



Queensland

Child Protection Regulation 2011

Explanatory Notes for SL 2011 No. 245

made under the
Child Protection Act 1999

General outline

Short title

Child Protection Regulation 2011.

Authorising law

Section 249 of the *Child Protection Act 1999*

Policy objectives and the reasons for them

The *Child Protection Act 1999* (the Act) provides for the care and protection of children in Queensland who are in need of protection. Under the Act, a child is in need of protection if they have suffered, are suffering or are at risk of suffering harm and do not have a parent able and willing to protect them. Harm is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. The Act is administered under a number of principles, primarily that the safety, wellbeing and best interests of the child are paramount.

The Regulation is being made to replace the Child Protection Regulation 2000 which will expire on 31 August 2012 pursuant to the *Statutory Instruments Act 1992*. The Regulation will repeal the Child Protection Regulation 2000.

Achievement of policy objectives

The Regulation continues the substance of provisions of the Child Protection Regulation 2000 with the sequence of sections aligned with the sequence of relevant provisions of the Act.

Part 2 Placing child in care

Agreement to provide care for child

Clause 3 prescribes the matters to be included in an agreement between the chief executive and an approved carer entered into under section 84 of the Act for the care of a child in the chief executive's custody or guardianship.

Matters to consider before telling or notifying parents

Clause 4 prescribes the matters the chief executive must consider under sections 85 and 86 before telling the parents of a child in the chief executive's custody or guardianship in whose care their child has been placed. The purpose of the chief executive considering the matters is to assess any risk that might be posed to the child or anyone else by providing the information to the parents.

Part 3 Regulation of care

Division 1 Licensing of care services

Independent evaluation for grant or renewal of licence

Clause 5 requires the chief executive, before granting an application to a corporation to provide a care service under the Act, to obtain a written evaluation of the service from a person who is independent of the applicant and the department. The chief executive must give a copy of the evaluation to the applicant and give the applicant at least 14 days to make a submission about the contents of the evaluation.

Suitability of selection, training and management methods

Section 126(f) of the Act prohibits the chief executive from granting a licence to provide care services unless satisfied (among other things) of the suitability of a corporation's methods for selecting, training and managing people engaged by the corporation to provide care services. *Clause 6* requires the chief executive, when considering this matter, to have regard to the department's published standards for the management of care services.

Procedure about reporting matter of concern

Clause 7 requires a licensee to prepare a procedure for staff of a licensed care service to report to the chief executive harm to a child in the care of the licensed care service that they are aware of or suspect, or a concern they have about the standards of care services provided under the licence. *Clause 7* specifies that the licensee must keep the procedure, which facilitates reporting by staff of matters of concern, up to date and ensure staff are aware of the procedure.

Licensee to keep particular records

Clause 8 requires a licensee to keep certain records, specified in the clause, for each child receiving care services under the licensee's licence.

Licensee to allow inspection of particular records

Clause 9 provides for the chief executive to inspect the records kept by the licensee under *Clause 8* and the licensee is obliged to allow the inspection.

Licensee may be required to give return

Clause 10 enables the chief executive to ask the licensee to provide a return about the information listed in *Clause 8*. The request must be made by written notification to the licensee stating the time within which the return must be provided to the chief executive. The time must be not less than 30 days after the chief executive gives the licensee notice. The licensee must comply with the notice, which must be in the approved form, within the specified time.

Division 2 General

Particulars to be included in report of harm to child

Under section 148 of the Act, a person employed in a licensed care service (among other specific responsible persons), must report to the chief executive if they become aware of or reasonably suspect that harm has been caused to a child placed in the care of the service. The report must be made immediately and, if a regulation under section 148(2) is in force, in accordance with the regulation.

Clause 11 is a regulation as referred to in section 148(2). It prescribes the particulars of information that the report to the chief executive must include.

Part 4 Confidentiality in relation to administration of Act

Approval to publish particular information

Section 189 of the Act prohibits the publication of information that identifies or is likely to lead to the identification of a child as a child who has been the subject of an investigation of an allegation of harm, or a child in the chief executive's custody or guardianship under the Act, or a child for whom an order is in force. The section also prohibits the publication, without the chief executive's written approval, of information that identifies, or is likely to lead to the identification of, a child living in Queensland as a child who has been harmed or allegedly harmed or is at risk or allegedly at risk of being harmed by a parent, a step parent or other member of the child's family.

Clause 12 sets out the matters which the chief executive may have regard to in deciding whether to approve a publication under section 189 of the Act.

Part 5 Corresponding laws of other States

Child welfare laws—Act, s 203

Section 203 of the Act provides that a regulation may declare a law of another State about the protection of children to be a child welfare law of

that State. *Clause 13* declares that a law mentioned in Schedule 1 of the Regulation is a child welfare law of the State mentioned in the column opposite the law.

Interstate laws and related matters—Act, s 204

Section 204 of the Act provides that if the Minister is satisfied that a law of another State substantially corresponds to Chapter 7 of the Act, the Minister may recommend that the Governor in Council declares the law to be an interstate law of that State, the State to be a participating State and the holder of a stated office to be the interstate officer for that State. The Governor in Council may make the declaration by regulation.

Clause 14 provides the declaration of the information as set out in Schedule 2 of the Regulation.

Part 6 Keeping records and preparing report

Chief executive to keep records

Clause 15 requires the chief executive to keep records and specifies the details of the records to be kept. It also specifies that the records must be kept in a way that enables the chief executive to collect or access information about a particular carer or care service or analyse trends from the information required to be recorded.

Report about information recorded under s 15

Section 248A of the Act empowers the chief executive, under a prescribed provision, to provide information to the children's commissioner to support the commissioner's monitoring functions under the *Commission for Children and Young People and Child Guardian Act 2000*. A prescribed provision includes a regulation made under section 249 of the Act about records to be kept.

Clause 16 requires the chief executive to prepare a written report about the records kept under *Clause 15* to be given to the children's commissioner on a regular basis.

Part 7 Suitable person

Purpose of pt 7

Clause 17 states the purpose of Part 7 is to provide for deciding who is a suitable person for the definition of 'suitable person' in the Dictionary in Schedule 3 of the Act and the matters a court or the chief executive may consider in deciding if a person is a 'suitable person'.

Custody or guardianship of child

Clause 18 provides the criteria for suitability to have custody or guardianship of a child. The criteria will be applied, for example, when a court is deciding whether to grant an order for a person to have custody or guardianship of a child.

Managing licensed care service

Director of applicant for licence or licensee

Nominee for licence

Person engaged in relation to provision of care services

Section 126 of the Act provides that the chief executive must not grant a corporation a licence to provide care services unless satisfied that the managers, directors, nominee and employees engaged in relation to the provision of care services by the licensee are suitable persons. *Clauses 19, 20, 21* and *22* provide the criteria for deciding whether managers, directors, nominees and employees of licensed care services are suitable persons.

Approved foster carer

Approved kinship carer

Clauses 23 and *24* provide the criteria for suitability of a person to be a foster carer or kinship carer. The criteria will be applied when deciding an application for a person to be an approved carer or to have their approval as a carer renewed. Under section 135 of the Act, subject to the chief executive being satisfied of specified matters, a person may be approved to be a foster carer of children in the custody or guardianship of the chief

executive generally, or a kinship carer of particular children who are kin to the applicant.

Provisionally approved carer

Clause 25 provides the criteria for suitability of a person to be a provisionally approved carer of a child. Under section 136B of the Act, the chief executive may issue a certificate of approval to a person to be a provisionally approved carer under specified circumstances, including that the chief executive proposes to place a child in care under the Act and the person has applied to be an approved foster carer or to be an approved kinship carer for the child.

Associating on daily basis with child

Clause 26 provides criteria for suitability of a person to associate on a daily basis with children. Under sections 135(1)(a)(ii), 135(1)(b)(iii) and 136C(e)(ii) of the Act, the chief executive must not grant a certificate of approval to a person to be a carer unless satisfied that all members of the person's household are suitable persons to associate on a daily basis with a child or children. Under sections 139(1)(b)(ii), 139(1)(c)(ii) and 139(1)(d)(ii) of the Act, the chief executive may suspend or cancel a certificate of approval if a member of the carer's household is not a suitable person to associate on a daily basis with a child or children.

Clause 27 provides for a court or the chief executive, when deciding if a person is suitable, to consider a person's employment history, physical or mental health and any other relevant matter.

Part 8 Repeal and transitional provisions

Division 1 Repeal

Repeal

Clause 29 repeals the Child Protection Regulation 2000

Division 2 Transitional provisions

Licensee to have procedure about reporting matters of concern

Clause 30 provides for a policy developed by a licensee under section 3 of the Child Protection Regulation 2000 before its repeal to be able to remain current and be taken to be a procedure under the Regulation.

Records kept by licensee

Clause 31 provides for a record kept by a licensee under section 4 of the Child Protection Regulation 2000 before its repeal to be taken to be a record kept by a licensee under the Regulation. The effect of this is that provisions under the Regulation relating to records kept by a licensee, will also apply to records kept by a licensee under Section 4 of the Child Protection Regulation 2000.

Notice to licensee to give return

Clause 32 provides that a notice given to a licensee under section 5 of the Child Protection Regulation 2000 before its repeal will continue to have effect as if it were a notice given to a licensee under section 10 of the Regulation.

Reference to repealed regulation

Clause 33 provides that a reference in a document created or received before the repeal of the Child Protection Regulation 2000 to that regulation, may be taken to be a reference to the Regulation if the context permits, subject to section 14H of the *Acts Interpretation Act 1954*.

Schedule 1 Child Welfare Laws

Schedule 1 lists the laws declared to be child welfare laws of other Australian states, territories and New Zealand (participating states) as provided for under section 203 of the Act.

Schedule 2 Interstate laws and related matters

Schedule 2 lists participating states and the interstate laws and interstate officers for participating states declared pursuant to section 204 of the Act for the purpose of decision making about transfers of court orders and court proceedings under the Act between Queensland and participating states.

Consistency with policy objectives of authorising law

The Regulation is consistent with section 249 of the Act which states that a regulation may be made by the Governor in Council under the Act and that such regulations may include provisions about the suitability of persons and premises for providing care services, the conduct of family group meetings, the SCAN (suspected child abuse and neglect) system and record keeping. It is also consistent with sections of the Act which provide that a regulation may prescribe matters for compliance.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will facilitate the operation of certain provisions of the Act for the safety, well being and best interests of children in need of protection. It will not incur any additional implementation costs to Government.

Consistency with fundamental legislative principles

The Regulation does not breach fundamental legislative principles.

Consultation

The non-government organisation sector providing licensed care services to children in the custody or guardianship of the chief executive of the

Department of Communities has been consulted about the Regulation. The sector supports the provisions of the Regulation.

Government departments administering child protection legislation in each jurisdiction in Australia and New Zealand (participating states) have been consulted to obtain up to date information for Schedules 1 and 2 for the purpose of transfers of child protection orders and proceedings between Queensland and other jurisdictions when children who are the subject of orders or proceedings move between participating states.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Communities.

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