



Family &
Community
Services

Adoption Regulation 2015

Regulatory Impact Statement



The Department of Family and Community Services invites comments and submissions on issues raised in this Regulatory Impact Statement (RIS) and on the proposed draft Adoption Regulation 2015 (draft Regulation).

Submissions may be made via email to Adoption.RegReview@facs.nsw.gov.au or fax to 02 9716 2988 or by mail to:

Department of Family and Community Services
Legislative Review Unit, FACS Legal
Locked Bag 4028
ASHFIELD NSW 1800

Submissions must be received by 3 July 2015.

Additional copies of this RIS and the draft Regulation can be downloaded from www.facs.nsw.gov.au or by calling Family and Community Services on (02) 9716 2307.

If you do not want your personal details or submission released, please indicate this clearly on your submission. Please note, however, that submissions may be made publicly available under the *Government Information (Public Access) Act 2009* (NSW). FACS may also decide to circulate some or all submissions for further comment to other interested parties, and publish submissions on its website.

Regulatory Impact Statement

Title of regulatory proposal

Public consultation draft Adoption Regulation 2015

Proponent

NSW Department of Family and Community Services

Responsible Minister

Minister for Family and Community Services

Relevant Act

Adoption Act 2000 (NSW)

Contents

Executive Summary	1
1. Introduction.....	3
Background	3
Requirements for a Regulatory Impact Statement.....	4
2. Context	4
Adoption generally.....	4
Intercountry adoptions	4
Local adoptions.....	5
Known adoptions	5
Trends in adoptions.....	5
Aboriginal and Torres Strait Islander children.....	8
Openness in adoption	9
Permanency planning and adoption for children in need of care and protection	10
The regulatory framework.....	10
3. Impact assessment of the proposed regulation.....	11
Option 1: Remake the existing Regulation without amendment	11
Option 2: Allow the existing Regulation to lapse.....	12
Self-regulation	12
Co-regulation/quasi-regulation	12
Extending the scope of the Adoption Act.....	13
Option 3: Make the proposed draft Regulation	13
Proposed amendments	13
Selection process	14
Adoption process.....	16
Adoption records and information.....	18
4. Conclusion.....	23
5. Consultation.....	23
Appendices	25
Appendix A: Public consultation draft Adoption Regulation 2015.....	25
Appendix B: Comparison table between Adoption Regulation 2003 and the draft Adoption Regulation 2015.....	91
Appendix C: Submissions received in response to Discussion Paper	108

Executive Summary

Adoption is the legal process which permanently transfers all the legal rights and responsibilities of being a parent from the child's birth parents to the adoptive parents. The *Adoption Act 2000* (NSW) (Adoption Act) covers the adoption of children in NSW, and the rights of people affected by adoption to access adoption information. The Adoption Regulation 2003 (existing Regulation) supports the Adoption Act with details and procedures for the Adoption Act to operate smoothly.

The existing Regulation will automatically lapse on 1 September 2015 under the *Subordinate Legislation Act 1989*. If no new regulation is made to take its place, the Adoption Act will continue without any accompanying regulation.

The Department of Family and Community Services (FACS) is of the view that there is a continued need for regulation. Therefore, the Government proposes to make a new regulation called the Adoption Regulation 2015 (draft Regulation) to replace the existing Regulation. The proposed draft Regulation will largely mirror the existing Regulation, with some changes. The key proposed amendments are:

- **improve accountability and transparency by:**
 - requiring accredited adoption agencies to publish any alternative selection criteria so that they are publicly available
 - requiring prospective adoptive parents to notify the adoption service of any significant change in circumstances that might affect their approval
 - ensuring adoption agencies notify applicants seeking to be assessed as prospective adoptive parents if their application is declined
 - notifying authorised carers who want to adopt a child in their care that they may be asked to attend information and education sessions before and after submitting their adoption application
- **make adoption practice consistent with anti-discrimination laws by:**
 - removing the bar against placing a child for adoption with an approved person or couple where they are expecting a child
- **strengthen informed consent procedures by:**
 - requiring counsellors to provide a written report on whether a birth parent under 18 years of age is capable of consenting to an adoption
- **improve adoption record-keeping requirements and access to adoption records by:**
 - facilitating greater access to information to enable adopted persons to know why they were adopted
 - clarifying an adopted person's access to adoption information entitlements concerning their 'unacknowledged birth father'

- prescribing International Social Service Australia (ISS) as an information source to enable ISS to provide post adoption and general family tracing information services
- allowing parties to an adoption to have a longer advance notice period, if requested, to give them more time before their adoption information is released to another person.

Other minor amendments are also proposed to correct inaccurate, outdated or inconsistent terminology in the existing Regulation.

1. Introduction

Background

Adoption in NSW and nationally has been the subject of increased attention and reform in recent years. This focus has included recognition of the pain and suffering of those affected by past forced adoptions, the ongoing development and implementation of policy to support a commitment to open adoption and a growing interest in the role of adoption as an alternative to long term out-of-home care (OOHC) for children who are unable to be cared for by their parents.

In 2011, following a series of preliminary consultations with peak, government and non-government agencies, FACS released a discussion paper, *Statutory Review of the Adoption Regulation 2003 Discussion Paper* (Discussion Paper) for public consultation.¹ Seventeen submissions were received in response to the Discussion Paper, the majority of which supported the continued need for regulation.² There was also wide recognition of the need to amend the existing Regulation to reflect current legislative obligations, standards and practices.

The review of the Regulation was interrupted by a number of adoption-related reform programs. This included Commonwealth-State negotiations on intercountry adoption and the recent comprehensive suite of legislative reforms to the child protection system, now being implemented as part of the Safe Home for Life program. A core element of these reforms was to establish the policy and legislative framework to implement the Government's commitment to a greater focus on adoption as a permanency option for children in long-term OOHC.

The draft Regulation and this accompanying Regulatory Impact Statement have been informed by the submissions received in response to the Discussion Paper. A number of the proposed amendments have been drawn from those submissions. Some issues that were raised by stakeholders have been addressed as part of the recent child protection legislative reforms, while others that require amendment of the enabling Act will be pursued when the Adoption Act is next reviewed.

The Safe Home for Life legislative amendments, which commenced on 29 October 2014, enabled the integration of the NSW OOHC and adoption accreditation frameworks. Previously, agencies that provided both adoption and OOHC services were required to go through two separate accreditation processes. The recently amended Part 2 of the Adoption Regulation 2003 aligns the two accreditation processes, making it easier for organisations to be dually accredited and reducing unnecessary red tape.

As the new accreditation provisions in Part 2 have only been in effect a short time, they are not being reviewed in detail as part of this regulatory review. However, FACS and the Office of the Children's Guardian (OCG) will consider any comments received in relation to these provisions.

¹ Department of Family and Community Services 2011, *Statutory Review of the Adoption Regulation 2003 Discussion Paper*, Community Services, Sydney, available at http://www.community.nsw.gov.au/about_us/news_and_publications/reports.html

² A list of organisations that made submissions is provided at Appendix C.

Requirements for a Regulatory Impact Statement

The *Subordinate Legislation Act 1989* governs the process for making regulations in NSW. Its aims are to reduce unnecessary regulation by government. It requires that before a new regulation can be made, a Regulatory Impact Statement (RIS) be prepared and public consultation be undertaken.

The RIS process considers the objectives of the proposed regulation and whether these objectives are most efficiently and effectively achieved through legislation, policy, or other processes such as contractual relationships between FACS and funded adoption service providers. The aim is to streamline the new regulation, while ensuring that the rights and obligations of affected persons are protected by legislation where appropriate and necessary.

2. Context

Adoption generally

Adoption is regarded in Australia and in other comparable English-speaking countries as a legal process whereby the legal rights and responsibilities for a child are transferred from the birth parents to the adoptive parents. After an adoption order is made, the adopted child is regarded at law as the child of the adoptive parent(s), and the adoptive parent(s) is regarded at law as the parent(s) of the adopted child.³ The adopted child has the same rights in relation to the adoptive parent(s) as a child who is born to the adoptive parent(s).⁴

There are three main categories of adoptions:

- intercountry adoptions
- local adoptions
- known adoptions.

Intercountry adoptions

Intercountry adoptions are adoptions of children from countries other than Australia. These adoptions are subject to NSW adoption law, Commonwealth law,⁵ the *Hague*

³ *Adoption Act 2000* (NSW) s 95(2)(c).

⁴ *Adoption Act 2000* (NSW) s 95(2)(a).

⁵ The Commonwealth legislation includes: *Immigration (Guardianship of Children) Act 1946*, *Migration Act 1958*, *Family Law Act 1975*, *Migration Regulations 1994*, *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* and the *Australian Citizenship Act 2007*. It also includes bilateral agreements between a non-Hague signatory country and Australia as well as the *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*

*Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention) and the United Nations Convention on the Rights of the Child.*⁶

Local adoptions

Local adoptions are adoptions of children who were born or were permanently residing in Australia before the adoption order was made, but who generally have had no previous contact or relationship with the adoptive parent(s).

Known adoptions

Known adoptions are adoptions of children who were born or were permanently residing in Australia before the adoption order was made, and who have a pre-existing relationship with the adoptive parent(s). Known adoptions include adoptions by step-parents, other relatives and carers.

In NSW, local, intercountry and known adoptions are governed by the Adoption Act. The Adoption Act is supported by the existing Regulation as well as the NSW Adoption Standards (the Standards). The Standards are established and used by the OCG as part of its program for the accreditation of adoption service providers in NSW. The OCG has developed benchmark policies for each of the Standards. These provide a framework of policies and targets that adoption service providers must meet.⁷ The accreditation of adoption service providers is governed by the Adoption Act⁸ and Part 2 of the existing Regulation.⁹

FACS and the Australian Families for Children Incorporated are currently the only agencies in NSW that arrange intercountry adoption placements. In addition to FACS, local adoption services are provided through three accredited adoption service providers in NSW — CatholicCare (Sydney), Anglicare and Barnardos Australia.

Trends in adoptions

As Table 1 illustrates, the number of children adopted in Australia has decreased significantly in the past few decades. The adoption of 317 children finalised in 2013-2014 is the lowest annual number on record — a fall of 9% from the 348 adoptions in the

which was signed in 2008, to implement the provisions of intercountry adoption within Australia where adoption is a state or territory responsibility.

⁶ As at date of publication, countries with which Australia maintains adoption programs include Bolivia, Chile, China, Colombia, Fiji, Hong Kong, India, Lithuania, Philippines, South Africa, South Korea, Sri Lanka, Taiwan and Thailand.

⁷ See the Office of the Children's Guardian website at <http://www.kidsguardian.nsw.gov.au/adoption/adoption>.

⁸ *Adoption Act 2000* (NSW) ss 12–13.

⁹ See also Adoption Regulation 2003 Sch 1.

previous year and a 76% decline from the 1,294 adoptions recorded 25 years earlier in 1989-1990.¹⁰

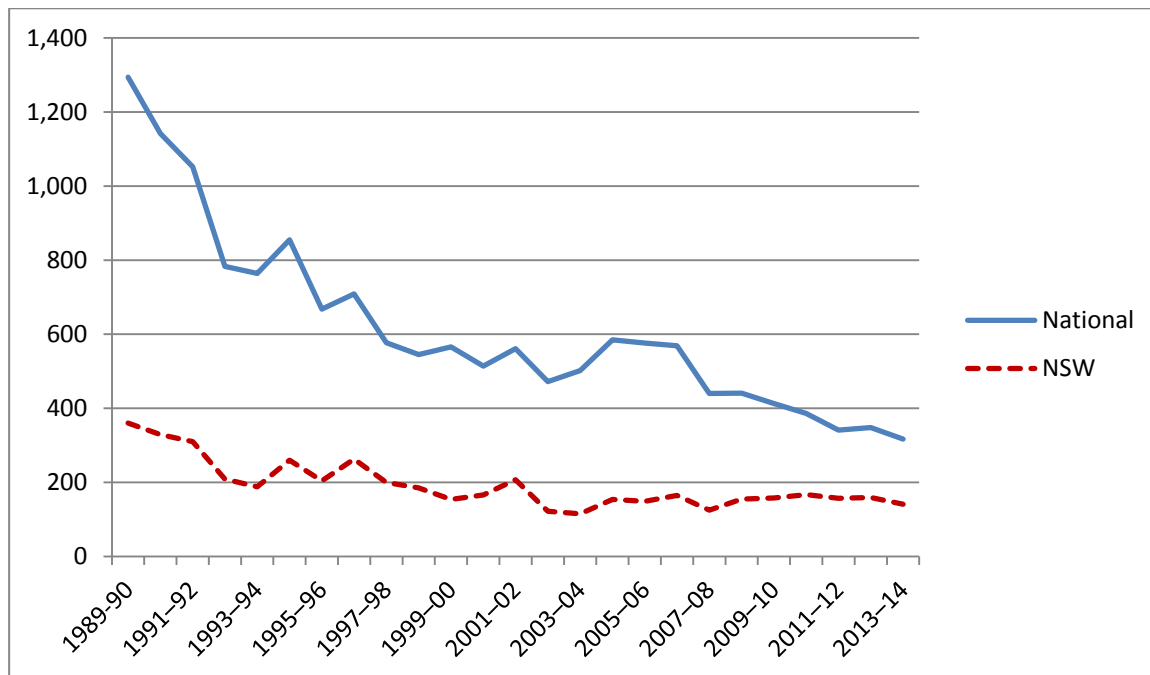


Table 1: Total number of adoptions Australia-wide and NSW from 1989-90 to 2013-14

By comparison, the number of adoptions in NSW in recent years has declined gradually (see Table 1). In 2013 -14, there were 141 adoptions compared to 167 adoptions in 2010-11.¹¹

The fall in the number of adoptions nationally has been greater for local and known adoptions than for children from overseas who are adopted.¹² Adoptions have declined for various reasons, including legislative changes introduced by state and territory governments over the past 20 years supporting a greater use of alternative legal orders such as permanent care orders and guardianship or custody of a child to a person other than a parent, such as a relative.¹³ Social trends, such as declining fertility rates, the wider availability of effective birth control, increased support for single parents and the emergence of family planning centres are also likely to have contributed to the decrease in the number of Australian children requiring adoption.¹⁴

Less than half of all children (142 children or 45%) adopted in Australia in 2013-2014 were aged under five years of age, with 38 (or 12%) being infants under the age of 12 months.

¹⁰ Australian Institute of Health and Welfare, *Adoptions Australia 2013-2014*, Child welfare series no. 60. Cat. no. CWS 51, Canberra, vi.

¹¹ Ibid, 47.

¹² Ibid, 34.

¹³ Ibid, 35.

¹⁴ Ibid, 35.

Of the 317 adoptions in 2013-2014, 114 children (36%) were adopted from overseas and 203 (64%) were children from Australia, including 46 local adoptions and 157 known child adoptions.¹⁵ Of the local adoptions finalised in 2013-2014, 28 (61%) were arranged by a government department and 18 (39%) were arranged by a non-government agency. The majority of known child adoptions in this period were by a carer, such as an authorised carer. The number of carer adoptions in 2013-2014 was the highest number of carer adoptions on record.¹⁶ Carer adoptions made up 57% of all known child adoptions, with 84 of the total 89 carer adoptions in Australia occurring in NSW.¹⁷

As Table 2 illustrates, there has been a steady increase in the number of adoption orders made in respect of children in OOHC in NSW over the past five years.¹⁸ This reflects policies which increasingly promote adoption to achieve stability for children in long-term OOHC when restoration to a birth parent is not viable.¹⁹

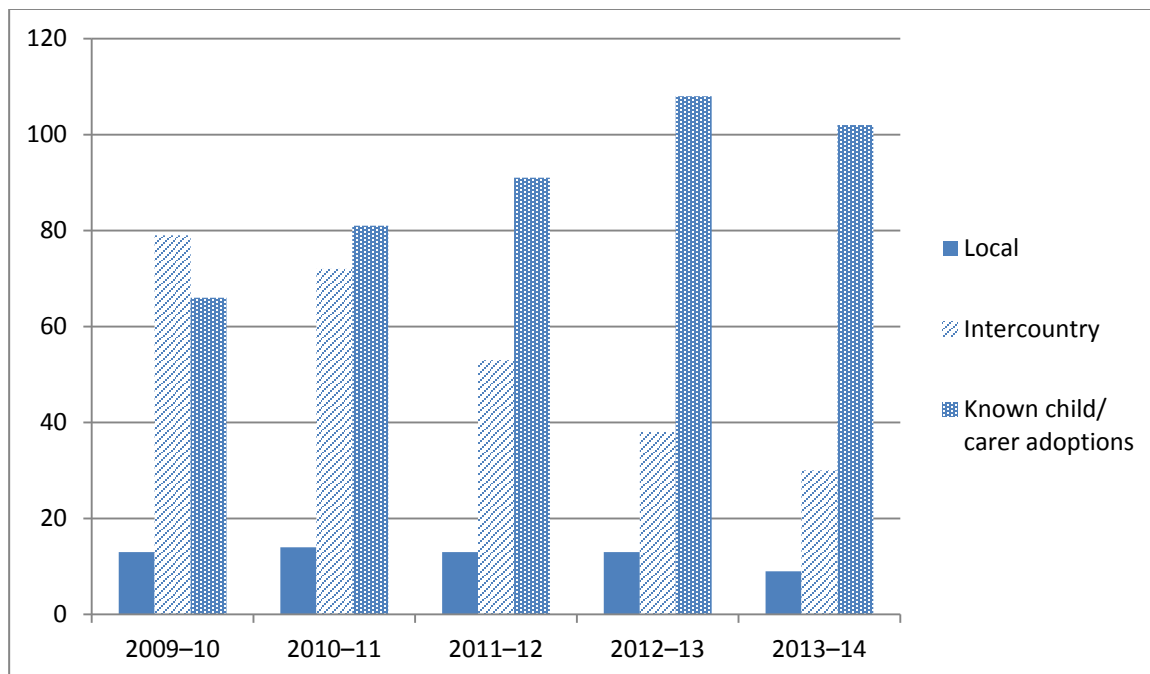


Table 2: Number of adoptions in NSW by type from 2009-10 to 2013-14

¹⁵ Ibid, 13.

¹⁶ Ibid, 35.

¹⁷ Ibid, 26.

¹⁸ In 2008-2009, there were 30 adoption orders made for children in OOHC in NSW; this increased to 48 in 2009-2010, 46 in 2010-2011, and 65 in 2011-2012. In 2012-2013, there were 78 adoption orders: see NSW Department of Family and Community Services, *Community Services Annual Statistical Report 2012/13*, 115.

¹⁹ Above n 10, 26.

Nationally, the number of intercountry adoptions has fluctuated over the last 25 years.²⁰ This fluctuation is due to variations in intercountry programs operating each year and changes in adoption practices in countries of origin,²¹ including the requirement that all efforts must first be made to place the child with suitable adoptive parents in the country of origin.²²

The number of persons seeking to adopt a child is greater than the number of children available for adoption through local and intercountry adoption programs. In 2013-2014, in NSW, there were 95 expressions of interest in local adoption. At 30 June 2014, there were 34 families approved and awaiting placement of a child through the Local Adoption and Permanent Care Program. In 2013-2014, nine children were adopted through local adoption in NSW.

In terms of intercountry adoptions in NSW, at 30 June 2014, there were 235 families in the intercountry adoption program, including 30 families being assessed, 106 families with a file overseas awaiting an adoption proposal and 22 families who had received an adoption proposal and were waiting for a notice to travel. In 2013-2014, 28 children arrived in NSW with their adoptive families through the intercountry adoption program. As at 30 June 2014, 77 families in NSW were receiving post-placement support through this program. In 2013-2014, 46 adoption orders were made or recognised in NSW for children through the program.²³

Aboriginal and Torres Strait Islander children

The number of Aboriginal and Torres Strait Islander children adopted in Australia each year is small. In 2013-2014, seven indigenous children were the subject of an adoption order in Australia, with all of these adoptions being known adoptions by persons who were either non-indigenous or whose indigenous status was unknown.²⁴

The primary reason for such small numbers is because adoption is absent in customary Aboriginal child care arrangements, a principle that is expressly reflected in NSW law.²⁵ The Aboriginal and Torres Strait Islander child placement principles in the Adoption Act establish a preference for the placement of Aboriginal and Torres Strait Islander children:

²⁰ Between 1999-2000 and 2004-2005, there was an increase in intercountry adoptions, reaching the highest number in 2004-2005 with 434 intercountry adoptions. In 2013-2014, there were 114 intercountry adoptions: above n 10, 37.

²¹ Ibid, 37-38.

²² Article 4(b) of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* requires that an intercountry adoption must only take place after possibilities for placement of the child within the State of origin have been given due consideration.

²³ Sixteen of these intercountry adoptions orders were recognised due to amendments to the Commonwealth *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* for children who had arrived in previous reporting years. The amendments added three countries (Ethiopia, Korea and Taiwan) as prescribed overseas jurisdictions to the Commonwealth Regulation, which facilitates automatic recognition and removes the need for adoptions to be finalised through the Australian court system.

²⁴ Above n 10, 45.

²⁵ *Adoption Act 2000* (NSW) s 35(1).

- first with the Aboriginal or Torres Strait Islander community or one of the communities to which the birth parent or birth parents of the child belongs
- secondly within another Aboriginal or Torres Strait Islander community, and if neither of these options is practicable or in the child's best interests
- with a non-Aboriginal or non-Torres Strait Islander prospective adoptive parent subject to certain requirements.²⁶

Further, the Adoption Act provides that adoption should not be considered for an Aboriginal or Torres Strait Islander child unless it is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child and is made in consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation.²⁷

Openness in adoption

One of the objects of the Adoption Act is to encourage openness in adoption.²⁸ The secrecy that surrounded past adoptions no longer exists. Research and experience, both in Australia and overseas, shows that generally a child's wellbeing is promoted by honesty and openness in adoption.²⁹

Openness allows adopted persons, adoptive parents, birth parents, siblings and other relatives of the adopted person to obtain information about each other from the day the adoption order is made. Allowing access to adoption information can have significant benefits for all parties to an adoption, including:

- providing the adopted person a greater understanding of his or her birth family heritage, identity and culture from an early age
- providing information to birth parents and siblings about the adopted person as they grow up, allowing birth parents, adopted persons and siblings to find and have contact with each other and form relationships
- allowing adoptive parents and adopted persons to experience the benefits of meeting and/or having information about birth parents and siblings through the adopted person's growing years.

The challenges of open adoptions for intercountry adoption include geography, incomplete records, limited support for openness in the overseas country and language barriers.³⁰ For locally adopted children, issues include inconsistent or no contact with their birth family and concerns the adoptive family may have about managing contact with the birth family appropriately.³¹

²⁶ *Adoption Act 2000* (NSW) ss 35(2), 35(3) and 39(1).

²⁷ *Adoption Act 2000* (NSW) ss 36, 39.

²⁸ *Adoption Act 2000* (NSW) s 7(g).

²⁹ New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965 (NSW)*, Issues Paper 9 (1993), [7.1].

³⁰ NSW Office of the Children's Guardian, *Statement of Contemporary Adoption Practice* (2009) 7 available at <http://www.kidsguardian.nsw.gov.au/adoption/benchmark-policies>

³¹ *Ibid.*

The Office of Children's Guardian's *Statement of Contemporary Adoption Practice* provides that any organisation seeking accreditation as an adoption service provider in NSW must provide a statement on their contemporary adoption practice, as part of the requirements for accreditation. The services provided by all adoption service providers must reflect the objects and principles in the Adoption Act and, for those providing intercountry adoption services, the principles set out in the Hague Convention.³²

Permanency planning and adoption for children in need of care and protection

One of the key objectives of the Government's Safe Home for Life reforms was to improve the way we create safe, secure, nurturing and stable long term homes for children and young people who are not able to live with their parents. The Safe Home for Life policy and legislative amendments clearly identify adoption as a permanent placement option, except in the case of Aboriginal and Torres Strait Islander children and young people. The new permanent placement principles provide that preference is to be given where practicable to the adoption of the child or young person over an order of parental responsibility to the Minister to 18 years, and placement with an authorised carer.

In order to streamline the processes for the adoption of children in OOHC, both the *Children and Young Persons (Care and Protection) Act 1998* and Adoption Act were amended to make it easier for:

- people wanting to pursue adoption, to be assessed as both authorised carers and prospective adoptive parents
- organisations to be accredited to provide both OOHC and adoption services.

A project is underway by the OCG to develop a single set of standards bringing together the NSW Adoption Standards and the NSW Standards for Statutory Out-of-Home Care. This will create a more streamlined accreditation system for agencies providing both OOHC and adoption services. It will also make it simpler for OOHC providers to achieve accreditation to provide adoption services.³³

The regulatory framework

The central purpose of the existing Regulation is to support the Adoption Act to ensure that it fulfils its objectives regarding the adoption of children in NSW and access to adoption information.

The objects of the Adoption Act are:

- the best interests of the child both in childhood and later life are the paramount consideration
- adoption is a service for the child

³² Ibid, 2.

³³ NSW Office of the Children's Guardian, *Annual Report 2013-14*, 9.

- adoption law and practice must assist a child to know and have access to his or her birth family and cultural heritage
- the changing nature of adoption practices are to be recognised
- the safeguards and standards that apply to children from NSW should also apply to children adopted from overseas
- NSW adoption law and practice should comply with Australia's obligations under treaties and other international agreements
- openness in adoption is to be encouraged
- access to certain adoption information should be allowed
- in certain circumstances, financial and other assistance may be provided post-adoption to adopted children and their birth and adoptive parents.³⁴

The existing Regulation, which supports the Adoption Act to ensure it operates smoothly, provides procedures and particulars for:

- the accreditation of adoption service providers and appointment of principal officers
- the selection of prospective adoptive parents (including authorised carers as adoptive parents of a child in their care)
- the keeping of Adoption and Reunion Information Registers
- the placement of children for adoption and the making of adoption plans
- consents to adoption
- preliminary hearings, adoption orders and records of adoptions
- the entitlement of certain persons to access adoption information
- classes of reviewable decisions.

3. Impact assessment of the proposed regulation

In undertaking this statutory review of the existing Regulation, the *Subordinate Legislation Act 1989* requires consideration of alternatives for government action as well as an assessment of the cost and benefits for achieving the objectives of the regulatory proposals. Three options for government action are:

- remake the existing Regulation without amendment
- allow the existing Regulation to lapse
- make the proposed draft Regulation.

Option 1: Remake the existing Regulation without amendment

A large portion of the existing Regulation remains relevant and current. Remaking the existing Regulation without amendment would maintain this status quo.

However, if the existing Regulation is remade without changes, it will not reflect current adoption practices and law and its capacity to effectively support the Adoption Act to achieve the aims of the legislation will be limited. In preliminary consultations when the

³⁴ *Adoption Act 2000* (NSW) s 7.

review was first initiated, stakeholders identified a number of necessary amendments to improve the current regulation (for example, some stakeholders sought greater clarity on the requirements to preserve adoption records while others advocated for improvements in access to adoption information). If the recommended amendments are not made, these important matters will remain unaddressed and an opportunity to improve the regulatory framework for adoption will be lost.

For these reasons, FACS does not recommend this option.

Option 2: Allow the existing Regulation to lapse

This option would mean that no new regulations are made when the existing Regulation lapses on 1 September 2015. The Adoption Act would therefore operate without any accompanying regulations and other alternatives would need to be relied on to achieve the identified regulatory objectives. Alternative options that could be pursued in place of regulations include self-regulation or a partnership approach with the non-government sector through co-regulation or extend the scope of the Adoption Act to incorporate the provisions of the regulation.

Self-regulation

Under a self-regulation model, the responsibility for setting standards and for developing and monitoring policies would fall on agencies and individuals themselves. Self-regulation relies on voluntary rules or codes of practice; government has no role in service delivery or the development of, and monitoring compliance with, standards.

While, in theory, a self-regulatory model may be more flexible and responsive, the lack of oversight by government would likely have a negative effect on standards and the quality of service delivery. In adoption, where the paramount object is to ensure the best interests of children are met, there is little support for the self-regulation of adoption services. Moreover, the adoption legislation includes many important rights. This is an area where the community expects that government will play a key role in setting the standards and ensuring those standards are monitored and met. A self-regulatory approach is not an effective way to achieve the identified regulatory objectives and is therefore not a realistic option.

Co-regulation/quasi-regulation

Co-regulation is a system whereby industry, in consultation with government, develops standards, codes of conduct and other policies for the sector. Industry monitors compliance with these standards and codes, while government provides legislative backing to enable the arrangements to be enforced.³⁵ In this system, regulatory arrangements are shared between the government and an industry or professional body. Co-regulation systems are suitable where there is a collaborative approach between the government and the relevant industry, with the industry having leadership in the area.

³⁵ NSW Government Better Regulation Office, *Guide to Better Regulation* (November 2009), 33.

Except for the accreditation of adoption service providers with compliance monitored by the Office of the Children's Guardian, FACS does not consider co-regulation or quasi-regulation to be a practical or effective alternative regime to provide the necessary level of assurance and safeguards regarding the adoption of children and ensuring the ongoing rights of adoptees and certain others affected by adoption. As noted above, adoption is an area where government oversight is necessary, and expected, to ensure the best interests of children are safeguarded.

Extending the scope of the Adoption Act

Another alternative to remaking the regulation is to amend the Adoption Act to include the procedural and practice detail that is currently covered by the Regulation.

FACS is of the view that this would make the principal legislation unwieldy, and would create a level of inflexibility that would be detrimental to adoption practice. Any fine-tuning of procedure and practice would entail legislative amendment, which, though rigorous, takes more time. This means that minor procedural matters could not be addressed as quickly as would be the case if they were contained in regulations. The major advantage of setting out practice and procedure in subordinate legislation is that while it is law and must be consistent with the enabling Act, regulations are a more flexible instrument and therefore can be more responsive to changes in policy and adoption practices.

For these reasons, FACS does not consider this a viable alternative to regulation.

Option 3: Make the proposed draft Regulation

Option three is to make the proposed draft Regulation which updates, clarifies and amends the existing Regulation to reflect and support current operating practices and standards. This will assist in providing clear, practical and contemporary guidance to adoption service providers, government, adopted persons, birth parents and adoptive parents to ensure the Adoption Act operates effectively.

In large part, the proposed draft Regulation mirrors the existing Regulation with some changes. These amendments will not alter adoption practice in NSW in any significant way nor will they impose any appreciable burden or cost on government, adoption service providers or parties to an adoption. A comparison table showing the differences between the existing Regulation and the draft Regulation is at **Appendix B**.

Proposed amendments

The proposed amendments fall under three main areas:

- selection process for prospective adoptive parents
- adoption process
- adoption records and information.

As noted earlier, no significant amendments are proposed in relation to the accreditation of adoption service providers, aside from minor amendments in relation to the retention of adoption records and the publication of alternative selection criteria.

Selection process

Publishing alternative selection criteria

Clauses 12 and 17I of the existing Regulation set out the selection criteria against which persons applying to become prospective adoptive parents are assessed. Accredited adoption service providers may use alternative selection criteria, but must first notify the Secretary of these criteria.³⁶ There is no obligation for the accredited adoption service provider to publish its alternative selection criteria. This may create difficulties for those wishing to apply to non-government adoption service providers, as they are unaware of the criteria against which their application will be assessed.

The draft Regulation establishes a new requirement that the accredited adoption service provider publish its selection criteria if they differ from those set out in the Adoption Act and regulations.³⁷

This requirement may result in additional administrative costs for non-government accredited adoption service providers. However, these costs are likely to be minimal and are outweighed by the benefit of increased openness and transparency in the selection and assessment process of prospective adoptive parents. The benefit of this proposal is that applicants seeking to become prospective adoptive parents will be able to make informed decisions as to whether to apply to adopt, and with which provider, with the full knowledge of the criteria against which their application will be assessed. This will save time and resources for both prospective applicants and the adoption service provider.

Reviewing approvals of adoptive parents

When a person or couple has been assessed and approved to be an adoptive parent, the approval is valid for four years, or longer if granted by the decision-maker.³⁸ During the consultation process, some stakeholders believed that four years is too long for an approval to be in place, as a significant change in circumstances could occur in that timeframe that would affect the person's approval status.³⁹ To address these concerns, the draft Regulation imposes a positive obligation on approved applicants to notify the relevant decision-maker of any significant change in circumstances that might affect their approval as soon as practicable after the change occurs.⁴⁰ The draft Regulation includes examples of what might constitute a significant change, such as a deterioration of health, a change in marital status or pregnancy. Such a notification may trigger a review of the approval by the adoption service provider.

³⁶ Adoption Regulation 2003 (NSW) cll 13(3A), 17J(4).

³⁷ Draft Adoption Regulation 2015 Sch 1, cl 12(3).

³⁸ Adoption Regulation 2003 cll 14(3), 17K(3).

³⁹ Association of Children's Welfare Agencies, *Submission*; NSW Office of the Children's Guardian, *Submission*.

⁴⁰ Draft Adoption Regulation 2015 cll 48(2), 62(2).

Adoptive parent education and training

The existing Regulation allows for the provision of education and training for authorised carers who want to adopt a child in their care.⁴¹ Currently the regulation provides that this education and training may occur after the authorised carer has submitted their application to adopt.⁴²

In practice, authorised carers are asked to attend information and education sessions prior to submitting their applications, so they are better informed as to whether to adopt the child in their care. They may also be asked to attend further education and training after their application has been submitted.

In order to better reflect what happens in practice, the draft Regulation requires authorised carers to participate in parent education and training both before and/or after they have made an application to adopt.⁴³

Notification of decision to decline to assess an application

After an assessment is completed, the decision-maker must notify the applicant of the decision made, whether the outcome is to approve the application, approve the application with conditions, or decline the application. The decision-maker must advise the applicant that they have a right to the reasons for the decision and the right to a review of that assessment decision.⁴⁴

However, with the exception of authorised carers who are invited to apply to adopt a child in their care, a decision-maker may decline to assess an application. While this is a reviewable decision⁴⁵ there is no corresponding requirement in the existing Regulation to advise the applicant of their right to the reasons for the decision and to seek a review.⁴⁶

To address this anomaly, the draft Regulation requires that the relevant decision-maker notify an applicant of their right to request reasons and a review of a decision to decline to assess an application to be assessed as prospective adoptive parents.⁴⁷

This proposal may lead to government and accredited adoption service providers bearing additional administrative costs, as there is currently no obligation to notify applicants of this decision or of their review rights. This proposal may lead to an increase in matters requiring an internal review by the decision-maker. The costs of notification and additional internal review can be offset against the benefits to applicants of being better informed and therefore able to exercise their current review rights, and the benefits

⁴¹ Adoption Regulation 2003 cl 17D.

⁴² Adoption Regulation 2003 cl 17D.

⁴³ Draft Adoption Regulation 2015 cl 54.

⁴⁴ Adoption Regulation 2003 cll 16, 17M.

⁴⁵ Adoption Regulation 2003 cl 72; *Adoption Act 2000* (NSW) s 189.

⁴⁶ Adoption Regulation 2003 cll 16, 17M.

⁴⁷ Draft Adoption Regulation 2105 cll 46-47.

generally to administrative decision-making of increased transparency and accountability.⁴⁸

Minor amendments

The draft Regulation proposes the following minor amendments to clarify or update provisions in the existing Regulation:

- clarify that all prospective adoptive parents other than authorised carers must be placed on the Adoption register⁴⁹
- require that applicants provide proof of their NSW residency with their application to adopt a child.⁵⁰

Adoption process

Removing the bar against placing a child for adoption with a pregnant female

The existing Regulation provides that a child must not be placed in the care of a woman who has been approved as a prospective adoptive parent, or her husband or de facto partner, for the purposes of adoption, if the decision-maker knows that she is pregnant.⁵¹ Although seemingly inconsistent with anti-discrimination laws, the overriding public policy at the time was to protect a child from being placed in a potentially unstable placement, as might be the case in a family with a new-born baby.

This assumption has been questioned in submissions received by FACS. Some stakeholders have submitted that pregnancy should not automatically preclude a person from adopting a child, but instead should be a factor — along with all other relevant factors — that the decision-maker should take into consideration when determining whether a particular placement is in the best interests of the child.⁵² This is the approach taken in a number of other Australian adoption jurisdictions where pregnancy is generally left as a matter of assessment for the relevant decision-maker.⁵³

⁴⁸ Administrative Review Council, *Decision Making: Reasons* (Administrative Review Best Practice Guide 4) (August 2007), 1.

⁴⁹ Draft Adoption Regulation 2015 cl 65(1).

⁵⁰ Draft Adoption Regulation 2015 cl 42(1)(e), 55(1)(e).

⁵¹ Adoption Regulation 2003 cl 24(2).

⁵² NSW Office of the Children's Guardian, *Submission*; NSW Commission for Children and Young Persons, *Submission*.

⁵³ See, eg, Adoption Regulations 2008 (Vic); *Adoption Act 1994* (WA); *Adoption of Children 2011* (NT); *Adoption of Children Regulations 2011* (NT). In the ACT, an adoptive parent's pregnancy could be considered in the application for an adoption order as a matter that affects the applicant's physical, mental and emotional health as it impacts on capacity to nurture the child or young person or otherwise as another relevant consideration: *Adoption Act 1993* (ACT) s 39F(1)(c). But c.f. *Adoption Regulations 2004* (SA) cl 19, where a person who will or is likely to have any other children residing with him or her in the period of two years following selection as an applicant for an adoption is excluded unless the Chief Executive is satisfied that there are special circumstances that would justify the making of an adoption order in favour of the person.

The preferred approach is to require approved applicants to notify the decision-maker of a pregnancy, and for the decision-maker to take that information into consideration when determining whether the placement is in the best interests of the child. This is consistent with anti-discrimination laws and in line with current social attitudes. Accordingly, the draft Regulation removes the bar against placing a child for adoption with an approved adoptive person or their partner, if the woman is pregnant.⁵⁴ An approved person will still be required to notify the decision-maker of a pregnancy as it is a significant change in circumstances.⁵⁵ The social benefit of this amendment is that it will open up placement options and will ensure that decisions focus on the needs and best interests of the child. This amendment will not impose any additional costs to government or adoption service providers as pregnancy is only one factor to consider when determining placement of a child with prospective adoptive parents. It should not, of itself, automatically exclude a particular placement.

Written report from counsellors on capacity to consent for persons under 18

A person giving consent to the adoption of their child must be counselled before signing an instrument of consent to that adoption.⁵⁶ As an additional protection, a counsellor who provides this counselling to a birth parent under 16 years of age must provide the Court a written report on the parent's capacity to understand the effect of consenting to the adoption their child.⁵⁷

The existing Regulation assumes that young people between the ages of 16 and 18 years have greater capacity and autonomy. However, these young people are still vulnerable as recognised in other areas of law such as the capacity to make a will or consent to a medical procedure like organ donation. This vulnerability is also reflected in the Adoption Act which renders the consent of birth parents who are under 18 years ineffective if the Court believes that they have not had independent legal advice.⁵⁸

To better reflect the particular needs and vulnerabilities of young people aged 16 to 18 years faced with a decision about the adoption of their child, the draft Regulation requires that a counsellor who provides counselling to a person under 18 years about the adoption of the person's child must give a written report on whether the person is capable of understanding the effect of signing a consent to the adoption.⁵⁹ This will be required as a matter of course, rather than as a matter to consider on a case by case basis.

This amendment will not result in any material increase in costs given the very low number of birth parents in this age group who are likely to be involved in an adoption. This proposed amendment means that all young people under 18 will benefit from counselling to understand the effect of consenting to the adoption of their child. This reduces the risk of a young person being assessed at a later stage of the adoption

⁵⁴ Draft Adoption Regulation 2015, cl 70.

⁵⁵ Draft Adoption Regulation 2015 cll 48(2), 62(2).

⁵⁶ *Adoption Act 2000* (NSW) s 63(1).

⁵⁷ Adoption Regulation 2003 cl 31(3).

⁵⁸ *Adoption Act 2000* (NSW) s 58(4).

⁵⁹ Draft Adoption Regulation 2015 cl 77(3).

process, and having to recount their circumstances with a counsellor on additional occasions which may be distressing.

Minor amendments

The following minor amendments are among those included in the draft Regulation to clarify or update existing provisions:

- updated language to reflect modern usage and current practice, for example, removing the outdated phrase ‘available for adoption’,⁶⁰ replacing ‘foster parent’ with ‘authorised carer’,⁶¹ ‘private fostering agency’ with ‘designated agency’⁶² and replacing references to ‘registered psychologist’ with ‘counsellor’⁶³ to better reflect practice
- clarify that it is the birth parents’, not the guardians’ religious upbringing, cultural heritage, identity or ties that is the relevant consideration when placing a child with prospective adoptive parents⁶⁴
- require that information given to a person on Aboriginal and Torres Strait Islander customs and culture is provided in a form approved by the Secretary to ensure consistency⁶⁵
- require that the instrument of consent be in a form approved by the Secretary to ensure consistent adoption practice across the sector⁶⁶
- clarify that adoption service providers must forward to the Secretary a copy of the instrument of consent (as the original is filed in Court)⁶⁷
- require applications for an adoption order to contain an identifying Court case number so that a person who receives a notice that an application has been made for an adoption order is able to file a notice of appearance in the correct proceedings.⁶⁸

Adoption records and information

Retention of adoption records

The Adoption Act requires accredited adoption service providers to keep adoption records. If they are no longer accredited or stop providing adoption services, they must send all of their relevant adoption records to the Secretary as soon as possible.⁶⁹

⁶⁰ Draft Adoption Regulation 2015 cl 70.

⁶¹ Draft Adoption Regulation 2015 cl 80.

⁶² Draft Adoption Regulation 2015 cl 81.

⁶³ Draft Adoption Regulation 2015 cl 82(3).

⁶⁴ Draft Adoption Regulation 2015 cll 71-72.

⁶⁵ Draft Adoption Regulation 2015 cl 86.

⁶⁶ Draft Adoption Regulation 2015 cl 80.

⁶⁷ Draft Adoption Regulation 2015 cl 83(6).

⁶⁸ Draft Adoption Regulation 2015 cl 90(c).

⁶⁹ Adoption Regulation 2003 cl 5Z.

By law, records of a child's origin, identity of birth parent and medical history must be preserved⁷⁰ and case records are not to be destroyed.⁷¹ Many adoption service providers and stakeholders have asked that the requirements be made clearer for record preservation and transfer after an adoption service provider ceases to operate be made clearer.⁷² The draft Regulation includes a note to clarify the record keeping requirements.⁷³ It is proposed that further guidance be provided by policy and procedures, rather than by regulation.

Entitlements of adopted persons to information

The existing Regulation limits the rights of an adopted person or adoptive parent(s) to know why they were placed for adoption to information that was recorded before placement for adoption.⁷⁴ Stakeholders submitted that this information can have significant implications for adopted persons and should be available to them irrespective of when that information may have been recorded. Information about the reasons for adoption is often central to concerns an adopted person has about their identity, and can help an adopted person understand their adoption story.

To address these concerns, the draft Regulation enables adopted persons and adoptive parents to access information that was provided about why their birth parents placed them for adoption, irrespective of the date the information was recorded.⁷⁵

Unacknowledged birth fathers

The birth father of an adopted person has the same legal rights to access adoption information as a birth mother.⁷⁶ Under the Adoption Act, a presumptive father is defined as a person who claims to be the child's father and is either named as the birth father on the child's original birth certificate, or is presumed at law to be the child's father.⁷⁷ For example, the de facto partner of the mother is presumed to be the child's father if they have been living together from 44 weeks before the birth to not less than 20 weeks before the birth.⁷⁸

The difficulty for some adopted persons is that their birth father is not named on their birth certificate, nor can be legally presumed to be their father. Sometimes in these situations, the adoption records of the child contain comments by a birth mother as to the

⁷⁰ *Adoption Act 2000* (NSW) s 175.

⁷¹ Adoption Regulation 2003 cl 73.

⁷² Barnardos Australia, *Submission*; Catholic Care, *Submission*; Anglicare, *Submission*; Benevolent Society, *Submission*; Salvation Army, *Submission*; Association of Children's Welfare Agencies, *Submission*; NSW Committee on Adoption and Permanent Care, *Submission*; NSW Department of Attorney General & Justice, *Submission*.

⁷³ Draft Adoption Regulation 2015 cl 31.

⁷⁴ Adoption Regulation 2003 ss 46(1)(vi), 45B(1)(vii).

⁷⁵ Draft Adoption Regulation 2015 cl 93(1)(b)(vii), 99(1)(b)(vi).

⁷⁶ *Adoption Act 2000* (NSW) ss 133E, 136.

⁷⁷ *Adoption Act 2000* (NSW) s 133A.

⁷⁸ *Status of Children Act 1988* (NSW) s 10.

birth father's identity. Such a person is referred to as an 'unacknowledged' birth father and the existing Regulation provides that identifying information about him cannot be released to the adopted person without his consent.⁷⁹

The draft Regulation makes three amendments concerning unacknowledged birth fathers. The first is to update the language by replacing 'unacknowledged birth father' with 'putative birth father'.⁸⁰ A putative birth father is a male to whom the paternity of a child is imputed. This amendment is in response to a concern that the term 'unacknowledged' suggests that information about the birth father provided by the birth mother is not accepted or recognised. It has been submitted that the term 'unacknowledged birth father' does not give due recognition to the experience of mothers who believe they provided this information at the time of adoption and therefore identify as having 'acknowledged' the birth father.⁸¹

The draft Regulation also makes it clearer that a putative birth father includes any person the information source reasonably believes to be the birth father of the adopted person on the basis of information contained in the relevant records, where this person is not named on the birth certificate or capable of being presumed to be the birth father.⁸²

The last amendment relates to the restriction on the supply of prescribed information, which provides that an information source⁸³ that holds information about a putative birth father must not, without his prior consent, disclose this information to an adopted person, an adoptive parent or a birth parent.⁸⁴

It is unclear whether this restriction on supply of prescribed information about putative birth fathers extends to the exchange of information between information sources permitted under existing clause 61, and this has caused some confusion in practice. To address this issue, the draft Regulation clarifies that the restriction does not prevent an information source from providing the information about putative birth fathers to another information source in the execution of the Act and Regulation.⁸⁵

The draft Regulation retains the requirement to obtain the consent of the putative birth father before any identifying information about him is provided to an adopted person, as this remains an important privacy safeguard. However, this amendment will allow organisations that have long-established relationships with adopted persons and their families to provide a holistic service while protecting the privacy rights of men who have been identified by the birth mother as a child's birth father in the child's adoption file.

⁷⁹ Adoption Regulation 2003 cl 55.

⁸⁰ Draft Adoption Regulation 2015 cl 110.

⁸¹ Committee on Adoption and Permanent Care, *Submission*.

⁸² Draft Adoption Regulation 2015 cl 110.

⁸³ Information sources are listed in the existing Regulation and include organisations that are likely to hold adoption information such as the Department of Family and Community Services, hospitals and church organisations which organised adoptions: see Adoption Regulation 2003 cl 58.

⁸⁴ Adoption Regulation 2003 cl 55.

⁸⁵ Draft Adoption Regulation 2015 cl 110(3).

The amendments proposed in relation to putative birth fathers will not impose any additional costs on FACS, accredited adoption service providers or information sources. Rather, the clarifying amendments will produce greater efficiencies for FACS and other information sources, and will deliver improved and responsive information to adopted persons and their families.

Prescribe International Social Service Australia as an information source

Since 2007, International Social Service Australia (ISSA) has been providing a post-adoption and general family tracing and reunification service for those who wish to locate an immediate family member who is thought to be in another country. Many of their matters concern adoptions that occurred within Australia or an overseas country and the adopted person now lives in Australia and wishes to search for their birth family overseas, or vice versa.

ISSA has submitted that it wishes to be prescribed as an information source in order to provide a complete service to its clients. Currently, where a client wishes to search for their paternal family, ISSA has to refer the client to another post-adoption service provider. In view of the post-adoption services that ISSA provides, and in order to ensure that adopted persons are able to access the information to which they are entitled in a seamless and timely manner, the draft Regulation prescribes ISSA as an information source.⁸⁶

Advice of death of adopted person

One way that parties to an adoption can obtain information about each other is by registering their names on the Reunion and Information Register (the Register). The Register is maintained by FACS and enables the Secretary to make arrangements for a reunion between registered persons. The existing Regulation provides that birth parents who are registered on the Register and whose child was placed for adoption before 2010 are entitled to be notified of the death of the adopted person or the breakdown of their adoptive placement where this information is known by FACS or the adoption service provider.⁸⁷

The draft Regulation amends this provision to allow an adoption service provider to advise a birth parent of the death of an adopted person or the breakdown of the adoptive placement, irrespective of whether the birth parent's name is registered in the Register.⁸⁸

Time periods for advance notice periods

An adopted person, a birth parent or an adoptive parent can request advance notice before their personal information is released to another person. This delays the release of information for a period of time (the advance notice period) giving the person an opportunity to prepare for the impact the release of information may have on them, their family or associates.

The existing Regulation prescribes an advance notice period of 2 months,⁸⁹ however the Adoption Act allows for an upper limit of 3 months.⁹⁰ The Secretary may, in some

⁸⁶ Draft Adoption Regulation 2015 cl 113.

⁸⁷ Draft Adoption Regulation 2015 cl 48(5).

⁸⁸ Draft Adoption Regulation 2015 cl 101.

cases, direct a longer advance notice period,⁹¹ but no longer than 4 months after the application is made.⁹²

Stakeholders have submitted that these time periods and limits are confusing, and the 4 month maximum period that the Secretary may allow is too short in some circumstances.⁹³

To address these concerns, the draft Regulation allows an advance notice period of up to 3 months consistent with the upper limit set by the Adoption Act. It also removes the maximum 4 months' advance notice period that the Secretary may direct when a longer advance notice period is considered appropriate.⁹⁴

These changes will allow greater consideration and accommodation of a person's unique circumstances in relation to when their personal information may be released to another person. For example, the changes would allow a person to request an advance notice period that gives them greater time to complete the Higher School Certificate, get married or undertake intensive medical treatment before their personal information is released to another. This increased flexibility maximises the likelihood of a successful contact or reunion.

The proposal will not impose any additional costs on government or service providers. The amendment will remove the confusion that stakeholders report has ensued from the current regulatory provisions.

Minor amendments

The draft Regulation proposes the following minor amendments to clarify or update provisions in the existing Regulation:

- replace the out dated term 'given up for adoption' with 'placed for adoption'⁹⁵
- clarify that an adopted person is entitled to receive information relating to an adopted sibling where the adopted sibling is 18 years or over⁹⁶
- clarify that information about the adoptive parents provided to birth parents when the adopted person is 18 years of age does not identify the adoptive parents⁹⁷
- update references to the list of prescribed information sources⁹⁸
- allow a person lodging an advance notice request to leave a message for a person affected by the notice via email to reflect changes in technology⁹⁹

⁸⁹ Adoption Regulation 2003 cl 65(1).

⁹⁰ *Adoption Act 2000* (NSW) s 145(a).

⁹¹ *Adoption Act 2000* (NSW) s 145(b).

⁹² Adoption Regulation 2003 cl 65(2).

⁹³ NSW Committee on Adoption and Permanent Care, *Submission*.

⁹⁴ Draft Adoption Regulation 2015 cl 124.

⁹⁵ Draft Adoption Regulation 2015 cl 99(1)(b)(vi), 100(1)(b)(iii).

⁹⁶ Draft Adoption Regulation 2015 cl 99(2).

⁹⁷ Draft Adoption Regulation 2015 cl 101(2)(f).

⁹⁸ Draft Adoption Regulation 2015 cl 113.

⁹⁹ Draft Adoption Regulation 2015 cl 121.

- clarify that messages will be provided to a party to an adoption when it is clear that this is what was intended.¹⁰⁰

4. Conclusion

FACS has evaluated and considered the extent to which other alternative government action is capable of supporting the Adoption Act to ensure its objects are achieved and the cost effectiveness of each of the options.

The role of regulation in the three main areas identified above — selection process, adoption process and adoptions records and information — has been analysed and consideration has been given as to whether there is a need for continued regulation and if so how the existing Regulation should be amended to better support the objects of the Adoption Act.

This review has shown that continued regulation in these areas is the preferred option to support the Adoption Act to ensure it achieves its objects efficiently and effectively and that this is most likely to be achieved by making the proposed draft Regulation with amendments.

While there may be some minor additional administrative costs incurred by the proposed amendments, these costs are outweighed by the expected efficiencies for adoption service providers, and the greater social benefit to adopted persons, and their birth and adoptive families.

5. Consultation

The Department of Family and Community Services invites comments and submissions on issues raised in this Regulatory Impact Statement and on the proposed draft Regulation.

Submissions may be made via email to Adoption.RegReview@facs.nsw.gov.au or fax to 02 9716 2988 or by mail to:

Department of Family and Community Services
Legislative Review Unit, FACS Legal
Locked Bag 4028
ASHFIELD NSW 1800

Submissions must be received by 3 July 2015.

Additional copies of this RIS and the draft Regulation can be downloaded from www.facs.nsw.gov.au or by calling Family and Community Services on (02) 9716 2307.

¹⁰⁰ Draft Adoption Regulation 2015 cl 122.

Family and Community Services will review the submissions received by the closing date and consider the issues raised. The draft Regulation may be amended in light of comments made in submissions.

If you do not want your personal details or submission released, please indicate this clearly on your submission. Please note, however, that submissions may be made publicly available under the *Government Information (Public Access) Act 2009* (NSW). FACS may also decide to circulate some or all submissions for further comment to other interested parties, and publish submissions on its website.

Appendices

Appendix A: Public consultation draft Adoption Regulation 2015



New South Wales

Adoption Regulation 2015

under the

Adoption Act 2000

[The following enacting formula will be included if this Regulation is made:]

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

Minister for Family and Community Services

Explanatory note

The object of this Regulation is to remake the provisions of the *Adoption Regulation 2003*, which is repealed on 1 September 2015 by the *Subordinate Legislation Act 1989*.

The Regulation includes several new provisions, including provisions that:

- (a) require the Secretary of the Department of Family and Community Services (the *Secretary*) and adoption service providers to notify an applicant for adoption of a decision to decline to assess the applicant's application to adopt, and
- (b) remove the current restriction on a child being placed with adoptive parents if the woman is pregnant, and
- (c) require a person who has been approved to adopt a child to notify the Secretary, or the adoption service provider that approved the person, of any significant change in the person's circumstances that might affect the approval (such as a deterioration in health or change in marital status), and
- (d) specify that, in the case of the placement of a child for adoption who has both a parent and a guardian, the wishes of the parent in relation to the religious upbringing and cultural heritage, identity and ties of the child prevail over any wishes expressed by the guardian, and
- (e) require an adoption service provider to publish its scale of fees and the criteria it uses to select prospective adoptive parents on its website.

The Regulation also makes provision for the following:

- (a) the accreditation of adoption service providers,
- (b) the selection of prospective adoptive parents,
- (c) the selection of authorised carers as adoptive parents of children already in their care,
- (d) adoption proceedings, including adoption plans and consenting to adoptions,
- (e) the supply of adoption information (such as birth certificates, birth records and other non-identifying information) to adopted persons, adoptive parents, birth parents and siblings,
- (f) miscellaneous, formal and savings provisions.

Public consultation draft

Adoption Regulation 2015 [NSW]
Explanatory note

This Regulation is made under the *Adoption Act 2000*, including sections 45 (1), 45F, 47 (2), 57 (definitions of *counsellor* and *mandatory written information*), 61 (1), 62 (3), 63 (1), 80 (1) and (3), 88 (1), 130 (a), 130A (2), 131 (4), 132 (2), 133, Part 2 of Chapter 8, 145 (paragraph (a) of the definition of *advance notice period*), 185 (c), 189 (paragraph (b) of the definition of *reviewable decision*), 193 (1) (i), 201 (1), 204 (5) (definition of *relevant authorised officer*) and 208 (the general regulation-making power).

Public consultation draft

Adoption Regulation 2015 [NSW]
Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	8
2 Commencement	8
3 Definitions	8
4 Notes	9
Part 2 Adoption service providers	
Division 1 Accreditation	
5 Adoption services that may be specified by Children's Guardian	10
6 Application for accreditation	10
7 Taking over an application for accreditation	10
8 Deferral of determination of application to renew accreditation	11
9 Determination of application for accreditation	11
10 Accreditation notice	12
11 Public information about accreditations	12
12 Children's Guardian may set aside decision not to accredit	13
13 Requirements where only provisional accreditation granted	13
14 Progression from provisional accreditation to full accreditation	13
15 Accreditation criteria must be wholly satisfied	13
Division 2 Transfer of accreditation	
16 Application of Division	14
17 Application for transfer of accreditation	14
18 Transfer guidelines	14
19 Transfer of accreditation	14
20 When transfer takes effect	15
21 Consequences of transfer of accreditation	15
Division 3 Accreditation administration	
22 Form and accreditation period	16
23 Accreditation extended after adoption service provider becomes a designated agency	16
24 Accreditation extended on deferral until application to renew determined	16
25 Accreditation extended until decision not to re-accredit takes effect	16
26 Accreditation extended to accommodate changes	17
27 Conditions on accreditation and process of accreditation	17
28 Accreditation—shortening, suspension and cancellation	17
29 Accredited adoption service providers with suspended accreditations	18
30 Accredited service providers with shortened accreditation periods	18
31 Cessation of provision of adoption services	18
Division 4 Principal officers	
32 Appointment of principal officer	19
33 Vacancies in office of principal officer	19
34 Acting principal officer	19
35 Notifications relating to principal officer and acting principal officers	20

Public consultation draft

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	21
37	Form of expression of interest	21
38	Information to be provided to persons submitting expressions of interest	21
39	Adoptive parent education and training	21
40	Form of application to adopt	21
41	Power to require information	21
42	Documents to accompany application to adopt	22
43	Action to be taken by relevant decision-maker after receipt of application to adopt	22
44	Suitability checks	22
45	Criteria for assessment of applicants	24
46	Assessment of applicants for adoption	25
47	Notification of assessment of applicants for adoption	25
48	Duration of approval	26
49	Approvals subject to conditions	26
50	Revocation of approval	26
Part 4	Selection of authorised carers as adoptive parents of a child in their care	
51	Application of Part	27
52	Submission of application to adopt	27
53	Information to be provided to authorised carers submitting applications to adopt	27
54	Adoptive parent education and training	27
55	Documents to accompany application to adopt	27
56	Action to be taken by relevant decision-maker after receipt of application to adopt	28
57	Power to require information	28
58	Suitability checks	28
59	Criteria for assessment of authorised carers who are applicants for adoption	29
60	Assessment of applicants for adoption	30
61	Notification of assessment of authorised carers who are applicants for adoption	31
62	Duration of approval	31
63	Approvals subject to conditions	31
64	Revocation of approval	32
Part 5	Placement for adoption and adoption proceedings	
	Division 1 Adoption register	
65	Adoption register	33
66	Removal of names from adoption register	33
67	Effect of having name on register	34
	Division 2 Placement for adoption	
68	Certain reports required before placement of child	34

Public consultation draft

Adoption Regulation 2015 [NSW]
Contents

	Page	
69	Selection of applicants for adoption order	34
70	Entitlement of approved person to adopt child	34
71	Placement of child for adoption in conformity with religious upbringing intentions	34
72	Placement of child for adoption in conformity with wishes as to cultural heritage, identity or ties	35
73	Placement where compliance with expressed wishes of parent or guardian impracticable	35
74	Confidentiality of adoption proceedings	35
Division 3 Adoption plans		
75	Contents of adoption plan	36
76	Review of adoption plan	36
Division 4 Consent to adoption		
77	Counsellors	36
78	Register of counsellors	37
79	Mandatory written information	37
80	Form of consent	38
81	Persons who may witness consents	39
82	Witnessing a consent	40
83	Notice of signing of general consent	40
84	No fees payable to witness to consent	41
85	Period in which person giving consent must be counselled	41
86	Consent to adoption of Aboriginal child or Torres Strait Islander child	41
Division 5 Records of adoptions		
87	Required information about adoption orders and discharge orders	41
88	Form of records	42
Division 6 Miscellaneous		
89	Preliminary hearings	42
90	Notice of application for adoption order	43
Part 6 Prescribed adoption information		
Division 1 General		
91	Definitions	44
Division 2 Prescribed information for adoptions after 1 January 2010		
92	Application of Division	44
93	Entitlement of adopted person—information prescribed under section 133C	44
94	Entitlement of adoptive parent—information prescribed under section 133D	45
95	Entitlement of birth parent—information prescribed under section 133E	46
96	Supply of other information to birth parent—information prescribed under section 133F	47
97	Entitlement of non-adopted sibling—information prescribed under section 133G	47

Public consultation draft

	Page
Division 3 Prescribed information for adoptions before 1 January 2010	
98 Application of Division	48
99 Entitlement of adopted person—information prescribed under section 134	48
100 Entitlement of adoptive parent—information prescribed under section 135	49
101 Entitlement of birth parent to information prescribed under section 136	50
Division 4 Other prescribed information	
102 Information prescribed under section 137 relating to deceased birth parent	51
103 Information prescribed under section 137 relating to deceased adopted person	51
104 Additional prescribed information	52
Division 5 Guidelines for supplying adoption information	
105 General guidelines under section 142 for release of birth certificate and prescribed information	52
106 Guidelines for exercise of discretion to issue authority to supply adoption information under sections 133E and 133G	53
107 Guidelines for exercise of discretion to supply adoption information under sections 136A and 140 (1)	53
108 Guidelines for exercise of discretion to withhold supply of adoption information or supply subject to conditions under section 136A	54
109 Guidelines for exercise of discretion to supply adoption information under section 140 (3)	54
110 Guidelines under section 142 for the release of prescribed information relating to putative birth fathers	54
Division 6 Miscellaneous	
111 Information as to last known name and address	55
112 Messages	55
Part 7 Supply of adoption information	
Division 1 Information sources	
113 Information sources and designated persons	56
114 Supply of birth certificate or prescribed information	56
115 Exchange of information between information sources	56
Division 2 Contact vetoes	
116 Secretary to endorse details of contact veto on authority to supply adoption information	57
117 Access to information about a contact veto	57
118 Guidelines under section 161 for request to confirm, cancel or vary contact veto	57
Division 3 Reunion and Information Register	
119 Definition	57
120 Information to be updated	58
121 Leaving and delivery of messages	58

Public consultation draft

Adoption Regulation 2015 [NSW]
Contents

	Page
122 Documents left before 1 September 1996	58
123 Offence	59
Division 4 Advance notice	
124 Advance notice period	59
Part 8 Miscellaneous	
125 Reviewable decisions	60
126 Case records	60
127 Restrictions on inspection of documents	61
128 When acts of Children's Guardian take effect	61
129 Fees and charges	61
130 Expenditure relating to intercountry adoptions	61
131 Provision of financial and other assistance to certain children	61
132 Proceedings for offences	61
133 Savings	61
Schedule 1 Conditions of accreditation for adoption service providers	63

Adoption Regulation 2015

under the

Adoption Act 2000

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 Community Services.

the Act means the *Adoption Act 2000*.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 1 Preliminary

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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 2 Adoption service providers

- (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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 2 Adoption service providers

- (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.

Public consultation draft

- (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

Public consultation draft

Adoption Regulation 2015 [NSW]

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

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*.

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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.

Public consultation draft

Adoption Regulation 2015 [NSW]

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

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.

Public consultation draft

Adoption Regulation 2015 [NSW]

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

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,

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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,

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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:

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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.

Public consultation draft

Adoption Regulation 2015 [NSW]

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

- (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.
- (8) 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.

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, 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 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 is subject and of any information that the relevant decision-maker has been notified of in accordance with a condition of an approval,
 - (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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 5 Placement for adoption and adoption proceedings

- (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

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 5 Placement for adoption and adoption proceedings

- (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:

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 5 Placement for adoption and adoption proceedings

- (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,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 5 Placement for adoption and adoption proceedings

- (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,

Public consultation draft

- (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.

Public consultation draft

- (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.

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,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 5 Placement for adoption and adoption proceedings

- (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),
 - (viii) copies of reports of any medical examinations of the adopted person carried out before the adoption order was made,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

- (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 person'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

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

- (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),
 - (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).

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

- (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 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),
 - (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.
- (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,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

- (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 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),
 - (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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

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 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.

Public consultation draft

- (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,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

- (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 confidential information unless the information source has obtained and taken into account the advice of the Secretary as to whether the information should be supplied and as to the provision of appropriate counselling for the person to whom it is supplied,
 - (c) the information source must not supply confidential information about a birth parent whose name is entered in the Reunion and Information Register unless the information source has taken such action as is reasonable in the circumstances to ascertain whether the birth parent wishes to supply the information personally.

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

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.

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 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, except with the consent of the putative birth father.

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

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 6 Prescribed adoption information

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) Burnside,
 - (c) International Social Service Australia,
 - (d) Link Up (NSW) Aboriginal Corporation,
 - (e) Salvation Army,
 - (f) Wesley Dalmar Child and Family Care.
- (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, and
 - (c) is to be accompanied by the fee or charge payable for the supply of such information or, if the applicant wishes the fee or charge to be reduced or waived by the Secretary, a statement as to why it should be reduced or waived.
- (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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 7 Supply of adoption information

- (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,

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 8 Miscellaneous

- (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.

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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Part 8 Miscellaneous

- (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

Public consultation draft

Adoption Regulation 2015 [NSW]
Schedule 1 Conditions of accreditation for adoption service providers

- (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.

Public consultation draft

Adoption Regulation 2015 [NSW]
Schedule 1 Conditions of accreditation for adoption service providers

- (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 alternative selection criteria used.
- (3) An adoption service provider that uses alternative selection criteria must make those selection criteria publicly available.

Appendix B: Comparison table between Adoption Regulation 2003 and the draft Adoption Regulation 2015

Adoption Regulation 2003		Adoption Regulation 2015	
Clause	Title and content	Clause	Details of amendments
			Note: Most provisions have been renumbered, with consequential amendments made throughout the draft Regulation. Amendments that only renumber references within clauses are not captured below.
Part 1 - Preliminary			
1	Name of Regulation	1	The date of the Regulation is now 2015.
2	Commencement	2	Commencement date 1 September 2015.
3	Definitions	3	Definition of access policy moved to cl 91. Definition of adoption record and appointment decision record deleted. Definition of approved identity information amended to correct a drafting error. Definition of non adopted sibling and non-identifying background information moved to cl 91. Definition of prescribed selection criteria amended to clarify that cll 45 and 59 set out criteria in respect of certain categories of prospective adoptive applicants. A definition of Secretary has been inserted.
4	Notes	4	Updating of clause to provide that notes 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	5	Minor drafting edit to remove reference to s 12(1) of the <i>Adoption Act 2000</i> .
5A	Application for accreditation	6	The words ‘furnish’ have been replaced with ‘provide’ in sub cll (3) and (4).

5B	Taking over an application for accreditation	7	
5C	Deferral of determination of application to renew accreditation	8	The word 'furnish' has been replaced with 'provide' in sub cl (3).
5D	Determination of application for accreditation	9	The word 'provider' has been inserted after 'service' in sub cl 9(1).
5E	Accreditation notice	10	
5F	Public information about accreditations	11	The phrase 'referred to in sub cl (1)' has been removed from sub cl (2).
5G	Children's Guardian may set aside decision not to accredit	12	
5H	Requirements where only provisional accreditation granted	13	
5I	Progression from provisional accreditation to full accreditation	14	References to 'furnish' and 'furnished' replaced with 'provide' and 'provided' in sub cll (3) and (4).
5J	Accreditation criteria must be wholly satisfied	15	
Division 2 – Transfer of Accreditation			
5K	Application of Division	16	
5L	Application for transfer of accreditation	17	References to 'furnish' and 'furnished' replaced with 'provide' and 'provided' in sub cll (2) and (3).
5M	Transfer guidelines	18	
5N	Transfer of accreditation	19	

5O	When transfer takes effect	20	
5P	Consequences of transfer of accreditation	21	
Division 3 – Accreditation administration			
5Q	Form and accreditation period	22	
5R	Accreditation extended after adoption service provider becomes a designated agency	23	
5S	Accreditation extended on deferral until application to renew determined	24	
5T	Accreditation extended until decision not to re-accredit takes effect	25	
5U	Accreditation extended to accommodate changes	26	
5V	Conditions on accreditation and process of accreditation	27	
5W	Accreditation – shortening, suspension and cancellation	28	The words 'furnished' has been replaced with 'provided' in sub cl (2).
5X	Accredited adoption service providers with suspended accreditations	29	
5Y	Accredited services providers with shortened accreditation periods	30	
5Z	Cessation of provision of adoption services and preservation of records of former	31	The heading has been changed to 'Cessation of provision of adoption services' A note has been included to cite relevant provisions in the Act and Regulation that require

	accredited service providers		certain records to be kept.
Division 4 – Principal Officers			
5ZA	Appointment of principal officer	32	
5ZB	Vacancies in office of principal officer	33	
5ZC	Acting principal officer	34	
5ZD	Notifications relating to principal officer and acting principal officers	35	Cl 35(1) is amended to clarify that the reference to the ‘appointment decision record’ is that referred to in cl 32.
Part 3 – Selection of prospective adoptive parents other than step parents, relatives or authorised carers of a child in out-of-home care			
5ZE	Application of Part	36	Minor drafting edit so that it reads ‘Part 3 of Chapter 4’.
6	Form of expression of interest	37	Cl 37(2) is amended to remove the words ‘a period of’ before ‘12 months’.
7	Information to be provided to persons submitting expression of interest	38	
8	Adoptive parent education and training	39	
9	Form of application to adopt	40	
9A	Power to require information	41	
10	Documents to accompany application to adopt	42	Amended to include proof that the applicant is resident or domiciled in NSW.
11	Action to be taken by relevant decision-maker	43	

	after receipt of application to adopt		
11A	Suitability checks	44	
12	Criteria for assessment of applicants	45	
13	Assessment of applicants for adoption in NSW	46	Change to heading to 'Assessment of applicants for adoption'. Amended to remove the note at the end of cl 46(1)(c). Cl 46(7) is amended to replace the word 'furnish' with 'provide'.
14	Notification of assessment of applicants for adoption in NSW	47	Change of heading to 'Notification of assessment of applicants for adoption'. Cl 47(1) is amended to add that the applicant is to be notified of the decision 'as soon as practicable after the decision is made'. Cl 47(2) is amended to add the words 'The notice is to include the following', and to remove the words 'the notice is to be accompanied by' at the beginning of cl 47(2)(a). 'Community Service' amended to read 'Community Services' in cl 47(2)(a). Cl 47(2)(a) is amended to replace 'an' with 'the' before 'applicant'. Cl 47(2)(b) is inserted to add requirements of notice in relation to reasons and right of review (currently in cl 16 of the existing Regulation).
14(3)	Duration of Approval	48	New clause inserted. Amended to remove the reference to an approval subject to conditions. Amended to remove the words 'the period of' before 4 years. Cl 48(2) is inserted to require an approved applicant to notify the decision maker of any significant change of circumstances that might affect that person's approval as soon as practicable after the change occurs. Examples are provided including a deterioration of health, changes in marital status or a pregnancy of the approved person or their de facto partner.

15	Approvals subject to conditions	49	Amended to remove the conditions that require a person to notify of a pregnancy or change in significant circumstances because these are covered by cl 48. Minor drafting edit in cl 49(e).
16	Advice to be given of decision and right to apply for reason, and review of, decision		Amended to delete this clause as it is now covered in cl 47 of draft Regulation.
17	Revocation of approval	50	Amended to remove note at the end of the clause.
Part 4 – Selection of Authorised Carers as Adoptive parents of a Child in their Care			
17A	Application of Part	51	Minor drafting edit to note to insert ‘the’ before the word ‘assessment.’ Minor drafting edit to insert ‘of Chapter 4’ after ‘Part 3A’ in the clause and the note.
17B	Submission of application to adopt	52	
17C	Information to be provided to authorised carers submitting applications to adopt	53	Minor drafting edits to insert ‘of Chapter 4’ after ‘Part 3A’ and remove the plural ‘authorised carers’.
17D	Adoptive parent education and training	54	Minor drafting edit to remove the plural ‘authorised carers’. Amended to add ‘service’ after ‘adoption’. Amended to allow adoptive parent education and training to be required of an authorised carer before or after an application by the authorised carer to adopt a child is submitted.
17E	Documents to accompany application to adopt	55	Amended to include proof that the authorised carer is resident or domiciled in NSW Minor drafting edits to remove plural ‘authorised carers’ and replace ‘such’ with ‘the’.
17F	Action to be taken by relevant decision-maker after receipt of application to adopt	56	Minor drafting edit to remove the plural ‘authorised carers’.
17G	Power to require information	57	Minor drafting edits to remove plural ‘authorised carers’.

17H	Suitability checks	58	Minor drafting edits to remove the plural 'authorised carers' and subsequent removal of the word 'jointly'.
17I	Criteria for assessment of authorised carers who are applicants for adoption in NSW	59	Title Change: Criteria for assessment of authorised carers who are applicants for adoption The clause is amended to refer to authorised carer only in the singular.
17J	Assessment of applicants for adoption in NSW	60	Title Change: Assessment of applicants for adoption Note referring to cl 72 has been removed. Minor drafting edits to remove the plural 'authorised carers'. The clause is amended to refer to 'prescribed' selection criteria. Clause amended to replace the word 'furnish' with 'provide'.
17K	Notification of assessment of authorised carers who are applicants for adoption in NSW	61	Change to heading to 'Notification of assessment of authorised carers who are applicants for adoption' Minor drafting edits to remove plural 'authorised carers'. The clause is amended to insert that notice of a decision is given to an applicant 'as soon as practicable after the decision is made'. The clause is amended to require the notice to include notice of the right to request reasons for, and apply for a review of the decision.
17K(3)		62	Change to heading to 'Duration of Approval' Minor drafting edits to remove plural 'authorised carers' and 'the period of' before '4 years'. Cl 62 (2) is inserted to require an approved authorised carer to notify the decision maker of any significant change in the authorised carer's circumstances that may affect the approval, for example, a deterioration in health, change in marital status, or if the carer or partner becomes pregnant, as soon as practicable after the change occurs.
17L	Approvals subject to conditions	63	The clause is amended to remove sub cll 17L(c) and (d) of the existing Regulation.

17M	Advice to be given of decision and right to apply for reasons for, and review of, decision		This clause is deleted as it is covered in cl 61 of the draft Regulation.
17N	Revocation of approval	64	The note regarding cl 72 is deleted. Minor drafting edits to remove the plural 'authorised carers'.
Part 5 – Placement for adoption and Adoption Proceedings			
Division 1 – Adoption Register			
18	Adoption register	65	The note in cl 18 (e) is deleted. The clause is amended to clarify that it relates only to an application to adopt a child under Part 3 of Chapter 4 of the Act. The clause inserts sub cl (2) which contains the contents of the Adoption Register.
19	Content of Adoption Register		This clause is deleted.
20	Removal of names from adoption register	66	
21	Effect of having name on register	67	
Division 2 – Placement for Adoption			
22	Certain reports required before placement of child	68	
23	Selection of applicants for adoption order	69	This clause is amended to insert 'kept under cl 65' after 'register'. Cl 69(2) is inserted to state that the clause does not apply in the case of a child who is in out-of-home care by the child's authorised carer.
24	Entitlement of approved person to adopt child	70	Cl 70(1) is amended to delete the words 'available for adoption'. Cl 70(2) is amended to remove the bar on placing a child for adoption with an approved

			person if the approved person or their partner is pregnant.
25	Placement of child for adoption in conformity with religious upbringing intentions	71	This clause is amended to clarify that where a child 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 the cll 71 and 72.
26	Placement of child for adoption in conformity with wishes as to cultural heritage, identity or ties	72	
27	Placement where compliance with expressed wishes of parent or guardian impracticable	73	
28	Confidentiality of adoption proceedings	74	
Division 3 – Adoption Plans			
29	Particulars to be contained in plan	75	Change to heading to ‘Contents of adoption plan’ Minor drafting amendment to state that ‘an adoption plan is to contain the following particulars’.
30	Review of adoption plans	76	Change to heading to ‘Review of adoption plan’
Division 4 – Consent to adoption			
31	Counsellors	77	Cl 77(3) is amended to change the age for which a report must be provided by a counsellor in relation to capacity to consent to adoption from ‘16 or under’ to ‘18 or under’. Minor drafting edit to insert ‘for a counsellor’ after ‘qualifications’ in cl 77(2).
32	Register of counsellors	78	Minor drafting edit in cll 78(4) and 78(6)(f).
33	Mandatory written information	79	

34	Form of consent	80	<p>This clause is amended to require the consent to be in a form approved by the Secretary.</p> <p>Cl 80(1)(g)(ii) and 80(3)(h)(ii) amended to remove the words 'and the date on which that period ends'.</p> <p>Minor drafting edits to cl 80(1)(i) and 80(3)(j) to remove the word 'respectively'.</p> <p>The word 'foster parent' is replaced with 'authorised carer'.</p>
35	Classes and descriptions of persons who may witness consents	81	<p>Change to heading to 'Persons who may witness consents'</p> <p>The words 'private foster' are replaced with 'designated'.</p> <p>Minor drafting edit in cl 81(1)(c)(i) to change to 'within the meaning of'.</p>
36	Witnessing a consent	82	<p>This clause is amended to change the age requirement from 16 to 18, so that a witness cannot witness a consent to adoption of a person less than 18, unless a counsellor has prepared a report stating that the person is capable of understanding the effect of the consent.</p> <p>This clause is amended to replace 'registered psychologist' with 'counsellor' at cl 82(3).</p>
37	Notice of signing of general consent	83	<p>Cl 83(6) is amended to allow a copy of the consent to be sent to the Secretary (rather than the original consent).</p> <p>Minor drafting edits in clause to change to active language.</p>
38	No fees payable to witness to consent	84	
39	Period in which person giving consent must be counselled	85	
	Consent to adoption of Aboriginal child or Torres Strait Islander Child	86	<p>New clause is inserted requiring that information under ss 64 and 65 of the <i>Adoption Act 2000</i> be given in the form approved by the Secretary.</p>

Division 5 – Records of Adoptions

43	Prescribed particulars and information	87	Change to heading to 'Required information about adoption orders and discharge orders'
44	Form of records	88	
Division 6 - Miscellaneous			
40 and 41	Preliminary Hearings	89	The clause is amended to replace the existing cl 40 and 41 and remove the note after cl 40.
42	Notice of application for adoption order	90	Cl 90(c) is amended to include the Court case number.
Part 6 – Prescribed adoption information			
Division 1 – General			
45	Prescribed information under section 133	91	Change to heading to 'Definitions' Contains definitions of 'prescribed information', 'access policy', 'non-adopted sibling' and 'non-identifying background information' from the existing cl 3.
Division 2 – Prescribed Information for adoptions after 1 January 2010			
45A	Application of Subdivision	92	Change to heading to 'Application of Division'
45B	Entitlement of adopted person – information prescribed under section 133C	93	Cl 93((1)(b)(vii) amended to delete 'before the placement for adoption', so that an adopted person is entitled to any reasons for the adoption decision irrespective of when the reasons were recorded by the information source. Cl 93(1)(b)(ix) amended to include as prescribed information medical history of the birth parents, siblings and grandparents before the adoption order was made.
45C	Entitlement of adoptive parent – information prescribed under section 133D	94	Cl 94(1)(b)(v) amended to entitle the adoptive parents to reasons for the adoption decision irrespective of when that information is recorded by the information source.

45D	Entitlement of birth parent – information prescribed under section 133E	95	Amended to change reference to ‘child’ to ‘person’ in cl 95(1)(a).
45E	Supply of other information to birth parent – information prescribed under section 133F	96	
45F	Entitlement of non-adopted sibling – information prescribed under section 133G	97	
Division 3 – Prescribed Information for Adoptions before 1 January 2010			
(Minor grammatical drafting edits to the Note in Division 3)			
46A	Application of Subdivision	98	Change to heading to ‘Application of Division’
46	Entitlement of adopted person – information prescribed under section 134	99	<p>Minor drafting changes to the Note under the heading of cl 99.</p> <p>Cl 99(1)(a) is amended to delete the word ‘relevant’.</p> <p>Cl 99(1)(b)(vi) is amended to delete ‘given up’ and replace with ‘placed’.</p> <p>Cl 99(1)(b)(vi) is amended to delete ‘before placement of adoption’ to allow entitlement about reasons for adoption irrespective of when information is recorded by an information source.</p> <p>Cl 99(1)(b)(viii) is amended to include medical history of birth parents and siblings before the adoption order was made as prescribed information.</p> <p>Cl 99(2) is amended to clarify entitlements related to adopted brothers and sisters.</p> <p>Cl 99(1)(b)(x) and (ix) and 99(2)(g) contain minor drafting edits to streamline the provisions.</p>
47	Entitlement of adoptive parent – information prescribed under section 135	100	<p>Minor amendments to the note under heading.</p> <p>Cl 100(1)(a) is amended to delete ‘relevant’ before ‘information’.</p> <p>Cl 100(1)(b)(iii) is amended to delete ‘given up’ and replace with ‘placed’, and the words ‘before the placement for adoption’ are deleted to allow entitlement to reasons irrespective</p>

			of when they were recorded by the information source.
48	Entitlement of birth parent – information prescribed under section 136	101	<p>Cl 101(1)(a) is amended to delete the word ‘relevant’.</p> <p>Minor drafting edits to cl 101(b)(viii) and 101(2)(f).</p> <p>Amended to change ‘child’ to ‘person’ in cl 101(1)(a).</p> <p>Cl 101(5) is amended to remove the requirement that the birth parent be entered on the Reunion and Information Register in order to receive certain information, including advice regarding the death of an adopted person.</p>
Division 4 – Other Prescribed Information			
49	Information prescribed under section 137 relating to deceased birth parent	102	Amended to change ‘child’ to ‘person’ in cl 102(a).
50	Information prescribed under section 137 relating to deceased adopted person	103	
51	Additional prescribed information	104	
Division 5 – Guidelines for Supplying Adoption Information			
52	General guidelines under section 142 for release of birth certificate and prescribed information	105	
52A	Guidelines for exercise of discretion to issue authority to supply adoption information under sections 133E and 133G	106	This clause is amended to simplify and correct information.
53	Guidelines for exercise of discretion to supply adoption information under sections 136A and 140(1)	107	This clause is amended to delete the existing cl 53(3) which is redundant.

54	Guidelines for exercise of discretion to withhold supply of adoption information or supply subject to conditions under section 136A	108	
54A	Guidelines for exercise of discretion to supply adoption information under section 140 (3)	109	
55	Guidelines under section 142 for the release of prescribed information relating to unacknowledged birth fathers	110	<p>Change to heading to 'Guidelines under section 142 for the release of prescribed information relating to putative birth fathers'</p> <p>The clause is amended to delete the term 'unacknowledged' and replace with 'putative' and also to amend the definition of 'putative birth father'.</p> <p>A note is inserted at the end of the clause to clarify that the restriction on the supply of prescribed information in cl 110(3) does not prevent an information source from providing the information to another information source in the execution of the Act and Regulation.</p>
Division 6 - Miscellaneous			
56	Information as to 'last known name and address'	111	Change to heading to 'Information as to last known name and address'
57	Messages	112	Minor drafting edits to simplify language.
Part 7 – Supply of adoption information			
Division 1 – Information Sources			
58	Information sources prescribed under paragraph (g) of definition of 'information source' in Dictionary	113	<p>Change to heading to 'Information Sources and designated persons'</p> <p>This clause is amended to update the names of organisations, removing Post Adoption Resource Centre and Scarba Family Centre as they are already part of the Benevolent Society (which is listed) and simplifying language. International Social Service Australia is also added as an information source.</p>

60	Supply of birth certificate or prescribed information	114	This clause is amended to delete the Note.
61	Exchange of information between information sources	115	
Division 2 – Contact Vetoes			
62	Secretary to endorse details of contact veto on authority to supply adoption information	116	
63	Access to information about a contact veto	117	Minor drafting edit in cl 117(2).
64	Guidelines under section 161 for request to confirm, cancel or vary contact veto	118	
Division 3 – Reunion and Information Register			
66	Definition	119	
67	Information to be updated	120	
68, 69	Leaving and delivery of messages	121	This clause is amended to include email as a way to leave or deliver a message.
70	Document left before the commencement of the Adoption Information Amendment Act 1995	122	Change to heading to 'Documents left before 1 January 1996' Minor drafting edits to simplify language.
71	Offence	123	
Division 4 – Advance Notice			
65	Advance notice period	124	This clause is amended to prescribe a general advance notice period of 3 months and

			remove the limit of 4 months for an advance notice period that the Secretary may permit.
Part 8 - Miscellaneous			
72	Reviewable decisions	125	
73	Case records	126	
74	Restrictions on inspection of documents	127	
74A	When acts of Children's Guardian take effect	128	
75	Fees and charges	129	
76	Expenditure relating to intercountry adoptions	130	
77	Provision of financial and other assistance to certain children	131	
78	Proceedings for offences	132	This clause is amended to correct the title of the relevant authorised officer.
79	Savings	133	The clause has been updated.
Schedule 1 - Conditions of accreditation for adoption service providers			
1	Definition		Deleted (and moved to cl 9 of the Schedule).
2	Negotiations for intercountry adoption services	1	Minor drafting edits to simplify language
3	Provision of domestic adoption services in NSW	2	Minor drafting edits to clarify language

4	Provision of intercountry adoption services in NSW and abroad	3	Minor drafting edits to clarify language
5	Sharing of accommodation with other associations and organisations	4	
9	Undertakings	5	
10	Provision of information to prospective adoptive parents		This clause has been moved to cl 12 of the Schedule
11	Fees	6	Change to heading to 'Fees to be publicly available'. Amended to require fees to be published on website
12	Entry to premises and inspection of records	7	Minor drafting edits to change 'public servant' to 'employee' and 'furnish' to 'provide'.
13	Provision of reports and information to Secretary and Children's Guardian	8	
14	Conflicts of interest	9	This clause has been amended to include the definition of 'member of staff' in cl 1 of the existing Schedule.
15	Appointment of foreign representatives	10	
16	Notification of certain changes	11	Minor drafting edits to simplify language.
16A	Notification of criteria for assessment of applicants for adoption	12	Change to heading to 'Selection criteria for applicants for adoption' This clause is amended to require an adoption service provider to publish alternative selection criteria.

Appendix C: Submissions received in response to Discussion Paper

Community Services Responses

- Out-of-Home Care
- Adoption and Permanent Care
- Aboriginal Services Branch
- Records Access

Responses from external agencies

- Aboriginal Child, Family and Community Care State Secretariat (AbSec)
- Anglicare
- Association of Children's Welfare Agencies
- CatholicCare
- Commission for Children & Young People
- Department of Attorney General & Justice
- International Social Services Australia
- NSW Committee on Adoption and Permanent Care Inc
- NSW Crown Solicitor's Office
- Office of the Children's Guardian
- Supreme Court of New South Wales
- The Salvation Army

Family and Community Services
Locked Bag 4028
Ashfield NSW 2131