

1995—No. 278

**CHILDREN (EQUALITY OF STATUS) ACT 1976—
REGULATION**

(Relating to blood tests)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Children (Equality of Status) Act 1976, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw
Attorney General.

Commencement

1. This Regulation commences on 7 July 1995.

Repeal

2. (1) The Children (Equality of Status) Blood Tests Regulation 1979 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Children (Equality of Status) Blood Tests Regulation 1979, had effect under that Regulation continues to have effect under the Children (Equality of Status) General Regulation 1993.

Amendments

3. The Children (Equality of Status) General Regulation 1993 is amended:

(a) by inserting before clause 1 the following heading:

PART 1—PRELIMINARY

- (b) by inserting in clause 3 (l), in alphabetical order, the following definitions:

“authorised laboratory” means a laboratory appointed by the Minister under clause 3A;

“authorised sampler” means a medical practitioner, a registered nurse or a person belonging to a class of persons prescribed by clause 17;

“authorised tester” means a person appointed by the Minister under clause 3A;

“registrar” of a court includes the clerk of a local court;

“representative”, in relation to a subject, means a person appointed as the subject’s representative under clause 18;

“section 19 direction” means a direction under section 19 (1) or (2) of the Act by which a court directs the use of blood tests for the purpose of ascertaining the paternity or maternity of a child;

“subject” means the person from whom a blood sample has been or is to be taken;

- (c) by inserting after clause 3 the following clause:

Appointment of authorised testers and laboratories

3A. The Minister may appoint persons to carry out blood tests and may appoint laboratories at which those tests may be carried out.

- (d) by inserting before clause 4 the following heading:

PART 2—MACHINERY PROVISIONS

- (e) by omitting clause 8 and by inserting instead the following Part:

PART 3—BLOOD TESTS

Division 1—Preliminary notices to be sent

Parties to notify court of authorised sampler

8. The parties to proceedings in which a section 19 direction is given by a court must notify the registrar of the court, within such period and in such manner specified by the court, of the name and address of the authorised sampler who is to take the blood samples for the purpose of giving effect to the court’s direction.

Court to notify authorised laboratory of certain matters

9. (1) On receiving a notice under clause 8, the registrar:

- (a) must decide which authorised laboratory the blood samples are to be sent to; and
- (b) must notify the person in charge of the laboratory of the decision.

(2) The notice referred to in subclause (1) (b) must contain the following information:

- (a) the name and location of the court and the number of the proceedings;
- (b) the name of the subject to whom the section 19 direction relates;
- (c) the purpose of the blood tests;
- (d) the name and address of the authorised sampler;
- (e) the date the direction was given;
- (f) the period within which the blood samples are to be taken;
- (g) the name of the subject's representative, if such a representative has been appointed.

Authorised laboratory to notify authorised sampler of certain matters

10. (1) On receiving a notice under clause 9, the person in charge of the authorised laboratory must notify the authorised sampler of the following matters:

- (a) the name and location of the court and the number of the proceedings;
- (b) the name of the subject to whom the section 19 direction relates;
- (c) the purpose of the blood tests;
- (d) the date the direction was given;
- (e) the period within which the blood samples are to be taken;
- (f) the address to which the blood samples are to be sent;
- (g) the name of the subject's representative, if such a representative has been appointed.

(2) The person in charge of the authorised laboratory must also send to the authorised sampler:

- (a) instructions for taking the blood samples; and
- (b) sufficient disposable containers and sufficient insulated packages for storing and transporting the blood samples; and

(c) a label for each container.

(3) The person in charge of the authorised laboratory must ensure that all containers referred to in subclause (2) (b):

(a) are pre-sterilised; and

(b) are capable of being sealed in such a manner that, if opened after being sealed, that fact would be evident on inspecting the container.

Division 2—Sampling blood

Procedures for taking blood samples

11. (1) The following provisions apply to the sampling of blood:

(a) the area of the skin from which the blood is to be withdrawn is to be cleansed with an antiseptic;

(b) the needles and syringes are to be pre-sterilised, disposable and previously unused;

(c) the container to store the blood sample is to be an unused container supplied in accordance with clause 10;

(d) the container is to be labelled in such a manner that:

(i) the removal of the label or any part of it; or

(ii) the alteration or erasure of any writing on the label, would be evident on inspecting the container;

(e) the following particulars are to be written in ink on the label:

(i) the subject's surname and other names in full;

(ii) the subject's age and sex;

(iii) the date and time when the sample was taken;

(iv) the number of the proceedings in which the relevant section 19 direction was given;

(v) the signature of the authorised sampler;

(f) after the container has been labelled, the blood sample is to be placed in the container, in the presence of the subject or the subject's representative;

(g) the container is to be sealed in such a manner that, if opened after being sealed, that fact would be evident on inspecting the container;

- (h) the container is to be packed, in an insulated package supplied in accordance with clause 10, in such a manner as to prevent damage to the blood sample during transportation;
- (i) the insulated package is to be sent to the authorised laboratory by the most reasonable and expeditious means available.

(2) Subject to this Regulation, an authorised sampler may make arrangements with the subject as to the time and place for the taking of blood samples, or may change any arrangements already made and make other arrangements.

Declaration by person providing blood sample

12. (1) Before taking a blood sample from the subject, the authorised sampler must obtain:

- (a) a written declaration in Form 2 in relation to the subject; and
- (b) a passport-style photograph of the subject.

(2) The declaration must be completed by the subject or, if a representative has been appointed for the subject, by the subject's representative.

(3) The authorised sampler must send the declaration to the authorised laboratory at the same time as the blood sample.

Authorised sampler to prepare report

13. (1) For the purposes of section 20 (2A) of the Act, the prescribed form for a report on the taking and identification of a blood sample from a subject is Form 3.

(2) The authorised sampler:

- (a) must affix to the report the passport-style photograph referred to in clause 12; and
- (b) must sign the sampler's name in ink in such a manner that the signature is written partly on the photograph and partly on the paper to which the photograph is affixed.

(3) The authorised sampler must send the report to the authorised laboratory at the same time as the blood sample.

(4) An authorised sampler who does not or is unable to take a blood sample from a subject:

- (a) must forward written reasons for not doing so to the court which gave the relevant section 19 direction; and
- (b) must notify the authorised laboratory that the sample was not taken.

Blood samples from different parties to the same proceedings to be taken by the same authorised sampler

14. If a court gives a section 19 direction for the taking of blood samples from 2 or more parties to the same proceedings, those blood samples must be taken by the same authorised sampler, unless the court otherwise directs.

Restrictions on taking of blood samples

15. An authorised sampler must not take a blood sample from a subject:

- (a) if a declaration has not been completed in accordance with clause 12; or
- (b) if the sampler believes that the subject has, within the previous 4 months, been transfused with blood or a blood product that may have affected the constitution of the subject's blood with regard to inheritable components; or
- (c) if, in the sampler's opinion, blood tests on a blood sample taken at that time could not effectively be carried out for the purposes of the court's direction; or
- (d) if, in the sampler's opinion, the taking of a blood sample at that time might have an adverse effect on the health of the subject.

Division 3—Testing of blood**Testing of blood**

16. (1) A blood test may only be carried out by an authorised tester.

(2) For the purposes of section 20 (1) and (2) of the Act, the prescribed form for a report on the results of a blood test is Form 4.

(3) The authorised tester must send the report to the court, together with the authorised sampler's report on the blood sample and the declaration made by or on behalf of the subject from whom the blood sample was taken.

Division 4—General**Persons who may take blood samples**

17. Persons who have completed a course of training that included training in the taking of venous blood samples from humans, and who have attained a qualification in a science or profession, are prescribed as a class of persons who may take blood samples for the purposes of section 19 (11) of the Act.

Person appointed to assist subject with legal or other disability

18. A court that gives a section 19 direction with respect to a person who, in its opinion, is suffering from a legal or other disability may appoint a person as the person's representative for the purposes of this Part.

(f) by inserting after Form 1 in Schedule 1 the following forms:

Form 2

(C1.12)

REPORT BY AUTHORISED SAMPLER

(Children (Equality of Status) Act 1976)

.....
(name of court)

No. of 19

In the matter of

Direction under section 19 (1)/19 (2)* of the Children (Equality of Status) Act 1976 for the taking of blood samples from the following subjects and for the use of blood tests for ascertaining paternity/maternity*:

.....

.....

.....

I,
(name)

of
(address)

.....
(occupation)

did on take blood samples from the
(date of sampling)

following persons*:

..... photograph
(subject)

..... photograph
(subject)

..... photograph
(subject)

..... photograph
(subject)

I hereby certify that:

- (a) in taking the blood samples I strictly observed the procedures provided for in clauses 11 and 13 (2) of the Children (Equality of Status) Regulation 1993; and
- (b) each of the blood samples is contained in a container bearing the name of the subject from whom it was taken, the date the sample was taken, the number of the proceedings (as shown above in this report) and my signature.

.....
(signature)

* Delete if inapplicable.

Clause 12 of the Regulation provides that, at the time the “Declaration by person providing blood samples” is completed in respect of each subject, a passport photograph of each subject must be obtained by the sampler.

NOTE: This report must be completed in ink.

Form 3

(Cl. 13)

DECLARATION BY PERSON PROVIDING BLOOD SAMPLE

(Children (Equality of Status) Act 1976)

.....
(name of court)

No. of 19

In the matter of

Direction under section 19 (1)/19 (2)* of the Children (Equality of Status) Act 1976 for the taking of blood samples from the following subjects and for the use of blood tests for ascertaining paternity/maternity*:

.....
.....
.....

I,
(name)

of
(address)

.....
(occupation)

PART A.

If “have not” is deleted, give particulars

who was born on
(date of birth of subject)

If “has not” is deleted, give particulars

If “has not” is deleted, give particulars.....

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AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

DECLARED at
this day of
19 before me—

.....

(A Justice of the Peace)

}
(signature of declarant)

* Delete if inapplicable.

NOTES:

Part A or Part B or any matter therein to be deleted if inapplicable.

This declaration must be completed in ink.

Form 4

(Cl. 16)

REPORT BY AUTHORISED TESTER

(Children (Equality of Status) Act 1976)

.....
(name of court)

No. of 19

In the matter of

Direction under section 19 (1)/19 (2)* of the Children (Equality of Status) Act 1976 for the taking of blood samples from the following subjects and for the use of blood tests for ascertaining paternity/maternity*:

.....
.....
.....

PART 1

1. I,
(name)
of
(address)
.....
(occupation)

being an authorised tester appointed under the Children (Equality of Status) Regulation 1993, report that I have carried out a blood group investigation (the results of which are given in Part 2 of this report) of the samples of blood submitted to me on
 in containers bearing the names of the abovenamed subjects and being the samples referred to in the attached report

of of dated
(name of authorised sampler) *(address)*

PART2

2. I report that the results of tests performed by me on the abovementioned samples show that the person from whom the blood in the container bearing the name
 was taken may be the father/mother of the person from whom the blood in the container bearing the name was taken.

3. I report that the results of tests performed by me on the abovementioned samples show that the person from whom the blood in the container bearing the name was taken is not the father/mother of the person from whom the blood in the container bearing the name was taken.

4. The result of the test referred to in paragraph 2 in determining whether the person firstmentioned in that paragraph may be the father/mother of the person secondmentioned in that paragraph is (a) of no value/(b) of the following value:

.....

.....
(signature)

.....
(qualifications)

.....
(date)

* Delete if inapplicable.

NOTES:

This report must be completed in ink.

Paragraphs 2, 3 or any matter in them to be deleted if inapplicable.

Paragraph 4 to be deleted if report made under paragraph 3.

All deletions or alterations to be initialled by tester.

A separate written statement may be made explaining or amplifying any statement made in this report and if made, is taken to form part of this report for the purposes of section 20 of the Children (Equality of Status) Act 1976.

More than one form may be used if one is insufficient.

EXPLANATORY NOTE

The object of this Regulation is to repeal the Children (Equality of Status) Blood Tests Regulation 1979 and to insert the provisions contained in that Regulation in the Children (Equality of Status) General Regulation 1993 without making any changes of substance.

The Regulation deals with the carrying out of blood tests ordered by a court to determine paternity or maternity in civil proceedings. The Regulation includes the following matters:

- (a) the procedures for choosing samplers and laboratories;
- (b) the procedures to be followed by samplers when taking blood samples;
- (c) requirements in relation to the carrying out of blood tests.

This Regulation is made under the Children (Equality of Status) Act 1976, including section 24 (the general regulation making power) and sections 19 and 20.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
