

Australian Capital Territory

Children and Young People Childcare Services Assessment Requirement 2009 (No 1)

Disallowable instrument DI2009–12

made under the

Children and Young People Act 2008, section 774 (Assessing compliance with childcare services standards)

1 Name of instrument

This instrument is the *Children and Young People Childcare Services Assessment Requirement 2009 (No 1)*.

2 Commencement

This instrument commences on 27 February 2009.

3 Childcare Services Assessment Requirements

I make the following childcare services assessment requirements.

Andrew Barr
Minister for Children and Young People

31 January 2009

Childcare Services Assessment Policy and Procedure

1. Introduction and Purpose

Ensuring licensed ACT childcare services consistently achieve compliance with the *Children and Young People Act 2008* and the *ACT Childcare Services Standards* is the primary function of the Children's Policy and Regulation Unit (CPRU).

By maximising services' compliance with the *ACT Childcare Services Standards*, the CPRU ensures there is a base on which services can build and achieve high quality service provision and outcomes for children.

This policy and procedure requires the implementation of at least one formal assessment of each service's compliance in their licence period, and describes how the CPRU will do this.

2. Legal Authority and Obligations

- 2.1 The *ACT Childcare Services Standards* set the minimum operating standards with which licensed ACT childcare services must comply. Each licensed ACT childcare service must have their compliance assessed by the licensing authority at least once during their licence period.

The *Children and Young People Act 2008* is the primary source of authority for the operation of a licensed childcare service in the ACT. The provisions of the *Children and Young People Act 2008*, including the *ACT Childcare Services Standards*, must be complied with at all times by staff exercising functions with or at childcare services.

The following sections of the *Children and Young People Act 2008* are relevant to this policy and procedure: sections 8, 749, 774, 813, 817, 818, and 887. Specifically, section 774 (below) of the *Children and Young People Act 2008* must apply.

Section 774, Assessing compliance with childcare services standards.

- (1) At least once during the period of a childcare service licence, the chief executive must assess the childcare service's compliance with the childcare services standards.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises (s 817)

- (2) The Minister may make childcare services assessment requirements.

- (3) A childcare services assessment requirement is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) An assessment must be carried out in accordance with the childcare services assessment requirements.

- (5) The chief executive may ask the licensed proprietor of a childcare service to give the chief executive any information about the

childcare service reasonably required by the chief executive to carry out the assessment.

Note The *Legislation Act*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client privilege.

(6) The licensed proprietor must comply with the request as soon as practicable.

2.2 This policy and procedure provides directions to the implementation of the provisions of the *Children and Young People Act 2008*.

2.3 The international human rights standard, Convention on the Rights of the Child, applies in the ACT and underpins the *Children and Young People Act 2008* and *ACT Childcare Services Standards*.

International human rights standards that are relevant to this policy and procedure are:

United Nations Convention on the Rights of the Child

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interests of the child shall be a primary consideration*.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the *institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities*, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The *Children and Young People Act 2008* (s 8) takes article 3.1 into account and states that the best interests of the child, or children is of paramount consideration when making any decision under the Act, including assessing compliance with the *ACT Childcare Services Standards*.

3. Authorisations and Delegations

3.1 An authorised officer (under s 26 of the *Children and Young People Act 2008*) of the CPRU may conduct compliance assessments described in this policy and procedure. The Manager and Assistant Manager, CPRU, and the Children's Services Advisers are authorised officers for this purpose.

3.2 The Manager or Assistant Manager, CPRU, must approve all compliance assessments undertaken by authorised officers of the CPRU.

- 3.3 An authorised officer may at any reasonable time, enter premises if a licensed childcare service is operating on the premises to conduct a compliance assessment.
- 3.4 An authorised officer may share the information gained from the compliance assessment with the service representative at the time of the assessment.
- 3.5 An authorised officer must share the information gained from the compliance assessment with the proprietor and/or the controlling person of the service, within a reasonable period, if the service is assessed as noncompliant at the time of the assessment.
- 3.6 All CPRU staff must comply with this policy and procedure and all policies and procedures as they apply to them. A member of CPRU staff who contravenes or fails to comply with a policy or procedure may be investigated and may be subject to disciplinary procedures under the *Public Sector Management Act 1994* and/or criminal investigation.
- 3.7 Authorised officers may conduct compliance assessments of licensed childcare services only in accordance with this policy and other relevant policies.

4. Definitions

Authorised Officer/s

The Manager and Assistant Manager, CPRU, and the Children's Services Advisers are authorised officers for the purposes of this policy and procedure.

CPRU Staff

CPRU staff are all employees of the CPRU, including authorised officers.

5. Principles

Legislative Principles

The *Children and Young people Act 2008* sets out the principles that must be considered by all decision makers making decisions under the Act and this policy. These are:

Section 8, Best interests of children and young people paramount consideration.

- (1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.
- (2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

Section 9, Principles applying to Act.

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where

relevant, except when it is, or would be, contrary to the best interests of a child or young person:

- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
 - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
 - (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
 - (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

Section 10, Aboriginal and Torres Strait Islander children and young people principle.

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
- (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

Section 730, Childcare services principles (ch 20).

In making a decision or taking action under this chapter for a childcare service, the following childcare services principles should be applied:

- (a) childcare services must provide care that is safe, positive and nurturing;
- (b) childcare services must promote the educational, social and developmental wellbeing of children.

Operational Principles

The following operational principles underpin this policy and procedure:

- (a) Proactive strategies to enable ease of compliance promote self regulated compliance in addition to a positive attitude to compliance. These aspects assist the practice of responsive regulation to occur effectively.
- (b) Decisions in relation to the level of monitoring of compliance, including frequency of undertaking a compliance assessment, should take into

account the needs of the service, the service's known history, and the experience of the staff at the service.

- (c) Confidentially must be reasonably protected wherever necessary in relation to information about children, families, staff, and service noncompliance history.

6. Policy and Procedure

Assessing Compliance

- 6.1 The CPRU utilises the theory of *Responsive Regulation*, as such, each visit to a service involves monitoring and assessing compliance with the *Children and Young People Act 2008* and the *ACT Childcare Services Standards*. However, each visit may focus on limited aspects or standards.
- 6.2 Authorised officers will conduct key checks at each routine scheduled visit, with the exception of complaint / concern investigations, unless an alternate purpose of visit is clearly established.
- 6.3 At all times, authorised officers will be fair and transparent with the assessment process, and uphold the principles of this policy and procedure.
- 6.4 Services will be informed within a reasonable period if they have been assessed as noncompliant in any way. The service representative, controlling person or proprietor will be given opportunity to explain the context of noncompliance, and actions and timeframes must be negotiated to regain compliance.
- 6.5 Steps and procedures described in the *Compliance Strategy* will be utilised if any noncompliance is identified via a compliance assessment.

Frequency of Assessing Compliance.

- 6.6 Each licensed childcare service must be fully assessed against the *ACT Childcare Services Standards* at least once in their licence period. This assessment/s will be recorded on the *Compliance Assessment Checklist*.
- 6.7 Each licensed childcare service may be fully or partially assessed against the *ACT Childcare Services Standards* more than once in their licensed period. These assessments will be recorded in the *Compliance Assessment Checklist*.

Conducting a Compliance Assessment

- 6.8 At any visit where an authorised officer intends to conduct a compliance assessment utilising the *Compliance Assessment Checklist*, the service representative, controlling person or proprietor must be informed at the visit.

Using the 'Compliance Assessment Checklist'

6.9 The *Compliance Assessment Checklist* may be used:

- (a) as a cumulative assessment of compliance throughout the service's licensed period;
- (b) as a one off assessment of compliance during the licence period;
- (c) as a strategy to elicit compliance where:
 - (i) noncompliance has been established as a historical pattern;
 - (ii) major concerns have been raised about the service's compliance;
 - (iii) as a complaint / concern investigation tool;
 - (iv) as directed by the Assistant Manager or Manager, CPRU; or
- (d) as an audit tool if requested by a proprietor.

Using the 'Record of Visit' form

6.10 A *Record of Visit* form must be provided to the service within a reasonable period after any visit conducted to the service.

6.11 A *Record of Visit* form may be photocopied and left at the service at the time of visit.

6.12 A *Record of Visit* form must be signed by the authorised officer/s visiting the service and a service representative. If a copy of the form is not provided to the service representative at the time of visit because the authorised officer/s chooses to write the record after the visit, the service representative will be requested to forward a signed copy back to the CPRU upon receipt of the form.

6.13 The *Record of Visit* form will record any compliance checks conducted including key checks, a summary of the discussion and/or observations made by the authorised officer/s, any actions required, responsibility for completing the actions and timeframes for concluding the actions.

Training

6.14 The Manager and Assistant Manager, CPRU, must ensure all authorised officers of the CPRU receive regular training in all areas covered by this policy and procedure.

Media

6.15 CPRU staff must not respond to any media inquiries concerning matters of compliance at a licensed childcare service unless approved by the Chief Executive.

6.16 Unless otherwise authorised by the Chief Executive, CPRU staff are to refer all media inquiries to the Manager, Media and Communications, Department of Disability, Housing and Community Services.

Information, Review of Decisions and Complaints

6.17 CPRU staff must ensure services, controlling people and proprietors are provided with information about aspects that affect them in a timely manner and in a manner that is likely to be understood.

- 6.18 A proprietor is able to request a review of a decision as described in division 24.1.3, or make a complaint about an authorised officer to the Office for Children, Youth and Family Support or the Administrative Appeals Tribunal.
- 6.19 A proprietor is able to make a submission to the Chief Executive regarding any noncompliance intended to be notified on the legislation register.
- 6.20 CPRU staff must ensure that the Review of Decisions and Complaints Policy and Procedure is followed in relation to the above.
- 6.21 CPRU staff must engage with the person seeking review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. CPRU staff must assist fully in any complaint or review process as directed by management.

7. Forms and Templates

Compliance Assessment Checklist

Record of Visit form / s

8. Related Policies and Procedures

Compliance Strategy

Complaints and Concerns about Childcare Services Policy and Procedure

Childcare Standards Reports Policy and Procedure

Review of Decisions and Complaints about CPRU Staff Policy and Procedure