

1991 - No. 111

ADOPTION INFORMATION ACT 1990 - REGULATION

(Adoption Information Regulation 1991)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Adoption Information Act 1990, has been pleased to make the Regulation set forth hereunder.

ROBERT WEBSTER

Minister for Family and Community Services.

PART 1 - PRELIMINARY

Citation

1. This Regulation may be cited as the Adoption Information Regulation 1991.

Commencement

2. (1) This Regulation commences on 2 April 1991, except as provided by subclause (2).

(2) This Part and clause 16 commence on the day on which this Regulation is published in the Gazette.

Definitions

3. In this Regulation:

"**adoptive family**" means adoptive parents and their children, whether natural or adopted;

"the Act" means the Adoption Information Act 1990.

**PART 2 - PRESCRIBED INFORMATION TO WHICH PERSONS
ARE ENTITLED**

Purpose of this Part

4. (1) This Part prescribes the additional information relating to adoptions which certain persons are entitled to receive under and subject to the Act.

(2) The Act prescribes the circumstances in which the original or amended birth certificates of adopted persons may be supplied.

Entitlement of adopted person - information prescribed under section 6

5. An adopted person is entitled to receive (subject to the Act) the following information held by an information source:

- (a) information relating to a birth parent, being:
 - . age
 - . date of birth
 - . nationality
 - . ethnic background
 - . birth certificate
 - . marriage certificate
 - . death certificate
 - . education (including information as to the number of years at school and qualifications obtained)
 - . occupation
 - . physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
 - . hobbies and interests
 - . religion
 - . medical history before the adoption order was made (being details of the birth of the adopted person or information relevant to the current or future physical or mental health of the adopted person)
 - . other children (including number of children and their age and sex)

- . reason the person was adopted (as stated by the birth parent or assessed by the information source before placement for adoption)
 - . length and nature of relationship of the adopted person's birth parents
 - . last known name and address (not being information referred to in clause 14)
 - . date on which birth parent placed child for adoption
 - . date of adoption order
 - . copies of medical reports of examinations of the adopted person made when the child was in the custody of birth parent (excluding any information that could be used to identify the birth parent)
 - . the following information concerning parents, brothers and sisters (that is, the adopted person's grandparents, aunts and uncles):
 - last known name and address (not being information referred to in clause 14)
 - age
 - date of birth
 - nationality
 - ethnic background
 - education (including information as to the number of years at school and qualifications obtained)
 - occupation
 - physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
 - hobbies and interests
 - medical history before the adoption order was made (being information relevant to the current or future physical or mental health of the adopted person)
 - . photographs and other documents given to the information source by a birth parent for the adopted person if a release is given in accordance with clause 15;
- (b) information relating to an adopted brother or sister of an adopted person who is 18 or more years old:
- . adoptive name
 - . date of placement for adoption
 - . date of adoption order
 - . the following details concerning adoptive parents:

- age
 - nationality
 - ethnic background
 - occupation
 - hobbies and interests
 - religion
 - composition of adoptive family (including number of children and their age and sex);
- (c) information relating to a birth parent or adopted brother or sister referred to in clause 10.

Entitlement of adoptive parent - information prescribed under section 7

6. An adoptive parent of an adopted person is entitled to receive (subject to the Act) the following information relating to the adopted person held by an information source:

- (a) if the adopted person is less than 18 years old:
- . the following details concerning birth parents, grandparents, aunts and uncles:
 - age
 - nationality
 - ethnic background
 - education
 - occupation
 - physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
 - hobbies and interests
 - . religion of birth parents
 - . medical history of birth family (being persons related by blood to the adopted person) before the adoption order was made (being details of the birth of the adopted person or information relevant to the current or future physical or mental health of the adopted person)
 - . copies of medical reports of examinations of the adopted person conducted before placement for adoption (excluding any information that could be used to identify a birth parent, grandparent, aunt or uncle)

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- . date of placement for adoption
 - . date of adoption order
 - . reason the person was adopted (as stated by the birth parent or assessed by the information source before placement for adoption)
 - . length and nature of relationship of the adopted person's birth parents
 - . whether the birth parents have or had any children other than the adopted person
 - . whether a birth parent was fostered or adopted
 - . photographs and other documents given to the information source by a birth parent for the adopted person if a release is given in accordance with clause 15;
- (b) information relating to the adopted person referred to in clause 10.

Entitlement of birth parent - information prescribed under section 8

7. A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to the Act) the following information held by an information source:

- (a) information relating to the adopted person, being:
- . birth details (including the time of birth and weight and length of the person at birth)
 - . date of placement for adoption
 - . date of adoption order
 - . last known name and address (not being information referred to in clause 14)
 - . marriage certificate
 - . death certificate
 - . health and welfare of the adopted person after placement for adoption
 - . photographs and other documents relating to the adopted person and adoptive family given to the information source for the birth parent if a release is given in accordance with clause 15;

- (b) information relating to an adoptive parent, being:
 - . age
 - . nationality
 - . ethnic background
 - . physical appearance (including height, weight, colour of hair and eyes, complexion and other information of a similar nature)
 - . occupation
 - . hobbies and interests
 - . religion
 - . composition of family (including number of children and their age and sex);
- (c) information relating to an adopted person or adoptive parent referred to in clause 10.

Information prescribed under section 9 relating to deceased birth parent

8. A relative, spouse or other person having 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:

- . information described in clause 7 (a) relating to an adopted person of any age
- . adoption consent given by the birth parent
- . request to arrange adoption made by the birth parent
- . information relating to a deceased birth parent referred to in clause 10.

Information prescribed under section 9 relating to deceased adopted person

9. A relative, spouse or other person having 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:

- . information described in clause 5 (a) relating to the birth parent
- . date of placement for adoption
- . date of adoption
- . copies of medical reports of examinations of the adopted person conducted before placement for adoption (excluding any information that could be used to identify a birth parent of the adopted person)

information relating to a deceased adopted person referred to in clause 10.

Additional prescribed information

10. (1) The following information is prescribed as information for the purposes of sections 6-9 of the Act, namely, information:

- (a) that is supplied by the Director-General or authorised by the Director-General to be supplied by the Principal Registrar or some other information source; and
- (b) that the Director-General is satisfied would, if disclosed, promote the welfare and best interests of either or both the party seeking the information and the person affected by the supply of the information; and
- (c) that the Director-General is satisfied is unlikely to be able to be obtained from any other source.

(2) Information prescribed by this clause is not to be supplied unless:

- (a) the Director-General has notified the person affected by the supply of the information of the intention to supply the information, but only if it is reasonably practicable to do so; and
- (b) a period of not less than 7 days has expired since the person was so notified; and
- (c) the Director-General has considered any submissions received from the person concerning supply of the information before the expiration of that period.

General guidelines under section 13 for release of prescribed information etc.

11. (1) An information source is to comply with the following guidelines in connection with the supply of any birth certificate 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; and
- (b) the information source must not supply confidential information unless the information source has obtained and taken into account the advice of the Director-General as to whether the information should be supplied and as to the

provision of appropriate counselling for the person to whom it is supplied.

(2) In this clause:

"**confidential information**" means information indicating that an adopted person was conceived as a result of an incestuous relationship between his or her birth parents or the sexual assault of his or her birth mother.

Guidelines under section 13 for release of prescribed information relating to unacknowledged birth fathers

12. (1) In this clause:

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

- (a) is not shown on the adopted person's original birth certificate as the person's father; or
- (b) is not, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person; or
- (c) is not, under the Family Law Act 1975 of the Commonwealth, to be presumed to be the father of the adopted child.

(2) An information source is not to supply prescribed information relating to an unacknowledged birth father if, in the opinion of the information source, the information could be used to identify the unacknowledged birth father or his parents, brothers or sisters, except with the consent of the unacknowledged birth father.

Guidelines under section 13 for exercise of discretion to supply a birth certificate or prescribed information under section 12

13. (1) The Director-General is to comply with the guidelines set out in this clause in connection with the supply of a birth certificate or prescribed information before an entitlement to the certificate or information arises under Part 2 of the Act.

(2) The Director-General is not to supply a birth certificate or prescribed information to an adopted person who is less than 18 years old against the wishes of a birth parent until such period (being a period of not less than 7 days) after the birth parent's refusal to consent to the supply as will, in the opinion of the Director-General, enable the birth parent (if he or she so wishes) to lodge a contact veto.

(3) The Director-General is to supply a birth parent with an amended birth certificate or prescribed information relating to an adopted person who is less than 18 years old only if:

- (a) the relationship between the adopted person and the adoptive parents has broken down and the adopted person is living separately from the adoptive parents; or
- (b) the adoptive parents support the supply of the birth certificate or prescribed information; or
- (c) the adoptive parents have died,

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

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

- (a) there is no contact veto in force against contact by the person with the person to whom the information relates; and
- (b) in the opinion of the Director-General, the information could not be used to identify the person to whom it relates.

Information as to "last known name and address"

14. The last known name and address of a person held by an information source is not prescribed information if the information:

- (a) was obtained through lodgment of a contact veto by the person under section 18 of the Act; or
- (b) was obtained through the person signing an undertaking under section 27 of the Act; or
- (c) was obtained through action taken to locate the person under section 34 of the Act and the person has not, by entering his or her name on the Reunion Information Register, expressed a desire to be reunited with the person wishing to be supplied with the name and address; or
- (d) was obtained through action taken to locate the person under Regulation 32D of the Adoption of Children Regulations (as in force before the commencement of section 42 of the Act) and the person has not, by entering his or her name on the Reunion

- Information Register, expressed a desire to be reunited with the person wishing to be supplied with the name and address; or
- (e) was obtained through action taken by the information source on behalf of an adopted person, birth parent or adoptive parent to obtain information (other than the name and address) which the adopted person, birth parent or adoptive parent is (or after the commencement of Part 2 of the Act would have been) entitled to receive under the Act and the person has not consented in writing to supply of the name and address; or
 - (f) was obtained through action taken on behalf of a relative, spouse or other person having a de facto or other close personal relationship with a deceased adopted person or deceased birth parent to obtain information (other than the name and address) which might be supplied under section 9 of the Act and the person has not consented in writing to supply of the name and address.

Photographs and other documents

15. A photograph or other document referred to in clause 5 (a), 6 (a) or 7 (a) given to an information source for an adopted person or birth parent is not prescribed information unless the person giving the photograph or document to the information source has signed a release (in a form approved by the Director-General) consenting to the supply of all such photographs or documents.

PART 3 - CONTACT VETOES

Access to information about a contact veto

16. (1) An application may be made to the Director-General by an adopted person who is 18 or more years old or a birth parent of such a person or a relative, spouse or other person referred to in section 9 of the Act for the Director-General to supply

- (a) a statement as to whether a veto objecting to contact by the person with an adopted person or a birth parent has been entered in the Contact Veto Register; and
- (b) if a veto has been entered, details of the date of birth of the person who objects to contact and the relationship of the person to the applicant.

- (2) An application under this clause:
- (a) is to be made in a form approved by the Director-General; and
 - (b) is to be accompanied by proof (to the satisfaction of the Director-General) of 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 to be waived or reduced by the Director-General, a statement as to why it should be waived or reduced.

Guidelines under section 24 for request to confirm, cancel or vary contact veto

17. Unless the Director-General considers that the circumstances are exceptional, the Director-General is not to deal with an applicant's request under section 24 of the Act to approach a person who has lodged a contact veto if:

- (a) the request is made within 6 months after the contact veto took effect; or
- (b) the person who lodged the contact veto was approached by the Director-General on a previous occasion at the request of the applicant and gave no indication that he or she might be willing in specified circumstances to cancel or vary the contact veto; or
- (c) the person was so approached and gave such an indication but the circumstances have not arisen or are not, in the opinion of the Director-General, likely to arise.

PART 4 - INFORMATION SOURCES

Information sources prescribed under paragraph (g) of definition of "information source" in section 3

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

Briarways Private Hospital, Guildford
Burnside
Dalmar Child and Family Care
Mercy Family Life Centre

Salvation Army Post-Adoption Service
Scarba Family Centre

Designated persons

19. (1) The person prescribed under section 11 (4) (h) of the Act as the designated person to deal with an application to an institution, body or person (prescribed under clause 18) for the supply of a birth certificate or prescribed information under Part 2 of the Act is the chief executive officer, by whatever title he or she is known, of the institution, body or person.

(2) The guidelines to be followed by a designated person in relation to an information source in authorising another person to exercise a function of the designated person are:

- (a) the person must be a senior officer or member of the information source; and
- (b) the person must, in the opinion of the designated person, have sufficient capacity to understand and responsibly exercise the functions of the designated person under the Act.

Exchange of information between information sources

20. (1) If a person who is entitled to receive information under the Act:

- (a) made an application for the supply of the information to an information source which does not hold the information; and
- (b) the information source know of another information source which does hold the information,

the information source to whom the application is made may request the other information source 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.

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PART 3 - CONTACT VETOES

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PART 4 - INFORMATION SOURCES

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EXPLANATORY NOTE

The object of this Regulation is to prescribe the matters necessary to bring the Adoption Information Act 1990 into operation.

The Regulation is primarily concerned with the prescription of the types of information (apart from the original or amended birth certificates of adopted persons) that adopted persons, adoptive parents, birth parents and relatives, spouses and other persons are entitled to receive under the Act. In most cases the information could be categorised as non-identifying in that it is unlikely by itself to reveal the identity of the person to whom it relates. Generally, the information may be obtained under the Act after the adopted person or birth parent has obtained the original or amended birth certificate in accordance with the Act or after the death of the adopted person or birth parent.

The Regulation also prescribes the guidelines which must be followed by information sources in disclosing information under the Act. These include guidelines intended to ensure that a person who might be identified by information disclosed under the Act has an opportunity to lodge a veto objecting to contact by the person to whom it is supplied (e.g. clause 13 (2)). Guidelines are also prescribed to ensure that information is supplied only to those entitled to it (e.g. cl. 11 (1) (a)) and that highly sensitive information is not supplied without considering the need for counselling of the person affected (e.g. cl. 11 (1) (b)) and to protect the privacy of persons (e.g. cl. 12 and 17).

Other matters covered by the Regulation include:

- (a) prescription of certain charitable institutions, bodies and persons as information sources for the purposes of the Act; and
 - (b) provision for the exchange of information between information sources.
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