

**COMMUNITY SERVICES (COMPLAINTS, APPEALS AND  
MONITORING) ACT 1993—REGULATION**

(Community Services (Complaints, Appeals and Monitoring) Regulation 1996)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Community Services (Complaints, Appeals and Monitoring) Act 1993, has been pleased to make the Regulation set forth hereunder.

Hon. RON DYER, M.L.C.  
Minister for Community Services.

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**Citation**

1. This Regulation may be cited as the Community Services (Complaints, Appeals and Monitoring) Regulation 1996.

**Commencement**

2. (1) This Regulation (clause 10 (c) excepted) commences on 3 April 1996.

(2) Clause 10 (c) commences on 3 October 1996.

**Definition**

3. In this Regulation:

“the Act” means the Community Services (Complaints, Appeals and Monitoring) Act 1993.

**Functions of Community Visitors: sec. 8**

4. For the purposes of section 8 of the Act, the following are prescribed as functions that a Community Visitor may exercise:

- (a) to inform the Minister and the Commissioner on matters affecting the welfare, interests and conditions of persons using visitable services;

- (b) to encourage the promotion of legal and human rights of persons using visitable services, including the right to privacy, confidentiality, adequate information and consultation in relation to those services and the right to complain;
- (c) to consider matters raised by persons using visitable services, staff of providers of visitable services and people having a genuine concern for the welfare, interests and conditions of persons using visitable services;
- (d) to provide information to persons using visitable services as to the advocacy services available to help them in the presentation of any grievance or matter of concern and, in appropriate cases, to assist such persons to obtain such services;
- (e) to facilitate, wherever it is reasonable and practicable to do so, the early and speedy resolution of grievances or matters of concern affecting persons using visitable services by referring those grievances or matters to the providers of the relevant services or to other appropriate bodies.

**Applicable service providers: sec. 11**

5. All service providers are prescribed as applicable service providers for the purposes of section 11 of the Act.

**Decisions which may be the subject of an appeal to the Tribunal: sec. 40**

6. (1) Decisions of the following kind are prescribed classes of decisions for the purposes of section 40 (1) (d) of the Act:

- (a) a decision made by a service provider not to take action recommended by the Commission under section 38 (1) of the Act, or to take part only of the action so recommended;
- (b) a decision made by the Minister or the Director-General to provide, or to continue to provide, a designated service within the meaning of the Disability Services Act 1993, where the provision of the service in accordance with the decision does not conform with the objects of that Act or the principles or applications of principles set out in Schedule 1 to that Act;
- (c) a decision made by the Minister to adopt or amend a transition plan, or to refuse to adopt or amend a transition plan, within the meaning of section 7 of the Disability Services Act 1993.

(2) A decision of the kind referred to in subclause (1) (a) belongs to a prescribed class of decisions in relation only to the person from whose complaint the recommendation referred to in that paragraph arose. Accordingly, only that person may make an appeal to the Tribunal from that decision.

(3) A decision of the kind referred to in subclause (1) (b) belongs to a prescribed class of decisions in relation only to designated services that are provided directly or indirectly as referred to in section 8 (2) (a) of the Disability Services Act 1993. Accordingly, an appeal to the Tribunal may not be made under this clause with respect to a decision concerning the provision of financial assistance referred to in section 8 (2) (b) of that Act. This does not affect any right of appeal that exists under section 20 of that Act.

**Right of appearance: sec. 58**

7. A person is of a class prescribed for the purposes of section 58 of the Act if, in the Tribunal's opinion:

(a) the person:

(i) is intellectually, physically, psychologically or sensorily disabled; or

(ii) is of advanced age; or

(iii) is a mentally ill person within the meaning of Chapter 3 of the Mental Health Act 1990; or

(iv) is otherwise disabled,

and, by virtue of that fact, is restricted in one or more major life activities to such an extent that the person requires supervision or social habilitation; and

(b) the person is totally or partially incapable of representing himself or herself in proceedings before the Tribunal.

**Record of proceedings**

8. (1) The Tribunal is to keep audio recordings of its proceedings unless it is impracticable to do so.

(2) The Registrar may supply copies of any such recordings on request.

**Substituted service: sec. 76**

9. (1) For the purposes of section 76 (1) (c) of the Act, a document or other instrument is sufficiently served if it is left with a person who is apparently of or above the age of 16 years at, or sent by post to, an address at which it is likely, in the Tribunal's opinion, that the document will be brought to the attention of the person to be served.

(2) A document or instrument served by post in accordance with subclause (1) is, until the contrary is proved, taken to have been served at the time when it would have been delivered in the ordinary course of post.

(3) For the purposes of section 76 (1) (c) of the Act, a document or other instrument is sufficiently served if it is published in a daily newspaper circulating generally throughout New South Wales or in such other publication as, in the Tribunal's opinion, is likely to come to the attention of the person to be served.

(4) A document or instrument served by publication in accordance with subclause (3) is taken to have been served on the date on which it is published.

**Reasons to be given for certain decisions: sec. 114**

10. The following classes of decisions are prescribed for the purposes of section 114 of the Act:

- (a) any decision against which there is a right of appeal to the Tribunal, other than:
  - (i) a decision of the kind referred to in section 40 (1) (b) or (c) of the Act; or
  - (ii) a decision of the kind referred to in clause 6 (1) (a), (b) or (c) of this Regulation;
- (b) any decision by a service provider in respect of which notice of a complaint is given to the service provider under section 14 of the Act, and in respect of which a request for reasons is made to the service provider by the Commission;
- (c) any decision by a service provider that is likely to have a significant impact on the quality or availability of a community service, and that directly affects one or more persons using the service, being a decision in respect of which a request for reasons is made to the service provider by or on behalf of a person so affected within 28 days after the decision is notified to that person.

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**NOTES**

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**EXPLANATORY NOTE**

The object of this Regulation is to prescribe various matters for the purposes of the Community Services (Complaints, Appeals and Monitoring) Act 1993. The new Regulation deals with the following matters:

- (a) prescribing the functions of Community Visitors under section 8 of the Act (clause 4);
- (b) prescribing applicable service providers for the purposes of section 11 of the Act (clause 5);
- (c) prescribing classes of decision that are to be appellable under section 40 of the Act (clause 6);
- (d) prescribing persons in respect of whom a “guardian ad litem” may be appointed under section 58 of the Act (clause 7);
- (e) requiring the Tribunal to keep audio recordings of its proceedings (clause 8);
- (f) providing for substituted service of certain documents for the purposes of section 76 of the Act (clause 9);
- (g) prescribing classes of decision in respect of which reasons must be recorded, and given to affected persons, under section 114 of the Act (clause 10);
- (h) other formal matters (clauses 1, 2 and 3).

This Regulation is made under the Community Services (Complaints, Appeals and Monitoring) Act 1993, including section 124 (the general regulation making power) and sections 8, 11, 40, 58, 76 and 114.

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