



New South Wales

Children (Care and Protection) Regulation 1996

under the

Children (Care and Protection) Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Care and Protection) Act 1987*.

Ron Dyer

Minister for Community Services

Explanatory note

The object of this Regulation is to repeal 5 regulations concerned with the care and protection of children and remake them as a single, amalgamated Regulation. The 5 regulations are:

- the *Children (Care and Protection—Wards and Protected Persons) Regulation 1988*,
- the *Fostering Authorities Regulation 1989*,
- the *Private Fostering Agency Authorities Regulation 1989*,
- the *Residential Child Care Centres Regulation 1989*,
- the *Children (Care and Protection—General) Regulation 1988*.

Part 2 of this Regulation makes provision for general matters concerning the provision of care for children under Division 1 of Part 2 of the Act.

Part 3 of this Regulation provides for the accommodation, care and maintenance of wards and protected persons under Part 6 of the Act.

Part 4 of this Regulation provides for the control and regulation of residential child care centres, which are centres, conducted by non-Government organisations, at which one or more children (other than

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children who are related to the person in charge of the premises) reside. In particular, Part 4:

- makes provision for the granting of licences for residential child care centres and to those who run them, and
- prescribes the conditions of a licence, including compliance with the Code of Conduct for Centres, set out in the Regulation, and
- regulates the maintenance and conduct of the centres.

Part 5 of this Regulation provides for the control and regulation of authorised private fostering agencies, which are non-Government organisations that arrange for the placement of children in foster care. In particular, Part 5:

- makes provision for the granting of authorities to conduct a private fostering agency, and
- prescribes the conditions of an authority, including that the principal officer of an agency obtain the agreement of each foster parent with whom it places a child to comply with the Code of Conduct for Foster Parents, set out in the Regulation, and
- requires the principal officer to adequately supervise the placement of each child who is placed with a foster parent, and
- requires the principal officer to keep a register of each foster parent in whose care the agency has placed children.

Part 6 of this Regulation imposes certain additional requirements on residential child care centres and private fostering agencies, including requirements:

- to keep certain records and registers concerning each child in the care of the centre or agency, and
- to provide information to the Director-General if persons associated with the provision of the service are charged with or convicted of certain offences, and if the centre or agency ceases to operate.

Part 7 of this Regulation provides for the control and regulation of foster parents who hold fostering authorities. A holder of a fostering authority has the care of children who are placed with them other than by a private fostering agency—for example, by the Director-General. Part 7:

- makes provision for the granting of fostering authorities, and
- prescribes the conditions of a fostering authority, including that the foster parent comply with the Code of Conduct for Foster Parents, set out in the Regulation, and

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- requires the foster parent to keep records concerning each child in the foster parent's care.

Part 8 of this Regulation regulates the conduct of all foster parents—those with whom foster children are placed by an agency and those who hold a fostering authority. Part 8 requires a foster parent:

- to undergo medical examination if required, and
- to provide information to the principal officer of an agency or the Director-General if they (or a member of their household) are charged with or convicted of certain offences, and if a foster child dies.

Nothing in this Regulation applies to a residential child care centre or a private fostering agency that is funded through the Department's Substitute Care Program, or a foster parent in whose care a child has been placed by such a private fostering agency.

This Regulation is made under the *Children (Care and Protection) Act 1987*, in particular sections 14 (9) and (12), 19, 20, 20B (3), 22 (3), 33A, 48 (3), 74 (1) (a), 91 (1), 92 (2) and 124 (the general regulation-making power) and clause 6 of Schedule 1.

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

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Part 1 Preliminary

1 Name of Regulation

This Regulation may be cited as the *Children (Care and Protection) Regulation 1996*.

2 Commencement

This Regulation commences on 1 September 1996.

3 Repeals

- (1) The following Regulations are repealed:
- (a) the *Children (Care and Protection—Wards and Protected Persons) Regulation 1988*,
 - (b) the *Fostering Authorities Regulation 1989*,
 - (c) the *Private Fostering Agency Authorities Regulation 1989*,
 - (d) the *Residential Child Care Centres Regulation 1989*,
 - (e) the *Children (Care and Protection—General) Regulation 1988*.
- (2) Any act, matter or thing that, immediately before any such repeal, had effect under the Regulation concerned, continues to have effect under this Regulation.

4 Definitions

In this Regulation:

agency means an authorised private fostering agency.

agency authority means a private fostering agency authority.

approved means approved for the time being by the Minister.

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Clause 4 Children (Care and Protection) Regulation 1996

Part 1 Preliminary

authorised officer means:

- (a) the Director-General, or
- (b) any officer authorised by the Director-General for the purposes of this Regulation.

centre means a residential child care centre.

child in alternative care means a child in alternative care as referred to in section 19 of the Act.

child care record means a record required to be kept under Part 6.

child care register means a register required to be kept under Part 6.

Code of Conduct for Foster Parents means the code of conduct set out in Schedule 1.

Code of Conduct for Centres means the code of conduct set out in Schedule 2.

facility has the same meaning as it has in the *Community Welfare Act 1987*.

Note. Under the *Community Welfare Act 1987*, a facility is any premises specified or described in an order of the Minister, published in the Gazette, declaring the premises to be a facility. Section 3A (6) of the *Community Welfare Act 1987* allows the Minister to establish and maintain establishments for the purpose of giving effect to the *Children (Care and Protection) Act 1987* on any facility that comprises premises that are under the control of the Crown.

foster child means a child who has been placed in the care of a foster parent for the purpose of the child being fostered.

foster home means the premises at which a foster parent resides.

foster parent means:

- (a) the holder of a fostering authority, and
- (b) a person in whose care a child has been placed by an agency for the purpose of the child being fostered.

foster parent's record means a record required to be maintained under clause 77.

fostering record means a record required to be kept under Part 6.

fostering register means a register required to be kept under Part 6.

licence means a licence for a residential child care centre.

licensee means the holder of a licence.

licensed manager of a centre means the licensed manager under the licence for the centre.

licensing standards means the licensing standards set out in Schedule 3.

principal officer of a program agency means the person authorised by the agency to have overall supervision of the provision of private fostering services by the agency.

program agency means a private fostering agency that is funded through the Department's Substitute Care Program.

relevant agency, in relation to a foster child who is in the care of a foster parent, means the agency that placed the child in the care of the foster parent.

TAFE establishment has the same meaning it has in the *Technical and Further Education Commission Act 1990*.

temporary care arrangement means a temporary care arrangement under section 14 of the Act.

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

5 Guidelines

The Minister may issue guidelines to assist people to comply with the provisions of the Act and this Regulation.

6 Notes

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

7 Operation of other legislation not affected

This Regulation does not affect the operation of any Act or law in its application to any matter with respect to which this Regulation makes provision.

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Clause 8 Children (Care and Protection) Regulation 1996

Part 2 General provisions

Part 2 General provisions

Note. This Part makes provision for general matters concerning the provision of care for children under Division 1 of Part 2 of the Act.

8 Children in alternative car—prescribed persons and premises

- (1) For the purposes of section 19 (4) (f) (i) of the Act, any person in whose care a child the subject of a temporary care arrangement has been placed under clause 12 is a prescribed person.
- (2) For the purposes of section 19 (4) (f) (ii) of the Act, any premises the subject of an application for a residential child care centre licence are prescribed premises.

9 Prescribed class of residential child care centre

Any centre (except those specified in Schedule 4) is prescribed as a class for the purposes of Division 2 of Part 3 of the Act.

10 Applications for temporary care arrangements

An application for a temporary care arrangement is to be in an approved form.

11 Applications for review of temporary care arrangements

- (1) An application for the review of a temporary care arrangement must be in writing.
- (2) A person who makes an application for the review of a temporary care arrangement relating to a child 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 a child who is of or above the age of 10 years—the child, and
 - (b) in any case—each person responsible for the child who can reasonably be located.

12 Care of children the subject of temporary care arrangements

A child the subject of a temporary care arrangement may be kept in the care of the Director-General or of some other suitable person who is willing to have the care of the child.

13 Ordinary medical and dental treatment

An authorised person who consents to the carrying out of medical or dental treatment on a child to whom section 20 of the Act applies is to cause notice of that fact to be given, as soon as is reasonably practicable, to a parent or guardian of the child.

14 Special medical treatment

- (1) The following treatments, procedures, operations and examinations are declared to be medical treatment for the purposes of section 20B of the Act:
 - (a) administration of any drug of addiction within the meaning of the *Poisons Act 1966*,
 - (b) administration of any long-acting injectable hormonal substance (such as medroxyprogesterone acetate in aqueous suspension) for the purpose of contraception or menstrual regulation,
 - (c) any treatment, procedure or operation in the nature of a vasectomy or tubal occlusion.
- (2) The following medical treatment is declared to be special medical treatment for the purposes of section 20B of the Act:
 - (a) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons Act 1966* (otherwise than in association with the treatment of cancer) 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 "Statement on Human Experimentation and Supplementary Notes" issued by the National Health and Medical Research Council, as in force on 1 July 1989, a copy of which is deposited in the head office of the Department,
 - (c) any medical treatment that involves the administration of a long-acting injectable hormonal substance (such as medroxyprogesterone acetate in aqueous suspension) for the purpose of contraception or menstrual regulation,
 - (d) any medical treatment in the nature of a vasectomy or tubal occlusion.

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Clause 15 Children (Care and Protection) Regulation 1996

Part 2 General provisions

15 Special medical examinations

If a special medical examination is carried out on a child to whom section 21 of the Act applies otherwise than with the consent of a parent of the child, the Minister is to cause notice of that fact to be given, as soon as is reasonably practicable, to a parent or guardian of the child.

16 Notification of sexual assault

- (1) For the purposes of section 22 (3) of the Act, the following professions, vocations and callings are prescribed:
 - (a) teaching (at a school),
 - (b) counselling (at a school),
 - (c) social work (at a school),
 - (d) early childhood teaching (at a school).
- (2) For the purposes of section 22 (3) of the Act, the following offices are prescribed:
 - (a) Principal of a school,
 - (b) Deputy Principal of a school.
- (3) In this clause, a reference to a school is a reference to a government school within the meaning of the *Education Reform Act 1990*.

17 Assessment reports

For the purposes of section 74 (1) (a) of the Act, an assessment report:

- (a) is to be in such form as the Director-General may from time to time approve, and
- (b) is to deal with such of the following matters as are relevant to the circumstances of the person to whom the report relates:
 - the person's family structure,
 - the person's history, development and experience,
 - the person's parent or parents,
 - the relationship between the person and his or her parent or parents,

- issues of social, cultural or economic significance to the person or his or her family,
 - the interaction between members of the person's family and capacity to adapt or deal with circumstances affecting the family,
 - the range of care orders that are available to the court in respect of the person,
 - the resources available within the Department to administer each kind of care order in that range, and
- (c) is to deal with such matters as the Children's Court may require in relation to the person to whom the report relates, and
- (d) may deal with such other matters as the Director-General considers appropriate to include in the report, and
- (e) may contain recommendations with respect to the care order that, in the opinion of the Director-General, is appropriate for the person to whom the report relates.

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Clause 18 Children (Care and Protection) Regulation 1996

Part 3 Wards and protected persons

Part 3 Wards and protected persons

Note. This Part provides for the accommodation, care and maintenance of wards and protected persons under Part 6 of the Act.

18 Living allowances for wards

- (1) This clause applies to a ward who is living independently.
- (2) The Minister may provide for the accommodation, care and maintenance of a ward:
 - (a) by means of a periodic allowance paid to the ward or to a person having the care of the ward, and
 - (b) by means of contingency allowances (that is, allowances to meet particular items of expenditure that relate to the accommodation, care and maintenance of the ward other than items of expenditure for which a periodic allowance has been paid) paid to the ward or to a person having the care of the ward.
- (3) An allowance is to be of such amount, and be paid in such instalments, as the Minister may determine.

19 Rates of allowance for wards and protected persons in foster care

- (1) For the purposes of section 91 (1) (b) of the Act, the prescribed rates of payment in respect of the accommodation, care and maintenance of a ward or protected person in the care of a foster parent who is approved by the Minister are the rates set out in Schedule 5.
- (2) The Minister may provide for the accommodation, care and maintenance of a ward or protected person by means of contingency allowances (that is, allowances to meet particular items of expenditure that relate to the accommodation, care and maintenance of the ward or protected person other than items of expenditure for which a payment has been made under section 91 (1) (b) of the Act) paid to the ward or protected person or to a person having the care of the ward.

- (3) Subclause (2) applies to a ward or protected person in the care of a foster parent who:
- (a) is approved by the Minister, or
 - (b) is provided by an agency, or
 - (c) holds a fostering authority, or
 - (d) is a program agency.

20 Rates of allowance for wards and protected persons in residential care

- (1) This clause applies to a ward or protected person who is in the care of a residential child care centre.
- (2) A payment made under section 91 (1) (b) of the Act in respect of a ward or protected person is to be of such amount, and be paid in such instalments, as the Minister may determine.
- (3) For the purposes of this clause, a ward or protected person does not cease to be in the care of a residential child care centre merely because the ward or protected person is temporarily in the care of some other person or body.

21 Declaration of additional income

A person having the care of a ward or protected person in respect of whom payments are made, as referred to in clause 19, must not fail:

- (a) on receiving or becoming entitled to receive any other payment in respect of the accommodation, care or maintenance of the ward or protected person, or
- (b) on becoming aware that the ward or protected person has received or become entitled to receive any other payment in respect of the accommodation, care or maintenance of the ward or protected person,

to cause notice of that fact to be given to the Director-General.

Maximum penalty: 5 penalty units.

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Clause 22 Children (Care and Protection) Regulation 1996

Part 3 Wards and protected persons

22 Placement of wards and protected persons with foster parents

- (1) A person who has custody of a ward or protected person under section 91 (1) (d) (i) of the Act, and who is the principal officer of an agency or of a program agency, must not place the ward or protected person in the care of any other person unless that other person:
 - (a) has furnished to the principal officer such information as the principal officer may reasonably require in order to assess the person's suitability to be a foster parent of the ward or protected person, and
 - (b) has successfully completed such course of training as the principal officer may reasonably require in order to ensure that the person is capable of exercising the functions of a foster parent of the ward or protected person.
- (2) A ward or protected person is not to be placed in the custody of any person under section 91 (1) (d) (ii) of the Act unless:
 - (a) the person has furnished to the Director-General such information as the Director-General may reasonably require in order to assess the person's suitability to be a foster parent of the ward or protected person, and
 - (b) the person has successfully completed such course of training as the Director-General may reasonably require in order to ensure that the person is capable of exercising the functions of a foster parent of the ward or protected person.

23 Information to be given by foster parents

- (1) A person who has been given the care of a ward or protected person by a person who has the custody of the ward or protected person under section 91 (1) (d) (i) of the Act and is the principal officer of an agency or of a program agency must cause the principal officer to be notified immediately of the following matters:
 - (a) any change in the place of residence of the ward or protected person,
 - (b) if the ward or protected person leaves, or is removed from, the care of the person,

- (c) if the ward or protected person:
 - (i) is to be, or has been, absent from the care of the person for a period of 24 hours or more, or
 - (ii) is to be, or has been, absent (whether or not while in the care of the person) from New South Wales for any period,
 - (d) if the ward or protected person suffers a serious accident, injury or illness,
 - (e) if the ward or protected person dies.
- (2) A person who has the custody of a ward or protected person under section 91 (1) (d) (ii) of the Act must cause the Director-General to be notified immediately of the following matters:
- (a) any change in the place of residence of the ward or protected person,
 - (b) if the ward or protected person leaves, or is removed from, the custody of the person,
 - (c) if the ward or protected person:
 - (i) is to be, or has been, absent from the care of the person for a period of 24 hours or more, or
 - (ii) is to be, or has been, absent (whether or not while in the care of the person) from New South Wales for any period at all,
 - (d) if the ward or protected person suffers a serious accident, injury or illness,
 - (e) if the ward or protected person dies.

24 Information to be given by principal officers

A person who:

- (a) has the custody of a child under section 91 (1) (d) (i) of the Act, and
- (b) is the principal officer of an agency or of a program agency,

must cause the Director-General to be notified immediately if that person has been notified of any of the matters specified in clause 23 (1) by a person having care of the child.

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Clause 25 Children (Care and Protection) Regulation 1996

Part 3 Wards and protected persons

25 Interviews with wards and protected persons

- (1) A person referred to in clause 23 (1) who has been given the care of a ward or protected person is to permit any person authorised by the principal officer of the agency or of the program agency to visit the ward or protected person, at any reasonable time, and to confer privately with the ward or protected person.
- (2) A person who has the custody of a ward or protected person under section 91 (1) (d) (ii) of the Act is to permit any person authorised by the Director-General to visit the ward or protected person, at any reasonable time, and to confer privately with the ward or protected person.

26 Conditions on which foster parents and others have custody of wards and protected persons

A person in whose custody a ward or protected person is placed under section 91 (1) (d) of the Act has the custody of the ward or protected person subject to the following conditions:

- (a) the person is to provide for the ward or protected person's physical, social and emotional well-being,
- (b) the person is to ensure that, in the case of a ward or protected person who is of a particular religion, the ward or protected person is given the opportunity to be educated in the tenets of that religion,
- (c) the person is to provide the ward or protected person with food, clothing and accommodation that is both suitable and adequate for the needs of the ward or protected person,
- (d) the person is to ensure that the ward or protected person receives any medical or dental treatment that the ward or protected person needs,
- (e) the person is to ensure that the ward or protected person is provided with recreational activities that are both suitable and adequate to the needs and interests of the ward or protected person,
- (f) the person is to ensure that, in the case of a ward or protected person who is under the age of 15 years, the ward or protected person attends school regularly,

- (g) the person is to ensure that any household duties required to be performed by the ward or protected person are commensurate with the capabilities of the ward or protected person.

27 Former wards and protected persons

- (1) If the Minister ceases to be the guardian of a ward or protected person, the Minister is to cause notice of that fact to be given to the ward or protected person.
- (2) Such a notice is to indicate the following:
 - (a) the nature and amount of any property held by the Minister on behalf of the former ward or protected person,
 - (b) the procedure appropriate for transferring any such property to the former ward or protected person or to some other person on behalf of the former ward or protected person,
 - (c) the existence of any assistance for which the former ward or protected person may be eligible,
 - (d) the procedure appropriate for applying for any such assistance.

28 Education and vocational training for former wards and protected persons

For the purposes of section 92 (2) of the Act, the following conditions are prescribed:

- (a) the educational or vocational training must be suitable for the former ward or protected person, having regard to the capabilities and interests of the former ward or protected person,
- (b) the education or vocational training must be commenced by the former ward or protected person while he or she is under the age of 21 years,
- (c) the former ward or protected person must apply himself or herself in the subjects and activities that comprise the education or vocational training.

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Clause 29 Children (Care and Protection) Regulation 1996

Part 3 Wards and protected persons

29 Inspection of facilities in which wards and protected persons are accommodated

- (1) This clause applies to all facilities that comprise premises that are under the control of the Crown or a person acting on behalf of the Crown that are used for the purpose of providing accommodation for wards or protected persons.
- (2) The Director-General is to cause each such facility to be inspected at least once every 6 months.
- (3) Such an inspection is to be carried out by an officer authorised by the Director-General for that purpose.
- (4) On completing an inspection of a facility, the authorised officer is to submit a report of the inspection to the Director-General.
- (5) The report of the inspection is to deal with the following matters:
 - (a) the physical, psychological and emotional well-being of the wards and protected persons residing in the facility.
 - (b) the social, cultural and educational development of those wards and protected persons,
 - (c) the general control and management of the facility,
 - (d) the morale, conduct and functions of persons employed in the facility,
 - (e) the condition of the premises (including the grounds, buildings, furniture, equipment and amenities) of the facility,
 - (f) the relationship between the facility and the neighbouring community,
 - (g) the existence of any contraventions of the Act or this Regulation,
 - (h) the nature, quality and extent of any arrangements that exist for staff training and development.
 - (i) any significant problems arising from the matters referred to in paragraphs (a)–(h),
 - (j) any matters that are deserving of commendation,
 - (k) any recommendations for the improvement of the facility,

- (l) such other matters as the Director-General may require to be dealt with in the report or as the authorised officer may consider appropriate to include in the report.

30 Care of wards and protected persons in facilities

The person in charge of a facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown that are used for the purpose of providing accommodation for wards or protected persons must ensure that the facility is conducted in accordance with the following conditions:

- (a) adequate provision is made for the physical, social and emotional well-being of each ward or protected person,
- (b) in the case of any ward or protected person who is of a particular religion, the ward or protected person is educated in the tenets, and brought up in accordance with the precepts, of that religion,
- (c) each ward or protected person is provided with food, clothing and accommodation that is both suitable and adequate for the needs of the ward or protected person,
- (d) each ward or protected person receives any medical or dental treatment of which the ward or protected person is in need,
- (e) each ward or protected person is provided with recreational activities that are both suitable and adequate to the needs and interests of the ward or protected person,
- (f) in the case of any ward or protected person who is under the age of 15 years, the ward or protected person attends school regularly.

31 Determination of religious affiliation

- (1) The Director-General may, if in his or her opinion it is desirable to do so, determine to which religion a particular ward or protected person belongs.
- (2) Such a determination is to be made having regard to:
 - (a) the views (if any) of the ward or protected person, and

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Part 3 Wards and protected persons

- (b) the views (if any) of the parents of the ward or protected person, and
- (c) the religious upbringing (if any) that the ward or protected person has already received.

32 Unnamed wards and protected persons

The Director-General is to ensure that any ward or protected person who does not have a given name or surname receives a name or surname.

33 Property of wards and protected persons

- (1) Property held by the Minister or the Director-General on behalf of a ward or protected person may be invested in any manner authorised by the *Trustee Act 1925*.
- (2) The Minister and the Director-General are to endeavour to obtain a reasonable return on any investments referred to in subclause (1).
- (3) The Minister or the Director-General may enter into an arrangement with the Public Trustee with respect to the management of any property held by the Minister or Director-General on behalf of a ward or protected person.
- (4) Nothing in this clause prevents:
 - (a) a sum of money (not exceeding \$1,000 at any one time) being held by a foster parent on behalf of a ward or protected person, or
 - (b) any sum of money being held by a ward or protected person.
- (5) Nothing in this clause limits the operation of any other Act or law that affects the functions of the Minister or the Director-General in relation to property held by or on behalf of a ward or protected person.

Part 4 Residential child care centres

Division 1 Preliminary

Note. This Part provides for the control and regulation of residential child care centres, which are centres conducted by non-Government organisations at which one or more children (other than children who are related to the person in charge of the premises) reside.

34 Application of Part

Nothing in this Part applies to a centre that is funded through the Department's Substitute Care Program.

Division 2 Licences

35 Application for licence

- (1) An application for a licence is to be made in an approved form.
- (2) An application must be accompanied by such information as the Minister may reasonably require to assist in the determination of the application.
- (3) Without limiting the generality of subclause (2), an initial application must be accompanied by the following:
 - (a) a site plan showing the location of every building and other structure, and
 - (b) a plan of each building showing its elevation, dimensions and the proposed use of each part of the building.

Note. Schedule 1 to the Act contains provisions relating to certain licences and authorities granted under the Act. Clause 2 of Schedule 1 provides that a person is not eligible to make an application for a licence unless the person is the proprietor of the premises for which the licence is applied for, or the Minister consents to the application.

36 Report on application for licence

- (1) In making a report (under clause 3 of Schedule 1 to the Act) on an application for a licence, an officer must state whether, in the officer's opinion:

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Part 4 Residential child care centres
Division 2

- (a) the proposed licensed manager of the centre:
 - (i) has had sufficient experience in the care and supervision of children to equip the person to carry out the duties of the licensed manager, and
 - (ii) is a fit and proper person, and
 - (b) the applicant has made or will make adequate provision for:
 - (i) the assessment of children whom the applicant is requested to admit to the proposed centre, and
 - (ii) the counselling of parents who request the applicant to admit their children to the proposed centre, and
 - (iii) the care and supervision of children who reside in the proposed centre, and
 - (iv) the training and development of staff employed in the care and supervision of children at the proposed centre.
- (2) In making a report on an application for a licence, an officer is to state whether, in the officer's opinion:
- (a) the grounds, buildings, equipment and amenities of the proposed service comply with the licensing standards, and
 - (b) the applicant has taken or will take any measures necessary to comply with this Part and the Code of Conduct for Centres.
- (3) For the purpose of establishing whether or not the proposed licensed manager is a fit and proper person, an officer may make such inquiries (including, subject to the *Criminal Records Act 1991*, inquiries as to the person's criminal record, if any) as the officer considers appropriate.

37 Conditions of licence

For the purposes of clause 6 of Schedule 1 to the Act, the following conditions are prescribed in relation to a licence:

- (a) the licensee must permit an authorised officer to inspect the centre, and all of its child care records and child care registers, during normal business hours,
- (b) the licensee must ensure that the grounds, buildings, equipment and amenities of the centre comply with the licensing standards,

- (c) the licensee, licensed manager and all other members of the staff of the centre must comply with the Code of Conduct.

Note. Section 34 (2) of the Act makes it an offence for a licensed manager to contravene or fail to comply with any condition of the licence that applies to the licensed manager. Section 35 (2) of the Act makes it an offence for a licensee to contravene or fail to comply with any condition of the licence for the centre that applies to the licensee. The licensee also commits an offence if the centre itself does not comply with any condition of the licence that applies to the centre. Section 120 of the Act provides that a person who is guilty of an offence for which no penalty is expressly imposed (which includes sections 34 (2) and 35 (2)) is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

38 Form of licence

- (1) A licence is to be in such form as may be approved.
- (2) A licence is to be endorsed with any condition imposed on it by the Minister under clause 6 or 7 of Schedule 1 to the Act.

39 Notice of changes relating to licence

The licensee of a centre must cause notice in writing of any proposed structural alteration to, or demolition of, any building or other structure at the centre to be given to the Director-General:

- (a) at least 3 weeks before the alteration or demolition commences, or
- (b) if the consent or approval of any public or local authority must be sought for the alteration or demolition, before the consent or approval is sought,

whichever is the earlier.

Maximum penalty: 2 penalty units.

Division 3 Maintenance of centres

40 Maintenance of buildings and grounds

The licensee of a centre must ensure that:

- (a) the centre is kept safe, clean and in good repair and is properly ventilated, lit and heated, and

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Pari 4 Residential child care centres
Division 3

- (b) the centre's exterior windows and doorways are, whenever appropriate, fitted with fly-screens, and
- (c) the centre's buildings and grounds are kept free of vermin, noxious insects and noxious plants.

Maximum penalty: 5 penalty units.

41 Maintenance of fire equipment

The licensee of a centre must ensure that:

- (a) all fire protection equipment with which the centre is equipped is tested at least once every 12 months and is kept in proper working condition, and
- (b) appropriate fire drills and evacuation procedures are established and practised at least once every 4 months.

Maximum penalty: 5 penalty units.

42 Maintenance of furniture and equipment

The licensee of a centre must ensure that:

- (a) all furniture, furnishings and equipment at the centre are kept in safe, clean and good repair, and
- (b) all bed linen is changed at least once every 7 days, and
- (c) bed linen used by one child is changed before a different child occupies the bed, and
- (d) appropriate arrangements are made for laundering bed linen and other furnishings used in the centre.

Maximum penalty: 5 penalty units.

43 Public liability insurance

The licensee of a centre must effect and maintain with an approved insurer public liability insurance in relation to the centre for a cover of not less than \$5,000,000.

Maximum penalty: 5 penalty units.

Division 4 Conduct of centres

44 Acceptance of children

- (1) The licensed manager of a centre must not accept a child as a resident of the centre otherwise than:
 - (a) at the written request of a person who is entitled to the custody of the child, or
 - (b) at the written request of the Director-General, or
 - (c) in accordance with an order made by a court having jurisdiction to make orders with respect to the care and custody of children.

Maximum penalty: 5 penalty units.

- (2) The licensed manager of a centre must not accept a child as a resident of the centre otherwise than in accordance with such directions (if any) as the Minister may give, either generally or in relation to any particular child or class of children.

Maximum penalty: 5 penalty units.

- (3) In deciding whether or not to accept a child as a resident, the licensed manager must have regard to:
 - (a) the views of the child, and
 - (b) the welfare and interests of the child.
- (4) Before accepting a child as a resident, the licensed manager must:
 - (a) obtain (where practicable) a social, behavioural and medical history of the child and the child's parents, and
 - (b) obtain a medical report on the state of the child's health.

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Part 4 Residential child care centres
Division 4

45 Visits and communication

The licensed manager of a centre must:

- (a) encourage visits to each child by the child's parents, relatives and friends, and
- (b) encourage communication (whether by letter, telephone or otherwise) between each child and the child's parents, relatives and friends,

except where to do so would be in contravention of any order of a court having jurisdiction to restrict or prohibit such visits or communications or would, in the opinion of the licensed manager, be detrimental to the welfare and interests of the child.

Maximum penalty: 5 penalty units.

Note. Section 38 of the Act requires the licensed manager of a centre to immediately give notice of the death of a child at a centre to such parents of the child as can reasonably be located, the police and the Director-General, except in respect of a child who is related to the licensed manager. The penalty for failure to comply with this requirement is 5 penalty units.

Part 5 Private fostering agencies

Division 1 Preliminary

Note. This Part provides for the control and regulation of authorised private fostering agencies, which are non-Government organisations that arrange for the placement of children in foster care.

46 Application of Part

Nothing in this Part applies to:

- (a) a program agency, or
- (b) a foster parent in whose care a child has been placed by a program agency.

47 Definition

In this Part:

foster parent means a person in whose care a child has been placed by an agency for the purpose of the child being fostered, but does not include the holder of a fostering authority.

Division 2 Agency authorities

48 Application for agency authority

- (1) An application for an agency authority is to be made in an approved form.
- (2) An application is to be accompanied by such information as the Minister may reasonably require to assist in the determination of the application.
- (3) An application must specify the person proposed to have the overall supervision of the provision of private fostering services carried on under the authority (the *principal officer*).

49 Report on application for agency authority

- (1) In making a report (under clause 3 of Schedule 1 to the Act) on an application for an agency authority, an officer must state whether, in the officer's opinion:

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Part 5 Private fostering agencies
Division 2

- (a) the proposed principal officer:
 - (i) is qualified for membership of the Australian Association of Social Workers, has other approved qualifications, or other approved training and experience, and
 - (ii) has had sufficient experience to equip the person to have the overall supervision of the private fostering services proposed to be carried on by the applicant, and
 - (iii) is a fit and proper person, and
 - (b) the applicant has made or will make adequate provision for:
 - (i) the assessment of children in respect of whom the applicant is requested to make fostering arrangements, and
 - (ii) the counselling of parents who request the applicant to make fostering arrangements in respect of their children, and
 - (iii) the investigation, selection and training of prospective foster parents and the inspection of prospective foster homes, and
 - (iv) the supervision of the fostering of children who are placed with foster parents by the applicant.
- (2) For the purpose of establishing whether or not the proposed principal officer is a fit and proper person, an officer may make such inquiries (including inquiries, subject to the *Criminal Records Act 1991*, as to the person's criminal record, if any) as the officer considers appropriate.

50 Conditions of agency authority

For the purposes of clause 6 of Schedule 1 to the Act, the following conditions are prescribed in relation to an agency authority:

- (a) the agency must permit an authorised officer to inspect the business premises of the agency, and all of its fostering records and fostering registers, during normal business hours,

- (b) the agency, the principal officer and all other members of the staff of the agency must use their best endeavours to ensure that foster parents comply with the Code of Conduct.

Note. Section 40 (4) of the Act makes it an offence for a person who is an authorised private fostering agency or the principal officer of such an agency to contravene or fail to comply with any condition of the agency authority that applies to that person. Section 120 of the Act provides that a person who is guilty of an offence for which no penalty is expressly imposed (which includes section 40 (4)) is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

51 Form agency authority

An agency authority is to be in such form as may be approved.

An agency authority is to be endorsed with any condition imposed on it by the Minister under clause 6 or 7 of Schedule 1 to the Act.

52 Notice of changes relating to agency authority

An agency must, within 7 days after any change in the agency's address, cause notice in writing of the change to be given to the Director-General.

Maximum penalty: 2 penalty units.

Division 3 Conduct of agencies

53 Care of children pending fostering

An agency must, in accordance with such directions as the Minister may give in that regard, use its best endeavours to arrange for the care of any child:

- (a) in respect of whom it has been requested to make fostering arrangements, and
- (b) for whom existing care arrangements are, in the agency's opinion, inadequate.

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Clause 54 Children (Care and Protection) Regulation 1996

Part 5 Private fostering agencies
Division 3

54 Placement of children

- (1) An agency must not place a child in foster care otherwise than:
- (a) at the written request of a person who is entitled to the custody of the child, or
 - (b) at the written request of the Director-General, or
 - (c) in accordance with an order made by a court having jurisdiction to make orders with respect to the care and custody of children.

Maximum penalty: 5 penalty units.

- (2) An agency must not place a child in foster care otherwise than in accordance with such directions (if any) as the Minister may give, either generally or in relation to any particular child or class of children.

Maximum penalty: 5 penalty units.

- (3) In deciding whether or not to place a child in foster care, an agency must have regard to:

- (a) the views of the child, and
- (b) the welfare and interests of the child.

- (4) Before placing a child in the care of a particular foster parent, an agency must:

- (a) assess the suitability of a prospective foster parent, and of the members of his or her household, in relation to the proposed placement of a child in his or her care, and
- (b) cause an inspection of the prospective foster home to be carried out and an assessment to be made of its adequacy as a foster home, and
- (c) obtain (where practicable) a social and medical history of the child and the child's parents, and
- (d) obtain a medical report on the state of the child's health.

- (5) An agency must not place a child in the care of a person unless, in its opinion:

- (a) the person:
 - (i) is sympathetic to the welfare of children, and
 - (ii) has adequate knowledge, understanding and experience of children so as to be capable of meeting their needs, and

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- (iii) is able to adequately care for and supervise children, and
 - (iv) is of suitable maturity, health and personality to care for children, and
 - (b) the person, and the members of the person's household, are fit and proper persons.
- (6) To assist an agency to form an opinion as to whether a prospective foster parent is of suitable health to care for children, the agency may require:
- (a) that the person undergo such examination by a medical practitioner as is reasonably necessary for that purpose, and
 - (b) that a report of the examination be provided to the agency.
- (7) In making arrangements for the fostering of a child, an agency must use its best endeavours to place the child with foster parents of the same religion and culture as the child.

55 Code of Conduct for Foster Parents

The principal officer of an agency must ensure that before any child is placed in the care of a foster parent:

- (a) the foster parent is given a copy of the Code of Conduct for Foster Parents, and
- (b) the foster parent is given guidance and information to assist in his or her compliance with the Code of Conduct for Foster Parents, and
- (c) the foster parent agrees, in writing, to comply with the Code of Conduct for Foster Parents.

56 Supervision of placements

- (1) The principal officer of an agency must give to a foster parent in whose care a child has been placed by the agency all information in the agency's possession that may assist the foster parent in caring for the child.
- (2) The principal officer of an agency must use his or her best endeavours to ensure that:
 - (a) each foster parent in whose care the agency has placed a child, and

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Part 5 Private fostering agencies
Division 3

(b) each such child,

is interviewed by a person authorised by the agency, at least once every 90 days, with respect to the welfare, progress and circumstances of the child.

(3) Without limiting the generality of subclause (2), any such interview must ascertain:

(a) particulars of any injuries or illnesses suffered by, and any medical or dental treatment carried out on, the foster child, and

(b) particulars of any consent given by the foster parent to the carrying out of medical or dental treatment on the child.

(4) The principal officer of an agency must ensure that a person who has requested the agency to make fostering arrangements in respect of a child is notified of

(a) each occasion on which the child is placed in, or is removed from, the care of a foster parent; and

(b) except where to do so would, in the opinion of the principal officer, be detrimental to the welfare and interests of the child the name and address of each such foster parent.

57 Public liability insurance

The principal officer of an agency must ensure that each of the agency's foster parents effects and maintains an adequate amount of public liability insurance.

Maximum penalty: 5 penalty units.

58 Visits and communication

The principal officer of an agency must:

(a) encourage visits to each child by the child's parents, relatives and friends, and

(b) encourage communication (whether by letter, telephone or otherwise) between each child and the child's parents, relatives and friends,

except where to do so would be in contravention of any order of a court having jurisdiction to restrict or prohibit such visits or communications or would, in the opinion of the principal officer, be detrimental to the welfare and interests of the child.

Maximum penalty: 5 penalty units.

59 Termination of placements

If the principal officer of an agency is of the opinion that it is in the interests of a child whom it has placed in the care of a foster parent that the placement be terminated, the principal officer must arrange for the child to be removed from the care of the foster parent and:

- (a) must place the child in the care of another foster parent, or
- (b) must make alternative arrangements for the care of the child.

60 Register of foster parents to be maintained

The principal officer of an agency must cause a register to be kept, in relation to each foster parent in whose care the agency has placed children, of the following particulars:

- (a) the name and address of the foster parent,
- (b) the name of each child placed with the foster parent,
- (c) the date on which each such child was so placed,
- (d) the date on which each such child ceased to be in the care of the foster parent.

Maximum penalty: 5 penalty units.

61 Notification of death

The principal officer of an agency, on being notified of the death of a child, must immediately cause notice of that fact to be given to:

- (a) such of the parents of the child as can reasonably be located, and
- (b) a police officer, and
- (c) the Director-General.

Maximum penalty: 5 penalty units.

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Clause 62 Children (Care and Protection) Regulation 1996

Part 6 Further requirements in relation to centres and agencies
Division 1

Part 6 Further requirements in relation to centres and agencies

Division 1 Preliminary

Note. This Part imposes certain additional requirements on residential child care centres and private fostering agencies, including requirements to keep certain records and registers and provide certain information.

62 Application of Part

Nothing in this Part applies to a program agency or a centre that is funded through the Department's Substitute Care Program.

63 Definitions

In this Part:

child means:

- (a) in the case of a centre, each child residing at the centre, or
- (b) in the case of an agency, each child whom the agency has placed in the care of a foster parent.

specified person means:

- (a) in the case of a centre, the licensee of the centre, or
- (b) in the case of an agency, the principal officer of the agency.

Division 2 Records and registers

64 Records to be kept

- (1) The specified person must cause a record to be kept in relation to each child containing the following particulars:
 - (a) the child's name, sex, date of birth and religion (if any),
 - (b) the ethnic group to which the child belongs and the primary language spoken by the child or (if the child has not yet learned to speak) by the child's parents,
 - (c) the names, addresses and home and business telephone numbers of the child's parents,

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- (d) the name of the person who requested the admission of the child to the centre, or the making of fostering arrangements in respect of the child, and:
 - (i) except as provided by subparagraph (ii)—the address and home and business telephone numbers of that person, or
 - (ii) if that person made the request on behalf of an organisation that had the care of the child—the name, address and telephone number of the organisation and the position held by that person in that organisation,
 - (e) a record of each acceptance and placement, including the name, address and telephone numbers of each foster parent in whose care the child is placed and the date of each occasion on which the child is so placed,
 - (f) a summary of each medical report obtained in relation to the child under clause 44 (4) (b) or 54 (4) (d),
 - (g) the date of each interview with the child, and of each interview with the child's foster parents or care workers, and a summary of the matters arising from each such interview,
 - (h) the date of each occasion on which the child ceases to be in the care of a foster parent or resident at a centre,
 - (i) the name, address and telephone number of the child's medical practitioner,
 - (j) particulars of any injuries or illnesses suffered by, and any medical or dental treatment carried out on, the child while residing at the centre or while in the care of a foster parent,
 - (k) particulars of any consent given by the specified person to the carrying out of medical or dental treatment on the child,
 - (l) particulars of any court orders affecting the custody or guardianship of the child of which the specified person is aware,
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Clause 64 Children (Care and Protection) Regulation 1996

Part 6 Further requirements in relation to centres and agencies
Division 2

- (m) particulars of any previous occasions on which the child has been placed in foster care or has been resident at any centre.

Maximum penalty: 5 penalty units.

- (2) In addition to the matters referred to in subclause (1), the specified person may include in a record any matter that he or she considers significant.

65 Register of children to be kept

- (1) The specified person must cause a register to be kept, in relation to each child, of the following particulars:
 - (a) the child's name, sex and date of birth,
 - (b) the names and addresses of the child's parents,
 - (c) the name and address of the person who requested the admission of the child to the centre or the making of fostering arrangements in respect of the child,
 - (d) particulars of any court orders affecting the custody or guardianship of the child of which the specified person is aware.
- (2) The licensed manager of a centre must cause the following additional particulars to be entered on a register kept under subclause (1):
 - (a) the dates of the child's admission to and discharge from the centre,
 - (b) the name and address of any other centres at which the child has been resident, and the dates of the child's admission to and discharge from each of those centres.
- (3) The principal officer of an agency must cause the following additional particulars to be entered on a register kept under subclause (1):
 - (a) the name and address of each foster parent in whose care the child is placed and the date of each occasion on which the child is so placed,
 - (b) the date of each occasion on which the child ceases to be in the care of a foster parent,
 - (c) the date on which the child ceases to be in the care of the agency.

Maximum penalty (subclauses (1)–(3)): 5 penalty units.

66 Retention of records and registers

- (1) The specified person must ensure that all of the records and registers are retained:
- (a) in the case of a centre, at the centre, and
 - (b) in the case of an agency, at the agency's principal place of business,

for not less than 7 years after they are made.

Maximum penalty: 5 penalty units.

- (2) Subclause (1) does not apply if the Director-General directs that the records or registers be dealt with otherwise than as referred to in that subclause and the specified person causes the records or registers to be dealt with in accordance with the terms of the direction.

67 Inspection of records and registers

- (1) The specified person must ensure that the records and registers are not inspected otherwise than by:
- (a) in the case of an agency, an employee of the agency, and
 - (b) in the case of a centre, the licensed manager of the centre, and
 - (c) in either case:
 - (i) an authorised officer, or
 - (ii) a person otherwise authorised by law to inspect the records or registers.

Maximum penalty: 5 penalty units.

- (2) Subclause (1) does not prevent the records and registers in respect of a particular child from being inspected by a parent of the child.

Division 3 Information and notice

68 Information to be provided to Director-General

- (1) The specified person must provide the Director-General with such information in relation to the centre or agency as the Director-General may from time to time reasonably require.

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Clause 68 Children (Care and Protection) Regulation 1996

Part 6 Further requirements in relation to centres and agencies
Division 3

- (2) If the licensee of a centre or the licensed manager of a centre:
- (a) is charged with or convicted of an offence for which a penalty of penal servitude or imprisonment for 12 months or more may be imposed, or
 - (b) becomes aware that a member of the staff of the centre has been charged with or convicted of such an offence,
- the licensee or licensed manager must immediately cause written notice of that fact to be given to the Director-General.
- (3) If the principal officer of an agency:
- (a) is charged with or convicted of an offence for which a penalty of penal servitude or imprisonment for 12 months or more may be imposed, or
 - (b) becomes aware that:
 - (i) a member of the staff of the agency has been charged with or convicted of such an offence, or
 - (ii) a foster parent in whose care the agency has placed a child, or any of the members of a foster parent's household, has been charged with or convicted of such an offence,
- the principal officer must immediately cause written notice of that fact to be given to the Director-General.
- Maximum penalty (subsections (1)–(3)): 5 penalty units.

69 Agency or centre ceasing to operate

- (1) The licensed manager of a centre that ceases to operate (whether because the centre ceases to be licensed, or for some other reason):
- (a) must immediately cause notice of that fact to be given to the Director-General, and
 - (b) must deliver to the Director-General all of its records and registers,
- within 7 days after ceasing to operate.
- (2) The principal officer of an agency that ceases to operate (whether because the agency ceases to hold an agency authority, or for some other reason):
- (a) must immediately cause notice of that fact to be given to the Director-General, and

- (b) must deliver to the Director-General, or (with the Director-General's consent) to the licensee of another centre, all of its records and registers,

within 7 days after ceasing to operate.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

- (3) A notice referred to in subclause (1) given in respect of a centre must:
 - (a) identify each child who was residing at the centre immediately before it ceased to operate as a centre, and
 - (b) indicate the name and address of the person in whose care the child is currently placed.
- (4) A notice referred to in subclause (2) given in respect of an agency must:
 - (a) identify each child who is currently in the care of a foster parent pursuant to a placement made by the agency, and
 - (b) indicate the name and address of the foster parent concerned.

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Clause 70 Children (Care and Protection) Regulation 1996

Part 7 Fostering authorities
Division 1

Part 7 Fostering authorities

Division 1 Preliminary

Note. This Part provides for the control and regulation of foster parents who hold fostering authorities—that is, a person having the care of a child placed with the person other than by a private fostering agency (for example, by the Director-General).

78 Definition

In this Part:

foster parent means the holder of a fostering authority, but does not include a person in whose care a child has been placed by an agency for the purpose of the child being fostered.

Division 2 Fostering authorities

71 Application for fostering authority

- (1) An application for a fostering authority is to be made in an approved form.
- (2) An application is to be accompanied by such information as the Minister may reasonably require to assist in the determination of the application.

72 Report on application for fostering authority

- (1) In making a report (under clause 4 of Schedule 1 to the Act) on an application for a fostering authority, an officer must state whether, in the officer's opinion:
 - (a) the applicant:
 - (i) is sympathetic to the welfare of children, and
 - (ii) has adequate knowledge, understanding and experience of children so as to be capable of meeting their needs, and
 - (iii) is able to adequately care for and supervise children, and
 - (iv) is of suitable maturity, health and personality to care for children, and

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- (b) the applicant, and the members of the applicant's household, are fit and proper persons.
- (2) If an officer is of the opinion that, for the purpose of the officer's report as to whether an applicant is of suitable health to care for children, a medical report on the applicant should be obtained, the officer may advise the Director-General to require:
 - (a) that the applicant undergo such examination by a medical practitioner as is reasonably necessary for that purpose, and
 - (b) that a report of the examination be provided to the officer.
 - (3) If the officer is of the opinion that the applicant is, or has been, fostering a child in contravention of section 42 of the Act, the officer must advise the Minister of that fact.
 - (4) For the purpose of establishing whether or not an applicant for a fostering authority, or a member of the applicant's household, is a fit and proper person, an officer may make such inquiries (including, subject to the *Criminal Records Act 1991*, inquiries as to the person's criminal record, if any) as the officer considers appropriate.

73 Code of Conduct for Foster Parents

The Director-General must ensure that before any child is placed in the care of a foster parent:

- (a) the foster parent is given a copy of the Code of Conduct for Foster Parents, and
- (b) the foster parent is given guidance and information to assist in his or her compliance with the Code of Conduct for Foster Parents, and
- (c) the foster parent agrees, in writing, to comply with the Code of Conduct for Foster Parents.

74 Conditions of fostering authority

For the purposes of clause 6 of Schedule to the Act, the following conditions are prescribed in relation to a fostering authority:

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Clause 74 Children (Care and Protection) Regulation 1996

Part 7 Fostering authorities
Division 2

- (a) the foster parent must, at any reasonable hour and on reasonable notice, permit an authorised officer:
 - (i) to inspect the foster home and all of his or her foster parent's records, and
 - (ii) to interview any foster child in the care of the foster parent (in private, if the authorised officer so requires),
- (b) the foster parent must comply with the Code of Conduct for Foster Parents.

Note. Section 42 (3) (b) of the Act makes it an offence for the holder of a fostering authority to contravene or fail to comply with any condition of the fostering authority. Section 120 of the Act provides that a person who is guilty of an offence for which no penalty is expressly imposed (which includes section 42 (3) (b)) is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

75 Form of fostering authority

A fostering authority is to be in such form as may be approved.

A fostering authority is to be endorsed with any condition imposed on it by the Minister under clause 6 or 7 of Schedule 1 to the Act.

76 Foster parent ceasing to hold fostering authority

A person who ceases to hold a fostering authority must surrender on demand to the Director-General all of his or her foster parent's records.

Maximum penalty: 1 penalty unit.

Division 3 Foster parent's records

77 Records to be kept by foster parent

- (1) A foster parent must maintain such records in relation to each foster child in his or her care as are required by the Director-General in accordance with any guidelines issued for the purposes of this clause by the Minister.

Maximum penalty: 1 penalty unit.

- (2) In addition to the matters referred to in subclause (1), a foster parent may include in a foster parent's record any matter relating to a foster child that the foster parent considers significant.

78 Retention of records by foster parent

- (1) A foster parent must ensure that all of his or her foster parent's records are retained in accordance with any guidelines issued for the purposes of this clause by the Minister.

Maximum penalty: 1 penalty unit.

- (2) Subclause (1) does not apply if the Director-General directs that the records be dealt with otherwise than as referred to in that subclause and the foster parent causes the records to be dealt with in accordance with the terms of the direction.

79 Inspection of foster parent's records

A foster parent must ensure that his or her foster parent's records are not inspected otherwise than by:

- (a) an authorised officer, or
- (b) a person otherwise authorised by law to inspect the records.

Maximum penalty: 2 penalty units.

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Part 8 Conduct of foster parents

Part 8 Conduct of foster parents

Note. This Part regulates the conduct of any foster parents—that is, those with whom a foster child is placed by an authorised private fostering agency and those who hold a fostering authority.

80 Application of Part

Nothing in this Part applies to a foster parent in whose care a child has been placed for the purpose of being fostered by a program agency.

81 Definition

In this Part:

relevant person means:

- (a) in relation to a foster parent who is the holder of a fostering authority, the Director-General, and
- (b) in relation to a foster parent in whose care a child has been placed by an agency for the purpose of the child being fostered, the principal officer of the agency.

82 Medical examination of foster parent and others

On the written advice of a medical practitioner, the relevant person may, by notice in writing served on a foster parent, require:

- (a) that the foster parent, or a member of the foster parent's household, undergo such examination by a medical practitioner as is reasonably necessary to ascertain whether the foster parent's household is a healthy environment for the care of children, and
- (b) that a report of the examination be provided to the relevant person.

83 Notice of change of address

A foster parent must, within 7 days after any change in the address of the foster home, cause notice in writing of the change to be given to the relevant person.

Maximum penalty: 2 penalty units.

84 Information to be provided to relevant person

- (1) A foster parent must provide the relevant person with such information concerning his or her care of a foster child as the relevant person may from time to time reasonably require.
- (2) If a foster parent:
 - (a) is charged with or convicted of an offence for which a penalty of penal servitude or imprisonment for 12 months or more may be imposed, or
 - (b) becomes aware that any of the members of his or her household have been charged with or convicted of such an offence,

the foster parent must immediately cause written notice of that fact to be given to the relevant person.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

85 Notification of death

- (1) A foster parent who is the holder of a fostering authority must immediately cause notice of the death of a foster child in his or her care to be given to:
 - (a) such of the parents of the child as can reasonably be located, and
 - (b) a police officer, and
 - (c) the Director-General.
- (2) A foster parent in whose care a child has been placed by an agency for the purposes of the child being fostered must immediately cause notice of the death of a foster child in his or her care to be given to the principal officer of the relevant agency.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

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Part 9 Miscellaneous

Part 9 Miscellaneous

86 Exemptions

- (1) For the purposes of section 48 (3) of the Act:
 - (a) a person in whose care a child has been placed by a program agency for the purpose of fostering the child is exempt from the operation of section 42 (1) of the Act, and
 - (b) a program agency that places a child in the care of a person for the purpose of the child being fostered is exempt from the operation of section 44 (1) of the Act,

to the extent that the person or program agency complies with the provisions of this Regulation that are applicable to the person or agency and any conditions on which the agency is funded.
- (2) For the purposes of section 48 (3) of the Act, a person that provides a child care service at a centre that is funded through the Department's Substitute Care Program, or who advertises himself or herself or holds himself or herself out as being willing to provide such a service, is exempt from the operation of section 31 (1) of the Act to the extent that the person complies with the provisions of this Regulation that are applicable to the person and any conditions on which the centre is funded.

Schedule 1 Code of Conduct for Foster Parents

(Clause 4)

1 The foster home

A foster parent must ensure that the foster home and its surrounds are kept safe, clean and in good repair and are properly ventilated, lit and heated.

2 Furniture, furnishings and equipment

The foster home must have:

- (a) adequate furniture, furnishings and equipment for use by the children who reside at the home, having regard to their ages and physical and intellectual development, and
- (b) adequate facilities for the preparation, refrigeration and hygienic storage of meals and refreshments, and
- (c) adequate facilities for the storage of equipment and bedding and for the safe keeping of the children's outdoor clothes and other personal belongings, and
- (d) sufficient equipment suitable for the indoor and outdoor recreational needs of the children, having regard to their ages and physical and intellectual development, and
- (e) at least one telephone available for use.

3 Swimming pools

Any swimming pool at the home must be adequately fenced in accordance with the *Swimming Pools Act 1992*.

4 Care of foster children

A foster parent must, in relation to each foster child in his or her care, ensure that:

- (a) the health, welfare and progress of the child are promoted, and
- (b) the child is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (c) the observance by the child of the child's religion (if any) and the preservation of the child's cultural identity are encouraged.

5 Bedrooms

A foster parent:

- (a) must provide adequate sleeping accommodation for a foster child in his or her care, and
- (b) must ensure that sleeping accommodation that is provided for a foster child in his or her care is appropriate for a child of the age of the foster child and takes into account the child's requirements for privacy, and
- (c) must ensure that:
 - (i) the child is provided with a separate bed or cot, equipped with a clean and comfortable mattress and bed clothing that is appropriate to the climate, and
 - (ii) linen on the child's bed or cot is changed weekly (or more frequently if necessary), and
 - (iii) adequate facilities are provided for storage of the child's clothing and personal belongings.

6 Study

A foster parent must ensure that a foster child in his or her care who is attending school or undertaking studies is provided with facilities for quiet study that are adequate, having regard to the age of the child.

7 Health and medical attention

- (1) A foster parent must ensure that a foster child in his or her care is supplied with such medical and dental treatment as is necessary.
- (2) A foster parent must, as soon as practicable (and, in any case, within 24 hours) after a foster child in his or her care is admitted to hospital, cause notice of that fact to be given to the Director-General.
- (3) If a medical practitioner recommends to a foster parent that the care or treatment of a foster child in his or her care should be varied for reasons of health, the foster parent must use his or her best endeavours to give effect to the medical practitioner's recommendation.

8 Discipline of foster children

A foster parent must ensure that a foster child in his or her care:

- (a) is given positive guidance towards socially acceptable behaviour, and
- (b) is not subjected to or threatened with:
 - (i) any form of corporal punishment, or
 - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
 - (iii) any punishment that is intended to humiliate or frighten the child.

9 Foster children not to perform unreasonable duties

A foster parent must not require a foster child in his or her care to perform duties that are unreasonable, having regard to the child's age and physical and intellectual development.

10 Discharge of foster children

- (1) A foster parent in whose care a child has been placed by an agency for the purposes of the child being fostered must not discharge a foster child into the care of any other person, otherwise than:
 - (a) into the care of:
 - (i) a member of the staff of the relevant agency, or
 - (ii) a person who is entitled to custody of the child, or
 - (iii) an authorised officer, or
 - (b) with the written consent of the Director-General or the principal officer of the relevant agency, or
 - (c) pursuant to an order of a court having jurisdiction to make orders with respect to the care and custody of children.
- (2) A foster parent who is the holder of a fostering authority must not discharge a foster child into the care of any other person, otherwise than:
 - (a) into the care of:
 - (i) a person who is entitled to custody of the child, or
 - (ii) an authorised officer, or

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- (b) with the written consent of the Director-General, or
- (c) pursuant to an order of a court having jurisdiction to make orders with respect to the care and custody of children.

11 Animals

A foster parent must ensure that any animal kept at the foster home as a pet is clean and well cared for.

Schedule 2 Code of Conduct for Centres

(Clause 4)

1 Admission of children

- (1) In deciding whether or not to admit a child to care, the licensed manager must have regard to:
 - (a) what options for the care of the child are available, and
 - (b) the views of the child, and
 - (c) the welfare and interests of the child.
- (2) If admission of a child to care is requested by a person who is not a parent of the child, the licensed manager must satisfy himself or herself, before admitting the child to care, that all reasonable endeavours have been made to locate the child's parents and to ascertain their views as to the child's admission to care.
- (3) Before admitting a child to care, the licensed manager of a centre must obtain (where practicable) a social and medical history of the child and the child's parents.

2 Care of children

The licensed manager and other members of the staff of a centre must, in relation to each child at the centre, ensure that:

- (a) the health, welfare and progress of the child are promoted, and
- (b) the child receives guidance as to generally accepted community standards of behaviour, and
- (c) the child is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (d) the observance by the child of the child's religion (if any) and the preservation of the child's cultural identity are encouraged.

3 Supervision of children

- (1) The licensed manager of a centre must ensure that children at the centre are adequately supervised, having regard to their ages and physical and intellectual development, by adult members of the staff.
- (2) The licensed manager of a centre must ensure that no person is allowed to supervise children unless the person:
 - (a) is sympathetic to the welfare of children, and
 - (b) has adequate knowledge, understanding and experience of children so as to be capable of meeting their needs, and
 - (c) is able to adequately care for and supervise children, and
 - (d) is of suitable maturity, health and personality to care for children, and
 - (e) is a fit and proper person, and
 - (f) has received suitable training in the proper care of children.
- (3) The licensed manager of a centre must ensure that no member of the staff who is supervising children unassisted both supervises children and performs other duties at the same time if those other duties would adversely affect the quality of supervision.

4 Bedrooms

- (1) The licensed manager of a centre:
 - (a) must provide adequate sleeping accommodation, in a room that is separate from any bedroom in which an adult sleeps, for each child who resides at the centre, and
 - (b) must ensure that:
 - (i) each such child is provided with a separate bed or cot, equipped with a clean and comfortable mattress and bed clothing that is appropriate to the climate, and
 - (ii) linen on each such child's bed or cot is changed weekly (or more frequently if necessary), and
 - (iii) adequate facilities are provided for storage of each such child's clothing and personal belongings.

- (2) The licensed manager of a centre must ensure:
 - (a) that no child who is of or above the age of 7 years sleeps in the same room as another child (other than a relative) of the opposite sex, and
 - (b) that each adolescent child who resides at the centre has sleeping accommodation that affords the child adequate privacy.

5 Study

The licensed manager of a centre must ensure that each child who resides at the centre, and who is attending school or undertaking studies, is provided with facilities for quiet study that are adequate, having regard to the age of the child.

6 Health and medical attention

- (1) The licensed manager of a centre must ensure that each child who resides at the centre is supplied with such medical and dental treatment as is necessary.
- (2) The licensed manager of a centre must, as soon as practicable (and, in any case, within 24 hours) after a child who resides at the centre is admitted to hospital, cause notice of that fact to be given to:
 - (a) a parent or guardian of the child who can reasonably be located, and
 - (b) the Director-General.
- (3) If a medical practitioner recommends to the licensed manager of a centre that the care or treatment of a child who resides at the centre should be varied for reasons of health, the licensed manager must use his or her best endeavours to give effect to the medical practitioner's recommendation.
- (4) The licensed manager of a centre must ensure:
 - (a) that there is a suitable and fully-stocked first-aid kit at the centre, and
 - (b) that at least one member of the staff of the centre holds approved qualifications in the administration of first-aid, and

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Schedule 2 Code of Conduct for Centres

- (c) that all first-aid equipment, medicine, drugs and other substances potentially harmful to children are stored in cupboards that are secured by means of child-proof locks.

7 Discipline of children

The licensed manager of a centre must ensure that any child who resides at the centre:

- (a) is given positive guidance towards socially acceptable behaviour, and
- (b) is not subjected to or threatened with:
 - (i) any form of corporal punishment, or
 - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
 - (iii) any punishment that is intended to humiliate or frighten the child.

8 Children not to perform unreasonable duties

The licensed manager of a centre must ensure that a child who resides at the centre is not required to perform duties that are unreasonable, having regard to the child's age and physical and intellectual development.

9 Animals

The licensed manager of a centre must ensure that any animal kept as a pet at the centre is kept clean and well cared for.

10 Discharge of resident children

The licensed manager of a centre must not discharge a child who resides at the centre into the care of any other person, otherwise than:

- (a) into the care of:
 - (i) a person who is entitled to the custody of the child, or
 - (ii) an authorised officer, or

- (b) with the written consent of the Director-General, or
- (c) pursuant to an order of a court having jurisdiction to make orders with respect to the care and custody of children.

Schedule 3 Licensing standards

(Clause 4)

1 Definition

In this Part:

unencumbered play space means space that is ordinarily available for children to play in or on, and that may reasonably be used for that purpose.

2 Indoor play space

A centre must have:

- (a) at least 3.25 square metres of indoor unencumbered play space for each child who is under the age of 6 years, and
- (b) such area of indoor unencumbered play space as is sufficient for the recreational needs of each child who is of or above the age of 6 years or who ordinarily attends school, having regard to the design, furniture and equipment of the centre's indoor areas.

3 Outdoor play space

(1) A centre must have:

- (a) at least 7 square metres of outdoor unencumbered play space for each child who is under the age of 6 years, and
- (b) such area of outdoor unencumbered play space as is sufficient for the recreational needs of each child who is of or above the age of 6 years, having regard to the nature of the centre's outdoor areas.

(2) The outdoor play space of a centre must be adequately shaded.

4 Fire protection

(1) A centre:

- (a) must be of a design and construction that prevents or inhibits the outbreak and spread of fire, and

- (b) must have appropriate fire protection equipment, such as fire extinguishers, fire blankets and smoke alarms that is tested in accordance with the requirements of AS 185 1.1—1995 for Level 1 service and is kept in proper working condition, and
 - (c) must be of such a design as to facilitate the speedy evacuation of the centre in the event of an outbreak of fire.
- (2) In this clause:

AS 1851.1—1995 means the standard published by Standards Australia under the title “Maintenance of fire protection equipment, Part 1: Portable fire extinguishers and fire blankets”, and numbered AS 1851.1—1995, as in force on the commencement of this Regulation.

5 Furniture, furnishings and equipment

A centre must have:

- (a) adequate furniture, furnishings and equipment for use by the children who reside at the centre, having regard to their ages and physical and intellectual development, and
- (b) adequate facilities for the preparation, refrigeration and hygienic storage of meals and refreshments, and
- (c) adequate facilities for the storage of equipment and bedding and for the safe keeping of the children’s outdoor clothes and other personal belongings, and
- (d) sufficient equipment suitable for the indoor and outdoor recreational needs of the children, having regard to their ages and physical and intellectual development, and
- (e) at least one telephone available for use by members of the staff of the centre and other persons authorised by the licensee of the centre.

6 Toilet and bathroom facilities

- (1) A centre must have adequate toilet, washing and bathing facilities for use by persons at the centre.

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Schedule 3 Licensing standards

- (2) A centre at which any children who are of or above the age of 2 years but under the age of 6 years reside must have a bathroom, equipped with a bath, for use by those children.
- (3) A centre at which any children who are of or above the age of 6 years reside must have a bathroom, equipped with a shower or bath, for use by those children.
- (4) Hot water that is connected to any basin, bath or shower used by children at a centre must be regulated so as to keep it below the temperature at which a child can be scalded.

7 Security

- (1) A centre must be appropriately designed, constructed and equipped to ensure the security of the centre against intruders.
- (2) A centre must have secure fencing around any parts of its grounds that are to be used by children who are under the age of 6 years.
- (3) Any door or gate at the boundary of a centre at which children who are under the age of 6 years reside must be fitted with a child-proof catch.
- (4) Any swimming pool on the premises of the centre must be adequately fenced in accordance with the *Swimming Pools Act 1992*.

Schedule 4 Residential child care centres not prescribed for the purposes of Division 2 of Part 3 of the Act

(Clause 9)

- (a) A foster home within the meaning of this Regulation.
- (b) The home at which any child who is lawfully in substitute care resides (so long as the only children who reside at the home are either lawfully in foster care or related to a resident of the home).
- (c) Premises that are under the control of the Crown or a person acting on behalf of the Crown.
- (d) Boarding facilities to enable children to attend a school, university or TAFE establishment, but which do not provide any other services.
- (e) Holiday camps or camps where children receive education, training or instruction in academic, athletic or recreational pursuits.
- (f) Premises where the only residential children under the age of 16 years are children who are related to the proprietor of the premises.
- (g) Residential centres within the meaning of the *Guardianship Act 1987*.
- (h) Accommodation services funded jointly by the Commonwealth and the State under the Supported Accommodation Assistance Program and the Youth Social Justice Strategy.

Schedule 5 Rates of allowance for wards and protected persons in foster care

(Clause 19)

- 1 In the case of a ward or protected person (other than a ward or protected person who is a person with special needs), to be an amount of:
 - (a) \$129 per fortnight for a ward or protected person who is under the age of 5 years, or
 - (b) \$142 per fortnight for a ward or protected person who is of or above the age of 5 years but under the age of 8 years, or
 - (c) \$146 per fortnight for a ward or protected person who is of or above the age of 8 years but under the age of 12 years, or
 - (d) \$198 per fortnight for a ward or protected person who is of or above the age of 12 years but under the age of 15 years, or
 - (e) \$242 per fortnight for a ward or protected person who is of or above the age of 15 years.
- 2 In the case of a ward or protected person who is a person with special needs—to be of such amount (not exceeding \$732.30) per fortnight as the Minister may determine.
- 3 A payment made under section 91 (1) (b) of the Act in respect of pocket money to be paid to a ward or protected person is to be an amount of
 - (a) \$8.60 per fortnight for a ward or protected person who is of or above the age of 5 years but under the age of 8 years, or
 - (b) \$12.00 per fortnight for a ward or protected person who is of or above the age of 8 years but under the age of 12 years, or
 - (c) \$20.00 per fortnight for a ward or protected person who is of or above the age of 12 years but under the age of 16 years, or
 - (d) \$30.00 per fortnight for a ward or protected person who is of or above the age of 16 years.