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Community Services Victoria

DEPARTMENTAL INSTRUCTION

TITLE AMENDMENTS TO COMMUNITY WELFARE SERVICES ACT 1970 AFFECTING GUARDIANSHIP SERVICES AND RECEPTION CARE SERVICES, PROTECTIVE WORKERS

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1. PREAMBLE

Several amendments to the Community Welfare Services Act 1970, were proclaimed on 15 September 1986. This Circular is aimed at providing information on the changes and their implications and interim policy on medical assessment.

2. PROVISIONS AFFECTED AND THEIR IMPLICATIONS FOR PRACTICE

2.1 Voluntary Admission to Care

S44A(7) - Persons made wards under Section 35 (CWS Act) before January 6, 1982 now come under the review and discharge provisions that apply to wards admitted to the care of the Department by the Children's Court.

This means that children who were admitted to care on a voluntary basis are to be treated in the same way as all wards of the state in relation to annual reviews of wardship and discharge of wardship. While, to date, this has occurred in practice, it is now a requirement that th wardship of such children and young people is subject to annual review.

2.2 Medical Assessments and Operations on Children and Young People in Safe Custody

S.199(1) and S.199(2A) - Persons on safe custody order but not in Department Reception Centres now come under the provisions for ordering medical assessment or authorising consent to operations.

This means that children and young people in any form of reception and remand care can undergo medical assessment and treatment without parental consent. In the past, this only applied to children and young people in reception centres. This change is of particular importance to protective interveners, who may need to seek medical evidence of alleged maltreatment in situations where parents refuse to allow a medical assessment.

2.3 Adoption Act 1984

S.40, S.45 and S.65 - References to "the Adoption Act 1964" are changed to "the Adoption Act 1984".

While the new Adoption Act is quite different to the 1964 Act, this particular amendment has no implications for policy and practice.

3. DISCUSSION : EFFECT OF AMENDMENTS IN MORE DETAIL

3.1 Voluntary Admission to Care

S.44A(7): The effect of this amendment will be best understood by reading paragraph 3.6.10 of the Guardianship Manual.

The amendment was necessary to make it clear that review and discharge provisions applying to wards admitted by a Children's Court do not apply to persons admitted under S.35 before 6 January, 1982. (S.35 voluntary admissions after that date are all subject to 12 month agreements. S.35 admissions before that date are not).

The amendments make paragraph 3.6.10.1(b) of the Guardianship Manual inaccurate to the extent that annual review of persons admitted under S.35 before 6 January, 1982 is now mandatory under the legislation.

The amendment also makes it clear that the Director-General (or a Children's Court on application by the parent) can discharge wardship for persons admitted to the care of the Department under S.35, before 6 January, 1982.

3.2 Medical Assessments of Children and Young People in Safe Custody

3.2.1 Discussion

S.199(1): Section 199(1) allows the Director-General to order that a person in the Director-General's custody be examined to determine that person's medical, physical or mental condition.

This has been extended by the amendment to apply to persons on safe custody orders in locations other than Departmental facilities, eg. ICRAS or reception foster care.

It should be noted that the power to order an examination only applies to the Director-General or CSV employees with assignments from the Director-General. At present this will be the Regional Manager. This power cannot be given to voluntary organisations. Authority to sign consents to anaesthetics and surgery under S.199(2) does not apply to ordering medical examinations [under S.199(1)].

The possibility of using this provision for persons on safe custody orders could be raised in the following situations:

- in child abuse cases where parents do not agree to obtain proper medical assessment;
- in cases of alleged sexual assault;
- in obtaining evidence of drug abuse or in screening for sexually transmitted diseases including AIDS.

The motivation to instigate such an examination will broadly relate to either :

(i) concern about the person's health raised by what can be observed or is believed to have occurred; or

(ii) a desire to gain information, possibly to be used as evidence, to clarify or verify what has occurred.

Whilst both motivations may be present in any given situation, one is usually primary.

3.2.2 Guidelines for Ordering Medical or Psychiatric Examinations

In the absence of fully developed guidelines, the following is an interim policy on order medical and psychiatric examinations.

The following policy relates to all situations where examination of a child or young person being held on a safe custody order is being considered:

- This power is only to be exercised in exceptional circumstances since when a person is on safe custody order the parents are still the guardians of the child.

- Parents must first be approached for consent to the examination and only if they :

  (i) refuse consent; or

  (ii) are unavailable after reasonable enquiry,

  should consideration be given to using this power.

- Agreement of an older child (10 years and older) must be sought. If the child consents to the examination, consent of parents should still be sought regardless of any allegations of physical or sexual assault by the parents that exist (see 3.2.2.1 and 3.2.2.2 below for discussion of when an older child refuses permission.

- The police are responsible for seeking consents to medical examinations which are part of their investigation of a possible criminal offence. If the child is on a safe custody order, this Section 199 power can be used to allow for such an examination. Agreement to use this provision in these circumstances should only occur after the Regional Manager is satisfied that :

  (i) Parental consent cannot be obtained or is inappropriate to be sought; and

  (ii) the police consider insufficient evidence otherwise exists to verify the alleged offence.

3.2.2.1 Specific guidelines when health concerns exist

- If any degree of concern about the child's health is such that medical examination appears urgent, then parental consent need not be sought if this would lead to an unacceptable delay.

- The emotionally sensitive nature of sexual assault demands that the issue of medical examinations be handled very carefully, in a supportive and reassuring manner. Only where the most extreme concerns exist for the health of the child or young person should the examination occur without their consent.

- In general, examination of an older child without their agreement should only occur if extreme concerns exist for their health.

- The discussion relating to medical consents in the Guardianship Services Manual (Section 9.1, pages 150 and 151) contains relevant information regarding the age at which only a young person's consent is required for medical procedures. This is particularly significant with respect to when an examination can be persued if an older child refuses consent.

3.2.2.2 Specific guidelines when verifying information is desired

- In child abuse cases involving younger children, medical and psychlogical examination may be ordered against parent's wishes if no other way can be identified to ensure protection of the child. This provision is not to be used unless there is strong evidence for a protection application and the examination is to gain support for the evidence.

- Medical examinations should not be ordered for the purposes of gathering verifying information if an adolescent child (13 years and over) has expressly refused permission.

3.3 Consents for Operations of Children and Young People in Safe Custody

3.3.1 Discussion

s.199(2) and S.199(2A): These sections allow the Director-General or persons authorised by the Minister to give consent to anaesthetics or surgery. S.199(2) includes wards and other persons in departmental facilities. The amendments inserts S.199(2A) so consents can be given for persons on safe custody order who are not in departmental facilities eg. ICRAS, reception foster care.

It should be noted that a reference in the Act to "serious threat to the health of the child" should not be read as meaning a serious threat to the life of the child. A serious threat to health could involve injuries such as fractured bones or a condition causing significant pain or discomfort for the child.

3.3.2 Guidelines

Before giving consent, where a child is on safe custody order, parents must first be given an opportunity to consent. If they refuse to give consent or cannot be found in a reasonable time and a doctor has advised there is serious threat to the health of the child, consent can be given by a person authorised under S.199(2A) (ie. Regional Managers).

3.3.3 Authorisation under S.199(2A)

An authority over S.199(2) does not apply to S.199(2A); this will require revision of the delegations relating to surgical operations. Regional Managers will be authorised as a matter of course, however, regions should arrange through Operations

Division central administration for the authorisation of other relevant personnel (eg. Principal Officers of Foster Care agencies).

NOTE: S.199(2) and S.199(2A) may be especially relevant to children where a protection application is taken out, to ensure adequate medical treatment.

3.4 Adoption Act 1984

S.40, S.45 and S.65: Amendments to these sections are purely consequential to the Adoption Act 1984 and cause no changes to practice of policy.

4. **QUERIES**

If you have any queries about these amendments and their implications, contact Andy Beven in the Protection and Guardianship Unit (6536 385).

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