COMMUNITY AND CHILD SERVICES

CN301*

Children and Community Services Act 2004

Children and Community Services Amendment Regulations 2011

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Children and Community Services Amendment Regulations 2011*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;

(b) regulation 5 — on the day on which the *Children and Community Services Amendment Act 2010* section 50 comes into operation;

(c) the rest of the regulations — on the day on which the *Children and Community Services Amendment Act 2010* section 36 comes into operation.

3. Regulations amended

These regulations amend the *Children and Community Services Regulations 2006*.

4. Part 5A inserted

After regulation 15 insert:

Part 5A — Parentage testing procedures and reports

Division 1 — General

16A. Terms used

In this Part —

bodily sample is not limited to a sample of blood;

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

guardian, in relation to a represented person, means a person appointed as a guardian of the person under the *Guardianship and Administration Act 1990* section 43;

HLA means human leucocyte antigen;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

NATA means the National Association of Testing Authorities, Australia;

nominated reporter means the person nominated by a laboratory to prepare a report relating to the information obtained as a result of carrying out a parentage testing procedure at that laboratory;

report means a report in accordance with regulation 16L;

represented person means a person in respect of whom a guardianship order made under the *Guardianship and Administration Act 1990* is in force;

responsible person, for a child, means —

(a) if the child is in provisional protection and care, or is the subject of a protection order (time limited) or protection order (until 18), the CEO or a person nominated by the CEO;

(b) otherwise —

(i) a person responsible for the long term care, welfare and development of the child; or

(ii) a person nominated by the Court for the purposes of this Part;

sample means a sample taken from a donor for the purposes of a parentage testing procedure;

sampler means a person who takes 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.

16B. Parentage testing procedures

For the purposes of the definition of ***parentage testing procedure*** in section 136A, the following medical procedures are prescribed —

(a) red cell antigen blood grouping;

(b) red cell enzyme blood grouping;

(c) HLA tissue typing;

(d) testing for serum markers;

(e) DNA typing.

16C. Compliance with regulations

A parentage testing procedure is taken to be carried out in accordance with these regulations if —

(a) it is carried out —

(i) in compliance with Division 2; and

(ii) at a laboratory that is accredited by NATA for the purpose of carrying out parentage testing procedures; and

(iii) in accordance with standards of practice that entitle the laboratory to be so accredited;

and

(b) a report for the procedure is prepared.

Division 2 — Collection, storage and testing of samples

16D. Samplers

A person must not take a bodily sample from a donor for the purposes of a parentage testing procedure unless —

(a) the person is a medical practitioner; or

(b) the person is employed by a hospital, a pathology practice, a parentage testing practice or a medical practitioner for the purpose of taking a bodily sample from a donor.

16E. Provision of information by donor — Form 4

(1) A sampler must not take a bodily sample from a donor unless the donor or, if subregulation (3) applies, a person who, under subregulation (3) can complete an affidavit, has —

(a) immediately before the sampler takes the bodily sample, completed an affidavit in the form of Schedule 1 Form 4, 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 subregulation (1)(b) is in addition to the photograph that is required to be attached to Form 4.

(3) If the donor is a child or a represented person the affidavit referred to in subregulation (1)(a) may be completed only by —

(a) in the case of a child, a person who is a responsible person for the child; or

(b) in the case of a represented person, a person who is a guardian of the represented person.

16F. Collection of blood samples

(1) A sampler may take a sample of blood from a donor only with a needle or syringe that —

(a) has not been used for any purpose; and

(b) has been sterilised; and

(c) is disposable.

(2) Before taking a sample of blood from a donor, the sampler must ensure 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.

16G. Collection of bodily samples for DNA typing

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

(2) A sampler must not take a bodily sample from a donor with a swab unless the swab —

(a) has not been used for any purpose; and

(b) has been sterilised.

(3) If the bodily sample to be taken from a donor is a skin scraping or a hair root, the implement used by the sampler to take the sample must have been sterilised before use.

16H. 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 any part of the label, were removed; or

(ii) if 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 in ink and include —

(i) the full name of the donor; and

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

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

and

(f) when paragraph (e) is complied with, the sampler and the donor sign the label, in ink.

(2) If the donor is a child —

(a) the procedure specified in subregulation (1)(a) must be completed in the presence of a person who is a responsible person for the child; and

(b) the procedure specified in subregulation (1)(f) is taken to be satisfied only if a person who is a responsible person for the child signs the label.

(3) If the donor is a represented person —

(a) the procedure specified in subregulation (1)(a) must be completed in the presence of a person who is a guardian of the represented person; and

(b) the procedure specified in subregulation (1)(f) is taken to be complied with only if the label is signed by a person who is a guardian of the represented person.

16I. Statement by sampler — Form 5

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

(a) complete a statement in the form of Schedule 1 Form 5; and

(b) affix the photograph of the donor referred to in regulation 16E(1)(b) to the 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.

16J. Packing and storage requirements

(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 regulation 16E(1)(a);

(b) the statement completed under regulation 16I.

16K. Testing of bodily samples

(1) A laboratory to which a bodily sample has been sent for testing must ensure that the testing is completed —

(a) if the proposed procedure is red cell antigen blood grouping, red cell enzyme blood grouping or testing for serum markers, within 6 days after the sample is taken; or

(b) if the proposed procedure is HLA tissue typing, within 3 days after the sample is taken; or

(c) if the proposed procedure is DNA typing, within a reasonable time after the sample is taken.

(2) If the proposed procedure is red cell enzyme blood grouping or testing for serum markers, subregulation (1)(a) is complied with if a dried sample of the bodily sample to be tested is prepared within 6 days after the sample is taken from the donor.

Division 3 — Reports

16L. Reports — Form 6

(1) For the purposes of section 136H(b) a report must be prepared, in accordance with this regulation, relating to the information obtained as a result of carrying out a parentage testing procedure.

(2) The report must be in the form of Schedule 1 Form 6.

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

(4) Part II 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.

5. Regulation 20A inserted

At the beginning of Part 6 insert:

20A. Prescribed authorities

The following agencies are prescribed for the purposes of the definition of ***prescribed authority*** in section 24A(1) —

(a) the department of the Public Service principally assisting in the administration of the *Aboriginal Heritage Act 1972*;

(b) the department of the Public Service principally assisting in the administration of the *Births, Deaths and Marriages Registration Act 1998*;

(c) the department of the Public Service principally assisting in the administration of the *Child Care Services Act 2007*;

(d) the department of the Public Service principally assisting in the administration of the *Health Legislation Administration Act 1984*;

(e) the department of the Public Service principally assisting in the administration of the *Higher Education Act 2004*;

(f) the department of the Public Service principally assisting in the administration of the *Housing Act 1980*;

(g) the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*;

(h) the department of the Public Service principally assisting in the administration of the *School Education Act 1999*;

(i) the department of the Public Service designated as the Mental Health Commission;

PART 1

Part 1 must be completed if the person making 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 (insert 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:

    (insert 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:

    (insert 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 a represented person.

1. I am the (state relationship or other status in relation to the donor) of (insert name of donor) who was born on (insert date of birth of donor).

2. (insert name of donor) is the person appearing in the photograph attached to this affidavit, being Attachment 'A'.

3. (insert name of donor) is a person whose racial background is (insert 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:

    (insert 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:

(insert 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

at

on 20

(Signature of person making affidavit)

BEFORE ME:
(insert name of person
before whom the affidavit
is made)

(Signature of person
before whom affidavit is
made)

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 made and the person making the affidavit, identifying it as the photograph mentioned in the affidavit.

*Omit if not applicable.

5. Parentage testing procedure

COLLECTION OF BODILY SAMPLES

NAME OF CHILD WHOSE PARENTAGE IS IN ISSUE: (insert child's name)

1. I, (insert name of sampler), of (insert professional address), (insert occupation), took the *bodily sample/*bodily samples specified below at (insert time) *a.m./*p.m. on (insert date) at (insert place of collection) from the following *person/*persons:

(a) (insert name of person, type of bodily sample and person's photograph);

*(b) (insert name of person, type of bodily sample and person's photograph);

*(c) (insert name of person, type of bodily sample and person's photograph);

*(d) (insert name of person, type of bodily sample and person's photograph).

2. When I took the *bodily sample/*bodily samples specified above, I complied with the *Children and Community Services Regulations 2006* Part 5A.

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 the *Children and Community Services Regulations 2006* regulation 16H.

DATED:

(Signature of sampler)

*Omit if not applicable.

6. Parentage testing procedure report

NAME OF CHILD WHOSE PARENTAGE IS IN ISSUE: (insert child's name)

PART I

1. I, (insert name of nominated reporter), of (insert street address of laboratory where testing was performed), (insert occupation), am a person nominated by the laboratory specified below to prepare a report for the purposes of the *Children and Community Services Act 2004* section 136H(b).

2. I report that *a parentage testing procedure/*parentage testing procedures being:

*(a) red cell antigen blood grouping;

*(b) red cell enzyme blood grouping;

*(c) testing for serum markers;

*(d) HLA tissue typing;

*(e) 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) (insert donor's name, date of birth and relationship to child whose parentage is in issue);

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

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

*(d) (insert donor's name, date of birth and relationship to 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 (insert date) by (insert name of sampler) in the *Children and Community Services Regulations 2006* Schedule 1 Form 5.

4. The parentage testing *procedure was/*procedures were carried out at (insert name and street address of *laboratory/*laboratories where testing was performed) on (insert date/s).

5. The results of the parentage testing *procedure/*procedures are set out in Part II 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 (insert name of putative parent) is not excluded from identification as the *father/*mother of (insert 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 (insert name of putative parent) is excluded from identification as the *father/*mother of (insert name of child whose parentage is in issue).

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

Putative *father/*mother is (insert figure) times more likely to produce a child with the required alleles than a *man/*woman drawn randomly from the general population. This equates to a Relative Chance of *Paternity/*Maternity of (insert figure).

[OR]

*7. I further report that the exclusion is based on contradictions of the laws of genetic inheritance in (insert amount) of the (insert amount) genetic markers: (insert the names of the genetic markers and whether the contradictions are of the first or second order).

*8. I further report (if necessary, provide further explanation of results detailed in item 6 or 7, or both).

DATED: 20 .

(Signature of nominated reporter)

PART II

1. The bodily *sample/*samples referred to in Part I of this report were received at (insert name and street address of laboratory at which parentage testing *procedure was/*procedures were carried out) on the following date/s:

   (a) (specify sample) — (insert date)

   *(b) (specify sample) — (insert date)

   *(c) (specify sample) — (insert date)

   *(d) (specify sample) — (insert date)

   *(e) (specify sample) — (insert date)

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

   (a) (insert name of donor and identification number);

   *(b) (insert name of donor and identification number);

   *(c) (insert name of donor and identification number);

   *(d) (insert name of donor and identification number).

3. The results obtained from the parentage testing *procedure/*procedures are: (set out the results).

Complete this item if the parentage testing procedure carried out was red cell antigen blood grouping, red cell enzyme blood grouping, HLA tissue typing or testing for serum markers.

*4. The results set out above in item 3 refer to the parentage testing *procedure/*procedures carried out *by me/*under my supervision on (insert date/s). The bodily *sample was/*samples were tested with 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]

Complete this item if parentage testing procedure carried out was DNA typing.

*4. The results set out above in item 3 refer to the parentage testing *procedure/*procedures carried out *by me/*under my supervision on (insert date/s). 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:

(Signature of person who carried out parentage testing procedure or person under whose supervision parentage testing procedure was carried out)

*Omit if not applicable.

By Command of the Governor,

G. MOORE, Clerk of the Executive Council.