



New South Wales

Status of Children Regulation 2019

under the

Status of Children Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Status of Children Act 1996*.

MARK SPEAKMAN, MP

Attorney General, Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to repeal and remake, without substantial changes, the provisions of the *Status of Children Regulation 2013*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision with respect to the procedures for the taking of bodily samples from donors under parentage testing orders and other machinery and formal matters.

This Regulation is made under the *Status of Children Act 1996*, including sections 3 (1) (definition of *parentage testing procedure*), 19 (1) (a) and (b), 21 (1) (e), 33 (2) (c) and 36 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Status of Children Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Status of Children Regulation 2013*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

accredited laboratory means a laboratory accredited by NATA to carry out parentage testing procedures.

donor means the person required to provide a bodily sample for the purposes of a parentage testing procedure.

NATA means the National Association of Testing Authorities, Australia.

nominated reporter means the person nominated by an accredited laboratory to prepare a report relating to the information obtained as a result of carrying out a parentage testing procedure.

putative parent means a person who claims to be, or whom another person claims to be, a parent of a child.

representative means:

- (a) in relation to a donor under the age of 18 years—a parent or guardian of the donor, or
- (b) in relation to a donor who has a disability:
 - (i) a trustee or manager in relation to the donor under a law of the State or Territory, the laws of which apply to that person, or
 - (ii) a person who is legally responsible for the care, welfare and development of the donor.

sampler means a person who takes (or proposes to take) a bodily sample from a donor for the purposes of a parentage testing procedure.

testing means the implementation, or any part of the implementation, of a parentage testing procedure.

the Act means the *Status of Children Act 1996*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) In this Regulation, a reference to a donor with a disability is a reference to a donor who has a disability within the meaning of the *Disability Inclusion Act 2014* that:
 - (a) results in the donor lacking the legal capacity to comply with or consent to a requirement of this Regulation (as the case may be), or
 - (b) otherwise prevents the donor from being able to comply with a requirement of this Regulation or consent to it being carried out (as the case may be).
- (3) The Supreme Court may appoint a person to be the representative of a donor for the purposes of this Regulation in relation to a particular matter if the Court is satisfied that there is no other representative who is available or suitable in the circumstances.
- (4) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.
- (5) Notes included in this Regulation do not form part of this Regulation.

Part 2 Parentage testing procedures

Division 1 General

4 DNA typing

For the purposes of the definition of *parentage testing procedure* in section 3 (1) of the Act, DNA typing is a prescribed medical procedure.

5 Parentage testing procedures

- (1) A parentage testing procedure must be carried out:
 - (a) in compliance with this Part, and
 - (b) at an accredited laboratory, and
 - (c) in accordance with the standards of practice that entitle a laboratory to be accredited by NATA.
- (2) A report must be prepared that relates to the information obtained as a result of carrying out the parentage testing procedure (referred to in this Division as a *parentage testing procedure report*).

6 Parentage testing procedure reports

- (1) A parentage testing procedure report must be prepared in accordance with Form 3.
- (2) Part 1 of the report must be completed by the nominated reporter identified in the report.
- (3) Part 2 of the report must be completed by:
 - (a) the person who carried out the parentage testing procedure, or
 - (b) the person under whose supervision the parentage testing procedure was carried out.
- (4) A parentage testing procedure report completed otherwise than in accordance with this clause is taken to be of no effect.

Division 2 Collection, storage and testing of samples

7 Provision of information by donor or donor's representative

- (1) A sampler must not take a bodily sample from a donor unless the donor has:
 - (a) immediately before the sampler takes the bodily sample, completed an affidavit in accordance with Form 1, to which is attached a recent photograph of the donor named in the affidavit, and
 - (b) either:
 - (i) provided to the sampler a recent photograph of the donor, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background, or
 - (ii) made a written arrangement with the sampler for a photograph of that kind to be taken.
- (2) The photograph required by subclause (1) (b) is in addition to the photograph that is required to be attached to Form 1.
- (3) If the donor is a person who is under the age of 18 years or who has a disability, the affidavit referred to in subclause (1) (a) must be completed only by the donor's representative.

8 Collection of bodily samples for DNA typing

For the purposes of a parentage testing procedure that is DNA typing, a sampler:

- (a) must not take a bodily sample (other than a blood sample) from a donor with a swab unless the swab has not been used for any purpose and is sterile, and
- (b) must not take a bodily sample (other than a blood sample) from a donor that is a skin scraping or hair root unless the implement used by the sampler to take the sample is sterile, and
- (c) must not take a blood sample from a donor unless:
 - (i) the needle or syringe that is to be used to withdraw the blood is sterile, disposable and has not been used for any purpose, and
 - (ii) the sampler ensures, before taking the sample, that the area of the donor's skin into which the needle or syringe is to be inserted to withdraw the blood has been cleaned with an antiseptic.

9 Container to be sealed and labelled

- (1) After taking a bodily sample from a donor, the sampler must ensure the following:
 - (a) the sample is placed in a container immediately after it is taken and in the presence of the donor,
 - (b) the container has not previously been used for any purpose,
 - (c) the container is sealed in a way that, if it were opened after being sealed, that fact would be evident on inspection of the container,
 - (d) the container is labelled in a way that the removal of the label (or part of the label), or the impairment of the writing on the label by alteration or erasure, would be evident on inspection of the container,
 - (e) the particulars on the label are inscribed permanently and include:
 - (i) the full name of the donor, and
 - (ii) the date of birth and sex of the donor, and
 - (iii) the date and time at which the sample was taken,
 - (f) the label inscribed with the particulars referred to in paragraph (e) is signed permanently by the sampler and the donor.
- (2) If the donor is a person who is under the age of 18 years or who has a disability:
 - (a) the procedure specified in subclause (1) (a) must be completed in the presence of the donor's representative, and
 - (b) the procedure specified in subclause (1) (f) is taken to have been complied with only if the label is signed by the donor's representative.

10 Statement by sampler

After taking a bodily sample from a donor, the sampler must:

- (a) complete a statement in accordance with Form 2, and
- (b) affix the photograph of the donor referred to in clause 7 (1) (b) to that statement, and
- (c) write the donor's name partly on the photograph and partly on the statement in a way that, if the photograph were later removed from the statement, the removal would be evident from inspection of the statement.

11 Packing and storage requirements

- (1) A bodily sample must be packed, stored and transported to a laboratory for testing in a manner that:

- (a) will preserve the integrity of the sample, and
 - (b) ensures that the testing of the sample will produce the same results as would have been obtained if the sample had been tested immediately after collection.
- (2) The sampler must ensure that the following documents are sent to the laboratory with the sample:
 - (a) the affidavit completed under clause 7, and
 - (b) the statement completed under clause 10.

12 Testing of bodily samples

A laboratory to which a bodily sample has been sent for DNA typing must ensure that the testing is completed within a reasonable time after the sample is taken.

Part 3 Miscellaneous

13 Paternity acknowledgements

- (1) For the purposes of section 19 (1) (a) of the Act, the prescribed form of an instrument acknowledging paternity of a child is Form 4.
- (2) For the purposes of section 19 (1) (b) of the Act, the following classes of persons are prescribed:
 - (a) Australian legal practitioners,
 - (b) officers of the Registry of Births, Deaths and Marriages nominated for the time being by the Registrar for the purposes of this paragraph.

14 Applications for declarations by the Supreme Court of parentage

For the purposes of section 21 (1) (e) of the Act, the following persons are prescribed:

- (a) the NSW Trustee and Guardian,
- (b) a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth,
- (c) an executor, trustee or administrator of an estate.

15 Qualified persons for the purpose of taking bodily samples

For the purposes of section 33 (2) (c) of the Act, persons employed by a hospital, pathology practice, parentage testing practice or medical practitioner for the purpose of taking a bodily sample from a donor are prescribed as qualified persons.

16 Repeal and savings

- (1) The *Status of Children Regulation 2013* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Status of Children Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

(Clause 3 (4))

Form 1 Parentage testing procedure affidavit by/in relation to donor

(Status of Children Act 1996)

(Clause 7 (1) (a))

Name of child whose parentage is in issue:

Name of donor:

Date of birth of donor:

*Relationship/*Putative relationship of donor to child whose parentage is in issue *[if donor is not the child whose parentage is in issue, insert relationship of donor to child]*:

Date of taking sample from donor:

I, *[name]*, of *[address]*, *[occupation]* *make oath and say/*affirm:

(Either Part 1 or Part 2 of this form must be completed and duly sworn or affirmed by the person completing it, and the signature witnessed, on the day the donor's sample is taken)

Part 1

(Part 1 must be completed if the person swearing or affirming the affidavit is the donor)

1 I am the person appearing in the photograph attached to this affidavit, being Attachment 'A'.

2 My racial background is: *[give details]*

3 In the last 2 years:

(a) I *have/*have not suffered from leukaemia.

(b) I *have/*have not received a bone marrow transplant.

*4 The particulars of the *leukaemia/*bone marrow transplant are as follows: *[give particulars]*

5 I *have/*have not received a transfusion of blood or a blood product within the last 6 months.

*6 The particulars of the transfusion of blood or blood product are as follows: *[give particulars]*

7 I consent to:

(a) the taking of *a bodily sample/*bodily samples from me on *[insert date sample is to be taken]* at *[insert place sample is to be taken]* for the purposes of *a parentage testing procedure/*parentage testing procedures, and

(b) the carrying out of *that procedure/*those procedures on the *sample/*samples.

Part 2

Part 2 must be completed on behalf of a child or adult who is not capable of swearing or affirming the affidavit. Under section 28 of the Act, a parentage testing procedure must not be carried out in relation to a child without the consent of a parent or guardian of the child.

1 I am the *[state relationship or other status in relation to the donor]* of *[name of donor]* who was born on *[date of birth of donor]*.

2 *[Name of donor]* is the person appearing in the photograph attached to this affidavit, being Attachment 'A'.

3 *[Name of donor]* is a person whose racial background is: *[give details]*

4 In the last 2 years:

(a) the donor *has/*has not suffered from leukaemia.

(b) the donor *has/*has not received a bone marrow transplant.

*5 The particulars of the *leukaemia/*bone marrow transplant are as follows: *[give particulars]*

6 The donor *has/*has not received a transfusion of blood or a blood product within the last 6 months.

*7 The particulars of the transfusion of blood or blood product are as follows: *[give particulars]*

8 I consent to:

- (a) the taking of **a bodily sample/*bodily samples* from the donor on *[insert date sample is to be taken]* at *[insert place sample is to be taken]* for the purposes of **a parentage testing procedure/*parentage testing procedures*, and
- (b) the carrying out of **that procedure/*those procedures* on the **sample/*samples*.

**SWORN/*AFFIRMED* by the
deponent at
on 20 .

.....
[Signature of deponent]

Before me:

.....
[Signature of person before whom the affidavit is sworn or affirmed]

Attach a recent photograph of the donor named in the affidavit, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background. The photograph must be marked 'A', and must bear a statement, signed by both the person before whom the affidavit is sworn or affirmed and the deponent, identifying it as the photograph mentioned in the affidavit.

**Delete if not applicable.*

Certificate under section 34 (1) (c) of Oaths Act 1900

**Please cross out any text that does not apply*

I *[insert name of witness]*, a *[insert qualification to be witness]*, certify the following matters concerning the making of this affidavit by the person who made it:

- 1 **I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.*
- 2 **I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [describe identification document relied on].*

[insert signature of witness]

Date:

Form 2 Parentage testing procedure collection of bodily sample statement by sampler

(Status of Children Act 1996)

(Clause 10 (a))

Name of child whose parentage is in issue:

- 1 I, *[name of sampler]*, of *[professional address]*, *[occupation]*, took the bodily **sample/*samples* specified below at *[time]* **am/*pm* on *[date]* at *[place of collection]* from the following **person/*persons*:
 - (a) *[name of person and type of bodily sample stated and person's photograph affixed]*,
 - *(b) [name of person and type of bodily sample stated and person's photograph affixed]*,
 - *(c) [name of person and type of bodily sample stated and person's photograph affixed]*,
 - *(d) [name of person and type of bodily sample stated and person's photograph affixed]*.
- 2 When I took the bodily **sample/*samples* specified above, I strictly observed the procedures provided under the *Status of Children Regulation 2019*.
- 3 I placed **the bodily sample/*each of the bodily samples* specified above in a container that was immediately sealed and then labelled in accordance with clause 9 of the *Status of Children Regulation 2019*.

Dated 20 .

.....
[Signature of sampler]

*Delete if not applicable.

Form 3 Report

(Status of Children Act 1996)

(Clause 6 (1))

Name of child whose parentage is in issue:

Part 1

1 I, [name of nominated reporter], of [address], am a person nominated by the laboratory specified below to prepare a report in accordance with clause 6 of the *Status of Children Regulation 2019*.

2 I report that a parentage testing *procedure/*procedures, being DNA typing, *has/*have been carried out on the bodily *sample/*samples contained in the sealed *container/*containers bearing the *name/names of the following *donor/*donors:

(a) [donor's name, date of birth and relationship to the child whose parentage is in issue],

* (b) [donor's name, date of birth and relationship to the child whose parentage is in issue],

* (c) [donor's name, date of birth and relationship to the child whose parentage is in issue],

* (d) [donor's name, date of birth and relationship to the child whose parentage is in issue].

3 Each bodily sample referred to in item 2 is the same bodily sample as the bodily sample specified in the statement completed on [date] by [name of sampler] in accordance with clause 10 of the *Status of Children Regulation 2019*.

4 The parentage testing *procedure was/*procedures were carried out at [name of laboratory or laboratories].

5 The results of the parentage testing *procedure/*procedures are set out in Part 2 of this report.

*6 I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that [name of putative parent] is not excluded from identification as the *father/*mother of [name of child whose parentage is in issue].

[OR]

*6 I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that [name of putative parent] is excluded from identification as the *father/*mother of [name of child whose parentage is in issue].

*7 I further report that the probability that [name of putative parent] is the genetic *father/*mother of [name of child whose parentage is in issue] has been calculated as follows:

*Paternity/*Maternity Index [figure] to 1

Relative chance of *Paternity/*Maternity [percentage]%

[OR]

*7 I further report that the exclusion is based on contradictions to the laws of genetic inheritance in [amount] of the [amount] genetic markers tested. The contradictions occurred in the following genetic markers: [names of genetic markers and whether the contradictions were of the first or second order]

*8 I further report [if necessary, provide further explanation of results detailed in items 6 and 7].

Dated 20 .

.....
[Signature of nominated reporter]

Part 2

- 1 The bodily **sample/*samples* referred to in Part 1 **was/*were* received at *[name of laboratory at which the parentage testing *procedure was/*procedures were carried out]* on 20 .
- 2 The following identification numbers were allocated respectively to the bodily **sample/*samples* in the **container/*containers* in which the **procedure was/*procedures* were carried out:
 - (a) *[name of person and identification number]*,
 - *(b) [name of person and identification number]*,
 - *(c) [name of person and identification number]*,
 - *(d) [name of person and identification number]*.
- 3 The results obtained from the parentage testing **procedure/*procedures* are as follows: *[set out the results]*
- *4* The results set out in item 3 refer to the parentage testing **procedure/*procedures* carried out **by me/*under my supervision* on *[date]*. The bodily **sample was/*samples* were tested against the same reagents and in parallel with appropriate known controls. Results from controls show that all reagents were of correct specificity and normal potency. I am satisfied that the results obtained are true and that they have been correctly transcribed from the laboratory records.

[OR]
- *4* The results set out in item 3 refer to the parentage testing **procedure/*procedures* carried out **by me/*under my supervision* on *[date]*. The bodily **sample was/*samples* were tested with the same probes/primers and in parallel with appropriate known controls. Fragment length and/or hybridisation patterns were in accordance with scientifically accepted standards. I am satisfied that the results obtained have been correctly coded from the fragment and/or hybridisation pattern and that they have been correctly transcribed from the laboratory records.

Dated 20 .

.....
[Signature of person who carried out parentage testing procedure or person under whose supervision procedure was carried out]

**Delete if not applicable.*

Form 4 Paternity acknowledgment

(Status of Children Act 1996, section 19)

(Clause 13 (1))

Note:

SIGNATURES MUST BE WITNESSED BY AN AUSTRALIAN LEGAL PRACTITIONER OR BY AN OFFICER OF THE REGISTRY OF BIRTHS, DEATHS AND MARRIAGES NOMINATED BY THE REGISTRAR.

IF A PARTY IS UNAVAILABLE TO SIGN THIS FORM, THE LAST KNOWN ADDRESS OF THE PERSON SHOULD BE PROVIDED IN THE APPROPRIATE SECTION IMMEDIATELY BELOW.

I

[full name of mother]

of

.....

Postcode: Ph:

I

[full name of father]

of

.....

Postcode: Ph:

hereby acknowledge that we are the natural mother and father of the child named below. We request that the Registrar include details of the father (as stated below) on the birth record of the child.

CHILD'S PARTICULARS

.....

Sex:

