Dear Ms Romeo

I write in response to correspondence from Ms Anne Campbell, Chief Executive, Community Services, regarding the statutory review of the Children and Young Persons (Care and Protection) Regulation 2000, (Care Regulation). Input has been invited on any broad issues relating to the provisions of the Care Regulation, to inform the development of a discussion paper to facilitate consultation with stakeholders.

The Care Regulation deals primarily with matters related to the provision of out-of-home care to children and young people. It covers matters such as the content of care plans and alternative parenting plans, management of the behaviour of children and young people in care, the conduct of authorised carers, and authorisation to work as a carer, including background checking for the purposes of Part 7 of the Commission for Children and Young People Act 1998.

- In conducting the review it is important to ensure the views of children and young people on matters covered in the Care Regulation are considered. The Commission would be happy to discuss further how this could be facilitated. If information from children and young people is not available, this should be noted in the Discussion Paper.

In addition it would be highly desirable to include any evaluative information on the experience and knowledge of children and young people in decisions and activities that concern them relating to the Regulation, such as the development of care plans and alternative parenting plans, having regard to the Charter of Rights for children and young people in out-of-home care and the NSW Standards for Statutory Out-of-Home Care 2010.

- The Regulation contributes to ensuring the safety of children and young people in out-of-home care, including that persons who perform the role of carer under the Regulation are fit and proper persons, and are not prohibited persons. In this regard, I would also like to draw attention to the desirability of ensuring, to the extent possible, that persons other than the authorised carer who reside in a house where a child is being cared for are fit and proper persons. The Draft Education and Care Services National Regulations, which will regulate the operation of licensed children's service from 2012, contain a provision to this effect for Family Day Care services, which are comparable to
out-of-home care in the sense that they are provided in the carer’s home (cl 163).

- Ways in which the Care Regulation could advance the rights set out in the Charter and Standard should also be considered (for example, the right to complain, the right to be involved in decisions about everyday matters, and to be involved in planning the type of support or assistance that may be needed upon leaving care).

- The question of whether the provisions in Schedule 2, Code of Conduct for Authorised Carers and Schedule 3, Code of Conduct for Residential Units reflect contemporary standards in relation to care, safety and discipline should be considered. For example, the Code of Conduct for Authorised Carers does not ensure that a child in out-of-home care does not have to share a bedroom with a child of the opposite sex. Consideration should also be given as to whether the provisions in these Schedules relating to discipline are adequate in prohibiting all disciplinary conduct that could be injurious to a child. This should also be considered in regard to the behaviour management policy statement in clause 35 Application for Accreditation.

- Law and practice should ensure the highest standards of care with regard to the health and safety of children and young people in out-of-home care are promoted. It is noted that reform of the provision of child care is currently progressing nationally under the National Quality Framework. The Draft Education and Care Services National Regulations set high standards for children in a range of areas including provision of nutritious food, provision of an environment free from tobacco, alcohol and other drugs and implementation of a medical management plan if a child has a specific health care need. It is suggested that consideration be given to the viability of adapting any relevant provisions dealing with children’s health and safety to the out-of-home care context.

- To improve the likelihood of compliance with the provisions of the law, oversight and accountability provisions should be reviewed and potentially strengthened.

For further communications on this matter, the contact person is Mr Gregor Macfie, Director Policy and Research on (02) 9286 7243 or at Gregor.Macfie@kids.nsw.gov.au.

Yours sincerely

[Signature]

Megan Mitchell
Commissioner
7 November 2011