

# Operation of Deed between DCJ and Barnardos (Parental Responsibility Delegation)

## What is the Deed between DCJ and Barnardos?

The Deed (Barnardos' Deed) between NSW Department of Communities and Justice (DCJ) and Barnardos Australia (Barnardos), sets out how Barnardos will exercise aspects<sup>1</sup> of parental responsibility on behalf of the Minister, for non-Aboriginal children<sup>2</sup> who are placed in the sole parental responsibility of the Minister and subject to final orders<sup>3</sup> of the NSW Children's Court.

## Responsibilities conferred in NSW legislation and articulated in the Deed

An underlying principle of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) is that the shorter the chain of those making decisions for or about a child, the better. Delegation of parental responsibility to Barnardos for children is consistent with this principle.

The delegation for this responsibility is described in Schedule X (the Care Act) and Schedule W (*Adoptions Act 2000*). The Deed further details the terms of this delegation.

The current Deed commenced on 1 January 2018 and expires on 30 June 2022. The document was revised to ensure consistency with the requirements of the Permanency Support Program (PSP).

## Hierarchy of contract documents

There are several interrelated documents, which are to be read in conjunction with each other. These are:

1. the PSP Program Level Agreement (PSP PLA)

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<sup>1</sup> Aspects of parental responsibility NOT delegated are consent to marry; consent for a child/young person to reside outside of NSW; applying for a passport; consent/decline end of life medical treatment; consent to certain medical treatment (termination, rendering infertile, terminal illness); applying to any court or tribunal as delegate of the Minister or Secretary (except for applying for an adoption order)

<sup>2</sup> The term 'child' and 'children' used in this fact sheet is inclusive of 'young person' and 'young people'. References to 'child' in this fact sheet assume the child is subject to delegated parental responsibility (and primary case responsibility) of Barnardos unless otherwise indicated.

<sup>3</sup> Final orders includes Shorter Term Care Orders (STCO's) made under section 79(9) and excludes all interim orders made under sections 69-70.

2. the Funding Deed
3. Barnardos' Deed
4. The Permanency Case Management Policy.

Where there is any inconsistency in the application of these documents, the matter should be resolved in the above order of priority. This means that where there is a difference between Barnardos Deed and the PLA or Funding Deed, the terms of the higher document will prevail. This is aimed at ensuring consistency between contracts and in the achievement of program goals.

All contracts, Deeds and relevant policies are subject to law, including the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act). The law will prevail to the extent of any inconsistency.

## Delegation of parental responsibility

The Deed has the effect of delegating to Barnardos, aspects of parental responsibility for non-Aboriginal children placed in sole parental responsibility of the Minister, following a final order made under the Care Act.

Barnardos is not delegated any functions of parental responsibility for Aboriginal and Torres Strait Islander children. This responsibility remains with DCJ.

If a child for whom Barnardos has been delegated parental responsibility is found to be of Aboriginal or Torres Strait Islander descent, the delegation of parental responsibility to Barnardos will cease<sup>4</sup>.

## Case management responsibilities

Case management responsibilities are to be carried out as required in the legislation, the PSP PLA and associated PSP policy documents, including the Permanency Case Management Policy.

### The Child Assessment Tool (CAT)

The Deed delegating parental responsibility gives Barnardos the ability to review and approve a child's Child Assessment Tool (CAT) score. The CAT currently decides the level of the Child's Needs Package.

When a child's CAT score is updated, Barnardos will provide the completed assessment and any supporting information to the DCJ nominated unit (usually a CFDU) exercising secondary case responsibility. The CFDU creates a new CAT record on ChildStory to reflect the assessed level of need and ensure that the appropriate child's needs package is received.

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<sup>4</sup> This does not necessarily cease the exercise of primary case responsibility by Barnardos.

## Changes to case plan goal

### *All case plan goals*

The Deed delegating parental responsibility gives Barnardos the ability to make and approve decisions regarding changes to case plan goals in relation to children in out of home care (OOHC). This is informed by required permanency goal reviews, as set out in the Permanency Case Management Policy.

Where Barnardos approves a change in a case plan goal, they submit the reviewed OOHC Case Plan and Family Action Plan (if relevant) that reflects the new goal via ChildStory Partner Community<sup>5</sup>.

## Model litigant policy

The Deed delegating parental responsibility requires Barnardos to follow the Model Litigant Policy when court matters arise.

The Model Litigant Policy applies to civil litigation (including care proceedings in the Children's Court) and civil claims involving the State of NSW or its agencies.. The policy is founded upon the concepts of behaving ethically, fairly and honestly to model best practice in litigation.

## Court proceedings

### *All court proceedings other than adoption proceedings*

The Deed delegating parental responsibility requires Barnardos to notify the General Counsel DCJ Legal Services, if a child is involved in any proceedings before any court or requires legal assistance. DCJ is responsible for providing legal assistance or will arrange for legal assistance to be provided.

Regardless of which court the proceedings are conducted, Barnardos:

- is consulted in relation to DCJ's instructions as early as possible
- works collaboratively with DCJ during proceedings.

### *Care proceedings*

In initiating court applications made under the Care Act in the Children's Court, a delegated DCJ officer<sup>6</sup> signs the court application on behalf of the Secretary, who is listed as the applicant in the proceedings. The DCJ delegated officer will instruct DCJ's legal officer or external legal practitioner, pursuant to the application.

Section 15.6 of the Deed provides that Barnardos will not formally be joined

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<sup>5</sup> While Barnardos approves the new case plan, the Child and Family District Unit (CFDU) must update ChildStory to ensure allocation and payment of correct case plan goal package funding level.

<sup>6</sup> The DCJ delegated officer is located in the DCJ's nominated unit, exercising secondary case responsibility.

as a party to any application. This includes care applications under s.60 of the Care Act and s.90 applications made by birth parents or other relevant parties. This means that DCJ should not join Barnardos as a party to those proceedings. However, Barnardos can apply for leave to join care proceedings under s.98(3).<sup>7</sup>

### *Adoption proceedings*

The Deed delegating parental responsibility gives Barnardos the authority (provided under Schedule X – *Children and Young Persons (Care and Protection) Act 1998* and Schedule W - *Adoptions Act*) to make an application for an adoption order on behalf of prospective adoptive parents, where adoption matters are uncontested and/or parents' consent to the adoption process.

Where the matter is contested and parents do not consent to the application process:

- Barnardos currently sends instructions to the Crown Solicitor's Officer to advise and appear in the contested adoption matter.
- Barnardos provide instructions to the Crown Solicitor's Officer directly in the proceedings.

### Advice of significant changes

Where any event has the ability to significantly negatively impact on the wellbeing of a child who is the subject of the delegation, then Barnardos must immediately advise DCJ. This includes, but is not confined to, the notification and default event requirements outlined in the PLA.

Where there is a significant change to a child or young person's placement, carer, case plan goal or legal status, Barnardos must advise the local DCJ District within 24 hours to enable any updates to ChildStory to occur in a timely manner.

Barnardos must advise DCJ Information Exchange Unit within 48 hours if the service has become the subject of an audit, review or investigation by the NSW Ombudsman or Children's Guardian.

### When Barnardos ceases exercising parental responsibility

If Barnardos becomes aware that it is likely to become unable to continue to exercise parental responsibility for a child, Barnardos:

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<sup>7</sup> See *EC v Secretary, NSW Dept. of Family and Community Services* [2019] NSWSC 226

- Immediately notifies the local DCJ District and their contract manager.
- Convenes a meeting with DCJ and other relevant parties to discuss relevant issues in relation to the child and to determine:
  - whether Barnardos' delegation will cease<sup>8</sup>
  - if so, whether or not Barnardos will continue to exercise primary case responsibility.

DCJ has the ability to revoke delegation of parental responsibility to Barnardos for identified children/young people at any time, and if this occurs, then a revocation will be issued in writing to Barnardos.

The cessation of Barnardos delegation in relation to the child and its impact upon case management (if any) is planned to ensure the least amount of disruption to the child. If the child is to transition to another placement, Barnardos (as set out in the Permanency Case Management Policy):

- Develops a transition plan in consultation with the child's parents and family/kin, DCJ, and the receiving service provider.
- Provides necessary casework to support transition of the child to the primary case responsibility of the receiving service provider.

## Dispute resolutions

In the event of a dispute arising from Barnardos Deed, the issue will be dealt with in accordance with Clause 8 of the PSP [PLA](#) and provisions regarding the handling of disputes set out in the [Permanency Case Management Policy](#).

## For further information

Barnardos Australia is contract managed by DCJ State-wide Contracts, Partnerships. For further information about the Deed or another aspect of the contract relationship between DCJ and Barnardos, please contact the mailbox at [State-wideContracts@facns.nsw.gov.au](mailto:State-wideContracts@facns.nsw.gov.au).

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<sup>8</sup> If Barnardos delegation ceases in relation to a child, Barnardos confirms this in writing to DCJ.