

# Guidelines for the Release of Adoption Information

These guidelines are published pursuant to sections 133E and 133G of the *Adoption Act 2000* and relate to the supply of adoption information to birth parents and non-adopted siblings of adopted persons under 18 years of age for adoptions finalised on or after 1 January 2010.

## 1. INTRODUCTION

The purpose of these guidelines is to assist the Secretary of the Department of Family and Community Services (Department) to determine for adoptions after 1 January 2010, whether the supply of adoption information, as outlined in sections 133E and 133G of the *Adoption Act 2000* concerning an adopted person who is less than 18 years of age, poses a risk to the safety, welfare or well-being of the adopted child or adoptive parents.

Amendments to the *Adoption Act 2000* (the Act) introduced by the *Adoption Amendment Act 2008* provide for greater access to adoption information (such as birth certificates and adoption orders) for adopted children, adoptive parents, birth parents and siblings in respect of an adoption given effect to by an adoption order made on or after 1 January 2010. The amendments arise from a review of the Act undertaken by the Department in 2006.

These changes represent an important step along the continuum of open adoption practice. They will ensure adopted children have an accurate picture of their identity from an early age. The changes will also encourage the establishment of sibling relationships for children affected by adoption which may endure a lifetime and will also assist the adopted child in attaining a greater understanding of their birth family heritage, identity and culture.

As adoption has become more open, it has generally been found that in approaching information sharing and contact both birth and adoptive families have the child's best interests at heart. Many of the relationships develop in a positive way as people get to know one another.

Research has demonstrated that for children growing up with adoptive parents, contact with immediate and extended birth family, community and culture is generally beneficial in assisting them to develop and maintain a sense of their identity and background.

Appendix A provides definitions of the terminology used in these guidelines.

## 2. PRINCIPLES THAT UNDERPIN THESE GUIDELINES

These guidelines have been developed having regard to the need for adoption decisions to be made with reference to all of the objects and principles set out in sections 7-9 of the Act, with particular attention to the following objects and principles:

- To encourage openness in adoption (s7(g)).

- To ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage (s7(c)).
- The best interests of the child, both in childhood and in later life, must be the paramount consideration (s8(1)(a)).
- If the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances (s8(1)(d)).
- A child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved (s8(1)(e)).
- The need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour (s8(2)U)).
- To ensure that a child is able to participate in any decision that has a significant impact on his or her life (s9(1)).

### **3. AUTHORITY OF THE SECRETARY TO PROVIDE OR REFUSE ACCESS TO INFORMATION**

Section 133E of the Act provides for birth parents' rights to adoption information for adoptions given effect to by an adoption order made on or after 1 January 2010. Under section 133E, a birth parent may access identifying information about an adopted person under 18 years of age, unless the Secretary is of the opinion that the release of that information would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents. In these circumstances, the Secretary may refuse to issue an authority to supply adoption information (Adoption Information Certificate) or issue an Adoption Information Certificate subject to conditions.

Section 133G of the Act provides for non-adopted siblings' rights to adoption information for adoptions given effect to by an adoption order made on or after 1 January 2010. Under section 133G, a non-adopted sibling will be able to access identifying information about an adopted person. If the non-adopted sibling is under 18 years of age, their parent(s)' consent to apply will be required. In some circumstances where the parent(s)' consent is not possible to obtain, the Secretary's consent is required. If the adopted person is under 18 years of age, the Chief Executive may refuse to issue the Adoption Information Certificate if the release of that information would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.

In determining an application from a non-adopted sibling it will be necessary to include the birth parent(s) in the assessment of risk as any identifying information obtained by a non-adopted sibling may be communicated to the birth parent(s).

#### **3.1 Overview of assessment process**

Persons seeking to access adoption information under section 133E or 133G of the Act

must apply to the Department for an Adoption Information Certificate. The purpose of the Adoption Information Certificate is to authorise an information source to supply adoption information.

An assessment of the risk to the safety, welfare or well-being of the adopted child or adoptive parents will be undertaken by the Department when an application for an Adoption Information Certificate is received from a birth parent or non-adopted sibling and the adopted person is under 18 years of age. Following is an overview of the risk assessment process:

- i. As a first step the Department will determine if the adoption was arranged by the Department of Family and Community Services or a non-government adoption service provider. When a non-government adoption service provider arranged the adoption, the Department will advise them of the application for adoption information and ask them to prepare a review report that identifies any risks in releasing adoption information. The reviewing agency's report and recommendation, including any conditions, will be considered by the Department as part of the risk assessment.

In the case of an out-of-home care adoption arranged by the Department, if the out-of-home care service provider with case management responsibility undertook the adoption assessment and prepared the adoption assessment report, it will be the reviewing agency and will be asked to prepare the report and recommendation. In all other cases the Department will prepare the report and recommendation.

- ii. The reviewing agency preparing the report and recommendation will undertake a review of its records to identify any issues of concern to the safety, welfare and well-being of the adopted child or adoptive parents and will contact the adoptive parents and adopted child and seek their views about the release of adoption information.
- iii. The Department will conduct a KiDS safety check and review their current records.
- iv. If no issues of concern relating to the safety, welfare and well-being of the adopted child or adoptive parents have been identified at stages (i) to (iii), the Department will complete the risk assessment (to be referred to as a Risk Assessment Level 1) and submit a recommendation to the Secretary to approve or approve with conditions the application for an Adoption Information Certificate.
- v. If issues of concern relating to the safety, welfare and well-being of the adopted child or adoptive parents are identified, a Risk Assessment Level 2 will be undertaken by the Department with the assistance of adoption and out-of-home care service providers as necessary. An interview may be required with the applicant and other relevant parties. A detailed file review will be undertaken by relevant agencies and information may be sought from other Government agencies with the applicant's permission.

- vi. Following the completion of the Risk Assessment Level 2, the Department will make a recommendation to the Secretary on whether to approve, approve with conditions or refuse the application for an Adoption Information Certificate.
- vii. Where the application relates to an Aboriginal child, the Secretary will consult with an appropriate community-based Aboriginal organisation before making a decision.
- viii. Written notice of the Secretary's decision, including the reasons for the decision and information about how the decision may be reviewed, will be provided to the applicant and the adoptive parents.

Where the adopted child is 16 years of age or over and it is considered necessary, the Secretary will also provide written notice of the decision to the child.

- ix. At the expiration of 28 days following a decision to approve, or approve with conditions, the application for an Adoption Information Certificate, the Adoption Information Certificate will be provided to the applicant provided:
  - a. the Secretary has not received a request for an internal review of the decision from the adoptive parents or adopted child; and
  - b. there has been compliance with any conditions.

### 3.2 Risk assessment

#### Relevant considerations for the risk assessment

The following are details about relevant considerations for assessing whether the release of information will pose a risk to the safety, welfare or wellbeing of the adopted child and/or their adoptive parents:

#### *Q The views of the adopted child and his or her adoptive parents*

The views and wishes of the child and the adoptive parents must be taken into account when assessing whether or not the disclosure of information will pose a risk to the safety, welfare or wellbeing of the adopted child or the adoptive parents. Concerns about any such risks for other members of the adoptive family also need to be considered. These views may be ascertained at a face-to-face meeting, via a telephone conversation or correspondence and be included in the report prepared by the reviewing agency.

The adopted child must be given every opportunity to freely express their views according to their age and developmental capacity. The adopted child may need help in understanding the implications of the release of information and may require help from a professional, preferably someone who has a significant relationship with the child, to understand the matter and express their view. For an Aboriginal child, an Aboriginal person known to the child must be identified for this role. The views of the adopted child must be given due weight in accordance with the developmental capacity of the child and the circumstances.

If the adoptive parents and the adopted child agree in writing to the information being released and a review of records that includes current records and the KiDS database does not identify any issues of concern, the application for an Adoption Information Certificate should be approved without further assessment.

If the adopted child or the adoptive parents oppose the disclosure of adoption information, a Risk Assessment Level 2 must be undertaken. The reasons for their opposition will be sought, evaluated, and the discussions recorded.

Concerns by adoptive parents regarding the possible difficulties of contact with birth parents or siblings is not a sufficient reason to withhold supply of information, where it has been assessed that there is no risk to the safety, welfare or well-being of the adopted child or the adoptive parents.

*(ii) A review of relevant records*

The reviewing agency must consider any information on the child's records that indicate the release of information will pose a risk to the safety, welfare or well-being of the adopted child and/or their adoptive parents.

Before a decision is made about the release of information, the Department will review current records and the KiDS database. Current records will include records of the adoption and any post-adoption support provided.

When issues of concern are identified a Risk Assessment Level 2 will be undertaken by the Department. This will include a full review of all the child's files held by the reviewing agency, The Department and any other service providers involved with the child. For instance, when the child was in out-of-home care prior to the adoption, the review will include the child's files held by any service provider that supervised the child prior to and after the adoption.

Records may indicate relevant concerns, including those related to:

- the applicant's views at the time the adoption occurred
- whether consent to the adoption was voluntary or dispensed with by the Court any concerns that arose for the Secretary or Minister in administering his/her parental responsibilities for the child
- whether contact has occurred between the parties both before and after the adoption, the nature of the contact and whether issues arose affecting the safety, welfare or well-being of the adopted child or adoptive parents
- the existence of other relevant orders made in care and protection, criminal and family law jurisdictions that indicate the release of information could adversely affect the safety, welfare or well-being of the adopted child or the adoptive parents.

*(iii) Information about the applicant*

The reviewing agency should consider all relevant information about the applicant held within the records or revealed through contact with the applicant. Where the applicant is a non-adopted sibling it will be necessary to also consider relevant information about the birth parent.

If a review of these records raises concerns regarding the safety, welfare and wellbeing of the child, a Risk Assessment Level 2 should be undertaken that includes an interview with relevant parties. If the applicant is a non-adopted sibling, the birth parent should also be interviewed.

Relevant considerations about the applicant and their behaviour that may give rise to a reasonable belief that the release of information would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents include the following:

- Information indicating the likelihood of frequent inappropriate intrusion, harassment, or other confronting physical or emotional behaviour by the applicant into the life of the child and adoptive parents.
- Information that the applicant had in the past a history of violent behaviour (for example, a record of sexual and violent offences or child protection orders), substance misuse, or a history of mental illness resulting in concerning behaviour.
- The applicant's current management of their behaviour and/or illness. A history of violent behaviour, substance misuse, or mental illness may not pose a risk to the safety, welfare or well-being of the adopted child and his or her adoptive parents, if the condition is now effectively and responsibly managed.

If concerns in relation to any of these matters remain and further detailed assessment is required, the Department may ask the applicant to provide a report from a suitably qualified professional and/or sign their consent for the Department to obtain additional information related to the issue of concern.

Identifying that an applicant has a history that includes any of the above considerations may not indicate a risk to the safety, welfare or well-being of the adopted child or the adoptive parents where the applicant's current circumstances have been assessed and the considerations found to be either well managed or no longer current.

*(iv) Previous contact and exchange of information between the applicant and the adopted child and adoptive parents*

The reviewing agency should consider, if contact has previously occurred between the applicant and the adopted child and adoptive parents, whether issues arose in the contact that adversely affected the safety, welfare or well-being of the adopted child or adoptive parents. For children adopted from out-of-home care, the nature of contact during the out-of-home care placement should also be taken into account.

If an exchange of information and/or contact between the applicant and the adopted child was provided for in an Adoption Plan, the reviewing agency should consider whether or not information was exchanged and/or contact occurred and the adopted child's, adoptive parent(s)' and birth parent(s)' views about this.

Where the child was previously in out-of-home care, any previous decisions recorded on the child's file regarding the release of placement information to the birth parents under s149B-K of the *Children and Young Persons (Care and Protection) Act 1998* should be reviewed and the consequences for all parties around the release of that information assessed.

#### *Involvement of multiple service providers*

Where the report by the reviewing agency raises concerns regarding the safety, welfare and wellbeing of the child, it may be necessary for the Department as part of the Risk Assessment Level 2 to obtain input from a variety of government or non-government agencies known to be involved with the birth parent and/or siblings.

For instance, where the birth parents have had other children in out-of-home care and these placements have been case managed by a non-government service provider, the provider may have important information to inform the risk assessment. The birth parent and/or sibling would be asked to give their written authority to obtain information from other service providers, such as in health or corrective services, for the risk assessment process. Information could be obtained from client records or from the service provider's current involvement with the birth parent and/or siblings.

#### *Where the contact details of the adopted child and his or her adoptive parents are unknown*

The reviewing agency must make reasonable efforts to locate the adopted child and their adoptive parents, to ensure they have the best opportunity to have their views heard. This should include consulting the White Pages® Online and other appropriate, current search methods when the adoptive parents cannot be located at their last known address.

In circumstances where the adoptive family cannot be located to ascertain their views, the reviewing agency should consider all other relevant information in making a recommendation as to whether the release of information would pose a risk to the safety, welfare or wellbeing of the adopted child or the adoptive parents.

#### *Where the applicant resides overseas*

Where a child has been adopted through the intercountry adoption program and the applicant resides overseas, a risk assessment in line with the guidelines must be completed. In conducting the risk assessment a reviewing agency or the Department may have less information available, particularly around the applicant and their behaviour. However, the risk assessment must still involve gathering the information available, including the views of the adopted child and his or her adoptive parent(s) and consulting relevant files and court or tribunal documents. If concerns are identified, the overseas

adoption authority involved may be requested to provide relevant information held on the applicant.

### 3.3 Outcome of the risk assessment

At the completion of their review and report, the reviewing agency will make a recommendation to the Department about whether the release of information would pose a risk to the safety, welfare and wellbeing of the adopted child or adoptive parents.

The Department will take into account the recommendation of the reviewing agency and if it does not have information from the risk assessment that indicates the release of information would pose a risk to the safety, welfare or well-being of the adopted child or the adoptive parents, then a recommendation should be prepared recommending the Secretary approve the application with or without conditions and issue an Adoption Information Certificate.

Where the Secretary has a reasonable belief that the release of information would pose a risk to the safety, welfare or well-being of the adopted child and/or their adoptive parent(s), a recommendation must be made that the application for an Adoption Information Certificate either be:

- declined, or
- approved, with conditions imposed.

Where the application relates to an Aboriginal child, the Secretary must consult with an appropriate community-based Aboriginal organisation before making a decision.

Conditions that may be imposed on the issue of an Adoption Information Certificate would address the risk to the safety, welfare or well-being of the adopted child and the adoptive parent(s). The conditions would be determined on a case-by-case basis and would apply to the particular concerns that have been identified and the circumstances of the parties.

Written notice of the Secretary decision, including the reasons for the decision and information about how the decision may be reviewed will be provided to the applicant and the adoptive parents.

The Secretary will also provide the adopted child with written notice of the decision, where the child is 16 years of age or over and it is considered necessary. For example, where the relationship between the child and the adoptive parents has broken down, or where the adopted child no longer lives with the adoptive parents.

The Adoption Information Certificate will be issued no less than 28 days following the date of the letters advising the outcome of the application to applicant and adoptive parents (and child where relevant). The Adoption Information Certificate will not be released unless there is compliance with any conditions.

## 4. REVIEW

If the applicant, adoptive parents or adopted child disagree with a decision to approve or refuse to issue an Adoption Information Certificate, under section 133E or 133G of the

Act, the applicant, adoptive parents or child may apply for an internal review of the decision, consistent with the internal review process outlined in section 192 of the Act.

The internal review must be requested within 28 days of the date on the notice from the Secretary of the decision.

The internal review process must be conducted by the Department and may affirm, vary or set aside the decision, or make a decision in substitution. The Secretary must advise the person seeking the review of the decision in writing the reasons for the decision within 60 days of receiving the application for the internal review.

Following advice of the outcome of an internal review, the applicant, adoptive parents or child may apply to the Administrative Decisions Tribunal (ADT) for a review of the Secretary's decision if they remain dissatisfied with the decision. The applicant, adoptive parents or the child have 21 days from the date of the outcome of the internal review being sent to them to request an ADT review.

The ADT will be advised when the application relates to an Aboriginal child, so whenever it is possible, Aboriginal representation on the ADT will be arranged.

Issue of an Adoption Information Certificate must not be approved or proceed while the decision is subject to internal review or an ADT review. If the application for review is withdrawn then the review process ceases.

If an internal review has occurred at the request of the adoptive parents or the child and the authority to supply information is still approved and the adoptive parents or child do not seek a review of the decision through the ADT, the Adoption Information Certificate will be issued by the Chief Executive after a period of 21 days following the date of the letter advising the adoptive parents or child of the outcome of the internal review. The adoptive parents or child (if age appropriate) will also be advised in writing when the Adoption Information Certificate has been issued.

A decision by the ADT is binding and must be complied with by all parties.

A decision to refuse the issue of an Adoption Information Certificate will remain in force for two years from the date of that decision being made. After this time an applicant may reapply.

## **5. FEES**

The gazetted fees for services will apply to all parties. There are no fees for parties with a direct entitlement to adoption information under sections 133E and 133G of the Adoption Act 2000. All parties will be responsible for fees set by the Registry of Births, Deaths and Marriages for obtaining information from the Registry.

## APPENDIX A

### DEFINITIONS

Adopted child means a person who was adopted in NSW and is less than 18 years of age.

Adoption information means any of the following: birth certificate, adoption order, adopted person's birth record or other information as prescribed by the regulations.

Reviewing agency means either the Department of Family and Community Services or the non-government service provider responsible for preparing a review report and recommendation to be considered as part of the risk assessment process.

Birth parent means a biological parent of an adopted person.

Contact means any form of contact between the adopted child and/or their adoptive family, and the child's birth family. This includes face to face meetings (supervised or unsupervised), correspondence, telephone calls, and internet communication.

The Secretary means the Secretary of the Department of Family and Community Services or a delegate of the Secretary.

Identifying information means any information that could be used to identify a party to an adoption. It is not limited to names and addresses but includes information that, when combined with other information, could be used to identify the person.

Information source means:

- (a) Department of Family and Community Services
- (b) the Department of Health
- (c) an accredited adoption service provider, or
- (d) a hospital, or
- (e) the Office of the Registrar of Births Deaths and marriages, or
- (f) the Supreme Court, or
- (g) any other institution, body or person prescribed in the regulations. These include The Benevolent Society, Post Adoption Resource Centre, Scarba Family Centre, Burnside, Barnardo's, Link-up (NSW) Aboriginal Corporation, Salvation Army Post-Adoption Service and Wesley Dalmar Child and Family Care.

Parties to an adoption means the following:

- (a) the child
- (b) the birth parent or parents
- (c) the adoptive parent or parents
- (d) the Secretary
- (e) the appropriate Principal Officer of an accredited adoption service provider specified under section 19 of the Act.

Risk assessment means an assessment of the likely risk(s) posed to the safety, welfare, or well-being of an adopted person under the age of 18 years and/or his or her adoptive parents by the release of identifying information about the adopted person to a birth parent and/or non-adopted birth sibling.

Adoption Information Certificate is the term used to describe a document issued by the Department of Family and Community Services' Adoption Information Unit that entitles the bearer to approach and request an information source to supply adoption information about the child, birth parents, siblings and adoptive parents from their records.