

South Australia

Family and Community Services Regulations 2009

under the *Family and Community Services Act 1972*

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Part 1—Preliminary

1—Short title

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

2—Commencement

These regulations will come into operation on 1 September 2009.

3—Interpretation

In these regulations, unless the contrary intention appears—

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

advisory committee means an advisory committee established by the Minister under section 11 of the Act;

detention room means a room in a training centre that is set aside for the detention of residents of the centre;

liquor means any beverage that, at 20 degrees Celsius, contains more than 1.15% alcohol by volume and includes any other substance that comprises, constitutes, contains or may be converted into that beverage;

resident, in relation to a training centre, means a youth detained in the centre;

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

Part 2—Advisory committees

4—Conduct of business by advisory committee

- (1) The member appointed as the presiding member of an advisory committee will preside at meetings of the committee at which he or she is present.
- (2) If the presiding member is absent from a meeting of the committee, the following provisions apply:
 - (a) if another member has been appointed as that member's deputy and is present at the meeting—the deputy will preside at the meeting;
 - (b) in any other case—a member chosen by the members present at the meeting will preside at the meeting.
- (3) A quorum of an advisory committee consists of one-half of the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the committee.
- (5) Each member present at a meeting of the committee has 1 vote on any question arising for decision and, if the votes are equal, the presiding member at the meeting may exercise a casting vote.

Part 3—Training centres

5—Functions of Chief Executive Officer

- (1) The Chief Executive Officer has responsibility to ensure that proper standards of administration are observed in the management of a training centre established under the Act.

- (2) The Chief Executive Officer must, for example, ensure that adequate arrangements are in place in a training centre—
 - (a) to maintain the physical, psychological and emotional well-being of the residents of the training centre; and
 - (b) to promote the social, cultural and educational development of the residents of the training centre resident; and
 - (c) to maintain discipline and order among the residents of the training centre resident; and
 - (d) to ensure, through the implementation of operational procedures, the proper security, control and management of the training centre.

6—Visitors

- (1) A resident of a training centre is entitled to be visited by at least 1 person on at least 1 occasion each week.
- (2) The manager of a training centre must encourage and facilitate visits to the residents in the centre by their relatives and friends.
- (3) A visit by a legal practitioner for the purpose of rendering legal services to a resident of a training centre will not be held to be a visit for the purposes of subregulation (1).
- (4) However, the manager of a training centre may, if of the opinion that special reasons exist for doing so, order that a particular person is barred from visiting a resident of the centre for any period the manager thinks fit, or until further order of the manager.

7—Prohibited treatment of residents

Subject to these regulations, a resident of a training centre 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 (other than in a detention room) from other residents;
- (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 centre;
- (g) any other treatment that is cruel, inhuman or degrading.

8—Use of force against residents

- (1) An employee in a training centre may only use such force against a resident of the centre as is reasonably necessary in any particular case—
 - (a) to prevent the resident from harming himself or herself or another person; or
 - (b) to prevent the resident from causing significant damage to property; or

- (c) to ensure that the resident complies with a reasonable direction given by an employee of the centre; or
 - (d) to maintain order in the centre; or
 - (e) to preserve the security of the centre.
- (2) If force is used against a resident of a training centre, each employee involved must ensure that a written report is provided to the manager of the centre containing the following particulars:
- (a) the name of the resident;
 - (b) the name of each employee involved in or who witnessed the use of force;
 - (c) the date, time and location in the centre where the use of force took place;
 - (d) the nature of the force used and the purpose for which, or circumstances in which, the force was used.
- (3) An account of an incident leading to the use of force against a resident must be—
- (a) written, signed and dated by the resident; or
 - (b) if the resident cannot write—
 - (i) written on the instructions of the resident, and signed and dated, by a person nominated for the purpose by the resident; and
 - (ii) signed by the resident,
- (and such account must be kept together with the record required to be kept under subregulation (2)).
- (4) A resident may nominate any of the following persons for the purposes of subregulation (3)(b):
- (a) the resident'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 training centre nor have been present during the relevant incident that led to the use of force against the resident).

9—Detention rooms

- (1) A resident of a training centre may only be detained in a detention room if an employee in the centre believes on reasonable grounds that—
- (a) the resident is about to harm himself or herself or another person; or
 - (b) the resident is about to cause significant damage to property; or
 - (c) it is necessary to detain the resident in a detention room—
 - (i) to maintain order in the centre; or
 - (ii) to preserve the security of the centre.

- (2) However, a resident of a training centre who is under the age of 12 years must not be detained in a detention room.
- (3) The maximum length of time that a resident of a training centre may be detained in a detention room is as follows:
 - (a) in the case of a resident aged 12 to 14 years—24 hours;
 - (b) in the case of a resident aged 15 years or over—48 hours.
- (4) A resident of a training centre who is detained in a detention room—
 - (a) must be closely supervised; and
 - (b) must be observed at intervals of not longer than 5 minutes.
- (5) If a resident of a training centre is detained in a detention room, the manager of the centre must ensure that a record is made containing the following details:
 - (a) the name and age of the resident;
 - (b) the date and time the detention began;
 - (c) the date and time the detention ended;
 - (d) the reason for the detention;
 - (e) the name of the employee of the centre who ordered the detention;
 - (f) action taken (if any) in respect of the resident before the resident was so detained;
 - (g) the management plan established for the resident for the period during which the resident was detained in the detention room;
 - (h) any issues or concerns relating to the resident's medical condition.
- (6) An account of an incident leading to the detention of a resident in a detention room must be—
 - (a) written, signed and dated by the resident; or
 - (b) if the resident cannot write—
 - (i) written on the instructions of the resident, and signed and dated, by a person nominated for the purpose by the resident; and
 - (ii) signed by the resident,

(and such account must be kept together with the record required to be kept under subregulation (5)).
- (7) A resident may nominate any of the following persons for the purposes of subregulation (6)(b):
 - (a) the resident'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 training centre nor have been present during the relevant incident that led to the resident being detained in the detention room).

10—Power to search residents

- (1) The manager of a training centre may cause a resident of the centre or a resident's belongings to be searched in any of the following situations:
 - (a) when the resident is received into the centre or returns after an absence from the centre;
 - (b) if the resident has had a full contact visit with a visitor to the centre;
 - (c) if the manager has reasonable cause to suspect that the resident has in his or her possession in the centre any substance or item—
 - (i) that is prohibited in the centre; or
 - (ii) that may jeopardise the security of the centre.
- (2) The following provisions apply to the search of a resident of a training centre:
 - (a) those present at any time during the search when the resident is naked (except a medical practitioner) must be of the same sex as the resident;
 - (b) at least 2 persons (apart from the resident) must be present at all times during the search when the resident is naked (with 1 of them conducting the search while the other observes);
 - (c) if a medical practitioner is required for the purposes of the search—the medical practitioner must be in addition to the 2 persons required under paragraph (b);
 - (d) for the purposes of the search—the resident may be required—
 - (i) to open his or her mouth; and
 - (ii) to strip; and
 - (iii) to adopt particular postures; and
 - (iv) to do anything else reasonably necessary for the purposes of the search,and if the resident does not comply with such a requirement, reasonable force may be applied to secure compliance;
 - (e) force must not be applied to open the resident's mouth except by or under the supervision of a medical practitioner;
 - (f) nothing may be introduced into an orifice of the resident's body for the purposes of the search except by a medical practitioner;
 - (g) the search must be carried out expeditiously and undue humiliation of the resident must be avoided.

11—Power to search visitors

- (1) This regulation does not apply to a person who is a resident of a training centre.

- (2) The manager of a training centre may—
- (a) cause any person who enters the centre to submit, subject to the person's consent, to a *limited contact search*, and to having his or her belongings searched, for the presence of prohibited items; or
 - (b) if there are reasonable grounds for suspecting that a person entering or in the centre is in possession of a prohibited item—cause the person and his or her possessions to be detained and searched; or
 - (c) if there are reasonable grounds for suspecting that a vehicle entering or in the centre is carrying a prohibited item—cause the vehicle to be detained and searched.
- (3) If a person does not consent to a limited contact search, the manager of the training centre may cause the person to be refused entry to or removed from the centre, using only such force as is reasonably necessary for the purpose.
- (4) Failure of a person to consent to a limited contact search does not of itself constitute grounds for suspecting that the person is in possession of a prohibited item.
- (5) The following provisions apply to a limited contact search:
- (a) the person cannot be required to remove any clothing or to open his or her mouth, and nothing may be introduced into an orifice of the person's body;
 - (b) any direct contact with the person's flesh that is necessary for the purpose of the search must be minimal and within the bounds of propriety;
 - (c) the person may be required to adopt certain postures or to do anything else reasonably necessary for the purposes of the search and, if the person does not comply with such a requirement, the manager may cause the person to be removed from the centre, using only such force as is reasonably necessary for the purpose;
 - (d) the search must be carried out expeditiously and undue humiliation of the person must be avoided.
- (6) The following provisions apply to a search under subregulation (2)(b):
- (a) the person may be required—
 - (i) to remove his or her outer clothing (including footwear and headwear) but no other clothing; and
 - (ii) to open his or her mouth (but force cannot be applied to open the person's mouth); and
 - (iii) to adopt certain postures; and
 - (iv) to submit to being frisked; and
 - (v) to do anything else reasonably necessary for the purposes of the search,and, if the person does not comply with such a requirement, the manager may cause the person to be removed from the training centre, using only such force as is reasonably necessary for the purpose;
 - (b) nothing may be introduced into an orifice (including the mouth) of the person's body;

- (c) at least 2 persons (apart from the person being searched) must be present at all times during the search;
 - (d) the search must be carried out expeditiously and undue humiliation of the person must be avoided.
- (7) The following provisions apply to a search under subregulation (2)(c):
- (a) the driver of the vehicle may be required to do anything reasonably necessary for the purposes of the search;
 - (b) if the driver does not comply with a requirement made under paragraph (a)—the manager may cause the driver and the vehicle to be refused entry to or removed from the training centre, using only such force as is reasonably necessary for the purpose.
- (8) If a prohibited item is found as a result of a search under this regulation, or a person fails to comply with a requirement lawfully made for the purposes of a search under this regulation, the manager may cause the person or the driver of the vehicle (as the case may be) to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.
- (9) If the employee who carries out a search of a person under this section suspects on reasonable grounds that a prohibited item may be concealed on or in the person's body, the manager may cause the person to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.
- (10) On a person being detained under subregulation (8) or (9), the manager must immediately cause a police officer to be notified.
- (11) Despite the preceding provisions of this regulation, if a person or vehicle may be detained under this regulation for the purposes of being searched, the manager may, instead, cause the person or vehicle to be refused entry to or removed from the training centre, using only such force as is reasonably necessary for the purpose.
- (12) For the purposes of this regulation, if permission for the introduction of any of the following items into a training centre has not been given by the manager of the centre, the item will be a ***prohibited item***:
- (a) a substance that is—
 - (i) a prescription drug; or
 - (ii) a controlled drug; or
 - (iii) a controlled plant,under the *Controlled Substances Act 1984*;
 - (b) a syringe or needle;
 - (c) a device capable of being used for the administration of a controlled drug by means of the drawing of smoke or fumes (resulting from the heating or burning of the drug or substance), including a device known as a bong;
 - (d) any—
 - (i) flammable, corrosive or toxic substance that is a dangerous substance under the *Dangerous Substances Act 1979*; or
 - (ii) liquor; or

- (iii) paint; or
- (iv) oil; or
- (v) acid or alkali; or
- (vi) glue; or
- (vii) herbicide, fungicide or insecticide;
- (e) a pressurised spray canister;
- (f) an explosive, explosive device or incendiary device, or any substance or device that can be used in the manufacture of an explosive or incendiary device;
- (g) any pistol, revolver, rifle, machine gun, shot gun or any other kind of gun or weapon;
- (h) a device or instrument designed or commonly used, or that has been or is capable of being adapted or modified, for the purpose of—
 - (i) inflicting any kind of bodily injury or harm to a person; or
 - (ii) assisting a resident to escape from a training centre;
- (i) a book, diagram, plan or other document, or audio or video recording, or any other material of any kind, that instructs, teaches or otherwise guides a person—
 - (i) how to make any item referred to in the preceding paragraphs; or
 - (ii) about a method of escaping from a training centre or causing an insurrection, riot or other disturbance at a training centre;
- (j) a film classified RC, X 18+ or R 18+, or a computer game classified RC, under the *Classification (Publications, Films and Computer Games) Act 1995*;
- (k) pornographic material;
- (l) a camera or other device capable of capturing or recording images (whether digitally or on film or tape);
- (m) a mobile telephone, mobile telephone accessory or other device that may be used to make or receive a telephone call;
- (n) a 2-way radio (also known as a walkie talkie);
- (o) any device that includes a modem or other device enabling it to transmit or receive data to or from a network of computers;
- (p) any unauthorised data storage device;

An ***unauthorised data storage device*** means a data storage device that has not been specifically authorised by the manager, but does not include a data storage device of a kind referred to in a preceding paragraph or a data storage device containing only a film or computer game classified G under the *Classification (Publications, Films and Computer Games) Act 1995*.

- (q) any tool;

- (r) any wire, rope, cord or twine;
- (s) any mirror, glass or ceramic item;
- (t) jewellery;
- (u) a backpack, handbag or any other bag;
- (v) a pram, pusher or bassinette;
- (w) an item or substance for grooming, cosmetic or toiletry purposes;
- (x) any other item for personal use.

Part 4—Residential care facilities

12—Functions of Chief Executive Officer

- (1) The Chief Executive Officer 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 Officer 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) If force is used against a child placed in a residential care facility, each employee involved must ensure that a written report is provided to the supervisor of the facility containing the following particulars:
 - (a) the name of the child;
 - (b) the name of each employee involved in or who witnessed the use of force;
 - (c) the date, time and location in the facility where the use of force took place;
 - (d) the nature of the force used and the purpose for which, or circumstances in which, the force was used;
 - (e) the follow-up action (if any) undertaken as a result of the use of force.
- (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*)

Schedule 2—Revocation of *Family and Community Services Regulations 1996*

The *Family and Community Services Regulations 1996* are revoked.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Family and Community Services Regulations 2009

Schedule 2—Revocation of *Family and Community Services Regulations 1996*

Made by the Governor

with the advice and consent of the Executive Council
on 20 August 2009

No 220 of 2009

DFCCS/08/020