

Australian Capital Territory

Children and Young People (Approved Care and Protection Organisations – Intervention) Guidelines 2018 (No 1)

Disallowable instrument – DI2018-97

made under the

Children and Young People Act 2008, Section 352T (Intervention-guidelines)

1 Name of instrument

This instrument is the *Children and Young People (Approved Care and Protection Organisations – Intervention) Guidelines 2018 (No 1)*

2 Commencement

This instrument commences on the day after notification.

3 Guidelines

I make the following Children and Young People (Approved Care and Protection Organisations – Intervention) Guidelines.

Bernadette Mitcherson
Director-General, Community Services Directorate

16 May 2018

(Children and Young People Approved Care and Protection Organisations

Intervention) Guidelines

1. Introduction

The Office of the Human Services Registrar (HSR), which is independent within the Community Services Directorate, is responsible for the regulation of approved Care and Protection Organisations on behalf of the Director-General. The function of regulation under the legislation is to provide safeguards for service users, government investment and the community. The legislation provides powers to approve organisations, monitor their performance, intervene when noncompliance may occur, and to revoke the approval of organisations if they are unwilling or unable to comply. The primary and preferred method of ensuring compliance is through *regulatory engagement* – the Human Services Registrar and organisation working together, voluntarily, to achieve and maintain compliance. Intervention powers are generally only used if the non-compliance is significant and requires more than regulatory engagement to ensure change is made and compliance is achieved. Procedural fairness will also underpin the regulation of care and protection organisations.

This guideline is one of three that guide the overall operation of approved care and protection organisations in accordance with the *Children and Young People Act 2008* (the Act) and underpinned by the *Children and Young People Regulation 2009*. The other two guidelines are:

- care and Protection Organisations - Suitability Approval Guidelines; and
- approved Care and Protection Organisations – Monitoring Guidelines.

Receiving and investigating complaints about care and protection organisations; and

Intervening in instances when care and protection organisations are noncompliant with the terms of their approval.

2. Regulation of Care and Protection Organisations

The Act requires the Director-General of the Community Services Directorate to undertake functions for the provision of services to vulnerable children and young people and their families. The Director-General has the powers to:

- register an organisation and revoke its registration under certain circumstances;
- monitor compliance of organisations with the Act;
- investigate complaints about an organisation's compliance with the Act; and
- record and make certain information about an organisation publicly available.

The Director-General expects that each approved Care and Protection Organisation will ensure that it continues to be compliant with the *Children and Young People Act 2008* and

undertakes regular evidence based self-assessment of performance against the Act.

3. Separation between regulation and policy and funding activities

The Human Services Registrar's functions are limited to regulatory activities. Child, Youth and Family (CYF) and other areas of the Community Services Directorate will retain responsibility for policy and funding activities and relationship and program management. In line with the Auditor-General's recommendation, the HSR will make recommendations to the Director-General in their own right and CYF will not instruct or seek to influence the recommendations of the HSR. CYF will have the option of making a submission to the Director-General on the recommendations made by the HSR for the Director-General's consideration before a final decision is made.

4. Approved Care and Protection Organisations

Under the Act, only approved care and protection organisations can provide a care and protection purpose in the ACT. An organisation is given approval when it demonstrates its capacity to provide care and protection services in accordance with a set of criteria or standards. Approved care and protection organisations have been approved as suitable entities for a care and protection purpose and also have at least one person approved as a responsible person pursuant to sections 62 to 65 of the Act. Care and protection purposes are:

- to provide placement prevention, reunification and supported contact services in a home or community setting or a residential setting;
- to provide kinship and foster care services;
- to provide residential care services;
- to provide clinical services;
- to provide engagement, empowerment and advocacy services; and
- to provide transition to adulthood services.

5. Purpose of this guideline

The Act provides the legal framework for the system of regulatory oversight of care and protection organisations and services. This guideline, along with the Children and Young People Care and Protection Organisations - Suitability Approval Guidelines and the Children and Young People Approved Care and Protection Organisations – Monitoring Guidelines, will support the administration of the Act and includes provision to support the day-to-day operation of the legislation.

This guideline provides the criteria to be applied by the Human Services Registrar if undertaking an intervention in an approved care and protection organisation under the provisions of the Act. This includes organisations subcontracted to provide care and protection services.

The guideline supports the use of enforcement powers that are:

- consistent under the Act; and
- consistent with the principles of good regulation.

The guideline is not prescriptive as care and protection organisations provide a range of services within the purposes for which they are approved. In deciding whether to take intervention action, the Director-General should consider all relevant information in order to form a judgement about whether an organisation is complying with the Act.

6. Principles of Regulation

The Human Services Registrar applies the following principles of regulation for Care and Protection Organisations:

Proportionate- enforcement powers will be only be used when necessary and in a way that is appropriate to the assessed level of risk;

Accountable- able to justify regulatory assessments and be subject to scrutiny;

Consistent- enforcement will be consistent regardless of the jurisdiction in which the provider operates;

Transparent- there will be clear and open communication with providers about enforcement processes and decisions;

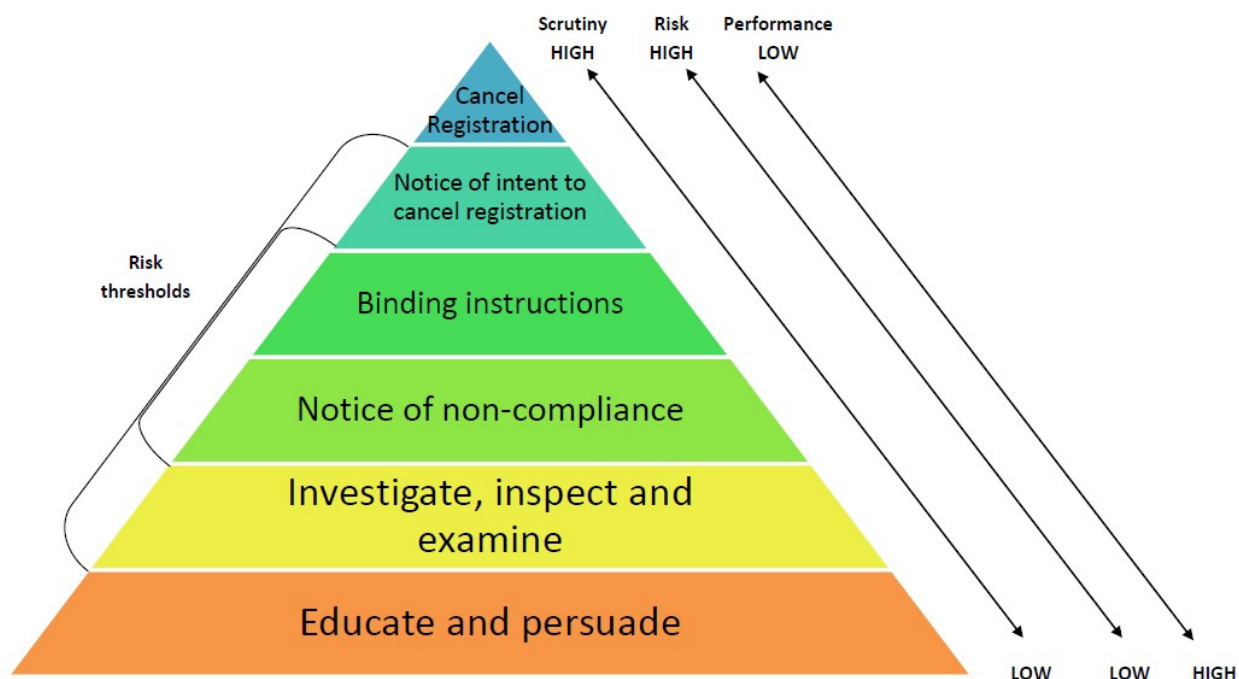
Flexible-enforcement will avoid unnecessary rules about how providers organise their business and demonstrate compliance;

Targeted- enforcement will be focused on the core purposes of improving outcomes and protecting vulnerable children and young people.

7. Risk based regulation

A proportionate regulatory approach will be applied, involving different levels of regulatory engagement, dependant on the approved care and protection organisation's risk profile. The Director-General will work from the principle of setting the minimum requirements necessary to appropriately manage risk.

Triggers and Scope for Action, Regulatory Sanctions and Support



8. Enforcement Powers

Under the Act, the Human Services Registrar has a range of enforcement powers for use if there is a reasonable belief that a provider is not complying with the Act, or its subordinate legislation. In exercising the powers under the Act, the HSR is required to comply with these Intervention Guidelines.

9. Serious and Urgent Matters

A matter will be serious and requires urgent action where the organisation's failure to comply creates a risk that is:

- likely or certain to occur; and
- significant or severe in its consequences for children, young people and/or others who require the organisation's services.

A serious and urgent matter requires the Director-General or delegate (the HSR) to take intervention action to ensure that children, young people and others are appropriately protected.

Serious and urgent matters include, but are not limited to:

- an act, omission or event that endangers the safety or security of a child or young person or other people;
- a significant threat to the financial viability of the organisation; and
- significant fraud, theft, corruption or dishonesty by an employee or member of the board of the organisation.

Intervention powers outlined in the Act are framed broadly to allow for the Director-General to undertake a proportionate and targeted assessment of the consequences of organisations noncompliance with the Act. The following section outlines how intervention powers are applied.

10. Noncompliance Notice

The Director-General may consider issuing a noncompliance notice where there are reasonable grounds to believe that the approved care and protection organisation is noncompliant or likely to be noncompliant. This is not an exhaustive measure and is one of a range of options that may be considered. A noncompliance notice must:

- be in writing;
- state that the action is noncompliant;
- describe how the action is noncompliant;
- invite the organisation to make an oral or written submission to the Director-General about the noncompliance; and
- state a reasonable due date for responding to an invitation to make a submission about the noncompliance.

11. Noncompliance Direction

The Director-General may issue a noncompliance direction to an organisation to address any action that is noncompliant with the Act. Conditions where a noncompliance direction might be issued include, but are not limited to, situations where the Director-General either:

- suspects on reasonable grounds that an approved care and protection organisation is noncompliant or likely to become noncompliant and considers that the noncompliance would be better dealt with under this section than by issuing a noncompliance notice; or
- has given an approved Care and Protection Organisation a noncompliance notice and the organisation has either not responded during the submission period or the response indicates that the organisation is still noncompliant or likely to become noncompliant.

When issuing a noncompliance direction, the Director-General must:

1. deliver the noncompliance direction in writing;
2. state that the action is noncompliant;
3. describe how the action is noncompliant;
4. state the action to be taken, or not taken, to end the noncompliance;
5. state a reasonable time for the organisation to comply with the direction; and
6. state that the organisation may make an oral or written submission to the Director-General about the noncompliance.

12. Safety Suspension Notice

The Director-General may issue a safety suspension notice if there are reasonable grounds to believe that a child or young person is unsafe when receiving a service from an approved care and protection organisation and suspension of the organisation is necessary to protect the child or young person. The Director-General

may give the organisation a safety suspension notice suspending one or more of the purposes the organisation is approved to provide, for a period of no longer than 28 days.

When issuing a safety suspension notice, the Director-General must:

1. issue the notice in writing, suspending a prescribed number of approvals where applicable;
2. include suspension of authorisation to provide residential care, over the same period of time, if the organisation also holds this approval;
3. include a statement in the notice advising that the organisation may make a written submission to the Director-General; and
4. take reasonable steps to tell a person with daily care responsibility for each child or young person likely to be affected, about the suspension.

13. Intention to Cancel Notice

The Director-General may give an approved care and protection organisation notice of intention to cancel the organisation's approval if:

- the Director-General suspects on reasonable grounds that the organisation is noncompliant, or likely to become noncompliant, and considers that the noncompliance would be better dealt with through intention to cancel functions; or
- the organisation has already been given a noncompliance direction by the Director-General about the noncompliance and has not complied with the direction.

When issuing an intention to cancel notice, the Director-General must:

1. issue the notice in writing;
2. state that the Director-General intends to cancel the organisation's approval because of the organisation's failure to comply with the noncompliance direction;
3. state the organisation may give a written submission to the Director-General showing cause as to why the organisation's approval should not be cancelled;
4. provide the organisation 28 working days after the intention to cancel notice is given, to make a written submission;
5. take reasonable steps to tell a persons with daily care responsibility for each child or young person likely to be affected about the suspension.

14. Cancellation

If the Director-General has issued an approved care and protection organisation an intention to cancel notice and the organisation makes a submission in accordance with the notice, the Director-General:

- must consider the submission;

- may consider any other relevant matter; and
- must decide to either;
 - cancel the organisation’s approval; or
 - evoke the intention to cancel notice.

If the approved Care and Protection Organisation does not make a submission in accordance with the intention to cancel notice, the Director-General must cancel the organisation’s approval.

If the Director-General decides to revoke the intention to cancel notice the Director-General must:

1. tell the organisation about the decision; and
2. tell anyone else who was informed about the intention to cancel notice about the decision.

15. Cancellation Notice

If the Director-General decides to cancel an Approved Care and Protection Organisation’s approval the Director-General must:

1. give written notice in the form of a cancellation notice, cancelling the approval from the date stated in the notice;
2. take reasonable steps to tell a person with daily care responsibility for each child or young person likely to be affected about the cancellation;
3. give the cancellation notice to the organisation at least 20 working days before the cancellation date; or
4. if the Director General decides another day that is before the cancellation date, the other day.