

South Australia

Family and Community Services Regulations 2009

under the *Family and Community Services Act 1972*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Family and Community Services Regulations 2009*.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Family and Community Services Act 1972*;

residential care facility means a residential care facility established under section 36 of the Act.

Part 4—Residential care facilities

12—Functions of Chief Executive

- (1) The Chief Executive has responsibility to ensure that proper standards of administration are observed in the management of a residential care facility established under the Act.
- (2) The Chief Executive must, for example, ensure that adequate arrangements are in place in a residential care facility—
 - (a) to maintain the physical, psychological and emotional well-being of children placed in the facility; and
 - (b) to promote the social, cultural and educational development of children placed in the facility; and
 - (c) to maintain discipline and order in the facility; and
 - (d) to ensure, through the implementation of operational procedures, the proper control and management of the facility.

13—Prohibited treatment of children in residential care facilities

Subject to these regulations, a child placed in a residential care facility must not be subjected to any of the following kinds of treatment:

- (a) corporal punishment of any form (that is, any action that inflicts or is intended to inflict physical pain or discomfort);
- (b) isolation from other children in the facility by, for example, being kept apart from the normal routine of the facility in a locked room;
- (c) psychological pressure or emotional abuse of any form intended to intimidate or humiliate;
- (d) deprivation of medical attention, basic food or drink, clothing or any other essential item;
- (e) deprivation of sleep;
- (f) unjustified deprivation of contact with persons outside the facility;
- (g) any other treatment that is cruel, inhuman or degrading.

14—Use of force against children in residential care facilities

- (1) An employee in a residential care facility may only use such force against a child placed in the facility as is reasonably necessary in any particular case—
 - (a) to prevent the child from harming himself or herself or another person; or
 - (b) to prevent the child from causing significant damage to property; or
 - (c) as a last resort after other strategies have failed—to ensure that the child complies with a reasonable direction given by an employee of the facility; or
 - (d) to maintain order in the facility.

- (2) An employee in a residential care facility who uses force against a child placed in the facility must, as soon as is reasonably practicable after the use of force—
- (a) prepare a written report (in a manner and form determined by the Chief Executive) relating to the use of force setting out—
 - (i) the name of the child;
 - (ii) the name of each employee in the facility involved in or who witnessed the use of force;
 - (iii) the date, time and location in the facility where the use of force took place;
 - (iv) the nature of the force used and the purpose for which, or circumstances in which, the force was used;
 - (v) any follow-up action undertaken as a result of the use of force; and
 - (b) cause the report to be verified in accordance with subregulation (2a); and
 - (c) submit the report (and a copy of any report referred to in subregulation (2a)(b)) to the supervisor of the residential care facility.
- (2a) A written report is to be verified by each employee who was involved in, or who witnessed the use of force, doing 1 or both of the following:
- (a) certifying on the written report, in accordance with any determination of the Chief Executive, that the report is an accurate account of the use of force against the child;
 - (b) providing a separate written report setting out such of the matters referred to in subregulation (2)(a) as may be known to the employee.
- (3) An account of an incident leading to the use of force against a child placed in a residential care facility must be—
- (a) written, signed and dated by the child; or
 - (b) if the child cannot write—
 - (i) written on the instructions of the child, and signed and dated, by a person nominated for the purpose by the child; and
 - (ii) signed by the child,

(and such account must be kept together with the record required to be kept under subregulation (2)).

- (4) A child may nominate any of the following persons for the purposes of subregulation (3)(b):
- (a) the child's case manager or case worker;
 - (b) a lawyer;
 - (c) a cultural advisor;
 - (d) any other adult person,

(but any such person nominated may not be an employee of the facility nor have been present during the relevant incident that led to the use of force against the child).

Part 5—Miscellaneous

15—Application for licence to carry on business of foster care agency

For the purposes of section 48(2) of the Act, an application for a licence to carry on the business of a foster care agency, or for renewal of a licence to carry on the business of a foster care agency must be made to the Chief Executive Officer on a form obtained from the Chief Executive Officer.

16—Agreement for admission of child to licensed children's residential facility

For the purposes of section 55(1)(a) of the Act, an agreement for a child to be placed in a children's residential facility must be in the form set out in Schedule 1.

Schedule 1—Agreement for admission of child to licensed children's residential facility

Family and Community Services Act 1972 (section 55(1)(a))

Part A—Agreement

- 1 Name of guardian(s) entering into agreement:
- 2 Address of guardian(s):
- 3 Name, age and sex of child or children to which agreement relates:
- 4 Name of children's residential facility:

*I/we the guardian(s) named above agree to entrust the children's residential facility named above with the care, custody and control of the *child/children named above for a period of months, commencing on the day of 20 subject to the conditions specified in Part B of this agreement.

I , the *licensee/person authorised by the licensee of the children's residential facility named above agree that the facility will be responsible for the care, custody and control of the *child/children named above for the period specified, subject to the conditions specified in Part B of this agreement.

* *Delete where appropriate.*

Part B—Conditions

This agreement is subject to the following conditions: (For example, conditions relating to payment by the guardian(s) in respect of the care of the child/children, visiting rights, absences from the facility, consent to medical and dental treatment, education, religious instruction or any other matter relating to the care, custody and control of the child/children including their rights to cultural identity and connection to their community. If the space provided is insufficient, attach a separate sheet.)

Dated this day of 20 .

Signed by the guardian(s):

In the presence of: (*witness*)

Signed by the licensee or person authorised by
the licensee of the children's residential facility:

In the presence of: (*witness*)

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Family and Community Services Regulations 2009* revoked the following:

Family and Community Services Regulations 1996

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2009	220	<i>Gazette 20.8.2009 p3755</i>	1.9.2009: r 2
2016	222	<i>Gazette 8.9.2016 p3708</i>	1.12.2016: r 2
2018	220	<i>Gazette 11.10.2018 p3799</i>	11.10.2018 except rr 8 and 9—22.10.2018: r2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>r 2</i>	<i>omitted under the Legislation Revision and Publication Act 2002</i>	<i>1.12.2016</i>
r 3		
<i>advisory committee</i>	<i>deleted by 220/2018 r 4</i>	<i>11.10.2018</i>
<i>detention room</i>	<i>deleted by 222/2016 r 4</i>	<i>1.12.2016</i>
<i>liquor</i>	<i>deleted by 222/2016 r 4</i>	<i>1.12.2016</i>
<i>resident</i>	<i>deleted by 222/2016 r 4</i>	<i>1.12.2016</i>
Pt 2	<i>deleted by 220/2018 r 5</i>	<i>11.10.2018</i>
<i>Pt 3</i>	<i>deleted by 222/2016 r 5</i>	<i>1.12.2016</i>
Pt 4		
r 12		
r 12(1)	varied by 220/2018 r 6(1)	11.10.2018

r 12(2)	varied by 220/2018 r 6(2)	11.10.2018
r 14		
r 14(2)	substituted by 220/2018 r 7	11.10.2018
r 14(2a)	inserted by 220/2018 r 7	11.10.2018
Pt 5	deleted by 220/2018 r 8	22.10.2018—not incorporated
Sch 1	deleted by 220/2018 r 9	22.10.2018—not incorporated
Sch 2	<i>omitted under the Legislation Revision and Publication Act 2002</i>	1.12.2016

Historical versions

1.12.2016