



New South Wales

Children and Young Persons (Care and Protection) Regulation 2000

under the

Children and Young Persons (Care and Protection) Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

FAYE LO PO', M.P.,

Minister for Community Services

Explanatory note

This Regulation provides for a number of matters under the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**), including the following:

- (a) access to certain information and records kept under the Act,
- (b) protection of communications made during alternative dispute resolution under the Act from disclosure except in certain circumstances,
- (c) the form and contents of care plans and alternative parenting plans,
- (d) the carrying out of certain medical treatments of children.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998* (as amended by the *Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000*), including section 264 (the general regulation-making power).

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Clause 1 Children and Young Persons (Care and Protection) Regulation 2000

Part 1 Preliminary

Children and Young Persons (Care and Protection) Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Regulation 2000*.

2 Commencement

This Regulation commences on 18 December 2000.

3 Definitions

In this Regulation:

Children's Court Advisory Committee means the Children's Court Advisory Committee established under the *Children's Court Act 1987*.

the Act means the *Children and Young Persons (Care and Protection) Act 1998*.

the 1987 Act means the *Children (Care and Protection) Act 1987*.

4 Notes

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

Part 2 General

5 Meaning of “related” and “relative”

A child or young person is “related” to, or a “relative” of, another person, for the purposes of the Act:

- (a) if the child or young person is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person, or
- (b) if the other person has parental responsibility for the child or young person (but not including the Minister or a person who has parental responsibility other than in his or her personal capacity), or
- (c) if the child or young person has been placed in the care or custody of the other person in accordance with the *Adoption of Children Act 1965*.

6 Rescission and variation of care orders—“significant change”

For the purposes of section 90 (2) of the Act, factors which indicate a significant change in the relevant circumstances of a child or young person since a care order was made or last varied include (but are not limited to) the following:

- (a) a failure of the parents of the child or young person concerned to meet their responsibilities under an applicable care plan or restoration plan,
- (b) a finding by the Children’s Court under section 82 (2) that proper arrangements have not been made for the care or protection of the child or young person.

7 Prescribed bodies: sec 248

For the purposes of section 248 (6) (f) of the Act, the following are prescribed as a *prescribed body*:

- (a) a private fostering agency within the meaning of the 1987 Act (whether or not it is authorised),
- (b) a body that conducts a residential child care centre or a child care service within the meaning of the 1987 Act (whether or not it is licensed),

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Part 2 General

- (c) a private adoption agency within the meaning of the *Adoption of Children Act 1965*,
- (d) the Family Court of Australia,
- (e) the Commonwealth Services Delivery Agency known as “Centrelink”,
- (f) any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children.

Part 3 Records, reporting and information

8 Form of records

Any record made under the Act or this Regulation may be kept in written or in electronic form, but may be kept in electronic form only if it is capable of being readily printed on paper.

9 Access to records relating to Aboriginals and Torres Strait Islanders

- (1) A person who is entitled under section 14 (2) of the Act to have access to records relating to the placement of an Aboriginal or Torres Strait Islander child or young person may request access to the records orally or in writing to the Director-General.
- (2) Access to such records may be given by making the record available for inspection, or by providing a copy of the record, as specified by the person requesting access.
- (3) The Director-General must give access to records within 21 days after receiving a request under this clause, except as provided by subclause (4).
- (4) If it is not reasonably practicable to give access within 21 days, then before that period has expired the Director-General must:
 - (a) explain to the person concerned the reasons why access to the records cannot be given within that period, and
 - (b) advise the person of a date when access to the records will be given.

10 Application of mandatory reporting requirements

Section 27 (Mandatory reporting) of the Act applies to the following classes of persons:

- (a) a person who, for gain or reward, provides a regular child-minding service out of school hours for a child of or above the age of 6 years but less than 13 years at a place other than the child's home (but not for a child who attends a school providing secondary education, being a government school, or a registered non-government school, within the meaning of the *Education Act 1990*),

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Part 3 Records, reporting and information

- (b) a person who holds a management position in an organisation that provides a service referred to in paragraph (a) for a child referred to in that paragraph,
- (c) a person who, in the course of his or her professional work or other paid employment delivers disability services wholly or partly to children,
- (d) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of disability services wholly or partly to children.

11 Protection of information disclosed in alternative dispute resolution

(1) In this clause:

alternative dispute resolution means:

- (a) counselling or alternative dispute resolution conducted under section 37 of the Act, or
 - (b) a preliminary conference conducted under section 65 of the Act, or alternative dispute resolution arising out of such a preliminary conference, or
 - (c) alternative dispute resolution conducted under section 114 of the Act.
- (2) Evidence of anything said or of any admission made during alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (3) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution is not admissible in evidence in any proceedings before any court, tribunal or body.
- (4) Subclauses (2) and (3) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the alternative dispute resolution and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under subclause (5) (d).

- (5) A person conducting alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution only in any one or more of the following circumstances:
- (a) with the consent of the person from whom the information was obtained,
 - (b) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
 - (c) if there are reasonable grounds to suspect that a child or young person is at risk of harm within the meaning of section 23 of the Act,
 - (d) if the disclosure is reasonably required for the purpose of referring any party or parties to alternative dispute resolution to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the alternative dispute resolution for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
 - (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

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Part 4 Care plans and alternative parenting plans

Part 4 Care plans and alternative parenting plans

12 Care plans: sec 78

- (1) For the purposes of section 78 (5) of the Act, a care plan:
 - (a) is to be in a form approved by the Director-General following consultation with the Children’s Court Advisory Committee, and
 - (b) is to include the following information:
 - (i) the date and place at which the care plan is made, and
 - (ii) the name of each person, agency or body participating in the plan, and their relationship to the child or young person,
 - (iii) the views of the Director-General as to the services that need to be provided to the child or young person and his or her family,
 - (iv) if practicable, the views of the parents of the child or young person as to the services that need to be provided to the child or young person and his or her family,
 - (v) if practicable, the views of the child or young person as to the services that need to be provided to him or her and his or her family,
 - (vi) the method by which the views of the parents and child or young person were obtained (for example, by interview in person or over the telephone, and whether the persons were spoken to separately or together).
- (2) The care plan is to make provision for the matters specified in section 78 (2) of the Act, and in addition is to set out the following matters:
 - (a) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
 - (b) any proposals concerning the education and training of the child or young person,
 - (c) whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act,
 - (d) the role and responsibilities of each person, agency or body participating in the plan, and the approximate period of time during which those responsibilities are to be carried out,

- (e) if more than one agency or body participates in the care plan, the agency or body that is to have overall responsibility for co-ordinating the plan and the delivery of services to the child or young person and his or her family,
 - (f) an initial date on which the progress of the plan is to be assessed by the agency or body having overall responsibility for co-ordinating the plan, and the frequency of subsequent assessments by that agency or body,
 - (g) indicators by which to assess the extent to which the care plan is successful,
 - (h) if restoration of the child or young person is to be considered at a later time, the goals to be achieved by the parents of the child or young person to facilitate his or her restoration to their care, and the approximate period of time in which those goals are to be attained having regard to the age and developmental needs of the child or young person.
- (3) A care plan may contain information about such of the following matters as are relevant to the circumstances of the child or young person concerned:
- (a) the family structure of the child or young person,
 - (b) the history, development and experience of the child or young person,
 - (c) the relationship between the child or young person and his or her parents,
 - (d) the ethnic background and religion of the child or young person,
 - (e) whether the child or young person is an Aboriginal or Torres Strait Islander,
 - (f) the principal language spoken in the family home of the child or young person,
 - (g) issues of social, cultural or economic significance in relation to the child or young person or his or her family,
 - (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family, and
 - (i) such other matters as the Director-General considers appropriate.

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Part 4 Care plans and alternative parenting plans

- (4) The care plan is to be accompanied by a copy of any relevant report on the physical, psychological, psychiatric or social well-being of the child or young person that, in the opinion of the Director-General, should be considered by the Children's Court.
- (5) The care plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
- (6) The care plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.
- (7) In this clause:
agency means any of the following:
 - (a) a private fostering agency within the meaning of the 1987 Act (whether or not it is authorised),
 - (b) a person or body who conducts a residential child care centre under the 1987 Act (whether or not it is licensed).

13 Alternative parenting plans

- (1) An alternative parenting plan that is submitted to the Children's Court under section 116 or 119 of the Act for an order approving the plan or for registration of the plan:
 - (a) is to be in a form acceptable to the Children's Court, and
 - (b) is to include the following information:
 - (i) the date and place at which the alternative parenting plan is made,
 - (ii) the name of each party to the plan, and their relationship to the child or young person,
 - (iii) if the Director-General or any support service organisation is a party to the proceedings, their views as to the services that need to be provided to the child or young person and his or her family,
 - (iv) if practicable, the views of the parents of the child or young person as to the services that need to be provided to the child or young person and his or her family,
 - (v) if practicable, the views of the child or young person as to the services that need to be provided to him or her and his or her family,

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- (vi) the method by which the views of the parents and child or young person were obtained (for example, by interview in person or over the telephone, and whether the persons were spoken to separately or together), and
 - (c) is to set out the way in which the needs of the child or young person are proposed to be met, and any proposals concerning:
 - (i) allocation of parental responsibility or specific aspects of parental responsibility,
 - (ii) residential arrangements,
 - (iii) supervision,
 - (iv) contact arrangements with the parents, relatives or other persons of significance to the child or young person (in particular, whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act),
 - (v) education and training,
 - (vi) medical care,
 - (vii) the provision of services.
 - (2) An alternative parenting plan that is formulated by the Director-General or a support service organisation may contain information about such of the following matters as are relevant to the circumstances of the child or young person concerned:
 - (a) the family structure of the child or young person,
 - (b) the history, development and experience of the child or young person,
 - (c) the relationship between the child or young person and his or her parents,
 - (d) the ethnic background and religion of the child or young person,
 - (e) whether the child or young person is an Aboriginal or Torres Strait Islander,
 - (f) the principal language spoken in the family home of the child or young person,
 - (g) issues of social, cultural or economic significance in relation to the child or young person or his or her family,
 - (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family, and
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Part 4 Care plans and alternative parenting plans

- (i) the resources required to provide the services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
 - (j) such other matters as the Director-General or the support service organisation considers appropriate.
- (3) The alternative parenting plan is to specify the role and responsibilities of each party to the plan, and the approximate period of time during which those responsibilities are to be carried out.
- (4) The alternative parenting plan is to be accompanied by a copy of any relevant report on the physical, psychological, psychiatric or social well-being of the child or young person that, in the opinion of the person formulating the plan, should be considered by the Children's Court.
- (5) The alternative parenting plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
- (6) The alternative parenting plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.
- (7) In this clause:
- support service organisation*** means a person, an agency or an organisation that provides counselling, therapy, conflict resolution or other support services to the child or young person concerned, or his or her family.
- agency*** means any of the following:
- (a) a private fostering agency within the meaning of the 1987 Act (whether or not it is authorised),
 - (b) a person or body who conducts a residential child care centre under the 1987 Act (whether or not it is licensed).

Part 5 Medical examination and treatment

14 Notice of medical examination: sec 173

For the purposes of section 173 (1) of the Act, the prescribed form of notice is Form 1 set out in Schedule 1.

15 Special medical treatment: sec 175

- (1) For the purposes of section 175 of the Act, the following medical treatments are declared to be special medical treatment:
 - (a) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* over a period or periods totalling more than 10 days in any period of 30 days,
 - (b) any medical treatment that involves an experimental procedure that does not conform to the document entitled *National Statement on Ethical Conduct in Research Involving Humans* published by the National Health and Medical Research Council in 1999, a copy of which is deposited in the head office of the Department,
 - (c) any medical treatment that involves the administration of a psychotropic drug to a child or young person in residential care for the purpose of controlling his or her behaviour.
- (2) Subclause (1) (a) and (c) does not apply to medical treatment in circumstances where the drug is administered in accordance with a written exemption granted, either generally or in a particular case, by the Director-General on the written request of the Director-General of the Department of Health.
- (3) If the Director-General of the Department of Health makes a written request under subclause (2) for an exemption in relation to the administration of a particular drug to a particular child or young person and does not receive notification of the decision of the Director-General of the Department of Community Services within 21 days after the making of the request, the exemption is taken to have been granted on the expiration of the 21-day period.

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Part 5 Medical examination and treatment

- (4) In this clause, a reference to a ***child or young person in residential care*** is a reference to a child or young person who resides in:
- (a) a residential child care centre (whether or not it is licensed) within the meaning of the 1987 Act, or
 - (b) a facility within the meaning of the 1987 Act.

Part 6 Out-of-home care

16 Application for review of temporary care arrangement: sec 152 (6)

- (1) An application to the Children’s Court for the review of a temporary care arrangement must be in writing.
- (2) A person who applies for a review of a temporary care arrangement is, as soon as practicable after the application is made, to cause a copy of the application (on which is endorsed the time, date and place set down for the hearing of the application) to be served on:
 - (a) in the case of an application made on behalf of the child or young person the subject of the arrangement—each person having parental responsibility for the child or young person who can reasonably be located, or
 - (b) in the case of an application by a person having parental responsibility for the child or young person—the child (if the child is of or above the age of 10 years) or young person.
- (3) A child or young person who applies for review of a temporary care arrangement is not required to serve a copy of the application on any other person.

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Schedule 1 Form

Schedule 1 Form

(Clause 14)

Form 1 Notice of medical examination

To:
(insert name of person having care of the child or young person)

You must immediately take
.....
.....
(insert name or description of the child or young person)

for a medical examination by
.....
(insert name or description of medical practitioner)

at
.....
.....
(insert name and address of hospital or place)

You may be charged with a criminal offence if you do not do as this notice requires.

This notice is issued by
.....
(insert name and position description of person issuing the notice)

BY AUTHORITY