2013 No 456

New South Wales

Status of Children Regulation 2013

under the

Status of Children Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Status of Children Act 1996*.

GREG SMITH, MP
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake, with only minor changes, the provisions of the *Status of Children Regulation 2008*, which would otherwise be repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*. The changes mainly comprise the removal of references to testing procedures that are no longer used.

This Regulation makes provision with respect to the following:

(a) parentage testing procedures and reports on such procedures,

(b) the form in which an acknowledgment of paternity is to be made and the persons who must witness such an acknowledgment,

(c) the persons (in addition to those specified in section 21 (1) of the *Status of Children Act 1996*) who can apply to the Supreme Court for declarations of parentage,

(d) matters of a savings and transitional nature.

This Regulation is made under the *Status of Children Act 1996*, including the definition of ***parentage testing procedure*** in section 3 (1) and sections 19 (1) (a) and (b), 21 (1) (e), 33 (2) (c) and 36 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Contents

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Status of Children Act 1996

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Status of Children Regulation 2013*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Status of Children Regulation 2008* which would otherwise be repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

accredited laboratory means a laboratory accredited by NATA to carry out parentage testing procedures.

donor means the person required to provide a bodily sample for the purposes of a parentage testing procedure.

NATA means the National Association of Testing Authorities Australia.

nominated reporter means the person nominated by an accredited laboratory to prepare a report relating to the information obtained as a result of carrying out a parentage testing procedure.

putative parent means a person who claims to be, or whom another person claims is, a parent of a child.

report means a report prepared in accordance with clause 13.

representative means, subject to subclause (3):

(a) in relation to a donor under the age of 18 years—a parent or guardian of the donor, or

(b) in relation to a donor who has a disability:

(i) a trustee or manager in relation to the donor under a law of the State or Territory whose laws apply to that person, or

(ii) a person who is legally responsible for the care, welfare and development of the donor.

sampler means a person who takes (or proposes to take) a bodily sample from a donor for the purposes of a parentage testing procedure.

testing means the implementation, or any part of the implementation, of a parentage testing procedure.

the Act means the *Status of Children Act 1996*.

(2) In relation to any requirement of this Regulation imposed on or in relation to a donor, a reference to a donor who is suffering from a disability is a reference to a donor who has a disability described in section 5 (1) of the *Disability Services Act 1993*:

(a) that results in the donor lacking the legal capacity to comply with or consent to the requirement (as the case may be), or

(b) that otherwise prevents the donor from being able to comply with the requirement or consent to it being carried out (as the case may be).

(3) The Supreme Court may appoint a person to be the representative of a donor for the purposes of this Regulation in relation to a particular matter if the Court is satisfied that there is no other representative who is available or who is suitable in the circumstances.

(4) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(5) Notes included in this Regulation do not form part of this Regulation.

Part 2 Parentage testing procedures and reports

Division 1 General

4 Application of Part

This Part applies to a parentage testing procedure that is required to be carried out on a person under a parentage testing order.

5 Parentage testing procedures

For the purposes of the definition of ***parentage testing procedure*** in section 3 (1) of the Act, DNA typing is a prescribed medical procedure.

6 Compliance with this Regulation

A parentage testing procedure is taken to be carried out in accordance with this Regulation only if:

(a) it is carried out:

(i) in compliance with Division 2, and

(ii) at an accredited laboratory, and

(iii) in accordance with the standards of practice that entitle a laboratory to be accredited by NATA, and

(b) it is supplemented by a report under Division 3.

Note. Any bodily sample that is taken as part of a parentage testing procedure must be taken by a qualified person within the meaning of section 33 of the Act.

Division 2 Collection, storage and testing of samples

7 Provision of information by donor or representative—Form 1

(1) A sampler must not take a bodily sample from a donor unless the donor or, if appropriate, a person described in subclause (3), has:

(a) immediately before the sampler takes the bodily sample, completed an affidavit in accordance with Form 1, to which is attached a recent photograph of the donor named in the affidavit, and

(b) either:

(i) provided to the sampler a recent photograph of the donor, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background, or

(ii) made a written arrangement with the sampler for a photograph of that kind to be taken.

(2) The photograph required by subclause (1) (b) is in addition to the photograph that is required to be attached to Form 1.

(3) If the donor is under the age of 18 years, or a person who is suffering from a disability, the affidavit referred to in subclause (1) (a) may be completed only by a representative of the donor.

8 Collection of bodily samples for DNA typing

(1) This clause applies to the taking of a bodily sample from a donor for the purposes of a parentage testing procedure that is DNA typing.

(2) **Bodily samples other than blood samples**

A sampler:

(a) must not take a bodily sample from a donor with a swab unless the swab:

(i) has not been used for any purpose, and

(ii) is sterile, and

(b) must not take a bodily sample from a donor that is a skin scraping or hair root unless the implement used by the sampler to take the sample is sterile.

(3) **Blood samples**

A sampler:

(a) must not take a sample of blood from a donor with a needle or syringe unless:

(i) it has not been used for any purpose, and

(ii) it is sterile, and

(iii) it is disposable, and

(b) must ensure, before taking a sample of blood from a donor, that the area of the donor's skin into which the needle is to be inserted to withdraw the blood has been cleaned with an antiseptic.

9 Container to be sealed and labelled

(1) If a bodily sample is taken from a donor, the sampler must ensure that:

(a) the sample is placed in a container:

(i) immediately after it is taken, and

(ii) in the presence of the donor, and

(b) the container has not previously been used for any purpose, and

(c) the container is sealed in a way that, if it were opened after being sealed, that fact would be evident on inspection of the container, and

(d) the container is labelled in a way that:

(i) if the label, or part of the label, were removed, or

(ii) if the writing on the label were impaired by alteration or erasure,

the removal of the label or the impairment would be evident on inspection of the container, and

(e) the particulars on the label are inscribed indelibly and include:

(i) the full name of the donor, and

(ii) the date of birth and sex of the donor, and

(iii) the date and time at which the sample was taken, and

(f) the label inscribed with the particulars referred to in paragraph (e) is signed indelibly by the sampler and the donor.

(2) If the donor is a person who is under the age of 18 years or suffering from a disability:

(a) the procedure specified in subclause (1) (a) must be completed in the presence of the person's representative, and

(b) the procedure specified in subclause (1) (f) is taken to have been complied with only if the label is signed by the person's representative.

10 Statement by sampler—Form 2

After taking a bodily sample from a donor, the sampler must:

(a) complete a statement in accordance with Form 2, and

(b) affix the photograph of the donor referred to in clause 7 (1) (b) to that statement, and

(c) sign his or her name partly on the photograph and partly on the statement in a way that, if the photograph were later removed from the statement, the removal would be evident from inspection of the statement.

11 Packing and storage requirement

(1) A bodily sample must be packed, stored and transported to a laboratory for testing in a manner that:

(a) will preserve the integrity of the sample, and

(b) ensures that the testing of the sample will produce the same results as would have been obtained if the sample had been tested immediately after collection.

(2) The sampler must ensure that the following documents are sent to the laboratory with the sample:

(a) the affidavit completed under clause 7,

(b) the statement completed under clause 10.

12 Testing of bodily samples

A laboratory to which a bodily sample has been sent for DNA typing must ensure that the testing is completed within a reasonable time after the sample is taken.

Division 3 Reports

13 Reports—Form 3

(1) A report must be prepared in accordance with this clause relating to the information obtained as a result of carrying out a parentage testing procedure.

(2) The report must be in accordance with Form 3.

(3) Part 1 of the report must be completed by the nominated reporter identified in the report.

(4) Part 2 of the report must be completed by:

(a) the person who carried out the parentage testing procedure, or

(b) the person under whose supervision the parentage testing procedure was carried out.

(5) A report completed otherwise than in accordance with this Regulation is taken to be of no effect.

Part 3 Miscellaneous

14 Paternity acknowledgments—Form 4

(1) For the purposes of section 19 (1) (a) of the Act, the prescribed form of an instrument acknowledging paternity of a child is Form 4.

(2) For the purposes of section 19 (1) (b) of the Act, the following classes of persons are prescribed:

(a) Australian legal practitioners,

(b) officers of the Registry of Births, Deaths and Marriages nominated for the time being by the Registrar for the purposes of this paragraph.

15 Applications for declarations by the Supreme Court of paternity or maternity

For the purposes of section 21 (1) (e) of the Act, the following persons are prescribed persons:

(a) the NSW Trustee and Guardian,

(b) a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth,

(c) an executor, trustee or administrator of an estate.

16 Persons prescribed as "qualified persons" under section 33 of the Act

For the purposes of section 33 (2) (c) of the Act, persons employed by a hospital, pathology practice, parentage testing practice or a medical practitioner for the purpose of taking a bodily sample from a donor are prescribed as qualified persons.

17 Repeal and savings

(1) The *Status of Children Regulation 2008* is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the *Status of Children Regulation 2008*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

(Clause 3 (4))

Form 1 Parentage testing procedure affidavit by/in relation to donor

(Status of Children Act 1996)

(Clause 7 (1) (a))

Name of child whose parentage is in issue: .....

Name of donor: .....

Date of birth of donor: .....

*Relationship/*Putative relationship of donor to child whose parentage is in issue *[if donor is not the child whose parentage is in issue, insert relationship of donor to child]*: .....

Date of taking sample from donor: .....

I, *[name]*, of *[address]*, *[occupation]* *make oath and say/*affirm:

(Either Part 1 or Part 2 of this form must be completed and duly sworn or affirmed by the person completing it, and the signature witnessed, on the day the donor's sample is taken)

Part 1

(Part 1 must be completed if the person swearing or affirming the affidavit is the donor)

1 I am the person appearing in the photograph attached to this affidavit, being Attachment 'A'.

2 My racial background is: *[give details]*

3 In the last 2 years:

(a) I *have/*have not suffered from leukaemia.

(b) I *have/*have not received a bone marrow transplant.

*4 The particulars of the *leukaemia/*bone marrow transplant are as follows: *[give particulars]*

5 I *have/*have not received a transfusion of blood or a blood product within the last 6 months.

*6 The particulars of the transfusion of blood or blood product are as follows: *[give particulars]*

7 I consent to:

(a) the taking of *a bodily sample/*bodily samples from me on *[insert date sample is to be taken]* at *[insert place sample is to be taken]* for the purposes of *a parentage testing procedure/*parentage testing procedures, and

(b) the carrying out of *that procedure/*those procedures on the *sample/*samples.

Part 2

Part 2 must be completed on behalf of a child or adult who is not capable of swearing or affirming the affidavit. Under section 28 of the Act, a parentage testing procedure must not be carried out in relation to a child without the consent of a parent or guardian of the child.

1 I am the *[state relationship or other status in relation to the donor]* of *[name of donor]* who was born on *[date of birth of donor]*.

2 *[Name of donor]* is the person appearing in the photograph attached to this affidavit, being Attachment 'A'.

3 *[Name of donor]* is a person whose racial background is: *[give details]*

4 In the last 2 years:

(a) the donor *has/*has not suffered from leukaemia.

(b) the donor *has/*has not received a bone marrow transplant.

*5 The particulars of the *leukaemia/*bone marrow transplant are as follows: *[give particulars]*

6 The donor *has/*has not received a transfusion of blood or a blood product within the last 6 months.

*7 The particulars of the transfusion of blood or blood product are as follows: *[give particulars]*

8 I consent to:

(a) the taking of *a bodily sample/*bodily samples from the donor on *[insert date sample is to be taken]* at *[insert place sample is to be taken]* for the purposes of *a parentage testing procedure/*parentage testing procedures, and

(b) the carrying out of *that procedure/*those procedures on the *sample/*samples.

*SWORN/*AFFIRMED by the deponent at
on 20 .

.....
[Signature of deponent]

Before me:

.....
[Signature of person before whom the affidavit is sworn or affirmed]

Attach a recent photograph of the donor named in the affidavit, measuring approximately 45 millimetres by 35 millimetres, that shows a full face view of the donor's head and the donor's shoulders against a plain background. The photograph must be marked 'A', and must bear a statement, signed by both the person before whom the affidavit is sworn or affirmed and the deponent, identifying it as the photograph mentioned in the affidavit.

**Delete if not applicable.*

Certificate under section 34 (1) (c) of Oaths Act 1900

**Please cross out any text that does not apply*

I [*insert name of witness*], a [*insert qualification to be witness*], certify the following matters concerning the making of this affidavit by the person who made it:

1 *I saw the face of the person *or* *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2 *I have known the person for at least 12 months *or* *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of witness*]

Date:

Form 2 Parentage testing procedure collection of bodily sample statement by sampler

(Status of Children Act 1996)

(Clause 10 (a))

Name of child whose parentage is in issue: .....

1 I, *[name of sampler]*, of *[professional address]*, *[occupation]*, took the bodily *sample/*samples specified below at *[time]* *am/*pm on *[date]* at *[place of collection]* from the following *person/*persons:

(a) *[name of person and type of bodily sample stated and person's photograph affixed]*,

*(b) *[name of person and type of bodily sample stated and person's photograph affixed]*,

*(c) *[name of person and type of bodily sample stated and person's photograph affixed]*,

*(d) *[name of person and type of bodily sample stated and person's photograph affixed]*.

2 When I took the bodily *sample/*samples specified above, I strictly observed the procedures provided under the *Status of Children Regulation 2013*.

3 I placed *the bodily sample/*each of the bodily samples specified above in a container that was immediately sealed and then labelled in accordance with clause 9 of the *Status of Children Regulation 2013*.

Dated 20 .

.....

[Signature of sampler]

**Delete if not applicable.*

Form 3 Report

(Status of Children Act 1996)

(Clause 13 (2))

Name of child whose parentage is in issue: .....

Part 1

1 I, *[name of nominated reporter]*, of *[address]*, am a person nominated by the laboratory specified below to prepare a report in accordance with clause 13 of the *Status of Children Regulation 2013*.

2 I report that a parentage testing *procedure/*procedures, being DNA typing, *has/*have been carried out on the bodily *sample/*samples contained in the sealed *container/*containers bearing the *name/names of the following *donor/*donors:

(a) *[donor's name, date of birth and relationship to the child whose parentage is in issue]*,

*(b) *[donor's name, date of birth and relationship to the child whose parentage is in issue]*,

*(c) *[donor's name, date of birth and relationship to the child whose parentage is in issue]*,

*(d) *[donor's name, date of birth and relationship to the child whose parentage is in issue]*.

3 Each bodily sample referred to in item 2 is the same bodily sample as the bodily sample specified in the statement completed on *[date]* by *[name of sampler]* in accordance with clause 10 of the *Status of Children Regulation 2013*.

4 The parentage testing *procedure was/*procedures were carried out at *[name of laboratory or laboratories]*.

5 The results of the parentage testing *procedure/*procedures are set out in Part 2 of this report.

*6 I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that *[name of putative parent]* is not excluded from identification as the *father/*mother of *[name of child whose parentage is in issue]*.

[*OR*]

*6 I report that the results of the parentage testing *procedure/*procedures carried out on the bodily *sample/*samples of the donors specified above show that *[name of putative parent]* is excluded from identification as the *father/*mother of *[name of child whose parentage is in issue]*.

*7 I further report that the probability that *[name of putative parent]* is the genetic *father/*mother of *[name of child whose parentage is in issue]* has been calculated as follows:

*Paternity/*Maternity Index	*[figure]* to 1
Relative chance of *Paternity/*Maternity	*[percentage]* %

[*OR*]

*7 I further report that the exclusion is based on contradictions to the laws of genetic inheritance in *[amount]* of the *[amount]* genetic markers tested. The contradictions occurred in the following genetic markers: *[names of genetic markers and whether the contradictions were of the first or second order]*

*8 I further report *[if necessary, provide further explanation of results detailed in items 6 and 7]*.

Dated 20 .

.....

[Signature of nominated reporter]

Part 2

1 The bodily *sample/*samples referred to in Part 1 *was/*were received at *[name of laboratory at which the parentage testing *procedure was/*procedures were carried out]* on 20 .

2 The following identification numbers were allocated respectively to the bodily *sample/*samples in the *container/*containers in which the *procedure was/*procedures were carried out:

(a) *[name of person and identification number]*,

*(b) *[name of person and identification number]*,

*(c) *[name of person and identification number]*,

*(d) *[name of person and identification number]*.

3 The results obtained from the parentage testing *procedure/*procedures are as follows: *[set out the results]*

*4 The results set out in item 3 refer to the parentage testing *procedure/*procedures carried out *by me/*under my supervision on *[date]*. The bodily *sample was/*samples were tested against the same reagents and in parallel with appropriate known controls. Results from controls show that all reagents were of correct specificity and normal potency. I am satisfied that the results obtained are true and that they have been correctly transcribed from the laboratory records.

[*OR*]

*4 The results set out in item 3 refer to the parentage testing *procedure/*procedures carried out *by me/*under my supervision on *[date]*. The bodily *sample was/*samples were tested with the same probes/primers and in parallel with appropriate known controls. Fragment length and/or hybridisation patterns were in accordance with scientifically accepted standards. I am satisfied that the results obtained have been correctly coded from the fragment and/or hybridisation pattern and that they have been correctly transcribed from the laboratory records.

Dated 20 .

.....

[Signature of person who carried out parentage testing procedure or person under whose supervision procedure was carried out]

**Delete if not applicable.*

Form 4 Paternity acknowledgment

(Status of Children Act 1996, section 19)

(Clause 14 (1))

Note:

SIGNATURES MUST BE WITNESSED BY AN AUSTRALIAN LEGAL PRACTITIONER OR BY AN OFFICER OF THE REGISTRY OF BIRTHS, DEATHS AND MARRIAGES NOMINATED BY THE REGISTRAR.

IF A PARTY IS UNAVAILABLE TO SIGN THIS FORM, THE LAST KNOWN ADDRESS OF THE PERSON SHOULD BE PROVIDED IN THE APPROPRIATE SECTION IMMEDIATELY BELOW.

I	I .....
[full name of mother]	*[full name of father]*
of	of .....
.....	.....
Postcode: ..... Ph:	Postcode: ..... Ph: .....

hereby acknowledge that we are the natural mother and father of the child named below. We request that the Registrar include details of the father (as stated below) on the birth record of the child.

CHILD'S PARTICULARS

.....	Sex: .....
[given names] *[family name]*	
born on ..... /..... /.....	at ..... , New South Wales.

FATHER'S PARTICULARS (at time of child's birth)

.....	Occupation: .....
[given names] *[family name]*	
born on ..... /..... /.....	at .....

This acknowledgment is made believing that the information provided is true to the best of our knowledge and belief.

.....	.....
[mother's signature]	*[father's signature]*
Signed at	Signed at .....
on	on .....
Witnessed by	Witnessed by .....
Qualification	Qualification .....
[Legal practitioner/Registry officer]	*[Legal practitioner/Registry officer]*
.....	.....
[name, address and telephone no. of witness]	*[name, address and telephone no. of witness]*
.....	.....