

CHILDREN AND COMMUNITY SERVICES ACT 2004

STANDING PROCEDURES FOR CARE PLAN REVIEW PANEL

I Michelle Andrews, the Chief Executive Officer for the time being of the Department of Communities, in accordance with section 95 of the *Children and Community Services Act 2004* hereby direct that the Care Plan Review Panel must follow the attached Standing Procedures in carrying out functions under that Act.

A handwritten signature in dark ink, appearing to read 'MA', followed by a long horizontal flourish.

Dated: 17 June 2019
this day of

CHIEF EXECUTIVE OFFICER
DEPARTMENT OF COMMUNITIES

CARE PLAN REVIEW PANEL - STANDING PROCEDURES

1. The following procedures are a combination of legislative requirements and directions of the CEO. All legislative requirements are referenced.

LEGISLATIVE MANDATE

2. Section 92 of the *Children and Community Services Act 2004* (CCS Act) requires the CEO to establish a Care Plan Review Panel ("Panel") and sets out:
 - (a) requirements for membership;
 - (b) powers relating to remuneration of members; and
 - (c) obligations regarding the provision of support services to the Panel.
3. Section 93 sets out who may make an application for review of a care planning decision and/or the CEO's decision not to give a copy of care plan or modification to a person (being the child, the child's parent, carer or any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child). This section also provides for:
 - (a) the application process and timeframes;
 - (b) the referral of the review application to the Panel;
 - (c) the Panel's deliberations, recommendations and report to the CEO; and
 - (d) the CEO's powers in making a review decision.
4. Section 94 enables a person aggrieved by the CEO's decision to apply to the State Administrative Tribunal ("SAT") for a review of that decision. Under the *State Administrative Tribunal Rules 2004* an application for review must be made within 28 days of the day on which the CEO gives notice of his or her decision. The Tribunal may extend this time limit upon application by any applicant, referring person or on its own initiative.
5. Under Section 95 the CEO may give directions, in writing, to the Panel as to its procedure, but otherwise, the Panel may determine its own procedures. The Panel must give every applicant a reasonable opportunity to be heard through making submissions about the application.

FUNCTION

6. The function of the Panel is, upon referral of review applications from the CEO, to review the application and other relevant material, and report to the CEO on its recommendations [s.93(5)]. In the course of doing this, the Panel provides applicants and interested parties with an opportunity to be heard, either through written submissions or by holding a hearing. The review application will identify the care planning decision/s to be reviewed and must set out the grounds on which the review is sought [s.93(2)].
7. A **care planning decision** in relation to a child, means a decision set out in a care plan for the child but does not include a secure care decision referred to in section 88G [s.91].
8. A **care plan** means a written plan that:
 - (a) identifies the needs of the child; and
 - (b) outlines steps or measures to be taken in order to address those needs; and
 - (c) sets out decisions about the care of the child including:
 - i. decisions about placement arrangements; and
 - ii. decisions about contact between the child and a parent, sibling or other relative of the child or any other person who is significant in the child's life [s.89(1)].

ADMINISTRATION

9. The CEO must provide the Panel with support services it may reasonably require [s.92(8)]. The responsibility for this support is delegated to the Assistant Director General Metropolitan Communities or Regional and Remote Communities or another officer with delegated authority.¹

MEMBERSHIP

10. The CEO will appoint at least three Panel members [s.92(2)].
11. Members of the Panel appointed by the CEO [s.92(3)] are to be people who have such experience, skills, attributes or qualifications to effectively perform their review function [s.92(3)]. Government policy requires that a submission is made to Cabinet (for noting) regarding the initial establishment of a body such as the Panel and the appointment of members where sitting fees are paid.
12. An officer of the Department of Communities is not eligible for appointment or to hold office as a member [s.92(4)]. An officer is a person employed in, or engaged by, the Department whether as a public service officer under the *Public Sector Management Act 1994*, under a contract for services, or otherwise [s.3].

¹ All delegations referred to in this document are made by the CEO under section 24 of the *Children and Community Services Act 2004*.

13. As a matter of policy, to ensure sufficient independence, a person will not be appointed as a Panel member if he or she has worked in the Department within the last three years unless he or she was engaged under a short-term contract or as a student on placement for no more than six months in total within the three year period.
14. Members may be appointed for up to three years. A member is eligible for re-appointment at the end of his/her term, however a member will not be re-appointed for more than a six-year period.
15. The CEO may remove and replace members at any time [s.92(5)].
16. A member may resign from office at any time within their term of appointment by providing four weeks written notice to the CEO.
17. The CEO must appoint a member to be the Chairperson [s.92(6)].
18. The CEO may also appoint Deputy Chairperson/s who will act as Chairperson when the Chairperson is unavailable.
19. The Chairperson and the Deputy Chairperson/s must be legally qualified and have completed the requirements to be admitted to practice law.
20. As far as practicable Panel membership should be diverse across age, gender and cultural backgrounds.
21. For applications to the Panel involving Aboriginal children in care it is a requirement that at least one Panel member is Aboriginal. It is preferable these members have a tertiary qualification in Social Sciences and experience in child and family welfare.
22. Panel members other than the Chairperson, Deputy Chairperson and any Aboriginal member must have a tertiary qualification in the Social Sciences, experience in child and family welfare and knowledge of current trends and issues for children and families.

REMUNERATION

23. The CEO may direct that the members of the Panel (other than an employee as defined in the *Public Sector Management Act 1994* section 3(1)) are to be paid remuneration or allowances or both. The CEO may determine the amount of any such payment on the recommendation of the Public Sector Commissioner [s.92(7)].

QUORUM

24. The Panel must consist of a Chairperson and two members [s.92(2)].

APPLICATIONS

25. An application for review may be made by:
 - the child;
 - a parent² of the child;
 - any carer³ of the child; or
 - any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child [s.93(1)].
26. An application for the review of a decision under section 89(7) may be made to the CEO by the person given notice of the decision under section 89(8) [s.93(2A)].
27. Applications must be made in writing to the CEO and set out the grounds on which the review is sought [s.93(2)].
28. An application form and accompanying brochure has been developed for this purpose. A Child Protection Worker will provide all persons who are required to be provided with a copy of the care plan or modified care plan with these materials at the same time as the person is provided with a copy of the care plan or modified care plan.
29. An application which is not made on the form referred to in clause 28 can still be accepted as a valid application so long as it identifies the decision/s to be reviewed and the grounds on which the review is sought [s.93(2)].
30. An application must be made within 14 days after the applicant receives a copy of the care plan or modified care plan or notice of the decision under s.89(8). In special circumstances the CEO or delegated officer may extend this period [s.93(3)(b) and s.93(4A) (b)].
31. The application, together with other material that the CEO or delegated officer considers relevant, is referred to the Panel, via the Panel Secretariat [s.93(4)].
32. The Chairperson of the Panel must advise the following persons in writing of the CEO's referral of the application for review; the date and place of any proposed Panel hearing/review date relating to the application; and that they may submit materials for consideration by the Panel:
 - (a) the applicant;
 - (b) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child;
 - (c) the officer who chaired the Care Plan Meeting;
 - (d) the Child Protection Worker; and

² "parent", in relation to a child, means a person, other than the CEO, who at law has responsibility for—
(a) the long-term care, welfare and development of the child; or
(b) the day-to-day care, welfare and development of the child; (s.3)

³ "carer" means a person who provides care for a child under a placement arrangement (s.3). A placement arrangement is an arrangement made under s.79(2).

- (e) the District Director.
33. All materials provided by the applicant, or the Department of Communities must be received by the Panel Secretariat no later than 10 working days prior to the hearing/review date. These materials should be provided to Panel members no later than five working days prior to the hearing/review date. The Panel Secretariat will provide a copy of any written submissions received from individuals referred to under clause 33 to all parties no later than five working days prior to the Hearing/review date. On occasion, the Chairperson, in consultation with the Senior Advisor, may decide not to distribute information received on grounds that:
- (a) the disclosure endangers, or is likely to endanger, a person's safety or psychological health;
 - (b) it is a record of confidential counselling with a child or a child's relative and the Chairperson reasonably believes that the information is not materially relevant to the Panel proceedings; or
 - (c) it is information personal to a child, a child's relative or a child's carer and the Chairperson reasonably believes that it is not materially relevant to the Panel proceedings.
34. As part of its consideration of the review application, the Panel must convene a hearing on the matter unless the Chairperson determines a hearing is not necessary because:
- (a) the Panel has recently reviewed the same matter and no new facts or information exist; or
 - (b) the issues are narrow and can be determined without the need for a hearing.
35. If the Chairperson decides a hearing is not necessary, he/she must provide written notice of this decision and the reasons for it to the persons referred to in clause 33.
36. If this Chairperson decides a hearing is not necessary, the Panel must convene a meeting, whether that be in person or by electronic means, to review the application and provide its report and recommendations to the CEO based on consideration of:
- (a) the application;
 - (b) all materials referred to the Panel by the CEO; and
 - (c) other relevant information submitted for the Panel's consideration in accordance with clause 34.
37. The Panel must act in a fair and impartial manner in making decisions about proceeding to hearings.
38. The Panel must conduct a hearing or a review within 6 weeks of the CEO's/delegated officer's referral of the application for review; or within a longer time period if agreed to by the CEO/delegated officer.

HEARINGS

39. The Panel must act in a fair and impartial manner.
40. The Panel must conduct hearings in a way that is culturally appropriate, respectful and sensitive to the relationships of the parties to the hearing, and the importance of these relationships in the ongoing care and planning for the child.
41. Hearings should be held with as little formality as the circumstances and the case permit. At the commencement of each hearing the Chairperson is to explain to all parties the hearing procedures and review process.
42. The Panel Secretariat will maintain a written record of proceedings. No audio or visual recording of the hearing is permitted by any person in attendance.
43. Applicants and other parties may bring a support person to a hearing. Applicants should be encouraged to describe in their own words the basis for their application and answer questions of the Panel. The Chairperson should allow the support person to assist the applicant in presenting his/her views if required. The support person can take notes.
44. If a party requests an interpreter or the Panel considers an interpreter is required, the hearing should not proceed until an interpreter is present, ideally in person but where that is not possible via telephone conference link.
45. The Panel must give each applicant a reasonable opportunity to make submissions in respect of his or her application [s.95(2)]. This includes the applicant discussing with the Panel any written submission they may have provided prior to the hearing and any additional information which supports their application.
46. An agenda for the hearing is prepared by the Panel Secretariat.
47. The Panel will hear the applicant's submission first. Other interested parties invited to the hearing will then meet individually with the Panel to provide their views on the application. The applicant will then reattend with respective district staff to hear a summary of their own submission and summaries of the feedback from interested parties before the district's response to the application.
48. The Panel must ensure that a party is made aware of any relevant allegation or other matter of a detrimental nature regarding him or her upon which the Panel may base a conclusion or recommendation.
49. Prior to providing a summary of submissions to the applicant, the Chairperson and Panel members should discuss and agree to the information to be presented in the summary.
50. Panel queries about Departmental practices and procedures should be referred to the Department's appointed Senior Advisor who will provide relevant

information to the Panel. If the Senior Advisor has been involved in previous decision-making or matters relevant to the applicant or the case in question, a different Senior Advisor not associated with the applicant or the case will attend the hearing.

51. The Panel may invite persons with relevant knowledge or expertise to assist the Panel with a particular application. Persons invited to assist the Panel are not members of the Panel and are prohibited from being involved in Panel's deliberations. All parties attending the hearing will be advised of all persons invited to the hearing.
52. An Aboriginal Panel member should be present for all hearings relating to a care plan for an Aboriginal child. An Aboriginal Senior Advisor for the Department should also be present.
53. In cases relating to a child from a culturally or linguistically diverse background the Panel may seek advice from a person with the relevant background.
54. The Panel may adjourn a hearing and request additional information before making its recommendations to the CEO.
55. If an applicant fails to attend a hearing without good reason, the Chairperson may decide whether to reschedule the hearing or whether the Panel should conclude its consideration of the application on the material available.

DELIBERATIONS AND RECOMMENDATIONS

56. Following the Panel's receipt of submissions and other relevant materials, and the conclusion of any hearing/s conducted, Panel deliberations are to be closed to non-members, with the exception of the Panel receiving administrative support from the Panel Secretariat. The Panel may seek further advice from the Senior Advisor in relation to Department policies and practice guidance if required. The Senior Advisor will not participate in the deliberations.
57. The Panel must consider and observe the principles of the *Children and Community Services Act 2004* [ss.7-14] in carrying out functions.
58. In forming their recommendation, the Panel must consider the Department's guidelines, policies and practices about the placement of:
 - (a) children from culturally and linguistically diverse backgrounds [refer s.80]; and
 - (b) Aboriginal and Torres Strait Islander children [refer ss.11-14 and 81].
59. The Panel must regard the best interests of the child as the paramount consideration [ss.7 and 8].
60. If the Panel is unable to determine its recommendations by consensus, the Chairperson may conduct a vote to determine the matter. Upon voting, if the Panel is evenly divided, the Chairperson is to have the casting vote. Conflicting views of Panel members and the results of any vote held should be noted in the

record of Panel proceedings.

61. The Panel must report its recommendations within 21 working days of completion of the hearing/review; or within a longer time period if agreed to by the CEO or delegated officer.
62. In reporting to the CEO, the Panel must give reasons for its recommendations.

DUTY OF DISCLOSURE / CONFLICT OF INTEREST

63. Panel members have an obligation to perform their official duties in the public interest and not to use their position or authority for personal gain or to cause detriment to others.
64. Panel members, including the Chairperson and Deputy Chairperson/s, who have a direct or indirect interest in a matter before the Panel must disclose the nature of the interest to the Senior Advisor to the Care Plan Review Panel as soon as practicable. The Chairperson (or Deputy Chairperson if required) in conjunction with the Senior Advisor will decide on the best way to manage or mitigate any risk associated with the conflict.
65. The Senior Advisor will maintain a register of conflicts and record how any risks associated with reported conflicts will be managed or mitigated. This may include the Panel member not participating in a review.
66. Any conflicts of interest which become apparent during a hearing must be disclosed to the Chairperson, or Senior Advisor should the Chairperson have the conflict. The management of the conflict must be recorded in the Panel proceedings. Should the conflict result in the Panel member, or Chairperson, not being able to participate in deliberations, the hearing may need to be rescheduled to ensure there is a quorum.

RECORD OF PROCEEDINGS

67. The Panel Secretariat, on behalf of the Panel, will maintain an accurate record of proceedings during the hearing and Panel deliberations; and retain a complete set of documents considered for each hearing/review.
68. The Panel Secretariat will prepare a draft record of the hearing and/or Panel proceedings and distribute these to the Panel Chair within five working days of these events taking place. The Panel Chair must review these records and approve or provide feedback about any required changes within five working days of receipt. On occasion, the CEO or delegate may require the Panel Chair to urgently review these records.
69. All records are subject to the *Freedom of Information Act 1992*.

CEO DECISION

70. The CEO or delegate, after considering the Panel's report and other information available, must:

- (a) Confirm, vary or reverse the care planning decision or decision made under section 89(7); or
 - (b) substitute another decision for the care planning decision or decision made under section 89(7); or
 - (c) refer the matter back to the Panel for further consideration and report. [s.93(6)]
71. The CEO or delegate must give the applicant, the District, and other interested parties, written notice of his or her decision under section 93(6) and written reasons for it.

CONFIDENTIALITY

72. Records of Panel deliberations and all materials considered by it are to be treated as strictly confidential.
73. Panel members must ensure all materials relevant to hearings are kept safe and secure at all times.
74. All materials provided to Panel members are for reference purposes only and remain the property of the Department of Communities. These materials must be returned to the Panel Secretariat at the completion of each hearing / review.
75. Panel members are bound by section 241 of the *Children and Community Services Act 2004* regarding confidentiality of information. It is an offence for a Panel member to directly or indirectly, record, disclose or make use of information obtained in the course of their role except as provided for under s.241.

PROTECTION FROM LIABILITY

76. Section 246 provides Panel members with protection from liability from an action in tort (e.g. negligence) for anything done in good faith in the performance of their functions under the *Children and Community Services Act 2004*.

REPORTING REQUIREMENTS

77. The Chairperson may submit a written report to the CEO or delegate on trends and issues being identified through the Care Plan Review Panel process.
78. The Chairperson must meet with the CEO or delegate twice a year.