

# **DEED**

between

**MINISTER FOR FAMILIES AND COMMUNITIES**

and

**BARNARDOS AUSTRALIA**

on

**EXERCISE OF ASPECTS OF PARENTAL RESPONSIBILITY**

for

**CHILDREN AND YOUNG PEOPLE UNDER THE  
MINISTER'S PARENTAL RESPONSIBILITY**

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**This Deed is between:**

Minister for Families and Communities [“Minister”]

**and**

Chief Executive Officer, Barnardos Australia [“You”]

Together the parties are referred to as “We” in this Deed.

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## *1. The role of this Deed*

- 1.1 We have entered into the following interrelated documents which are to be read in conjunction with each other:
- i. the Funding Deed;
  - ii. the Program Level Agreement; and
  - iii. this Deed.
- 1.2 Any inconsistency in the application of those documents shall be resolved in the above order of priority.
- 1.3 This Deed sets out how We will exercise aspects of parental responsibility on behalf of the Minister for individual children and young people who are placed in the sole parental responsibility of the Minister following a final order made under the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**) and how We will communicate with each other.
- 1.4 This Deed sets out the basis upon which the Minister grants to You a delegation to exercise parental responsibility on their behalf and the basis upon which You accept that delegation. The delegation is in the form set out in **Annexure A**. For children and young people who are in the parental responsibility of the Minister, the duties of parenting cannot be delegated. This means that the Minister has responsibility to ensure proper provision for the child or young person and carries the risk for any harm to the child or young person or caused by the child or young person.

- 1.5 The individual children and young people for whom You will exercise the delegation will be those approved by the Secretary of DCJ and whose details You shall retain in a register.

## 2. *General principles*

- 2.1 We acknowledge that an underlying principle of the Act is that the shorter the chain of those who make decisions for or about a child or young person the better. Delegation of parental responsibility to You is consistent with the Act and/or the *Adoption Act 2000* to achieve more timely decision-making for a child.
- 2.2 You agree to comply with the laws by which We are bound. Without limiting this, in exercising parental responsibility You will give due consideration to the relevant principles set out in sections 9, 10, 10A, 11, 12 and 13 of the Act that guide the OOHHC system.
- 2.3 The Department of Communities and Justice (DCJ) being the government agency of which the Minister is responsible notes that You have been accredited as a designated agency by the Office of the Children's Guardian.

## 3. *The terms of this Deed*

- 3.1 This Deed will commence on 1 October 2022.
- 3.2 This Deed expires on 30 June 2027 unless terminated earlier in accordance with its terms.
- 3.3 Before the expiration of this Deed the signatories (or their successors) of both parties may agree in writing to extend the Deed for a further agreed period of 12 months.
- 3.4 Either party may seek to vary this Deed by notifying the other to this effect. We must each agree to the variations in writing.
- 3.5 Either party may terminate this Deed after giving 28 days written notice to the other party.
- 3.6 The Minister will terminate the Deed without notice if You cease to be able to fulfil your responsibilities as a designated agency or You are in breach of a condition of accreditation.
- 3.7 This Deed is dependent upon the Funding Deed and Program Level Agreement.

- 3.8 If the Funding Deed or Program Level Agreement is rescinded, terminated or surrendered for any reason, this Deed is rescinded, terminated or surrendered (as the case may be) at the same time.
- 3.9 If You are in breach of the Funding Deed or Program Level Agreement, You are deemed to be in breach of an essential term of this Deed.
- 3.10 We will cooperate with each other in the provision of information/data in accordance with DCJ's statutory obligations.
- 3.11 You will not be delegated the parental responsibility for Aboriginal and Torres Strait Islander children and young people. Parental responsibility for Aboriginal and Torres Strait Islander children and young people is to remain with DCJ.
- 3.12 If a child or young person for whom You have been delegated parental responsibility is found to be of Aboriginal and Torres Strait Islander descent, Your delegation of parental responsibility shall cease. Case management responsibility for that child or young person is not affected.

#### *4. Parental responsibilities*

- 4.1 You agree to the exercise of:
- i. parental responsibility, as set out in this Deed except where set out at clause 4.2 below.
  - ii. provide the casework services, as outlined in the Program Level Agreement, that meet the needs of the child or young person the subject of the delegation in accordance with the case plan and all other documents provided to You by DCJ for this purpose.
- 4.2 Subject to clause 4.1 above You cannot make decisions on matters that are otherwise exceptions to the exercise of parental responsibility under delegation from the Minister. These exceptions are set out in the Schedules of the Instrument of Delegation in **Annexure A** of this Deed.
- 4.3 When it becomes necessary to discuss progress in achieving outcomes for a child or young person the subject of the delegation, We will each ensure our representatives have sufficient decision-making capacity. You will ensure that Your representatives include persons with knowledge of the child or young person.
- 4.4 The standard of care expected of a delegate is that which an ordinary reasonable person would expect of the delegate's professed special skill or knowledge in the position of the delegate. A delegate should not act at the direction of the delegator but must comply with any conditions to which the delegation is subject.

- 4.5 You must adhere to the Model Litigant Policy. That policy is set out at **Annexure B** and **C** and applies in both Children’s Court and Supreme Court proceedings.
- 4.6 Where You become aware of a possible breach of the policy, You must immediately report this breach to DCJ.
- 4.7 If DCJ forms the view that You have breached the policy, DCJ will promptly write to You and the issue shall be addressed in accordance with clause 8 of the Program Level Agreement.

## 5. *The Register*

- 5.1 You will keep and maintain a register of each child or young person the subject of the delegation. The register will contain:
- i. full name;
  - ii. date of birth;
  - iii. date and court location in which the order for parental responsibility to the Minister was made;
  - iv. address of the place in which the child or young person the subject of the delegation resides;
  - v. full name(s) of the authorised carer(s) with whom the child or young person the subject of the delegation resides;
  - vi. date upon which You commenced exercising the delegation; and
  - vii. date upon which You ceased exercising the delegation.
- 5.2 You shall make the register referred to in clauses 1.5 and 5.1 available to DCJ at any reasonable time and shall permit DCJ to make a copy of the register, or any part of it, at any reasonable time.
- 5.3 It is an essential term of this Deed that You will ensure the register You maintain of children and young people under Your delegated parental responsibility is correct, in all material respects, at all times.
- 5.4 You must notify DCJ of any changes to the content of the register, in so far as these relate to which children and young people are subject to the Deed.
- 5.5 You must provide DCJ a copy of the register, and a review and/or audit may be undertaken at any time to ensure that all aspects of the delegation are being carried out in accordance with the terms of this Deed.

- 5.6 You shall ensure that the records relating to the contents of the register are kept safe and secure for a period of not less than 7 years after each child and young person the subject of the delegation attains the age of 18 years as outlined in the Funding Deed.
- 5.7 As soon as DCJ and You are satisfied on the basis of evidence, that a child or young person is of Aboriginal or Torres Strait Islander descent, the register shall be amended to reflect this. This change solely relates to the delegation of aspects of the Minister's parental responsibility and does not affect the exercise of case management responsibility.
- 5.8 Where You are exercising aspects of parental responsibility for a child or young person the subject of the delegation, You will comply with DCJ procedures for administration of parental responsibility, as advised to you and as amended from time to time. DCJ will provide You with a copy of these procedures.

## 6. *Cessation*

- 6.1 If You become aware that You are, or are likely to become, unable to continue to exercise parental responsibility for an individual child or young person the subject of the delegation You will immediately notify DCJ.
- 6.2 You will notify DCJ of any significant and/or ongoing difficulties in achieving outcomes for a child or young person the subject of the delegation. DCJ will notify You if DCJ becomes aware of any significant and/or ongoing difficulties concerning the care and protection of the child or young person the subject of the delegation. In relation to that child or young person, You agree to convene and chair a case planning meeting in which DCJ will participate, unless agreed otherwise by both DCJ and You, to make decisions about appropriate actions to achieve safety, permanency and wellbeing outcomes for that child or young person. A decision can be made by either DCJ or You at such a case planning meeting that You will cease to exercise the delegation for that child or young person.
- 6.3 We agree that the return of parental responsibility to DCJ should, wherever possible, be a planned and orderly process. You agree to convene a case planning meeting at which DCJ will participate, unless agreed otherwise, to make decisions about the return of parental responsibility and associated matters (including those that may prevent the return of parental responsibility if appropriate).
- 6.4 At Your written request DCJ will revoke the delegation of parental responsibility for an individual child or young person the subject of the delegation.

6.5 DCJ may at any time revoke the delegation of parental responsibility by issuing a revocation in writing to You. You will immediately cease to act pursuant to the delegation upon receipt of a written notice to You from DCJ. The notice may require You to cease acting pursuant to the delegation in relation to a child or young person the subject of the delegation, or in relation to all children and young people the subject of the delegation.

## 7. *Sub-delegation of parental responsibility*

7.1 You may only sub-delegate to Your employees those aspects of the Minister's parental responsibility delegated to You. Sub-delegation of authority to exercise parental responsibility to Your employee must be consistent with the roles and responsibilities of that position.

7.2 A sub-delegation must be in writing and is to be kept with the register of each child or young person the subject of the delegation and a copy given to the employee holding the sub-delegation.

7.3 Prior to the commencement of any sub-delegation, You must notify DCJ of the sub-delegation and provide a copy of any delegation instruments in respect of the sub-delegation.

7.4 For the avoidance of doubt, You remain vicariously liable for all acts, omissions or defaults of the employee the subject of a sub-delegation.

## 8. *Legislation*

8.1 By accepting delegation to exercise aspects of parental responsibility on behalf of the Minister You agree to comply with the following legislation and requirements as if You were a State government agency:

- *Children and Young Persons (Care and Protection) Act 1998 and regulations*
- *Adoption Act 2000 and regulations*
- *NSW Children's Guardian Act 2019*
- *State Records Act 1998*
- *Government Information (Public Access) Act 2009*
- *Protected Interest Disclosures Act 1994*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *Ombudsman Act 1974*
- *Child Protection (Working With Children) Act 2012*

- *Any and all other legislation listed in the Permanency Support Program (PSP) and Permanency Case Management Policy, published on the DCJ website.*

8.2 You will develop and implement policies and procedures that are consistent with the legislation listed in sub-clause 8.1 and the principles behind that legislation.

## 9. Confidentiality

9.1 We will ensure that the rights and confidentiality of clients and employees are protected in policy and practice in accordance with State and Commonwealth legislation. Notwithstanding this, You will ensure that in the event of an investigation or monitoring undertaken by or on behalf of DCJ the records and documents will be available to whomever is authorised in writing by the Executive District Director.

9.2 You acknowledge that You are subject to Section 76 of the *Community Welfare Act 1987* and that, as a result, a breach of confidentiality under this Deed may be an offence under that section.

9.3 DCJ will not disclose any information concerning a child or young person the subject of the delegation, made available to DCJ or its delegate for the purpose of an investigation or monitoring, unless appropriate consent has been given or the disclosure is in accordance with a legislative requirement.

## 10. Records

10.1 You must comply with any direction or guidelines in relation to records concerning a child and young person the subject of the delegation:

- i. issued by the Minister or the Secretary;
- ii. published on the DCJ website, insofar as those directions or guidelines apply to Permanency Support Program (PSP) providers or designated agencies.

10.2 Within 7 days of a written notice of request from DCJ, You will provide a copy of all requested records and documents pertaining to a child or young person the subject of the delegation to a DCJ representative.

10.3 You are required to maintain records and documents concerning the exercise of parental responsibility on behalf of the Minister in relation to all children for whom You exercise aspects of parental responsibility under this Deed. You are required to maintain these records and documents safely for such period as you exercise parental responsibility under this Deed and for 7 years after the child or young person leaves Your care<sup>1</sup>. At the expiration of the 7-year

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<sup>1</sup> Section 170, *Children and Young Persons (Care and Protection) Act 1998*



period, You must deliver a copy of all records and documents concerning that individual child or young person to the Secretary 20 business days, or such other timeframe as agreed in writing with DCJ <sup>2</sup>.

## **11. Indemnity**

- 11.1 You will indemnify and keep indemnified DCJ from any claim or other liability which may arise as a consequence of any breach by You, or anyone on Your behalf, of this Deed and any action or decision made pursuant to the Instrument of Delegation concerning a child or young person the subject of the delegation.
- 11.2 DCJ will indemnify and keep You indemnified from any claim or other liability that may arise as a consequence of any breach committed by DCJ, or anyone on DCJ's behalf, of this Deed.

## **12. Financial indemnity**

- 12.1 DCJ will accept liability for any loss or damage that is caused by a child or young person who is the subject of the delegation provided that:
- i. an individual claim exceeds \$10,000 per claim;
  - ii. You can demonstrate that the loss or damage was not reasonably preventable by You; and
  - iii. You, or any other party, are not entitled to receive compensation for the loss or damage from any other source.
- 12.2 DCJ will consider a claim for any loss or damage where an individual claim does not exceed \$10,000 per claim, where it can be demonstrated that an individual child or young person the subject of the delegation has caused accumulated damage in excess of \$10,000 within a financial year.
- 12.3 Claims for loss or damage are to be submitted in writing to the Deputy Secretary, Deputy Secretary, Strategy, Policy and Commissioning, DCJ. Claims should itemise individual items over \$1,000 and provide 3 quotes for replacement/repair.

## **13. Court appearances and instructions in proceedings**

### **All proceedings**

- 13.1 If a child or young person the subject of the delegation is involved in proceedings before any court or otherwise requires legal assistance, You are to notify the General Counsel DCJ Legal, as soon as practicable. DCJ Legal may arrange for assistance to be provided to the child or young person and

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<sup>2</sup> The records may be delivered directly to Government Records Repository and placed in ownership of the Secretary

to You in Your capacity as delegate of the Minister. DCJ Legal cannot provide You with legal advice.

- 13.2 You will cooperate with DCJ to ensure the Minister is able to meet their statutory obligations including by ensuring Your compliance with the Model Litigant Policy (at clause 4.5) in relation to all children or young people the subject of the delegation.
- 13.3 You will ensure compliance with all court orders (including interim court orders), notations to court orders, administrative directions of the court and current care plans.

**Proceedings under the *Children and Young Persons (Care and Protection) Act 1998***

- 13.4 You understand the delegation herein excludes You from making any court application to any court or tribunal as a delegate of the Minister or the Secretary, with the exception of some applications under the *Adoption Act 2000*.
- 13.5 If an application is made by the Secretary under the Act, in respect of a child or young person the subject of the delegation, You understand that a DCJ officer with appropriate delegated power who is attached to the Child and Family District Unit (CFDU) closest to where the child is living, will:
- i. instruct a legal officer in relation to the application to act on behalf of the Secretary in the court proceedings; and
  - ii. coordinate the discharge of DCJ's role and responsibilities as a model litigant and party to the proceedings.
- 13.6 You understand that the legal officers engaged by DCJ will obtain instructions from the relevant DCJ officer with delegated power, and not You, but will ensure You are consulted about those instructions. Legal officers engaged by DCJ cannot provide You with legal advice.
- 13.7 You understand DCJ will not seek to join You as a party to any application under the Act.

**Proceedings under the *Adoption Act 2000***

- 13.8 Where You are limited to acting as the delegate of the Secretary under the *Adoption Act 2000*, DCJ will provide You with a copy of the DCJ procedure on administrative functions of parental responsibility.
- 13.9 In uncontested matters (which includes where parents do not formally consent), an application for an adoption order under the *Adoption Act 2000* regarding children and young people the subject of the delegation, is made

on behalf of the “Secretary, Department of Communities and Justice” by their delegate.

13.10 The Chief Executive Officer of Barnardos has delegated authority to sign the court application described in clause 13.9 above.

13.11 If birth parents contest an application, You may directly instruct the Crown Solicitor to act in accordance with DCJ policy and procedures, whereupon You will be the applicant in the legal proceedings.

## 14. *Dispute resolution*

14.1 In the event of a dispute arising from this Deed, the issue will be dealt with in accordance with clause 20 of the Permanency Support Program (PSP) Funding Deed.

## 15. *Definitions*

The following definitions apply in the context of this Deed:

“**Act**” refers to the *Children and Young Persons (Care and Protection) Act 1998* as amended from time to time and unless otherwise stated.

“**After care**” means services provided to a child or young person who has left statutory out-of-home care (OOHC), excluding children or young people that have exited OOHC to restoration, guardianship or adoption.

“**Authorised person**” means a person who may lawfully exercise the specific functions of parental responsibility for a child or young person who is in the parental responsibility of the Minister for Department of Communities and Justice that have been delegated to the holder of a specified office, a person acting in that office, or the next senior officer who assumes responsibility during an absence from duty of the delegated office holder.

“**Care responsibility**” is the daily care and control of a child or young person as set out under section 157 of the Act.

“**Case management**” is the process of assessing, planning, implementing, monitoring and reviewing that aims to strengthen and enhance the safety, welfare and well-being of children and young persons through integrated and coordinated service delivery.

“**Case plan**” means the document that identifies required goals, objectives and tasks to protect and support children, young people and their families.

**“Case plan review”** is a major component of primary case responsibility to validate and incorporate changes to case plan goals, objectives and tasks. Case planning is a participatory process of identifying strategies that will address the physical, emotional, educational, social, religious and cultural needs of the child or young person.

**“Casework”** is implementation of the case plan tasks, coordination of services and supports, and monitoring. The child or young person’s safety, welfare and wellbeing are paramount objectives in the casework process.

**“Children’s Court”** means the court designated under the *Children’s Court Act 1987* to hear care applications and criminal proceedings concerning children and young persons.

**“Child or young person the subject of the delegation”** means those individual children or young people identified by clause 1.3

**“Family time”** means all forms of communication between a child or young person who is residing away from their family and their family members and/or significant others. Family time may occur through planned visits, letters, telephone conversations, electronic devices or other forms of communication.

**“Deed”** means this Deed between (the) Minister for Families and Communities and Barnardos Australia on Exercise of Aspects of Parental Responsibility for Children and Young People Under The Minister’s Parental Responsibility.

**“Delegation”** means the conferring of legal authority, power or function by one position on another. A delegate acts in addition to, rather than in place of, the person who has given the delegation. Delegation must be exercised subject to any written directions for the purpose of delegation or sub-delegation generally, or that may be issued in relation to a particular child or young person.

**“Executive District Director”** means the director (or any person so acting) for the time being, of the relevant district of DCJ.

**“DCJ”** means the Crown in Right of the State of New South Wales acting through the Department of Communities and Justice and, where context permits, its officers and employees. In this Deed, unless otherwise stated, the Manager Client Services, Child and Family District Unit, is the contact person.

**“DCJ representative”** refers to the person nominated to the position by the Minister, Secretary, Deputy Secretary or Executive District Director.

**“Funding Deed”** means the deed between DCJ and the Service Provider whereby DCJ has agreed to advance funds to the Service Provider in consideration of the Service Provider providing or procuring the provision of the Services.

**“Instrument of Delegation”** in relation to this Deed, sets out the powers, authorities, duties and functions given to an authorised person specified in the Schedule to the

Instrument. The Instrument of Delegation sets out the exercise of parental responsibility for a child or young person who is the subject of the delegation and any specific exclusions and/or conditions upon the exercise of parental responsibility.

**“Minister”** means the Minister for Families and Communities or as otherwise titled from time to time, the Minister administering responsibilities under the Act.

**“OOHC”** has the meaning given in section 135 of the Act.

**“Parental responsibility”** means all of the duties, powers, responsibilities and authorities which parents generally have in relation to their children, under section 3 of the Act.

**“Parental responsibility of the Minister”** means where an order of the Children’s Court has placed a child or young person in the sole parental responsibility of the Minister under section 79(1)(b) of the Act.

**“Program Level Agreement”** means the program level agreement executed by the Department of Communities and Justice and You on 13 September 2022.

**“Record”** means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means, including (but not limited to):

- a record in relation to a child or young person as the evidence of actions and decisions taken; and
- documents necessary to assist in monitoring and reviewing Your provision of OOHC services and delivery of the Permanency Support Program (PSP).

**“Secretary”** means the Secretary (or any person so acting) for the time being, of DCJ.

**“Wellbeing”** is the satisfactory state of developing physically, mentally, morally spiritually and socially in a healthy normal environment. Assessment of well-being includes identification of permanency needs, continuity of significant relationships and stability of placement.

**“You/Your”** means the incorporated organisation of Barnardos Australia ABN 18068557906.

## Signatories

**In witness whereof We have signed, sealed and delivered this Deed as follows:**

### Minister for Families and Communities

**Natasha Maclaren-Jones**

**Signature:** \_\_\_\_\_

**Minister**

**Date:** \_\_\_\_\_

Witness:

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Position:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### Barnardos Australia

**Deirdre Cheers**

**Signature:** \_\_\_\_\_

**Chief Executive Officer**

**Date:** \_\_\_\_\_

Witness:

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Position:** \_\_\_\_\_ **Date:** \_\_\_\_\_

***[ANNEXURES A, B AND C]***