

and the accreditation is taken to have continued in existence as if the notice under subclause (1) had not been given.

### **29 Accredited adoption service providers with suspended accreditations**

- (1) Subject to subclause (2), an accredited adoption service provider remains an accredited adoption service provider while the provider's accreditation is suspended.
- (2) While an accredited adoption service provider's accreditation is suspended, the adoption service provider is not an accredited adoption service provider for the purposes of section 11 of the Act.
- (3) The Children's Guardian may remove the suspension of an accredited adoption service provider's accreditation at any time by notice in writing given to the provider.

### **30 Accredited service providers with shortened accreditation periods**

- (1) The Children's Guardian may, by notice in writing given to an accredited adoption service provider, reduce the period by which the provider's accreditation period has been shortened under clause 28.

- (2) For the removal of doubt, the shortening of an accreditation period under clause 28 does not prevent the accreditation period from being extended under any other provision of this Part.

### **31 Cessation of provision of adoption services**

- (1) An accredited adoption service provider must give the Secretary and the Children's Guardian notice in writing as soon as practicable after it ceases to provide adoption services that the Children's Guardian has specified it may provide.
- (2) 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 Secretary.

**Note—**

Section 175 of the Act requires an accredited adoption service provider to ensure that information it holds in relation to a child's origin, identity of birth parent and medical history is preserved. Clause 126 requires the principal officer of an accredited adoption service provider to keep various case records.

Maximum penalty: 25 penalty units.

## **Division 4 Principal officers**

### **32 Appointment of principal officer**

- (1) The governing body of an organisation that is accredited as an adoption service provider must appoint a person as the principal officer of the accredited adoption service provider.
- (2) The governing body must not appoint a person as principal officer unless it has determined that the person is a suitable person to be a principal officer having regard to the matters referred to in subclause (3) and any other matters it considers relevant.

**Note—**

The *Child Protection (Working with Children) Act 2012* also contains requirements concerning the appointment of principal officers.

- (3) Before deciding whether a person is a suitable person to be a principal officer, the governing body must:
  - (a) obtain approved identity information with respect to the person, and
  - (b) ensure that any applicable requirements of the *Child Protection (Working with Children) Act 2012* have been complied with, and
  - (c) conduct or obtain a nationwide criminal record check of the person, and
  - (d) obtain a Community Services check of the person, and
  - (e) obtain references from at least 2 persons concerning the person's suitability to be

appointed as a principal officer.

- (4) As soon as practicable after deciding to appoint a person as a principal officer, the governing body must record in writing its decision to do so and the date (not being earlier than the date on which the decision is recorded) on which the appointment is to take effect (the **appointment decision record**).
- (5) The appointment decision record must state that the governing body has complied with subclause (3).
- (6) Any act of a principal officer is not to be called into question merely because of any failure of a governing body to comply with subclause (4) or any other defect in the principal officer's appointment.

### **33 Vacancies in office of principal officer**

The governing body of an accredited adoption service provider must appoint a person to fill a vacancy in the office of principal officer as soon as practicable after the occurrence of the vacancy.

### **34 Acting principal officer**

- (1) The governing body, or a person authorised by the governing body to act on its behalf, must appoint a person to act in the office of the principal officer during the illness or absence of the principal officer or during a vacancy in the office of the principal officer (an **acting principal officer**).
- (2) Clause 32 (3) (other than paragraph (a)) does not apply to or in respect of the appointment of a person as an acting principal officer.
- (3) A person must not be appointed as an acting principal officer unless the person has a working with children check clearance that is in force or has made a current application for such a clearance under the [Child Protection \(Working with Children\) Act 2012](#).
- (4) A person may not hold office as an acting principal officer for more than 3 months unless the governing body of the accredited adoption service provider has complied with the requirements of clause 32 (3) (c)-(e) and confirmed that the person is a suitable person to hold office as a principal officer having regard to those matters.

### **35 Notifications relating to principal officer and acting principal officers**

- (1) An accredited adoption service provider must give the Children's Guardian and the Secretary a copy of the appointment decision record under clause 32 as soon as practicable after a person is appointed to the office of principal officer.
- (2) As soon as practicable after a vacancy in the office of principal officer occurs, the accredited adoption service provider must give the Children's Guardian and the

Secretary written notice of the fact of that vacancy, the name of the person appointed as acting principal officer and the date of the appointment.

- (3) The accredited adoption service provider must give the Children's Guardian and the Secretary written evidence that it has complied with the requirements of clause 32 (3) (c)-(e) and confirmed that the person is a suitable person to hold office as a principal officer having regard to those matters if a person holds office as acting principal officer for more than 3 months.

### **Part 3 Selection of prospective adoptive parents other than step parents, relatives or authorised carers of a child in out-of-home care**

#### **36 Application of Part**

This Part applies to and in respect of the selection of persons as adoptive parents under Part 3 of Chapter 4 of the Act.

#### **37 Form of expression of interest**

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

#### **38 Information to be provided to persons submitting expressions of interest**

- (1) The Secretary 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,



(g) applying to be an authorised carer of a child or young person in out-of-home care.

(2) The information may be communicated to a person verbally or in writing or by such other means as the Secretary or the principal officer thinks fit.

### **39 Adoptive parent education and training**

(1) The Secretary or principal officer of an accredited adoption service provider 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 Secretary or that principal officer or the principal officer of another accredited adoption service provider.

(2) Costs of attendance at courses are to be at the person's expense.

### **40 Form of application to adopt**

An application to adopt a child is to be made in the form approved by the Secretary.

### **41 Power to require information**

The relevant decision-maker may require a person who has submitted an application to adopt a child to provide such information as is reasonably required by the decision-maker to assess the suitability of the person to be approved or selected to adopt a child.

### **42 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 Secretary,
- (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,
- (e) proof that the applicant is resident or domiciled in New South Wales.

(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 Secretary.

#### **43 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.

#### **44 Suitability checks**

- (1) The relevant decision-maker must not assess an applicant as suitable to be approved to adopt a child unless the relevant decision-maker has obtained or conducted the following in respect of an applicant:
  - (a) approved identity information,
  - (b) if the relevant decision-maker reasonably believes that a designated agency has material knowledge about the applicant—a designated agency check from that agency,
  - (c) if the relevant decision-maker reasonably believes that an accredited adoption service provider has material knowledge about the applicant—an accredited adoption service provider check from that provider,
  - (d) a nationwide criminal record check,
  - (e) a Community Services check,
  - (f) references from at least 2 persons concerning the applicant's suitability to adopt a child.

**Note—**

Section 45 (2) of the Act requires certain additional checks to be conducted under the [Child Protection \(Working with Children\) Act 2012](#).

- (2) The relevant decision-maker may obtain further information, or conduct further checks, in relation to the applicant at any time before the making of an adoption order in relation to the application.
- (3) The relevant decision-maker is to obtain or conduct the following in respect of any person (other than a child in out-of-home care) who resides at the applicant's home for a period of 3 or more weeks after the application is made and before it assesses

the applicant as suitable to be approved to adopt a child or who takes up residence after the assessment and before the adoption order is made:

- (a) approved identity information,
- (b) if the relevant decision-maker reasonably believes that a designated agency has material knowledge about the person—a designated agency check,
- (c) if the relevant decision-maker reasonably believes that an accredited adoption service provider has material knowledge about the person—an accredited adoption service provider check from that provider,
- (d) a nationwide criminal record check of the person (if the person is 16 or more years of age),
- (e) a Community Services check (if the person is 16 or more years of age).

**Note—**

Section 45 (2) of the Act requires certain additional checks to be conducted under the [Child Protection \(Working with Children\) Act 2012](#).

- (4) The relevant decision-maker may obtain or conduct a nationwide criminal record check of a person (other than a child in out-of-home care) who resides at the applicant's home for a period of 3 or more weeks who is 14 or 15 years of age at any time between the making of the application and the making of the adoption order.
- (5) The relevant decision-maker may obtain further information, or conduct further checks, in relation to a person who resides at the applicant's home as referred to in subclause (3) or (4) at any time before the making of an adoption order in relation to the application.
- (6) The relevant decision-maker may make such other inquiries with respect to the applicant or a person who resides at the applicant's home as referred to in subclause (3) or (4) as the decision-maker considers appropriate, including any check relating to the employment or other activities of the applicant or person.
- (7) If an application to adopt a child is made to the principal officer of a service provider that is also a designated agency and the applicant has applied to be authorised by the designated agency as an authorised carer, the relevant decision maker may use any authorised carer suitability check obtained or conducted in relation to the applicant (and any person residing at the applicant's home) in order to comply with the requirements of this clause.
- (8) If, in conjunction with the application to adopt a child made to a relevant decision-maker, the applicant has applied to be authorised by a designated agency as an authorised carer, the relevant decision maker may obtain from that designated agency information relating to any authorised carer suitability check obtained or

conducted by the designated agency in relation to the applicant (and any person residing at the applicant's home) in order to comply with the requirements of this clause and may share any information it has obtained in complying with this clause with that agency.

- (9) A designated agency has **material knowledge** about a person for the purposes of subclauses (1) (b) and (3) (b) if the designated agency:
- (a) has authorised the person as a carer under the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (b) has received an application from the person to be authorised as a carer, or
  - (c) has known the person to reside at the home of such a carer or applicant.
- (10) An accredited adoption service provider has **material knowledge** about a person for the purposes of subclauses (1) (c) and (3) (c) if the accredited adoption service provider:
- (a) has received an expression of interest from the person in adopting a child, or
  - (b) has received an application to adopt a child from the person, or
  - (c) has known the person to reside at the home of a person submitting such an expression of interest or application.
- (11) In this clause:

**authorised carer suitability check** means approved identity information, a designated agency check, a nationwide criminal record check or Community Services check obtained or conducted in accordance with the *Children and Young Persons (Care and Protection) Regulation 2012* for the purposes of deciding whether to grant an authorisation as an authorised carer.

#### **45 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,
- (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) any information obtained or check conducted under clause 44,
- (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,
- (l) without limiting paragraph (k), if the person is, or at any time has been, an authorised carer—the person's compliance with any applicable provisions of the *Children and Young Persons (Care and Protection) Act 1998* and the regulations made under that Act.

#### **46 Assessment of applicants for adoption**

- (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.
- (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.
- (4) 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 Secretary in accordance with clause 12 (2) of Schedule 1 and any information obtained or check conducted under clause 44.
- (5) In assessing the suitability of applicants to adopt, the relevant decision-maker must take into account whether any other person who resides at the home of the applicant is of good repute and is a fit and proper person to associate with a child, having regard to the information obtained and checks conducted in relation to the person under clause 44.
- (6) 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.
- (7) If the relevant decision-maker is a principal officer, he or she must:
  - (a) promptly advise the Secretary of decisions taken by the decision-maker under subclause (1), and
  - (b) provide the Secretary with such particulars relating to any such decision as the Secretary may require.

#### **47 Notification of assessment of applicants for adoption**

- (1) The relevant decision-maker is to advise the applicant of the decision by notice in writing served personally or by post as soon as practicable after the decision is made.
- (2) The notice is to include the following:
  - (a) a copy of any assessment report or other report concerning the applicant (other than any criminal record check, accredited adoption service provider check, Community Services check, designated agency check or confidential referee report) considered by the relevant decision-maker in assessing the applicant,
  - (b) 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.

#### **48 Duration of approval**

- (1) An approval has effect for 4 years (or such longer period as may be determined by the relevant decision-maker) after the applicant is advised of the approval.
- (2) An approved applicant must notify the relevant decision-maker of any 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, or if the applicant or the applicant's spouse or de facto partner becomes pregnant) as soon as practicable after the change occurs.

#### **49 Approvals subject to conditions**

Without limiting the conditions that the relevant decision-maker may impose under clause 46, 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 confirm or update the particulars of the application (and to undergo such medical examinations for the purposes of medical reports and supply copies of any documents that accompanied the application as may be required by the relevant decision-maker) if a child is not placed with the applicant within 4 years after the applicant is advised of the approval.

#### **50 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 Secretary in writing of the decision to revoke the approval as

soon as practicable after the decision is made.

## **Part 4 Selection of authorised carers as adoptive parents of a child in their care**

### **51 Application of Part**

This Part applies to and in respect of the selection of authorised carers as adoptive parents in accordance with Part 3A of Chapter 4 of the Act.

#### **Note—**

Section 45C of the Act limits the operation of Part 3A of Chapter 4 of the Act to the assessment and selection of persons authorised by a designated agency as authorised carers of children in out-of-home care as prospective adoptive parents. Part 3 of this Regulation applies to other authorised carers seeking to adopt a child.

### **52 Submission of application to adopt**

- (1) The Secretary may, orally or in writing, invite an authorised carer (or authorised carers) of a child who is in out-of-home care to submit an application (or joint application) to the Secretary or the principal officer of an accredited adoption service provider to adopt the child.
- (2) The application is to be submitted in writing in the form approved by the Secretary.

### **53 Information to be provided to authorised carers submitting applications to adopt**

- (1) The Secretary or principal officer to whom an application is submitted under this Part is to supply the authorised carer who submitted the application with information about the following:
  - (a) the education, assessment, approval and selection processes,
  - (b) criteria for approval and selection of authorised carers as adoptive parents in accordance with Part 3A of Chapter 4 of the Act,
  - (c) fees and the reduction or waiver of fees,
  - (d) the rights and responsibilities under the law of New South Wales of authorised carers who are applying to adopt a child under this Part, adoptive parents, adopted persons and birth parents or former adoptive parents of adopted children.
- (2) The information may be communicated to the authorised carer verbally or in writing or by such other means as the Secretary thinks fit.

### **54 Adoptive parent education and training**

The Secretary or principal officer of an accredited adoption service provider may, at any time before or after an authorised carer has submitted an application under this Part, require the authorised carer to attend an adoptive parent education and training course



provided by the Secretary or that principal officer or the principal officer of another accredited adoption service provider.

#### **55 Documents to accompany application to adopt**

- (1) An application by an authorised carer to adopt a child under this Part is to be accompanied by the following:
  - (a) a statement made by each authorised carer as to the physical and mental health of the authorised carer, and a medical report in respect of the authorised carer, in the form approved by the Secretary,
  - (b) a certified copy of every marriage registration (if any) relating to the authorised carer issued by the Registry of Births, Deaths and Marriages or, if the authorised carer 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 authorised carer,
  - (d) a certified copy of the birth registration relating to the authorised carer and proof of any amendment to the registration of birth, if applicable,
  - (e) proof that the authorised carer is resident or domiciled in New South Wales.
- (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 Secretary.

#### **56 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 under this Part.
- (2) In addition to any medical report accompanying the application, the relevant decision-maker may obtain such other medical reports as he or she thinks fit in respect of the authorised carer who made the application.

#### **57 Power to require information**

The relevant decision-maker may require the authorised carer who submitted an application to adopt a child to provide such information as is reasonably required by the relevant decision-maker to assess the suitability of the authorised carer to be approved to adopt the child.

#### **58 Suitability checks**

- (1) The relevant decision-maker must not assess an authorised carer who applied to be

approved as suitable to adopt a child unless the relevant decision-maker has obtained or conducted the following in respect of each authorised carer:

- (a) approved identity information,
- (b) if the relevant decision-maker reasonably believes that a designated agency has material knowledge about the authorised carer—a designated agency check from that agency,
- (c) if the relevant decision-maker reasonably believes that an accredited adoption service provider has material knowledge about the authorised carer—an accredited adoption service provider check from that provider,
- (d) a nationwide criminal record check,
- (e) a Community Services check,
- (f) references from at least 2 persons concerning the authorised carer's suitability to adopt a child.

**Note—**

Section 45 (2) of the Act requires certain additional checks to be conducted under the [Child Protection \(Working with Children\) Act 2012](#).

- (2) The relevant decision-maker may obtain further information, or conduct further checks, in relation to an authorised carer at any time before the making of an adoption order in relation to the application.
- (3) The relevant decision-maker is to obtain or conduct the following in respect of any person (other than a child in out-of-home care) who resides at an authorised carer's home for a period of 3 or more weeks at any time after the application is made and before it assesses the authorised carer as suitable to adopt the child or any person who takes up residence after that assessment and before the adoption order is made:
  - (a) approved identity information,
  - (b) if the relevant decision-maker reasonably believes that a designated agency has material knowledge about the person—a designated agency check,
  - (c) if the relevant decision-maker reasonably believes that an accredited adoption service provider has material knowledge about the person—an accredited adoption service provider check from that provider,
  - (d) a nationwide criminal record check of the person (if the person is 16 or more years of age),
  - (e) a Community Services check (if the person is 16 or more years of age).

**Note—**

Section 45 (2) of the Act requires certain additional checks to be conducted under the *Child Protection (Working with Children) Act 2012*.

- (4) The checks referred to in subclause (3) (d) and (e) do not apply to or in respect of a child if such a check was not required when an authorised carer suitability check was obtained or conducted in relation to the authorised carer who made the application.
- (5) The relevant decision-maker may obtain further information, or conduct further checks, in relation to a person who resides at an authorised carer's home for a period of 3 or more weeks to those referred to in subclause (3) at any time before the making of an adoption order in relation to the application.
- (6) The relevant decision-maker may make such other inquiries with respect to an authorised carer or a person who resides at the authorised carer's home for a period of 3 or more weeks as the decision-maker considers appropriate, including any check relating to the employment or other activities of the authorised carer or person.
- (7) An accredited adoption service provider has **material knowledge** about an authorised carer or person for the purposes of this clause if the accredited adoption service provider:
  - (a) has received an expression of interest from the authorised carer or person in adopting a child, or
  - (b) has received an application to adopt a child from the authorised carer or person, or
  - (c) has known the authorised carer or person to reside at the home of a person submitting such an expression of interest or application.
- (8) A designated agency has **material knowledge** about an authorised carer or person for the purposes of this clause if the designated agency:
  - (a) has authorised the authorised carer or person as a carer under the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (b) has received an application from the authorised carer or person to be authorised as a carer, or
  - (c) has known the authorised carer or person to reside at the home of such a carer or applicant.
- (9) In this clause:

**authorised carer suitability check** means approved identity information, a designated agency check, a nationwide criminal record check or Community Services check obtained or conducted in accordance with the *Children and Young Persons (Care*

*and Protection) Regulation 2012* for the purposes of deciding whether to grant an authorisation as an authorised carer.

### **59 Criteria for assessment of authorised carers who are applicants for adoption**

For the purposes of section 45F of the Act, the relevant decision-maker is to have regard to the following matters when assessing the suitability of an authorised carer to be approved to adopt the child:

- (a) the authorised carer's health, including emotional, physical and mental health,
- (b) the authorised carer's age and maturity,
- (c) the authorised carer's skills and life experience in relation to the authorised carer's ability to undertake parenting tasks and attend to the specific needs of an adopted child,
- (d) the authorised carer's capacity to support the maintenance of the child's cultural identity and religious faith (if any),
- (e) the authorised carer'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,
- (f) the general stability of the authorised carer's character,
- (g) the stability and quality of the authorised carer's relationship with his or her spouse (if any) and between the authorised carer, his or her spouse (if any) and other members of the authorised carer's family and household,
- (h) any information obtained or check conducted under clause 58,
- (i) whether the authorised carer has shown an ability to provide a stable, secure and beneficial emotional and physical environment for the child and has the capacity to provide such an environment during the child's upbringing until the child reaches social and emotional independence,
- (j) without limiting paragraph (i), the person's compliance, while at any time an authorised carer, with any applicable provisions of the *Children and Young Persons (Care and Protection) Act 1998* and the regulations made under that Act.

### **60 Assessment of applicants for adoption**

- (1) The relevant decision-maker may:
  - (a) approve or approve subject to conditions, or
  - (b) decline to approve,

an authorised carer who has made an application to adopt a child under this Part as suitable to adopt the child.

- (2) Without limiting subclause (1), the relevant decision-maker may decline to approve the authorised carer as suitable to adopt the child if the authorised carer has made an application to another relevant decision-maker and that other decision-maker:
  - (a) is assessing the suitability of the authorised carer to adopt the child, or
  - (b) has approved, or approves subject to conditions, the authorised carer as suitable to adopt the child.
- (3) In assessing the suitability of an authorised carer to adopt a child under this Part, 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), the prescribed selection criteria and any information obtained or check conducted under clause 58.
- (4) 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 Secretary in accordance with clause 12 (2) of Schedule 1 and any information obtained or check conducted under clause 58.
- (5) In assessing the suitability of an authorised carer to adopt a child under this Part, the relevant decision-maker must take into account whether any other person who resides at the home of the authorised carer is of good repute and is a fit and proper person to associate with a child having regard to the information obtained and checks conducted in relation to the person under clause 58.
- (6) The relevant decision-maker must decline to approve an application made jointly by authorised carers if the relevant decision-maker determines that any of them is not suitable to adopt a child.
- (7) A relevant decision-maker must not assess an authorised carer as suitable to adopt a child unless the authorised carer and every adult person who resides with the authorised carer has a working with children check clearance that is in force under the [Child Protection \(Working with Children\) Act 2012](#) or is exempted by the regulations under that Act from the requirement to hold such a clearance.

#### **61 Notification of assessment of authorised carers who are applicants for adoption**

- (1) The relevant decision-maker is to advise the authorised carer who made an application to adopt a child under this Part of the decision by notice in writing served personally or by post as soon as practicable after the decision is made.
- (2) The notice is to include the following:
  - (a) a copy of any assessment report or other report concerning the authorised carer

(other than any accredited adoption service provider check, nationwide criminal record check, designated agency check, Community Services check or confidential referee report) considered by the relevant decision-maker in assessing the authorised carer,

- (b) written advice of the authorised carer's right to request reasons for, and apply for a review of, the decision under Chapter 10 of the Act.

## **62 Duration of approval**

- (1) An approval has effect for 4 years (or such longer period as may be determined by the relevant decision-maker) after the authorised carer is advised of the approval.
- (2) An approved authorised carer must notify the relevant decision-maker of any significant change in the authorised carer's circumstances that might affect the approval (for example, if the authorised carer suffers a deterioration in health or changes his or her marital status, or if the authorised carer or the authorised carer's spouse or de facto partner becomes pregnant) as soon as practicable after the change occurs.

## **63 Approvals subject to conditions**

Without limiting the conditions that the relevant decision-maker may impose under clause 60, conditions may be imposed that:

- (a) limit the duration of the approval, or
- (b) require an authorised carer approved as suitable to adopt the child to confirm or update the particulars of the application for approval on a periodic basis or at the request of the relevant decision-maker.

## **64 Revocation of approval**

- (1) The relevant decision-maker may at any time revoke approval of an authorised carer as suitable to adopt a child.
- (2) The relevant decision-maker must:
  - (a) advise the authorised carer of a decision to revoke an approval as soon as practicable after the decision is made, and
  - (b) give the authorised carer written advice of their right to request reasons for, and apply for a review of, the decision under Chapter 10 of the Act.

## **Part 5 Placement for adoption and adoption proceedings**

### **Division 1 Adoption register**

#### **65 Adoption register**

- (1) The Secretary 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 under Part 3 of Chapter 4 of the Act,
  - (b) the name of every person approved as suitable to adopt a child under that Part,
  - (c) if a person is approved as suitable to adopt a particular child under that Part, the names of the person and of the child,
  - (d) the cultural identity of every person approved as suitable to adopt a child under that Part,
  - (e) details of any condition to which an approval under that Part is subject and of any information that the relevant decision-maker has been notified of in accordance with a condition of an approval under that Part,
  - (f) such other particulars as the Secretary may determine.
- (2) The adoption register is to indicate, in the manner considered appropriate by the Secretary, the following:
  - (a) the full name of each person approved as suitable under Part 3 of Chapter 4 of the Act to adopt a child from New South Wales and the date of the approval,
  - (b) the full name of any person approved as suitable under that Part 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 Secretary,
  - (d) if the application was made to an accredited adoption service provider—the name of the service provider.

#### **66 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 Secretary 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 Secretary, 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 Secretary 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.

#### **67 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.

### **Division 2 Placement for adoption**

#### **68 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 Secretary, 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 Secretary has prepared a report as referred to in section 40 of the



Act.

**69 Selection of applicants for adoption order**

- (1) 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 Secretary or principal officer from the persons whose names are indicated in the adoption register kept under clause 65 as persons who have been approved as suitable to adopt by that service provider.
- (2) This clause does not apply in the case of an adoption of a child who is in out-of-home care by the child's authorised carer.

**70 Entitlement of approved person to adopt child**

An approved person is not entitled to be the applicant for an adoption order in respect of a particular child unless in the opinion of the relevant decision-maker the person is suitable to adopt the child.

**71 Placement of child for adoption in conformity with religious upbringing intentions**

- (1) 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).
- (2) In the case of a child who has both a parent and a guardian, the wishes expressed by the parent are to prevail over the wishes of the guardian for the purposes of this clause and clause 72.

**72 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.

**73 Placement where compliance with expressed wishes of parent or guardian impracticable**

- (1) Despite clauses 71 and 72, 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.

#### **74 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, or
  - (c) to the Children's Guardian for the purposes only of the exercise of the Children's Guardian's functions under Part 2 or under the *Child Protection (Working with Children) Act 2012*.
- (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) for the purposes of the exercise of the Children's Guardian's functions under Part 2 or under the *Child Protection (Working with Children) Act 2012*, or
  - (d) 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.

## **Division 3 Adoption plans**

### **75 Contents of adoption plan**

For the purposes of section 47 (2) of the Act, an adoption plan is to contain the following 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 Secretary 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.

### **76 Review of adoption plan**

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 Secretary.

## **Division 4 Consent to adoption**

### **77 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 78.
- (2) For the purposes of the definition of **counsellor** in section 57 of the Act, the prescribed qualifications for a counsellor are that the 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 Secretary 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 Secretary for the purposes of this paragraph,

(ii) a member of a professional association approved by the Secretary 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 18 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.

## **78 Register of counsellors**

(1) The Secretary 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 77 (2), and

(b) has no relevant criminal record.

(4) An application for entry in the register is to be made in the form approved by the Secretary.

(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 Secretary by notice in writing.

(6) The Secretary 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), or
- (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 Secretary, 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.

## 79 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 Secretary.

## 80 Form of consent

- (1) For the purposes of section 61 (1) 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 be in the form approved by the Secretary and 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 Secretary (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,
- (h) a statement as to when the Secretary 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) 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 (1) of the Act, the instrument for general consent to the adoption of a non-citizen or other child of whom the Secretary 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 (1) 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,
- (i) a statement as to when the Secretary 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) 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 an authorised carer who has had the care of the child for 2 years or

more.

### 81 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 Secretary,
    - (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 within the meaning of 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 designated 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.

### 82 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 18 years of age unless he or she is satisfied that a counsellor or other appropriate expert has prepared a report stating that, in the opinion of the counsellor or expert, the person is capable of understanding the effect of the consent.

### **83 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:
  - (a) notify the Secretary, and
  - (b) if the adoption service provider has been requested to make arrangements for the adoption of the child, advise the Secretary as to 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 notify the Secretary.
- (3) Notice under subclause (1) or (2):
  - (a) must be in the form approved by the Secretary, 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 Secretary the instrument together with a request, in the form approved by the Secretary, 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 Secretary, to the Secretary.
- (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, notify the Secretary,

in the form approved by the Secretary, that the service provider is unwilling to make the arrangements.

- (6) The service provider is to forward to the Secretary, with the notice, a copy of 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.

#### **84 No fees payable to witness to consent**

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

#### **85 Period in which person giving consent must be counselled**

For the purposes of section 63 (1) 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.

#### **86 Consent to adoption of Aboriginal child or Torres Strait Islander child**

The written information on Aboriginal or Torres Strait Islander customs and culture and certain other matters referred to in sections 64 (1) (b) (i) and 65 (1) (b) (i) of the Act is to be provided in the form approved by the Secretary following consultation with an Aboriginal or Torres Strait Islander organisation.

### **Division 5 Records of adoptions**

#### **87 Required information about adoption orders and discharge orders**

- (1) For the purposes of sections 130 (a), 130A (2), 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 full name of the child's adoptive parent or parents (including, if applicable, the original surname of the child's adoptive mother),
  - (v) the occupation of the child's adoptive parent or parents,
  - (vi) the age and place of birth of the child's adoptive parent or parents,
  - (vii) date and place of marriage (if any) of the child's adoptive parents,
  - (viii) details of previous children (if any) of the adoptive parent's relationship,
  - (ix) the name of the informant,
  - (x) particulars of the registration.
- (2) For the purposes of sections 130 (a), 130A (2), 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.

- (3) A record under section 130A (2) of the Act must include a statement confirming that the adoption was organised by or under the authority of the Secretary.

### **88 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.

## **Division 6 Miscellaneous**

### **89 Preliminary hearings**

- (1) For the purposes of section 80 (1) of the Act, decisions about the following are prescribed matters in relation to which the Court may hold a preliminary hearing:
- (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.
- (2) For the purposes of section 80 (3) of the Act, the following classes of persons are prescribed (being persons who may apply to the Court for a preliminary hearing to be held):
- (a) parties to an adoption,
  - (b) any person approved by the Court as having sufficient interest in an adoption.

### **90 Notice of application for adoption order**

Notice of an application for an adoption order under section 88 (1) of the Act must contain the following particulars:

- (a) the full name and date of birth of the child,
- (b) the date on which the application was made,
- (c) the Court case number for the adoption proceedings,
- (d) the provisions of the adoption plan (if any),
- (e) advice about the right of the person given the notice to oppose the application,

- (f) information about how the person given the notice may become a party to the application.

## Part 6 Prescribed adoption information

### Division 1 General

#### 91 Definitions

- (1) For the purposes of the Act, **prescribed information** is the information that a person is entitled to receive under this Part (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).
- (2) In this Part:

**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](#).

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

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

### Division 2 Prescribed information for adoptions after 1 January 2010

#### Note—

This Division sets out the entitlements to adoption information for parties to adoptions that occurred on or after 1 January 2010. Division 3 applies to adoptions that occurred before that date. The rest of this Part and Part 7 contain further provisions relating to adoption information for all adoptions.

#### 92 Application of Division

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

#### 93 Entitlement of adopted person—information prescribed under section 133C

- (1) An adopted person is entitled to receive:
- (a) any non-identifying background information held by an information source about his or her birth parent, sibling, grandparent, aunt or uncle that will give the adopted person knowledge of his or her origins, and
  - (b) any of the following information about the adopted person held by an information source:

- (i) birth details (including the time of birth and weight and length at birth),
  - (ii) date on which the adopted person was placed with the adoptive parents,
  - (iii) date of the adoption order,
  - (iv) a copy of the adoption order or memorandum of adoption (or both),
  - (v) a copy of the instrument of consent to the adoption and any associated documents relating to the social and medical history of the adopted person provided by a birth parent,
  - (vi) a copy of the request by the consenting birth parent to make arrangements for the adoption,
  - (vii) the reason an adoption decision was made by the birth parents for the adopted person (as stated by the birth parents or recorded by the information source before the adoption order was made),
  - (viii) copies of reports of any medical examinations of the adopted person carried out before the adoption order was made,
  - (ix) any document certifying particulars of the birth, marriage or death of a birth parent,
  - (x) any message given to the information source for the adopted person if clause 112 is complied with,
  - (xi) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins.
- (2) In addition, an adopted person is entitled to receive:
- (a) any non-identifying background information held by an information source about his or her non-adopted sibling or adopted brother or sister that will give the adopted person knowledge of that non-adopted sibling or adopted brother or sister's life, and
  - (b) any of the following information about his or her non-adopted sibling or adopted brother or sister held by an information source:
    - (i) any document certifying particulars of the birth, marriage or death of a non-adopted sibling or an adopted brother or sister,
    - (ii) any other document, report, photograph or recording relating to a non-adopted sibling or an adopted brother or sister that contains information about that person's life.
- (3) An adopted person is also entitled to receive any of the following information held by

an information source about his or her adopted brother or sister:

- (a) the adoptive name of the adopted brother or sister,
- (b) date and place of birth,
- (c) date on which the adopted brother or sister was placed with his or her adoptive parents,
- (d) date of the adoption order,
- (e) a copy of the adoption order or memorandum of adoption (or both),
- (f) the following details concerning the adoptive parents of the adopted brother or sister:
  - (i) age,
  - (ii) nationality,
  - (iii) ethnic background,
  - (iv) occupation,
  - (v) hobbies and interests,
  - (vi) religion,
  - (vii) composition of adoptive family (including number of children and their age and sex).

- (4) Despite subclauses (1)–(3), an adopted person is not entitled to receive information that identifies any other person unless the adopted person is otherwise entitled to receive the information under the Act or an access policy.

**94 Entitlement of adoptive parent—information prescribed under section 133D**

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

- (iv) a copy of the adoption order or memorandum of adoption (or both),
  - (v) the reason an adoption decision was made by the birth parents for the adopted person (as stated by the birth parents or recorded by the information source before the adoption order was made),
  - (vi) any message given to the information source for the adopted person or adoptive parents if clause 112 is complied with,
  - (vii) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins.
- (2) Despite subclause (1), an adoptive parent is not entitled to receive information that identifies any other person unless the adoptive parent is otherwise entitled to receive the information under the Act or an access policy.

**95 Entitlement of birth parent—information prescribed under section 133E**

- (1) A birth parent of an adopted person is entitled to receive:
- (a) any non-identifying background information held by an information source about an adopted person or his or her adoptive parents that will give the birth parent knowledge of the adopted person's life, and
  - (b) any of the following information about the adopted person held by an information source:
    - (i) birth details of the adopted person (including the time of birth and weight and length at birth),
    - (ii) date on which the adopted person was placed with the adoptive parents,
    - (iii) date of the adoption order,
    - (iv) a copy of the adoption order or memorandum of adoption (or both),
    - (v) a copy of the instrument of consent to the adoption and any associated documents relating to the social and medical history of the adopted person provided by a birth parent,
    - (vi) a copy of the request by the consenting birth parent to make arrangements for the adoption,
    - (vii) copies of reports of medical examinations of the adopted person carried out before the adoption order was made,
    - (viii) any document certifying particulars of the marriage or death of the adopted person,



- (ix) any message given to the information source for the birth parent if clause 112 is complied with,
  - (x) any other document, report, photograph or recording relating to the adopted person's life.
- (2) Information relating to the health and welfare of an adopted person after placement for adoption is non-identifying background information for the purposes of subclause (1) only if:
- (a) the information source holding the information is the Department or an accredited adoption service provider, or
  - (b) the information is information referred to in clause 104 (1).
- (3) A birth parent is entitled to receive any of the following information if it is held by the Department or accredited adoption service provider:
- (a) advice of the death of the adopted person,
  - (b) advice that the relationship between the adopted person and the adoptive parents has irretrievably broken down and the adopted person is living separately from the adoptive parents.
- (4) Despite subclauses (1) and (3), a birth parent is not entitled to receive information that identifies any other person unless the birth parent is otherwise entitled to receive the information under the Act or an access policy.

**96 Supply of other information to birth parent—information prescribed under section 133F**

For the purposes of section 133F (2) of the Act, the following kinds of information are prescribed as information that a birth parent may request the Secretary or a principal officer to take action to ascertain from the adopted person's adoptive parents:

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

**97 Entitlement of non-adopted sibling—information prescribed under section 133G**

- (1) A non-adopted sibling of an adopted person is entitled to receive:
- (a) any non-identifying background information held by an information source about an adopted person or his or her adoptive parents and adoptive family that will give

- the non-adopted sibling knowledge of the adopted person's life, and
- (b) any of the following information about the adopted person held by an information source:
- (i) date on which the adopted person was placed with the adoptive parents,
  - (ii) date of the adoption order,
  - (iii) a copy of the adoption order or memorandum of adoption (or both),
  - (iv) any document certifying particulars of the birth, marriage or death of the adopted person,
  - (v) any message given to the information source for the non-adopted sibling if clause 112 is complied with,
  - (vi) any other document, report, photograph or recording relating to the adopted person's life.
- (2) Information relating to the health and welfare of an adopted person after placement for adoption is non-identifying background information for the purposes of subclause (1) only if:
- (a) the information source holding the information is the Department or an accredited adoption service provider, or
  - (b) the information is information referred to in clause 104 (1).
- (3) Despite subclause (1), a non-adopted sibling is not entitled to receive information that identifies any other person unless the non-adopted sibling is otherwise entitled to receive the information under the Act or an access policy.

### **Division 3 Prescribed information for adoptions before 1 January 2010**

**Note—**

This Division sets out the entitlements to adoption information for parties to adoptions that occurred before 1 January 2010. Division 2 applies to adoptions that occurred on or after that date. The rest of this Part and Part 7 contain further provisions relating to adoption information for all adoptions.

#### **98 Application of Division**

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

#### **99 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. See Divisions 4–6 of this Part. 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 and birth parents.

(1) An adopted person is entitled to receive:

- (a) any relevant information 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 his or her birth parent, sibling, grandparent, aunt or uncle that will give the adopted person knowledge of his or her origins, and
- (b) any of the following information 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 placed for adoption (as stated by the birth parent or recorded by the information source before the adoption order was made),
  - (vii) copies of reports of any medical examinations of the adopted person carried out before the adoption order was made,
  - (viii) any document certifying particulars of the birth, marriage or death of a birth parent,
  - (ix) any message given to the information source by a birth parent for the adopted person if clause 112 is complied with,
  - (x) any other document, report, photograph or recording relating to the adopted person that contains information about his or her origins,
  - (xi) advice of the death of a birth parent if the information relating to the death is held by the Department or an accredited adoption service provider.

(2) An adopted person is entitled to receive the following information held by an information source relating to any of his or her adopted brothers or sisters who are 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) any document certifying particulars of the marriage or death of the adopted brother or sister,
- (h) 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*.

**100 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. See Divisions 4–6 of this Part.

- (1) An adoptive parent of an adopted person who is less than 18 years old is entitled to receive:
  - (a) any relevant information 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 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 placed for adoption (as stated by the birth parent or recorded by the information source before the adoption order was made),
    - (iv) any message given to the information source by a birth parent for the adopted person or for the adoptive parent if clause 112 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.

## **101 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. See Divisions 4–6 of this Part.

- (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 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 the adopted person or his or her adoptive parents that will give the birth parent knowledge of the adopted person'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) any document certifying particulars of the marriage or death of the adopted person,
- (ix) any message relating to the adopted person and adoptive family given to the information source for the birth parent if clause 112 is complied with,
- (x) 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 the adoptive parents that does not identify the adoptive 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 Secretary.

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 104 (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 Secretary 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 is entitled to receive any of the following information if it is held by the Department or an 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.

## **Division 4 Other prescribed information**

### **102 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) any non-identifying background information held by an information source about an adopted person or his or her adoptive parent that would have given the deceased birth parent knowledge of the adopted person's life after adoption,
- (b) information relating to a deceased birth parent referred to in clause 104 (1),
- (c) a copy of the adoption order or memorandum of adoption.

**103 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) any non-identifying background information held by an information source about a birth parent, sibling, grandparent, aunt or uncle of the adopted person that would have given the deceased adopted person knowledge of his or her origins,
- (b) information relating to a deceased adopted person referred to in clause 104 (1),
- (c) a copy of the adoption order or memorandum of adoption.

**104 Additional prescribed information**

- (1) Information that is not otherwise prescribed information is prescribed for the purposes of sections 133C-133G and 134-137 of the Act if:
  - (a) the Secretary is satisfied the information is unlikely to be obtained from any other source, and
  - (b) the Secretary is satisfied the information would, if disclosed, promote the welfare and best interests of either or both the person seeking the information and the person affected by the supply of the information, and
  - (c) the information is to be supplied by the Secretary or authorised by the Secretary to be supplied by the Registrar or some other source.
- (2) Information prescribed by this clause is not to be supplied unless:
  - (a) the Secretary 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 the supply of the information or the Secretary 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 Secretary, it is not reasonably practicable to notify the person, or
- (b) the whereabouts of the person are unknown and the Secretary has been unable to discover them after making such inquiries as are reasonable in the circumstances.

## **Division 5 Guidelines for supplying adoption information**

### **105 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 sensitive information unless the information source makes available appropriate counselling or support to the person receiving the sensitive information,
  - (c) the information source must not supply sensitive 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:

**sensitive 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, and
- (c) information that could reasonably be expected to be distressing in nature to the person receiving the information.

### **106 Guidelines for exercise of discretion to issue authority to supply adoption information under sections 133E and 133G**

- (1) For the purposes of sections 133E (5) and 133G (6) of the Act, the *Guidelines for the Release of Adoption Information* published by the Department in the Gazette on 18 December 2009 are prescribed.

- (2) The Secretary is to ensure that the guidelines are available on the Department's website.

**Note—**

The relevant website is [www.community.nsw.gov.au](http://www.community.nsw.gov.au).

**107 Guidelines for exercise of discretion to supply adoption information under sections 136A and 140 (1)**

- (1) The Secretary is to comply with the guidelines set out in this clause in connection with the supply of adoption information:
- (a) in accordance with a request made under section 136A of the Act, or
  - (b) under section 140 (1) of the Act.
- (2) The Secretary 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 Secretary 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 Secretary (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.
- (4) The Secretary 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 Secretary, the information could not be used to identify the person to whom it relates,
- and, in the opinion of the Secretary (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.

**108 Guidelines for exercise of discretion to withhold supply of adoption information or supply subject to conditions under section 136A**

- (1) The Secretary may obtain advice from such persons as the Secretary thinks may be of assistance to the Secretary 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 136A 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 Secretary, has other suitable qualifications or experience.

**109 Guidelines for exercise of discretion to supply adoption information under section 140 (3)**

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

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

**110 Guidelines under section 142 for the release of prescribed information relating to putative birth fathers**

- (1) In this clause:

***putative birth father*** of an adopted person means a person who an information source reasonably believes to be the birth father of the adopted person and 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 Secretary, 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 Secretary 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 a putative birth father to an adopted person if, in the opinion of the information source, the information could be used to identify the putative birth father or a relative of the putative birth father, unless the adopted person has signed an undertaking in a form approved by the Secretary that the person will not:
- (a) contact or attempt to contact the putative birth father or a relative of the putative birth father, or
  - (b) procure another person to contact or attempt to contact the putative birth father or a relative of the putative birth father,
- except through the support services provided by an information source to facilitate the contact.
- (4) A person who contravenes any such undertaking is guilty of an offence.
- Maximum penalty: 25 penalty units.
- (5) In supplying any information in accordance with subclause (3), the information source is to provide a statement to the adopted person to the effect that the putative birth father may not, in fact, be the birth father of the adopted person.

**Note—**

This clause applies only to the supply of information relating to a putative birth father by an information source to a person who has made an application to receive the information and who is entitled to receive the information under the Act. It does not apply to the exchange of information relating to a putative birth father between information sources.

## **Division 6 Miscellaneous**

### **111 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 *Adoption Act 2000* 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.

## 112 Messages

- (1) A message that is given to an information source for an adopted person, adoptive parent, birth parent or non-adopted sibling after 1 February 2003 is not prescribed information unless the person giving the message to the information source has signed a release (in the form approved by the Secretary) 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 Secretary, incapable of giving consent.
- (3) A message that was given to an information source for an adopted person, adoptive parent, birth parent or non-adopted sibling before 1 February 2003 is not prescribed information unless:
  - (a) in the opinion of the Secretary, the records of the information source concerned clearly indicate that the person intended the message to be supplied to the adopted person, adoptive parent, birth parent or non-adopted sibling, or
  - (b) the Secretary 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.

## **Part 7 Supply of adoption information**

### **Division 1 Information sources**

#### **113 Information sources and designated persons**

- (1) The following are prescribed as information sources for the purposes of the Act:
  - (a) The Benevolent Society,
  - (b) Unitingcare Burnside,
  - (c) International Social Service Australia,
  - (d) Link-Up (NSW) Aboriginal Corporation,
  - (e) Relationships Australia,
  - (f) The Salvation Army,
  - (g) Wesley Dalmar Child and Family Care.

**Note—**

Other information sources are listed under the definition of **information source** in the Dictionary to the Act.

- (2) The chief executive officer (by whatever name) of each of the prescribed information sources is prescribed as the designated person for that information source for the purposes of paragraph (h) of the definition of **designated person** in the Dictionary to the Act.
- (3) The guidelines to be followed by a designated person for 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.

#### **114 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) This clause 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 Secretary.

### **115 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 2 Contact vetoes**

### **116 Secretary to endorse details of contact veto on authority to supply adoption information**

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

### **117 Access to information about a contact veto**

- (1) An application may be made to the Secretary 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 Secretary 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:

- (a) is to be made in the form approved by the Secretary, and
- (b) is to be accompanied by proof (to the satisfaction of the Secretary) of the identity of the applicant.

(3) The Secretary is not to supply any information under this clause if, in the opinion of the Secretary, 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.

#### **118 Guidelines under section 161 for request to confirm, cancel or vary contact veto**

Unless the Secretary considers that the circumstances are exceptional, the Secretary 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 3 Reunion and Information Register**

#### **119 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.

#### **120 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 Secretary 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 Secretary if a person referred to in a message dies or leaves Australia permanently.

**121 Leaving and delivery of messages**

- (1) A person may leave a message by:
  - (a) leaving it at an address specified by the Secretary, or
  - (b) sending it by post to an address specified by the Secretary, or
  - (c) sending it by email to an email address specified by the Secretary.
- (2) The Secretary:
  - (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 Secretary may deliver a message:
  - (a) by delivering it to the person for whom it has been left by post to the address entered on the Register or by email to the email address entered on the Register, or
  - (b) if the person for whom it has been left advises the Secretary 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.
- (4) The Secretary must not give a person a message that the Secretary has opened and inspected and that the Secretary 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.

**122 Documents left before 1 September 1996**

- (1) This clause applies to any document left with the Secretary before 1 September 1996 by a person whose name was entered on the Reunion Information Register established under the *Adoption Information Act 1990* as then in force.

(2) The Secretary 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 1 September 1996.

(3) The Secretary is only to treat a document as if it were a message if 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.

### 123 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.

## Division 4 Advance notice

### 124 Advance notice period

For the purposes of paragraph (a) of the definition of **advance notice period** in section 145 of the Act, the prescribed period is 3 months after an application for personal information relating to a person is made.

**Note—**

Under paragraph (b) of the definition of **advance notice period** in section 145 of the Act, the Secretary may specify a longer period in relation to a particular advance notice request.

## Part 8 Miscellaneous

### 125 Reviewable decisions

- (1) The following classes of decision of the Secretary 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.
- (2) The following classes of decision of the Children's Guardian are prescribed for the purposes of section 193 (1) (i) of the Act:
- (a) a decision to grant or refuse an application for accreditation,
  - (b) a decision as to the specification of the adoption services that may be provided by an accredited adoption service provider and any variation of such a decision,
  - (c) a decision to impose or not to impose a condition on the accreditation of an adoption service provider or the process of accreditation as an adoption service provider,
  - (d) a decision to vary or revoke any such condition,
  - (e) a decision to shorten the accreditation period, or suspend or cancel the accreditation, of an accredited adoption service provider (other than such a decision requested by an accredited adoption service provider),
  - (f) a decision to refuse to make a decision referred to in this subclause that the Children's Guardian is empowered and has been requested to make.

## **126 Case records**

- (1) The Secretary 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 Secretary or the accredited adoption service provider, and
  - (b) each person who has requested the Secretary or the accredited adoption service provider to make arrangements for the adoption of a child by the person, and
  - (c) each authorised carer the Secretary has invited to submit an application to adopt a child.
- (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 Secretary or any other person authorised in writing to inspect any such record by the Court or by both the Secretary and the principal officer of the accredited

adoption service provider,

(d) the Children's Guardian for the purposes only of the exercise of the Children's Guardian's functions under Part 2 or under the *Child Protection (Working with Children) Act 2012*.

(3) The case records are not to be destroyed.

### **127 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 Secretary,
- (c) the principal officer of an accredited adoption service provider in respect of proceedings in which the service provider was involved,
- (d) the Children's Guardian for the purposes only of the exercise of the Children's Guardian's functions under Part 2 or under the *Child Protection (Working with Children) Act 2012*.

### **128 When acts of Children's Guardian take effect**

- (1) This clause applies to anything the Children's Guardian is required or authorised to do under this Regulation if done by way of a written instrument.
- (2) The instrument takes effect on the date of its execution unless it otherwise provides.

### **129 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.

### **130 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.

### **131 Provision of financial and other assistance to certain children**

For the purposes of section 201 (1) of the Act, the following classes of children are prescribed:

- (a) children who, in the opinion of the Secretary, are intellectually disabled,

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

### **132 Proceedings for offences**

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

### **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.

### **133 Savings**

- (1) Any act, matter or thing that, immediately before the repeal of the [Adoption Regulation 2003](#), had effect under that Regulation continues to have effect under this Regulation.
- (2) Section 46 (2A) and (2B) of the Act, as inserted by the [Child Protection Legislation Amendment Act 2014](#), extend to an adoption plan that accompanied or was prepared in relation to an application for an adoption order made, but not determined, before 29 October 2014.

## **Schedule 1 Conditions of accreditation for adoption service providers**

(Clause 27)

### **1 Negotiations for intercountry adoption services**

- (1) On being accredited, an adoption service provider must give an undertaking to the Secretary 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 are resident or 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.

## **2 Provision of domestic adoption services in NSW**

An adoption service provider that is accredited to provide domestic adoption services must not provide domestic adoption services in New South Wales to persons who are not resident or domiciled in the State.

## **3 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 provide intercountry adoption services in New South Wales to persons who are not resident or domiciled in the State or the country so specified.

## **4 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.

## **5 Undertakings**

An adoption service provider must comply with any undertakings it gives to the Secretary or the Children's Guardian, including undertakings given pursuant to its application for accreditation and undertakings given pursuant to the conditions of its accreditation.

## **6 Fees to be publicly available**

An adoption service provider must publish its scale of fees on its website.

## **7 Entry to premises and inspection of records**

- (1) An adoption service provider must allow the Secretary, and any Public Service employee authorised by the Secretary 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 Secretary, and any such employee, with such assistance as is reasonably necessary for the purposes of any such inspection.
- (2) For the purposes of the exercise of the functions the Children's Guardian has to

accredit adoption service providers and to monitor their responsibilities under the Act and this Regulation, an adoption service provider must, at any reasonable hour, permit the Children's Guardian, or a person authorised in writing by the Children's Guardian for the purposes of this subclause, to:

(a) enter premises owned or occupied by the adoption service provider, and

(b) inspect the premises, and

(c) observe and converse with any person present in the premises, and

(d) make such examination and inquiry while in the premises as the Children's Guardian or person thinks necessary for the exercise of those functions.

(3) For that purpose, an adoption service provider must:

(a) provide the Children's Guardian with such assistance and facilities as are reasonably necessary to enable the Children's Guardian to exercise the functions referred to in subclause (2), and

(b) authorise any person subject to the direction of the adoption service provider to answer questions or otherwise provide information to the Children's Guardian.

(4) An adoption service provider is not required to permit entry to premises under subclause (2) if the provider was not given reasonable notice that entry would be required, unless:

(a) the Children's Guardian has certified, by notice in writing, that giving notice before requiring entry would frustrate the purpose of requiring entry, and

(b) that notice was given to the provider before the provider's permission was demanded.

## **8 Provision of reports and information to Secretary and Children's Guardian**

(1) An adoption service provider must provide the Secretary and the Children's Guardian 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 Secretary or Children's Guardian 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.

(2) An adoption service provider must provide the Secretary or Children's Guardian with

any information relevant to its provision of adoption services that the Secretary or Children's Guardian may reasonably require by notice in writing.

## **9 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 notify the Secretary and the Children's Guardian in writing.
- (2) If as a consequence of such a notice the Secretary 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.
- (3) In this clause, **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.

## **10 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 Secretary has approved the proposed appointment.

## **11 Notification of certain changes**

- (1) An adoption service provider must notify the Secretary and the Children's Guardian of any change in the following one business day after the change occurs:
  - (a) the corporate or business name or ABN of the adoption service provider,
  - (b) the street and postal address of the adoption service provider's principal place of business,
  - (c) the provider's general telephone number,
  - (d) the provider's general email address (if any).



- (2) An adoption service provider must notify the Secretary of any change in the following within 14 days after the change occurs:
  - (a) the terms of the documents that govern its constitution,
  - (b) the terms of any trust that it has established in connection with its provision of adoption services.
  - (c) the criteria that are used to assess the suitability of applicants to adopt a child.

## **12 Selection criteria for applicants for adoption**

- (1) 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.
- (2) An adoption service provider that uses criteria to assess the suitability of applicants to adopt a child that are different from the prescribed selection criteria must notify the Secretary of the different selection criteria used.
- (3) An adoption service provider that uses selection criteria that are different to the prescribed selection criteria must make those selection criteria publicly available.