



New South Wales

Community Services (Complaints, Reviews and Monitoring) Regulation 2004

under the

Community Services (Complaints, Reviews and Monitoring) Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

CARMEL TEBBUTT, M.L.C.,
Minister for Community Services

Explanatory note

The object of this Regulation is to remake such of the provisions of the *Community Services (Complaints, Reviews and Monitoring) Regulation 1996* under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**the 1993 Act**) as are of continuing utility.

The 1996 regulation is to be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation contains the following provisions:

- (a) a provision prescribing the functions of Official Community Visitors for the purposes of section 8 of the 1993 Act (clause 4),
- (b) a provision prescribing classes of decisions in respect of which an application for review may be made under section 28 of the 1993 Act (clause 5),
- (c) a provision prescribing classes of decisions in respect of which reasons must be given under section 45 of the 1993 Act (clause 6),
- (d) a provision prescribing 1 December 2002 as the date from which deaths must be recorded in the register of reviewable deaths kept under section 36 of the 1993 Act (clause 7),
- (e) a transitional provision with respect to the activities of the Child Death Review Team in relation to deaths registered before 31 December 2002 (clause 8),
- (f) other provisions of a minor nature (clauses 1, 2, 3 and 9).

This Regulation is made under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, including section 52 (the general power to make regulations), sections 8, 28, 36 and 45 and clause 1 of Schedule 1 (the power to make savings and transitional regulations).

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Community Services (Complaints, Reviews and Monitoring) Regulation 2004

under the

Community Services (Complaints, Reviews and Monitoring) Act 1993

1 Name of Regulation

This Regulation is the *Community Services (Complaints, Reviews and Monitoring) Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note. This Regulation replaces the *Community Services (Complaints, Reviews and Monitoring) Regulation 1996* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

the Act means the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

4 Functions of Official Community Visitors

For the purposes of section 8 of the Act, the following are prescribed as functions that an Official Community Visitor may exercise:

- (a) to inform the Minister and the Ombudsman 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.

5 Decisions subject to review by Tribunal

- (1) Decisions of the following kind are prescribed classes of decisions for the purposes of section 28 (1) (c) of the Act:

- (a) a decision made by a service provider not to take action recommended by the Ombudsman under section 26 of the *Ombudsman Act 1974* as a result of an investigation of a complaint under Part 4 of the Act, or to take part only of the action so recommended,

Note. Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* enables a person to complain to the Ombudsman about the provision, failure to provide, withdrawal, variation or administration of a community service in respect of a particular person or group of persons.

- (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,

Note. As at the commencement of this Regulation, designated services were prescribed by the regulations under the *Disability Services Act 1993* to mean all services provided or funded by the Minister, including all services co-funded by the Commonwealth Government through the Home Care Service.

- (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*.

Note. A transition plan under section 7 of the *Disability Services Act 1993* is a plan by which the provision of non-conforming services (that is, designated services that, prior to the commencement of that Act, had not been provided in accordance with the principles and applications of principles set out in Schedule 1 to that Act) is to be brought into conformity with those principles and applications of principles.

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- (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 apply to the Tribunal for a review of that decision.
 - (3) A decision of the kind referred to in subclause (1) (b) belongs to a prescribed class of decisions only if the decision relates to designated services that are provided directly or indirectly as referred to in section 8 (2) (a) of the *Disability Services Act 1993*.
 - (4) In particular, a decision of the kind referred to in subclause (1) (b) does not belong to a prescribed class of decisions if the decision relates to the provision of financial assistance referred to in section 8 (2) (b) of the *Disability Services Act 1993*.
 - (5) Subclause (4) does not affect any right of review that exists under section 20 of the *Disability Services Act 1993*.

6 Reasons to be given for certain decisions

The following classes of decisions are prescribed for the purposes of section 45 (1) of the Act:

- (a) any decision in respect of which there is a right of review by the Tribunal, other than a decision of a kind referred to in clause 5 (1),
- (b) 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.

7 Systemic review of deaths of children at risk of harm, children in care or other persons in care

For the purposes of section 36 (1) (c) of the Act, the prescribed date is 1 December 2002.

Note. This date was (effectively) prescribed by clause 11 of the *Community Services (Complaints, Reviews and Monitoring) Regulation 1996*.

8 Reports required to be prepared by Child Death Review Team

- (1) This clause applies to functions of the Child Death Review Team concerning reports and recommendations relating to deaths of children due to abuse or neglect or that occur in suspicious circumstances, being deaths registered in the period ending on 31 December 2002.

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- (2) The Child Death Review Team is to exercise functions relating to any such reports and recommendations as if the amendments made in respect of those functions by the *Community Services Legislation Amendment Act 2002* had not been made.
- (3) In this clause, ***Child Death Review Team*** means the Child Death Review Team established under the *Commission for Children and Young People Act 1998*.

9 Saving

Any act, matter or thing that, immediately before the repeal of the *Community Services (Complaints, Reviews and Monitoring) Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.

BY AUTHORITY
