

Australian Capital Territory

Children and Young People Childcare Standards Report Requirement 2009 (No 1)

Disallowable instrument DI2009–13

made under the

Children and Young People Act 2008, section 776 (Annual childcare standards report - requirements)

1 Name of instrument

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

2 Commencement

This instrument commences on 27 February 2009.

3 Childcare Standards Report Requirements

I make the following childcare standards report requirements.

Andrew Barr
Minister for Children and Young People

31 January 2009

Childcare Standards Report Requirements 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). The *Children and Young People Act 2008* ensures that licensed childcare services in the ACT have greater accountability to the public. This allows the public to make increasingly more informed decisions about the early childhood care and education they use.

This policy and procedure requires the implementation of an annual report on licensed childcare services compliance with the *ACT Childcare Services Standards* and 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, 730, 749, 760-763, 765-766, 774-777, 813, 817-818, and 887. Specifically, section 775 (below) of the *Children and Young People Act 2008* must apply.

Section 775, Annual childcare standards report

- (1) The chief executive must, for each financial year, prepare a report (a **childcare standards report**) about compliance of licensed childcare services with the childcare services standards.
- (2) A childcare standards report must include –
 - (a) any temporary standards exemptions under section 749 (2); and
 - (b) any compliance notices confirmed or amended under section 760 (4); and
 - (c) any compliance suspension notices given under section 761; and
 - (d) any safety suspension notices given under section 763 (2); and
 - (e) any intention to cancel notices or cancellation notices given under section 765 or section 766; and

- (f) any assessments made by the chief executive under section 774 during the financial year to which the report relates; and
- (g) if no assessment was made by the chief executive under section 774 during the financial year to which the report relates for a childcare service – the date the service was last assessed and the year the service is to be assessed; and
- (h) any submission that the chief executive is required to include under section 777 in the childcare standards report; and
- (i) if a proprietor, controlling person or childcare worker for a childcare service was found guilty of, or convicted of an offence against this chapter – details of the offence.

Note Before including in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must consult, and consider submissions by, the licensed proprietor (see s 777).

(3) A childcare standards report is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(4) A childcare standards report must comply with the childcare standards report requirements.

(5) A childcare standards report must not include information that –

- (a) identifies a person as a person who made a confidential report; or
- (b) would allow a person's identity as a person who made a confidential report to be worked out; or
- (c) identifies a child; or
- (d) would allow the identity of a child to be worked out; or
- (e) identifies a person as a childcare worker for a childcare service; or
- (f) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

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 The Director, Service and Sector Development, Office for Children, Youth and Family Support must approve all information included in a *Childcare Standards Report*.
- 3.2 CPRU staff must ensure accurate and timely record keeping and input of required information into the CPRU database.
- 3.3 CPRU staff may write a *Childcare Standards Report* and check for accuracy of the report.
- 3.4 An authorised officer must notify a *Childcare Standards Report* under the *Legislation Act*.
- 3.5 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.

4. Definitions

Full working week in a month

A full working week in a month is a week where the dates of Monday to Friday in that week all fall in the same calendar month.

CPRU staff

CPRU staff are all employees of the CPRU.

Authorised officer

An authorised officer for the purposes of this policy and procedure is an officer of the Department of Disability, Housing and Community Services authorised to place instruments on the ACT Legislation Register.

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) Clear information available to the public will assist families to make increasingly informed decisions regarding choice of childcare service.
(b) Confidentiality must be reasonably protected wherever necessary in relation to information about children, families, staff, and service noncompliance history. As such, section 775 (5) must be adhered to.

6. Policy and Procedure

Writing the Childcare Standards Report

- 6.1 The Manager or Assistant Manager, CPRU, may nominate a CPRU staff member to coordinate the *Childcare Standards Report*.
- 6.2 The nominated CPRU staff member will write the *Childcare Standards Report* using the appropriate template and follow up any outstanding information from the relevant CPRU staff member, including *Childcare Standards Report Notices* wherever relevant.
- 6.3 The nominated CPRU staff member will write the notifiable instrument and brief using the appropriate template and forward the document to the Manager or Assistant Manager, CPRU for review.

Timeframes

- 6.4 Collation of the *Childcare Standards Report* must commence the first day of the first full working week of July each year.
- 6.5 The draft *Childcare Standards Report* will be written and proposals for included information submitted to the Manager, CPRU by close of business the last working day of the second full working week in July each year.
- 6.6 Any *Childcare Standards Report Notices* required under section 777, *Children and Young People Act 2008*, will be issued by close of business the last working day of the third full working week in July each year.

- 6.7 Licensed proprietors may make a written submission to the Chief Executive within 30 days of receiving a *Childcare Standards Report Notice* (see s 777, *Children and Young People Act 2008*).
- 6.8 If a submission is received, the Manager, CPRU must decide to include or not to include the proposed information regarding noncompliance.
- 6.9 The final *Childcare Standards Report* will be received by the Executive Director, Office for Children, Youth and Family Support, by close of business the first full working week in September each year.

Governance

- 6.10 The final *Childcare Standards Report* will be signed off by the Chief Executive and then notified as per the *Legislation Act*.
- 6.11 Internal departmental governance procedures will be followed to complete point 6.10 of this policy and procedure.

Issuing a Childcare Standards Report Notice

- 6.12 *Childcare Standards Report Notices* are to be posted registered mail / express post platinum and faxed to the relevant licensed proprietor/s.
- 6.13 Records of confirmation of delivery/mode of delivery must be kept on file.

Training

- 6.14 The Manager and Assistant Manager, CPRU, must ensure all CPRU staff 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 information included in a *Childcare Standards Report* 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 licensed proprietor is able to make a complaint about a CPRU staff member to the Office for Children, Youth and Family Support.
- 6.19 CPRU staff must ensure that the Review of Decisions and Complaints Policy and Procedure is followed in relation to the above.
- 6.20 CPRU staff must engage with the person 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 process as directed.

7 Forms and Templates

Notifiable Instrument & Brief Templates

Childcare Standards Report Template

Childcare Standards Report Notice

8 Related Policies and Procedures

Compliance Strategy

Childcare Services Assessment Policy and Procedure

Complaints and Concerns about Childcare Services Policy and Procedure

Review of Decisions and Complaints about CPRU Staff Policy and Procedure