



# Children and Young Persons (Care and Protection) Regulation 2012

under the

Children and Young Persons (Care and Protection) Act 1998

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

PRU GOWARD, MP  
Minister for Family and Community Services

## Explanatory note

The object of this Regulation is to remake, with a number of modifications, the provisions of the *Children and Young Persons (Care and Protection) Regulation 2000*, which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*. The Regulation deals with the following:

- (a) access to certain information and records kept under the *Children and Young Persons (Care and Protection) Act 1998 (the Act)*,
- (b) protection of communications made during alternative dispute resolution under the Act from disclosure except in certain circumstances,
- (c) the forms and contents of care plans and alternative parenting plans,
- (d) the carrying out of certain medical treatments on children,
- (e) matters relating to out-of-home care (including the authorisation of carers and the accreditation of designated agencies),
- (f) matters relating to the Children's Guardian.

This Regulation includes the following modifications of the provisions of the *Children and Young Persons (Care and Protection) Regulation 2000*:

- (a) expanding the meaning of a "relative" of (and "related" to) a child or young person for the purposes of the Act or this Regulation to include a person who is the cousin of the child or young person and a person who is the de facto partner of a parent of the child or young person,

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#### Explanatory note

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- (b) making changes consequent on the commencement of the *Children (Education and Care Services) Supplementary Provisions Act 2011* and the *Children (Education and Care Services National Law Application) Act 2010*,
- (c) providing that a request for access to records relating to the placement of an Aboriginal or Torres Strait Islander child or young person in statutory or supported out-of-home care under section 14 (2) of the Act must be granted within a maximum of 35 working days (rather than 21 days), unless that period is extended (or further extended) by agreement with the person requesting access,
- (d) allowing the disclosure of information obtained in connection with an alternative dispute resolution for the purpose of referring a person conducting the alternative dispute resolution or a legal practitioner attending the alternative dispute resolution to an appropriate body for alleged professional misconduct,
- (e) clarifying the circumstances in which the administration of a psychotropic drug to a child in out-of-home care is permitted,
- (f) providing a new form of emergency authorisation for carers to enable a child or young person to be placed, for a limited period under specified conditions, with a person who is a relative of, or a member of the same kinship group as, the child or young person,
- (g) providing that the Code of Conduct for Authorised Carers included in the *Children and Young Persons (Care and Protection) Regulation 2000* will cease to have effect from 1 March 2013 and omitting the Code of Conduct for Residential Units from that earlier regulation immediately,
- (h) requiring an authorised carer to notify the relevant designated agency if the authorised carer becomes a parent to another child or young person or if a child, young person or other person joins the authorised carer's household,
- (i) clarifying what actions of authorised carers are prohibited when correcting or managing the behaviour of a child or young person in out-of-home care,
- (j) providing that a designated agency may cancel or suspend the authorisation of an authorised carer if the agency is of the opinion that the authorised carer is no longer a suitable person to be an authorised carer.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including section 264 (the general regulation-making power) and clause 1 of Schedule 3 to that Act.

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## 2012 No 425

Clause 1 Children and Young Persons (Care and Protection) Regulation 2012

Part 1 Preliminary

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# Children and Young Persons (Care and Protection) Regulation 2012

under the

Children and Young Persons (Care and Protection) Act 1998

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Regulation 2012*.

### 2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Children and Young Persons (Care and Protection) Regulation 2000* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**accreditation criteria** means standards and other criteria approved under clause 48 (1).

**departmental designated agency** means a designated agency that is a Division of the Government Service.

**full accreditation**—see clause 49 (3) (a).

**provisional accreditation**—see clause 49 (3) (b).

**registered agency** means a Division of the Government Service or other organisation registered under clause 72 for the purpose of providing or arranging voluntary out-of-home care in accordance with Part 3A of Chapter 8 of the Act.

**the Act** means the *Children and Young Persons (Care and Protection) Act 1998*.

**voluntary carer** means a natural person who is providing voluntary out-of-home care in respect of a child or young person.

**working day**, in relation to the Children's Guardian, means a day on which the principal office of the Children's Guardian is open.



- (2) In this Regulation, a reference to:
  - (a) a Division of the Government Service or other organisation includes a reference to a branch or part of a Division or organisation, and
  - (b) an organisation that has applied for accreditation as a designated agency includes a designated agency that has applied for renewal of accreditation as a designated agency.
- (3) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Children and Young Persons (Care and Protection) Regulation 2012

Part 2 General

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### Part 2 General

#### 4 Meaning of “related” and “relative”

- (1) A child or young person is “related” to, or a “relative” of, another person, for the purposes of the Act:
- (a) if the other person is the parent, spouse of the parent, grandparent, brother, sister, step-brother, step-sister, cousin, niece, nephew, uncle or aunt (whether by blood or marriage) of the child or young person, or
  - (b) if the other person has parental responsibility for the child or young person (but not including the Minister, the Director-General or a person who has parental responsibility other than in his or her personal capacity), or
  - (c) if the other person has care responsibility for the child or young person under the *Adoption Act 2000* (but not including the Minister, the Director-General or a person who has care responsibility other than in his or her personal capacity).
- (2) In this clause, *spouse* of a person means:
- (a) the person’s husband or wife, or
  - (b) the person’s de facto partner,
- but if more than one person would so qualify as a spouse, means only the latest person to so qualify.

**Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

#### 5 Rescission and variation of care orders—“significant change”

For the purposes of section 90 (2) of the Act, factors which indicate a significant change in the relevant circumstances of a child or young person since a care order was made or last varied include (but are not limited to) the following:

- (a) the parents of the child or young person concerned have not met their responsibilities under an applicable care plan or permanency plan involving restoration,
- (b) a finding by the Children’s Court under section 82 (3) of the Act that proper arrangements have not been made for the care or protection of the child or young person.

#### 6 Delegation of functions of Children’s Guardian

For the purposes of section 186 (3) (d) of the Act, a Department Head of any Department of the Public Service is prescribed as an *authorised person*.

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## 7 Review of decisions of Children's Guardian by Administrative Decisions Tribunal

Pursuant to section 264 (1A) (i) of the Act, the following decisions of the Children's Guardian are reviewable by the Administrative Decisions Tribunal:

- (a) to impose or not to impose a condition on:
  - (i) the process of accreditation as a designated agency, or
  - (ii) the accreditation of a designated agency, or
  - (iii) the registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act,
- (b) to vary or revoke any such condition,
- (c) to shorten the accreditation period, or suspend or cancel the accreditation, of a designated agency,
- (d) to refuse an application for registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act,
- (e) to cancel the registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act.

**Note.** Pursuant to section 245 (1) (b) and (i) of the Act, the following decisions are also reviewable by the Administrative Decisions Tribunal:

- (a) a decision of the relevant decision-maker to accredit or not to accredit a Division of the Government Service or an organisation (or branch or other part of a Division or an organisation) as a designated agency,
- (b) a decision of a relevant decision-maker to refuse to make a decision referred to in the preceding paragraph that the decision-maker is empowered and has been requested to make.

## 8 Prescribed bodies

For the purposes of paragraph (f) of the definition of *prescribed body* in section 248 (6) of the Act, the following are prescribed:

- (a) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (b) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*,
- (c) a designated agency,
- (d) a registered agency,
- (e) an accredited adoption service provider within the meaning of the *Adoption Act 2000*,
- (f) the Family Court of Australia,
- (g) the Federal Magistrates Court of Australia,

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Clause 9 Children and Young Persons (Care and Protection) Regulation 2012

Part 2 General

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- (h) the Commonwealth Department of Human Services,
- (i) the Commonwealth Department of Immigration and Citizenship,
- (j) any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

### **9 Form of child's or young person's consent to order awarding sole parental responsibility to child's or young person's authorised carer**

- (1) A consent referred to in section 149 (5) of the Act:
  - (a) must be in writing, and
  - (b) must be signed by the child or young person concerned in the presence of a witness, and
  - (c) must bear a statement from the witness to the effect that he or she informed the child or young person, before the consent was signed and in a language and manner that the child or young person could understand:
    - (i) that the authorised carer making the application concerned will gain sole parental responsibility for the child or young person if the Children's Court makes the order sought by the application, and
    - (ii) that any such order that is made by the Children's Court may be varied or rescinded in accordance with section 149A of the Act, and
    - (iii) that the child or young person is entitled to obtain independent legal advice before signing the consent.
- (2) The witness referred to in subclause (1) (b) may be any person over the age of 18 years, other than the principal officer of the relevant designated agency and other than an employee of that agency who has been directly involved in the supervision of the child's or young person's placement.

### **10 Form of principal officer's consent to variation or rescission of order for sole parental responsibility**

A consent referred to in section 149A (1) (b) of the Act is to be given in a form approved by the Director-General.

### **11 Principal officer's report as to placement of child or young person subject to order for sole parental responsibility**

- (1) A report under section 149A (2) of the Act with respect to the placement of a child or young person for whom an authorised carer has sole

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parental responsibility must be in writing and must include the following information:

- (a) the name, date of birth and residential address of the child or young person,
  - (b) the name, residential address and telephone number of the authorised carer,
  - (c) the length of time for which the child or young person has been in the care of the authorised carer, whether under the authorised carer's sole parental responsibility or otherwise,
  - (d) the date of the order awarding the authorised carer sole parental responsibility for the child or young person,
  - (e) the address and telephone number of the designated agency whose principal officer is providing the report,
  - (f) the name and contact details of each person or body whose relationship with the child or young person would be affected by the variation or rescission of the sole parental responsibility order to which the report relates, and the nature of each such relationship.
- (2) The following information, as relevant, must also be included in the report:
- (a) details of the relationship between:
    - (i) the child or young person, and
    - (ii) the authorised carer and the authorised carer's family,together with an assessment of the degree of attachment that the child or young person has to the authorised carer and the authorised carer's family,
  - (b) details of the support given by the designated agency to the placement of the child or young person with the authorised carer,
  - (c) any views expressed by the child or young person with respect to the proposed variation or rescission of the sole parental responsibility order to which the report relates, together with an indication of when and how any such views have been ascertained,
  - (d) an assessment as to how the proposed variation or rescission of the sole parental responsibility order to which the report relates is likely to affect the safety, welfare and well-being of the child or young person, having particular regard to its impact on the needs of the child or young person for permanency,
  - (e) an assessment of the arrangements that should be made (including any proposed contact orders) to preserve contact between the child or young person and his or her parents,

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Clause 12 Children and Young Persons (Care and Protection) Regulation 2012

Part 2 General

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relatives, friends and other persons connected with the child or young person.

### 12 When acts of Children's Guardian take effect

- (1) This clause applies to anything the Children's Guardian is required or authorised to do under this Regulation or the *Children and Young Persons (Savings and Transitional) Regulation 2000* if done by way of a written instrument.
- (2) The instrument takes effect on the date of its execution unless it otherwise provides.

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## Part 3 Records, reporting and information

### 13 Form of records

Any record made under the Act or this Regulation may be kept in written or in electronic form.

### 14 Access to records relating to Aboriginals and Torres Strait Islanders

- (1) A person who is entitled under section 14 (2) of the Act to have access to records relating to the placement of an Aboriginal or Torres Strait Islander child or young person may request access to those records.
- (2) A request under this clause:
  - (a) is to be made to the Director-General, and
  - (b) may be made orally or in writing, and
  - (c) must be accompanied by documentary proof of the person's identity.
- (3) The Director-General is to give access to such records by:
  - (a) making the records available for inspection, or
  - (b) providing a copy of the records.
- (4) The Director-General must give access to records within 20 working days after receiving such a request, except as provided by this clause.
- (5) If it is not reasonably practicable to give access within 20 working days, then before that period has expired the Director-General must:
  - (a) explain to the person concerned the reasons why access to the records cannot be given within that period, and
  - (b) extend (or further extend) by up to 10 working days (with a maximum extension under this subclause of 15 working days for any particular request).
- (6) The period can also be extended (and further extended) by agreement with the person requesting access to the records.
- (7) In this clause, *working day* means any day that is not a Saturday, Sunday or public holiday.

**Note.** Other legislation also governs access to records, including but not limited to the following:

- (a) section 29 of the Act,
- (b) the *Health Records and Information Privacy Act 2002*,
- (c) the *Privacy and Personal Information Protection Act 1998*.

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Clause 15 Children and Young Persons (Care and Protection) Regulation 2012

Part 3 Records, reporting and information

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### 15 Application of mandatory reporting requirements

Section 27 of the Act applies to the following classes of persons:

- (a) a person who, in the course of his or her professional work or other paid employment delivers disability services wholly or partly to children,
- (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of disability services wholly or partly to children.

### 16 Extension of alternative reporting arrangements to employees and contractors of relevant Aboriginal organisations

- (1) The operation of section 27A of the Act is extended to employees of, or persons engaged by, any organisation that is, or is eligible to become, an ordinary member or associate member of the Aboriginal Health and Medical Research Council of NSW (a *relevant Aboriginal organisation*) and who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:
  - (a) a reference in section 27A of the Act to a staff member is taken to include a reference to an employee of, or person engaged by, a relevant Aboriginal organisation, and
  - (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any employee of, or person engaged by, a relevant Aboriginal organisation.

### 17 Extension of alternative reporting arrangements to employees or contractors of affiliated health organisations

- (1) The operation of section 27A of the Act is extended to employees of, or persons engaged by, affiliated health organisations and who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:
  - (a) a reference in section 27A of the Act to a staff member is taken to include a reference to an employee of, or person engaged by, an affiliated health organisation, and
  - (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any employee of, or person engaged by, an affiliated health organisation.
- (3) In this clause:  
*affiliated health organisation* has the same meaning as in the *Health Services Act 1997*.



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**18 Temporary extension of alternative reporting arrangements to certain general practitioners and general practice nurses**

- (1) The operation of section 27A of the Act is extended to general practitioners, and general practice nurses, who practise in a designated area and who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:
  - (a) a reference in section 27A of the Act to a staff member is taken to include a reference to such a general practitioner or general practice nurse, and
  - (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any such general practitioner or general practice nurse.
- (3) In this clause:

***designated area*** means the local government area of Bathurst Regional, Blayney, Bogan, Bourke, Broken Hill City, Brewarrina, Cabonne, Cessnock City, Cobar, Coonamble, Cowra, Central Darling, City of Lithgow, Dubbo City, Dungog, Forbes, Gilgandra, Gloucester, Gosford City, Lachlan, Lake Macquarie City, Maitland City, Mid-Western Regional, Muswellbrook, Narromine, Newcastle City, Orange City, Parkes, Port Stephens, Singleton, Upper Hunter Shire, Walgett, Warren, Warrumbungle Shire, Wellington or Wyong and that part of the land within the Western Division of the State that is not within a local government area.

***general practice nurse*** means a nurse who is employed or engaged to work in the medical practice of a general practitioner (whether or not the nurse is employed by the medical practice).

***general practitioner*** means a registered medical practitioner who has qualifications in general practice recognised by the Royal Australian College of General Practitioners and who practises as a general practitioner.
- (4) This clause ceases to have effect at the beginning of 30 September 2013.

**19 Protection of information disclosed in alternative dispute resolution**

- (1) In this clause:

***alternative dispute resolution*** means:

  - (a) counselling or alternative dispute resolution conducted under section 37 of the Act, or
  - (b) a dispute resolution conference conducted under section 65 of the Act, or alternative dispute resolution arising out of such a dispute resolution conference, or

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Clause 19 Children and Young Persons (Care and Protection) Regulation 2012

Part 3 Records, reporting and information

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- (c) alternative dispute resolution conducted under section 114 of the Act.
- (2) Evidence of anything said or of any admission made during alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (3) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution is not admissible in evidence in any proceedings before any court, tribunal or body.
- (4) Subclauses (2) and (3) do not apply with respect to any evidence or document:
  - (a) if the persons in attendance at, or identified during, the alternative dispute resolution and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under subclause (5) (c).
- (5) A person conducting alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution only in any one or more of the following circumstances:
  - (a) with the consent of the person from whom the information was obtained,
  - (b) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
  - (c) if, as a result of obtaining the information, the person conducting alternative dispute resolution has reasonable grounds to suspect that a child or young person is at risk of significant harm within the meaning of section 23 of the Act,
  - (d) if the disclosure is reasonably required for the purpose of referring any party or parties to alternative dispute resolution to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the alternative dispute resolution for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
  - (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.
- (6) Despite subclause (5), any person attending alternative dispute resolution (including a person conducting the alternative dispute resolution) may disclose information obtained in connection with the

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alternative dispute resolution if the disclosure is reasonably required for the purpose of referring any person conducting the alternative dispute resolution or a legal practitioner attending the alternative dispute resolution to an appropriate body for any professional misconduct alleged to have been committed in connection with the alternative dispute resolution.

## 20 Provision and collection of information

- (1) A person is authorised to provide to the Children's Guardian, and the Children's Guardian is authorised to collect and use, any information relevant to the exercise of the functions of the Children's Guardian under this Regulation or the *Children and Young Persons (Savings and Transitional) Regulation 2000*, including, but not limited to, information relevant to the following:
  - (a) the assessment of an individual's suitability to be an authorised carer,
  - (b) the assessment of the suitability of a Division of the Government Service or an organisation to be accredited as a designated agency,
  - (c) the assessment of the suitability of a Division of the Government Service or an organisation to be registered as a registered agency.
- (2) A person is authorised to provide to a designated agency, and the agency is authorised to collect and use, any information relevant to the exercise of the agency's functions under those regulations, including information relevant to the assessment of an individual's suitability to be an authorised carer.
- (3) A person is authorised to provide to a relevant agency (within the meaning of section 156 (1) of the Act), and the relevant agency is authorised to collect and use, any information relevant to voluntary out-of-home care that is provided, arranged or supervised by the agency.
- (4) This clause does not operate to limit the information the Children's Guardian or a relevant agency may collect or use to information provided by another person authorised to do so under this clause.
- (5) This clause is subject to any prohibition on the provision of information under any other law.

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Clause 21 Children and Young Persons (Care and Protection) Regulation 2012

Part 3 Records, reporting and information

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### 21 Senior officers of other Australian law enforcement agencies

For the purposes of paragraph (b) of the definition of *senior officer* in section 29 (6) of the Act, the following classes of persons employed in the following law enforcement agencies are prescribed as senior officers of those agencies:

- (a) persons who are commissioned police officers of the Australian Federal Police,
- (b) persons holding a rank of or above the rank of Superintendent in the Northern Territory Police Force,
- (c) persons holding appointment as commissioned police officers of the Queensland Police Service,
- (d) persons holding the rank of inspector or above in South Australia Police,
- (e) persons holding the rank of inspector or above in the Tasmanian Police Service,
- (f) persons holding or acting in the rank of inspector or above in the Victorian police force,
- (g) persons holding appointment as commissioned police officers of the Western Australian Police Force.

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## Part 4 Care plans and alternative parenting plans

### 22 Care plans

- (1) For the purposes of section 78 (5) of the Act, a care plan:
  - (a) is to be in a form approved by the Director-General following consultation with the Children's Court Advisory Committee established under the *Children's Court Act 1987*, and
  - (b) is to include the following information:
    - (i) the date on which the care plan is made,
    - (ii) the name of each person, agency or body participating in the plan, and their relationship to the child or young person,
    - (iii) the method by which the views of the parents and child or young person were obtained (for example, by interview in person or over the telephone, and whether the persons were spoken to separately or together).
- (2) A care plan is to contain information about the following matters when relevant to the circumstances of the child or young person concerned:
  - (a) the family structure and significant family and other relationships of the child or young person,
  - (b) the history, development and experience of the child or young person,
  - (c) the relationship between the child or young person and his or her parents,
  - (d) the ethnic background and religion of the child or young person,
  - (e) whether the child or young person is of Aboriginal or Torres Strait Islander descent and which communities the child or young person identifies with,
  - (f) the principal language spoken in the family home of the child or young person,
  - (g) issues of social, cultural, educational or economic significance in relation to the child or young person or his or her family,
  - (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family,
  - (i) if practicable, the views of the child or young person as to the services that need to be provided to him or her and his or her family,

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Part 4 Care plans and alternative parenting plans

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- (j) the views of the parents of the child or young person as to the services that need to be provided to the child or young person and his or her family,
  - (k) the views of the Director-General as to the services that need to be provided to the child or young person and his or her family,
  - (l) if the views referred to in paragraphs (i) and (j) were not obtained, the reasons why they were not obtained,
  - (m) such other matters as the Director-General considers appropriate.
- (3) The care plan is to make provision for the matters specified in section 78 (2) of the Act, and in addition is to set out the following matters:
- (a) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
  - (b) the plans or arrangements to meet the education and training needs of the child or young person,
  - (c) whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act,
  - (d) the role and responsibilities of each person, agency or body participating in the plan, and the approximate period of time during which those responsibilities are to be carried out,
  - (e) if more than one agency or body participates in the care plan, the agency or body that is to have overall responsibility for co-ordinating the plan and the delivery of services to the child or young person and his or her family,
  - (f) an initial date on which the progress of the plan is to be assessed by the agency or body having overall responsibility for co-ordinating the plan, and the frequency of subsequent assessments by that agency or body,
  - (g) indicators by which to assess the extent to which the care plan is successful,
  - (h) if restoration of the child or young person is to be considered at a later time, the goals to be achieved by the parents of the child or young person to facilitate his or her restoration to their care, and the approximate period of time in which those goals are to be attained having regard to the age and developmental needs of the child or young person.

**Note.** The matters for which a care plan must make provision under section 78 (2) of the Act are:

- 
- (a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of any period for which the child or young person is removed from the care of his or her parents,
  - (b) the kind of placement proposed to be sought for the child or young person, including:
    - (i) how it relates in general terms to permanency planning for the child or young person, and
    - (ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,
  - (c) the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person,
  - (d) the agency designated to supervise the placement in out-of-home care,
  - (e) the services that need to be provided to the child or young person.
- (4) The care plan is to be accompanied by a copy of any relevant report on the health, educational or social well-being of the child or young person that, in the opinion of the Director-General, should be considered by the Children's Court.
- (5) The care plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
- (6) The care plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.

**Note.** Under section 10 of the Act (The principle of participation), the Director-General is responsible for providing a child or young person with information, assistance and opportunities that will enable the child or young person to participate in decisions made under or pursuant to the Act that have a significant impact on his or her life. Those decisions include the development and review of care plans concerning the child or young person.

### 23 Alternative parenting plans

- (1) An alternative parenting plan that is submitted to the Children's Court under section 116 or 119 of the Act for an order approving the plan or for registration of the plan:
- (a) is to be in a form acceptable to the Children's Court, and
  - (b) is to include the following information:
    - (i) the date on which the alternative parenting plan is made,
    - (ii) the name of each party to the plan, and their relationship to the child or young person,
    - (iii) the method by which the views of the parents and child or young person were obtained (for example, by interview in

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- person or over the telephone, and whether the persons were spoken to separately or together), and
- (c) is to set out the way in which the needs of the child or young person are proposed to be met, and any proposals concerning:
    - (i) allocation of parental responsibility or specific aspects of parental responsibility, and
    - (ii) residential arrangements, and
    - (iii) supervision, and
    - (iv) contact arrangements with the parents, relatives or other persons of significance to the child or young person (in particular, whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act), and
    - (v) education and training, and
    - (vi) medical care, and
    - (vii) the provision of services.
  - (2) An alternative parenting plan that is formulated by the Director-General or a support service organisation is to contain information about the following matters when relevant to the circumstances of the child or young person concerned:
    - (a) the matters referred to in clause 22 (2) (a)–(j) and (l) and (3) (a),
    - (b) if the Director-General or any support service organisation is a party to the proceedings, their views as to the services that need to be provided to the child or young person and his or her family,
    - (c) such other matters as the Director-General or the support service organisation considers appropriate.
  - (3) The alternative parenting plan is to specify the role and responsibilities of each party to the plan, and the approximate period of time during which those responsibilities are to be carried out.
  - (4) The alternative parenting plan is to be accompanied by a copy of any relevant report on the physical, psychological, psychiatric or social well-being of the child or young person that, in the opinion of the person formulating the plan, should be considered by the Children’s Court.
  - (5) The alternative parenting plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
  - (6) The alternative parenting plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.



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- (7) In this clause:  
*support service organisation* means a person, an agency or an organisation that provides counselling, therapy, conflict resolution or other support services to the child or young person concerned, or his or her family.

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Part 5 Medical examination and treatment

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### Part 5 Medical examination and treatment

#### 24 Notice of medical examination

For the purposes of section 173 (1) of the Act, the prescribed form of notice is Form 1 set out in Schedule 1.

**Note.** Section 80 (1) of the *Interpretation Act 1987* provides that where a form is prescribed by, or approved under, an Act, strict compliance with the form is not necessary but substantial compliance is sufficient.

#### 25 Special medical treatment

##### (1) Prescription of further special medical treatments

For the purposes of section 175 of the Act, the following medical treatments are declared to be special medical treatment:

- (a) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* over a period or periods totalling more than 10 days in any period of 30 days,

**Note.** A drug of addiction is a substance specified in Schedule Eight of the Poisons List proclaimed under the *Poisons and Therapeutic Goods Act 1966*. The Poisons List adopts by reference, with certain modifications, Schedules 1–8 of the Poisons Standard under the *Therapeutic Goods Act 1989* of the Commonwealth. See also the Poisons List information available at [www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons\\_list\\_alpha\\_pdf.asp](http://www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons_list_alpha_pdf.asp).

- (b) any medical treatment that involves an experimental procedure that does not conform to the document entitled *National Statement on Ethical Conduct in Human Research 2007* published by the National Health and Medical Research Council in 2007 and updated in 2009,

**Note.** A copy of the *National Statement on Ethical Conduct in Human Research 2007* can be found at [www.nhmrc.gov.au/guidelines/publications/e72](http://www.nhmrc.gov.au/guidelines/publications/e72).

- (c) any medical treatment that involves the administration of a psychotropic drug to a child in statutory out-of-home care.

##### (2) Exemptions

Subclause (1) (a) does not apply to medical treatment in circumstances where the drug is administered in accordance with a written exemption granted, either generally or in a particular case, by the Director-General on the written request of the Director-General of the Ministry of Health.

**Note.** A copy of the general exemption issued by the Director-General can be accessed at the following website:

[www.community.nsw.gov.au/about\\_us/legislation\\_.html](http://www.community.nsw.gov.au/about_us/legislation_.html).

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- (3) If the Director-General of the Ministry of Health makes a written request under subclause (2) for an exemption in relation to the administration of a particular drug to a particular child and does not receive notification of the decision of the Director-General of the Department within 21 days after the making of the request, the exemption is taken to have been granted on the expiration of the 21-day period.

## 26 Administration of psychotropic drug to child in statutory out-of-home care

- (1) An authorised carer may not consent to any special medical treatment involving the administration of a psychotropic drug to a child in statutory out-of-home care for the purpose of controlling his or her behaviour unless:
- (a) the treatment forms part of a behaviour management plan, and
  - (b) if the child resides in a residential unit, the principal officer of the designated agency has authorised the behaviour management plan.

- (2) For the avoidance of doubt, if a psychotropic drug is also a drug of addiction consent to special medical treatment involving the administration of that drug must only be given in accordance with subclause (1). This provision applies even if the drug is administered in accordance with an exemption referred to in clause 25 (2).

**Note.** For example, methylphenidate (also known as Ritalin) is a psychotropic drug and is also a drug of addiction referred to in clause 25 (1) (a). Methylphenidate is also the subject of an exemption under clause 25 (2). The effect of this subclause is that an authorised carer of a child who is in statutory out-of-home care may not consent to the administration of methylphenidate to that child, unless the treatment forms part of a behaviour management plan and, if the child resides in residential unit, the principal officer of the designated agency has also authorised the behaviour management plan.

- (3) In this clause:
- drug of addiction** means a drug of a kind referred to in clause 25 (1) (a).
- residential unit** means premises where an authorised carer provides out-of-home care to one or more children or young persons (other than the carer's own place of residence).

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Part 6 Out-of-home care

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## Part 6 Out-of-home care

### Division 1 General

#### 27 Application for review of temporary care arrangement

- (1) An application to the Children's Court for the review of a temporary care arrangement must be in writing.
- (2) A person who applies for a review of a temporary care arrangement is, as soon as practicable after the application is made, to cause a copy of the application (on which is endorsed the time, date and place set down for the hearing of the application) to be served on:
  - (a) in the case of an application made on behalf of the child or young person the subject of the arrangement—each person having parental responsibility for the child or young person who can reasonably be located, or
  - (b) in the case of an application by a person having parental responsibility for the child or young person—the child (if the child is of or above the age of 10 years) or young person.
- (3) A child or young person who applies for review of a temporary care arrangement is not required to serve a copy of the application on any other person.

#### 28 Arrangements and services that are not out-of-home care

- (1) For the purposes of section 135 (3) (c) of the Act, the following are prescribed as not being out-of-home care:
  - (a) boarding services provided by an educational institution, or a body affiliated to an educational institution, to enable children and young people to attend the institution,
  - (b) a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, religious, athletic or recreational pursuits, but does not include any such camp, centre or facility the primary purpose of which is to give respite to the carers of children and young people or to address the challenging behaviour of children and young people,
  - (c) a private health facility licensed under the *Private Health Facilities Act 2007*,
  - (d) health services under the *Health Services Act 1997*,
  - (e) adoption services under the *Adoption Act 2000*,
  - (f) any place used for the detention of children and young persons pending criminal proceedings (including police custody), or a

detention centre within the meaning of the *Children (Detention Centres) Act 1987*,

- (g) placement with a person authorised as an authorised carer under section 137 (1) (c) of the Act in accordance with arrangements that do not involve supervision by a designated agency,
  - (h) SAAP arrangements funded under the *Supported Accommodation Assistance Act 1994* of the Commonwealth,
  - (i) placement arrangements provided to give respite to children and young persons who are carers and their siblings.
- (2) In this clause, *educational institution* means a school, training establishment or university.

## Division 2 Authorisations by designated agencies

### 29 Definitions

In this Division:

*authorised carer* means an individual authorised as an authorised carer by a designated agency.

*designated agency*, in relation to an authorised carer, means the designated agency that authorised the authorised carer.

*supervising person* means:

- (a) the Director-General (or an officer delegated the Director-General's functions for the purposes of this clause), or
- (b) an officer or employee of the designated agency that has supervisory responsibility for a child or young person in the care of an authorised carer.

### 30 Authorisation by a designated agency as an authorised carer—general authorisation

- (1) A designated agency may authorise an individual belonging to any of the following classes of individuals as an authorised carer (other than an authorised carer referred to in clause 31 (1), 32 (2) or 33 (2)):
- (a) an employee of the agency whose duties as an employee include:
    - (i) providing care for children or young persons, or
    - (ii) supervising the provision of care for children or young persons,
  - (b) an individual engaged by the agency under a contractual arrangement (other than as an employee) to provide services that include:
    - (i) providing care for children or young persons, or

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Part 6 Out-of-home care

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- (ii) supervising the provision of care for children or young persons,
  - (c) an employee of an individual referred to in paragraph (b) whose duties as an employee include providing care for children or young persons,
  - (d) an individual who cares for children or young persons in his or her private capacity.
- (2) A designated agency must not authorise an individual under subclause (1) unless the agency has determined that the individual is suitable to be an authorised carer.
- (3) A designated agency must not determine that an individual is suitable to be an authorised carer under subclause (2) unless:
  - (a) the individual has furnished to the agency such information as the agency may reasonably require in order to assess the individual's suitability to be an authorised carer, and
  - (b) the individual has successfully completed such course of training as the agency may reasonably require in order to ensure that the individual is capable of exercising the functions of an authorised carer, and
  - (c) the agency has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998* and has done anything else it is required to do under that Act in relation to the authorisation before employing (within the meaning of Part 7 of that Act) the individual to perform the duties of an authorised carer, and

**Note 1.** Section 45 of the *Commission for Children and Young People Act 1998* provides that the background checking provisions of Part 7 of that Act apply to and in respect of other adults who reside at the home of an authorised carer and that it is the duty of a designated agency to carry out all the relevant procedures of background checking of such persons to determine whether it is appropriate for those persons to reside at the home of the authorised carer.

**Note 2.** Part 7 of the *Commission for Children and Young People Act 1998* is to be repealed and replaced by the *Child Protection (Working with Children) Act 2012*.

- (d) having regard to the functions imposed on an authorised carer by or under the Act, any information possessed by the agency and all the circumstances of the case, the agency has estimated:
  - (i) the risk, if any, to any child or young person in authorising the individual as an authorised carer, including any risk arising from the particular place at which the authorised carer will be providing out-of-home care, and

- (ii) the risk, if any, that the individual may be unable to properly perform the functions of an authorised carer.
- (4) For the purpose of determining whether an individual is suitable to be an authorised carer under subclause (2), the designated agency may make such inquiries as to the individual, and as to each individual who is aged 14 years or above in the household of the individual, as the agency considers appropriate, including:
  - (a) subject to the *Criminal Records Act 1991*—a check for any criminal record of the individual (whether or not within New South Wales), and
  - (b) any other relevant probity check relating to the previous employment or other activities of the individual.
- (5) The principal officer of a designated agency is to carry out the functions of the agency under subclause (1), unless the Children’s Guardian approves the carrying out of those functions by another individual.
- (6) Failure to comply with subclause (5) does not affect the validity of the authorisation of any authorised carer under this Regulation, whether the authorisation occurred before or after the commencement of this subclause.

**31 Authorisation by a designated agency as an authorised carer—  
emergency authorisation**

- (1) A designated agency may, in an emergency, authorise an individual who is a relative or kin of a child or young person as an authorised carer for the child or young person (other than an authorised carer referred to in clause 30 (1), 32 (2) or 33 (2)).
- (2) A designated agency must not authorise an individual under subclause (1) unless the agency has determined that the individual is suitable to be an authorised carer.
- (3) A designated agency must not determine that an individual is suitable to be an authorised carer under subclause (2) unless:
  - (a) the individual has furnished to the agency such information as the agency may reasonably require in order to assess the individual’s suitability to be an authorised carer, and
  - (b) the agency has commenced carrying out background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998* and has done anything else it is required to do under that Act in relation to the authorisation before employing (within the meaning of

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Part 7 of that Act) the individual to perform the duties of an authorised carer, and

**Note 1.** Section 45 of the *Commission for Children and Young People Act 1998* provides that the background checking provisions of Part 7 of that Act apply to and in respect of other adults who reside at the home of an authorised carer and that it is the duty of a designated agency to carry out all the relevant procedures of background checking of such persons to determine whether it is appropriate for those persons to reside at the home of the authorised carer.

**Note 2.** Part 7 of the *Commission for Children and Young People Act 1998* is to be repealed and replaced by the *Child Protection (Working with Children) Act 2012*.

- (c) having regard to the functions imposed on an authorised carer by or under the Act, any information possessed by the agency and all the circumstances of the case, the agency has estimated:
- (i) the risk, if any, to any child or young person in authorising the individual as an authorised carer, including any risk arising from the particular place at which the authorised carer will be providing out-of-home care, and
  - (ii) the risk, if any, that the individual may be unable to properly perform the functions of an authorised carer.
- (4) For the purpose of determining whether an individual is suitable to be an authorised carer under subclause (2), the designated agency may make such inquiries as to the individual, and as to each individual who is aged 14 years or above in the household of the individual, as the agency considers appropriate, including:
- (a) subject to the *Criminal Records Act 1991*—a check for any criminal record of the individual (whether or not within New South Wales), and
  - (b) any other relevant probity check relating to the previous employment or other activities of the individual.
- (5) The designated agency must complete the background checking referred to in subclause (3) (b) as soon as is reasonably practicable.
- (6) It is a condition of an authorisation under this clause that:
- (a) only children or young persons who are relatives or kin of the authorised carer be placed in the care of the carer, and
  - (b) the authorised carer take all reasonable steps to become an authorised carer under clause 30, and
  - (c) the authorised carer furnishes to the agency such further information as the agency may reasonably require in order to continue to assess the carer's suitability to:
    - (i) continue to be an authorised carer under this clause, and



- (ii) become an authorised carer under clause 30, and
  - (d) within 3 months after the placement of a child or young person with the authorised carer, the carer must successfully complete such course of training as the agency may reasonably require in order to ensure that the individual is capable of exercising the functions of an authorised carer (whether under this clause or clause 30).
- (7) Without limiting clause 42, an authorisation under this clause ceases to have effect:
- (a) if the background checking referred to in subclause (3) (b) returns a negative assessment, or
  - (b) if the authorised carer fails (or fails to complete) the course of training referred to in subclause (6) (d), or
  - (c) in any event, 3 months after the placement of a child or young person with the authorised carer.
- Note.** A designated agency may cancel or suspend an authorisation if the agency is of the opinion that the authorised carer is no longer a suitable person to be an authorised carer—see clause 42 (a).
- (8) The principal officer of a designated agency is to carry out the functions of the agency under subclause (1), unless the Children’s Guardian approves the carrying out of those functions by another individual.
- (9) Failure to comply with subclause (8) does not affect the validity of the authorisation of any authorised carer under this clause.
- (10) In this clause, *kin*, in relation to a child or young person, means a person who is not a relative of a child or young person, but who shares a cultural, tribal or community connection with the child or young person that is recognised by that child or young person’s family and community.
- (11) This clause takes effect on 1 November 2012.

### 32 Authorised carers authorised by the Department to enable special care

- (1) In this clause:
- special care provider* means an organisation that the Department has determined is suitable to provide special out-of-home care for children or young persons.
- special out-of-home care* for a child or young person means out-of-home care provided for a child or young person who has an intellectual, psychiatric, sensory, physical or similar impairment (or a combination of such impairments) that:
- (a) is permanent or is likely to be permanent, and

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- (b) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.
- (2) The Department, in its capacity as a designated agency, may authorise an individual belonging to any of the following classes of individuals as an authorised carer who can provide special out-of-home care:
  - (a) an employee of a special care provider whose duties as an employee include:
    - (i) providing care for children or young persons, or
    - (ii) supervising the provision of care for children or young persons,
  - (b) an individual engaged by a special care provider under a contractual arrangement (other than as an employee) to provide services that include:
    - (i) providing care for children or young persons, or
    - (ii) supervising the provision of care for children or young persons.
- (3) The Department must not authorise an individual under subclause (2) unless the relevant special care provider has:
  - (a) informed the Department that the special care provider has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998*, and
  - (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.

**Note 1.** Section 45 of the *Commission for Children and Young People Act 1998* provides that the background checking provisions of Part 7 of that Act apply to and in respect of other adults who reside at the home of an authorised carer and that it is the duty of a designated agency to carry out all the relevant procedures of background checking of such persons to determine whether it is appropriate for those persons to reside at the home of the authorised carer.

**Note 2.** Part 7 of the *Commission for Children and Young People Act 1998* is to be repealed and replaced by the *Child Protection (Working with Children) Act 2012*.

- (4) The Department must not place a child or young person in the out-of-home care of an individual authorised under subclause (2) unless the Department has:
  - (a) determined that the child or young person has special needs for out-of-home care that can be best met by such a placement, and
  - (b) consulted the Children's Guardian about the placement.

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**33 Authorised carers authorised by designated agency to give respite to usual authorised carers**

- (1) In this clause:  
*respite care provider* means an organisation providing temporary respite relief for authorised carers.
- (2) A designated agency may authorise an individual belonging to any of the following classes of individuals as an authorised carer who can provide respite for other authorised carers:
- (a) an employee of a respite care provider whose duties as an employee include:
    - (i) providing care for children or young persons, or
    - (ii) supervising the provision of care for children or young persons,
  - (b) an individual engaged by a respite care provider under a contractual arrangement (other than as an employee) to provide services that include:
    - (i) providing care for children or young persons, or
    - (ii) supervising the provision of care for children or young persons.
- (3) The designated agency must not authorise an individual under subclause (2) unless the relevant respite care provider has:
- (a) informed the agency that the respite care provider has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998*, and
  - (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.
- Note 1.** Section 45 of the *Commission for Children and Young People Act 1998* provides that the background checking provisions of Part 7 of that Act apply to and in respect of other adults who reside at the home of an authorised carer and that it is the duty of a designated agency to carry out all the relevant procedures of background checking of such persons to determine whether it is appropriate for those persons to reside at the home of the authorised carer.
- Note 2.** Part 7 of the *Commission for Children and Young People Act 1998* is to be repealed and replaced by the *Child Protection (Working with Children) Act 2012*.
- (4) The principal officer of a designated agency is to carry out the functions of the agency under subclause (2), unless the Children's Guardian approves the carrying out of those functions by another individual.
- (5) Failure to comply with subclause (4) does not affect the validity of any authorisation of an authorised carer under this clause.

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- (6) A designated agency must not place a child or young person in the out-of-home care of an individual authorised under subclause (2) unless the agency has given the Children's Guardian notice in writing of the name, and the street and postal address of the principal place of business, of the respite care provider.
- (7) A designated agency must notify the Children's Guardian in writing if any child or young person is placed in the out-of-home care of any individual or individuals authorised by the agency under this clause for a period or periods amounting to more than 90 days in any 12 month period.

### **34 Conditions of authorisations**

- (1) A designated agency may at any time impose such reasonable conditions as it thinks fit on the authorisation of an authorised carer.
- (2) A designated agency may at any time vary or revoke a condition of an authorisation imposed under subclause (1).
- (3) The imposition, variation or revocation of a condition takes effect when it is notified to the authorised carer in writing.
- (4) It is a condition of an authorisation that the authorised carer must comply with the Code of Conduct for Authorised Carers set out in Schedule 2.
- (5) Subclause (4) and Schedule 2 cease to have effect on 28 February 2013.

### **35 Authorisations by designated agencies to be in writing**

- (1) A designated agency that authorises a person as an authorised carer under clause 30, 31, 32 or 33 must cause the person to be given a copy of the authorisation in writing.
- (2) The written authorisation must set out any conditions of the authorisation imposed by the designated agency.

### **36 Personal responsibility of authorised carers**

An authorised carer is personally responsible for carrying out the carer's functions and duties as an authorised carer.

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**37 Inspection of home or premises**

An authorised carer must, at any reasonable hour and on reasonable notice, permit a supervising person:

- (a) to inspect the home or premises at which the authorised carer provides out-of-home care, and all of the authorised carer's records relating to a child or young person in out-of-home care, and
- (b) to interview any child or young person in out-of-home care.

**38 Medical examination**

An authorised carer must, if requested in writing by the designated agency on the written advice of a medical practitioner:

- (a) undergo, or cause a member of the authorised carer's household to undergo, such examination by a medical practitioner as is reasonably necessary to ascertain whether the authorised carer's household is a healthy environment for the care of children or young persons, and
- (b) provide a report of such examination to the designated agency and to any other supervising person who requests that the report be provided to it.

**39 Notice of change of address**

An authorised carer must, before changing his or her residential address, cause notice in writing of the change to be given to an officer or employee of the designated agency.

**40 Information to be provided to designated agency**

- (1) An authorised carer must provide the designated agency with such information concerning the care of a child or young person as the agency may from time to time reasonably require.
- (2) An authorised carer must immediately notify the designated agency if any of the following occurs:
  - (a) a child or young person leaves the care of the authorised carer,
  - (b) the child or young person is to be, or has been:
    - (i) expelled or suspended from school, or
    - (ii) absent without permission from the care of the authorised carer for a period of 24 hours or more, or
    - (iii) absent without permission (whether or not while in the care of the authorised carer) from New South Wales for any period,

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- (c) the child or young person suffers a serious accident, injury or illness,
- (d) the child or young person dies,
- (e) the authorised carer:
  - (i) becomes a parent to another child or young person, or
  - (ii) is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
  - (iii) becomes aware that any members of his or her household have been charged with or convicted of such an offence,
- (f) a child, young person or other person joins the authorised carer's household.

### 41 Management of behaviour of children and young persons

- (1) An authorised carer, in correcting and managing the behaviour of a child or young person in out-of-home care:
  - (a) must not use:
    - (i) any physical coercion or physical punishment (including corporal punishment), or
    - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
    - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
  - (b) must, in any event, use only behaviour management practices approved by the designated agency.
- (2) An authorised carer who finds that the approved behaviour management practices are not sufficiently effective to correct or manage the behaviour of a child or young person is to notify that fact as soon as practicable to the designated agency.
- (3) On receiving a notification under subclause (2), the designated agency, after assessing the situation, is to determine if the problem should be addressed:
  - (a) by providing appropriate advice, support and training to the authorised carer and appropriate support to the child or young person, or
  - (b) by changing the placement arrangements.

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**42 Cancellation or suspension of authorisations by designated agencies**

A designated agency may, by notice in writing, cancel or suspend the authorisation of an authorised carer if the agency is of the opinion that the authorised carer:

- (a) is no longer a suitable person to be an authorised carer, or
- (b) has failed to comply with any condition of the authorisation, or
- (c) has failed to comply with any obligation or restriction imposed on the authorised carer by the Act or this Regulation, or
- (d) has failed to comply with a written direction to the authorised carer by the designated agency or the Children's Guardian under section 157 (3) of the Act, or
- (e) has failed to uphold the Charter of Rights prepared under section 162 of the Act.

**Note.** Under section 245 (1) (a) of the Act, a decision to cancel or suspend the authorisation of an authorised carer is reviewable by the Administrative Decisions Tribunal.

**Division 3 Authorisations other than by designated agencies****43 Other authorisations**

- (1) For the purposes of section 137 (1) (c) of the Act, the following persons are authorised as authorised carers:
  - (a) a person who provides residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency and who provides the care and control under:
    - (i) a care plan developed by the Director-General, or
    - (ii) an alternative parenting plan approved or registered by the Children's Court under Part 1 of Chapter 7 of the Act,
  - (b) a person providing residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency under an order of the Supreme Court, the Family Court of Australia or the Federal Magistrates Court.
- (2) A person referred to in subclause (1) is authorised as an authorised carer only in relation to the child or young person concerned, and the person ceases to be an authorised carer when the person ceases to have care responsibility for the child or young person.
- (3) A person referred to in subclause (1) (a) is required to comply with the Code of Conduct for Authorised Carers set out in Schedule 2. This subclause ceases to have effect on 28 February 2013.

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### 44 Management of behaviour of children and young persons

- (1) This clause applies only to a person authorised as an authorised carer under clause 43 (1) (a).
- (2) An authorised carer, in correcting and managing the behaviour of a child or young person in out-of-home care, may use only behaviour management practices approved by the Director-General.

## Division 4 Accreditation as a designated agency

### Subdivision 1 Accreditation

#### 45 Application for accreditation

- (1) An organisation or a Division of the Government Service (an *applicant*) may apply in writing to the Children's Guardian for:
  - (a) accreditation as a designated agency, or
  - (b) the renewal of accreditation as a designated agency.
- (2) An application is:
  - (a) to be made in the form approved by the Children's Guardian, and
  - (b) to be accompanied by such information as the Children's Guardian may reasonably require to assist in the determination of the application, and
  - (c) if the applicant is an organisation that is not a Division of the Government Service—to specify the name of the individual proposed to be the applicant's principal officer on accreditation, and
  - (d) to be accompanied by a behaviour management policy statement that sets out:
    - (i) the views of the applicant on the behaviour management practices to be observed by authorised carers regarding the care, management and discipline of children and young persons for whom the designated agency has supervisory responsibility, and
    - (ii) details of the procedures to be used in respect of the application of physical restraint, including consent, reporting, analysis and supervision of staff, and support and counselling to be provided to children and young persons to whom physical restraint has been applied, and
  - (e) to include a statement to the effect that the applicant's behaviour management policy includes a ban on the use of all of the following:



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- (i) any physical coercion or physical punishment (including corporal punishment),
  - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food,
  - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
- (f) to be accompanied by a psychotropic drugs policy statement that sets out the views of the applicant on the administration of psychotropic drugs for the purpose of controlling the behaviour of children and young persons.
- (3) The Children's Guardian may require an applicant to furnish to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to assess the applicant's suitability to be a designated agency.
- (4) Any information that is required under subclause (3) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.

#### **46 Taking over an application for accreditation**

- (1) An application made by an organisation for accreditation as a designated agency may be taken over by another organisation only in accordance with this clause.
- (2) The Children's Guardian may authorise an organisation (*the successor*) to take over an application for accreditation as a designated agency made by another organisation (*the predecessor*), by notice in writing given to the successor.
- (3) The Children's Guardian must not authorise a successor to take over an application unless:
- (a) the predecessor has requested that action, and
  - (b) the successor has given the Children's Guardian a written undertaking that it will operate in the manner proposed in the application or as otherwise agreed in writing by the successor and the Children's Guardian, and
  - (c) the successor has, by notice in writing given to the Children's Guardian, specified the name of the individual proposed to be the successor's principal officer on accreditation.

**Note.** In addition to the conditions set out in Schedule 3, the process of accreditation of an organisation that takes over an application under this clause may also be subject to conditions imposed under clause 65 (3) (Conditions on accreditation and process of accreditation).

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- (4) A copy of the notice under subclause (2) must be given to the predecessor, if the predecessor continues to exist, and, on and from receipt of the notice, the predecessor is taken not to be an applicant for accreditation as a designated agency.
- (5) Unless prohibited by or under any Act, the Children's Guardian may disclose to the successor any information in his or her possession regarding the predecessor.
- (6) A condition imposed on the process of accreditation in respect of an application for accreditation continues to apply to the process despite the application being taken over under this clause.

### 47 Deferral of determination of application to renew accreditation

- (1) If a designated agency has applied for the renewal of an accreditation, the Children's Guardian may, by notice in writing to the agency, defer determining the application.
- (2) The deferral has effect until a notice given under clause 50 in respect of the application takes effect.
- (3) The deferral does not affect any requirement made under clause 45 (3) to furnish information in respect of the application, whether the requirement was imposed before or during the deferral.
- (4) If the Children's Guardian defers determining the application for 6 months or more from the date the deferral took effect, the Children's Guardian must inform the Minister in writing of the deferral.

**Note.** The accreditation period of a designated agency whose application for renewal of accreditation has been deferred is extended under clause 62 until the application is determined.

### 48 Accreditation criteria

- (1) On the recommendation of the Children's Guardian, the Minister may, from time to time, approve standards and other criteria for use in determining:
  - (a) whether to grant an application for accreditation as a designated agency, and
  - (b) what accreditation period will be granted.
- (2) Without limiting subclause (1), criteria may be approved under that subclause in respect of a class or classes of applicants.
- (3) Without limiting subclause (1), the following matters are to be addressed by criteria approved under that subclause:
  - (a) the assessment procedures (including probity testing) for determining whether a person is suitable to be an authorised carer,

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- (b) the training provided to authorised carers,
  - (c) the supervision provided to authorised carers,
  - (d) what provision is made for the involvement of children and young persons in the making of decisions that affect them,
  - (e) what provision is made for the involvement of the persons who have parental responsibility for children or young persons immediately before the children or young persons enter into out-of-home care in the making of decisions that affect those children or young persons,
  - (f) what provision is made for the involvement of authorised carers in the making of decisions concerning the child or young person in their care.
- (4) The Children’s Guardian must make criteria approved under subclause (1) available for public inspection.
- (5) Failure to comply with subclause (4) does not affect the validity of any decision of the Children’s Guardian to accredit or not to accredit an applicant.

#### **49 Determination of application for accreditation**

- (1) The Children’s Guardian may grant accreditation as a designated agency to an applicant if, in the opinion of the Children’s Guardian, the applicant wholly or substantially satisfies the accreditation criteria referred to in clause 48.
- (2) The Children’s Guardian may come to the opinion that an applicant satisfies a particular accreditation criterion if a body, recognised by the Children’s Guardian for the purposes of this subclause, has determined that the applicant meets a standard or other criterion recognised by the Children’s Guardian for the purposes of this subclause in respect of the accreditation criterion.
- (3) The Children’s Guardian may grant the following accreditation:
- (a) if the applicant has made arrangements for the provision of out-of-home care in accordance with the Act and the regulations at any time during the period commencing 12 months before the application was made and ending when the application is determined—*full accreditation*,
  - (b) in any other case—*provisional accreditation*.

#### **50 Accreditation notice**

- (1) As soon as reasonably practicable after determining an application for accreditation, the Children’s Guardian must inform the applicant of the following by notice in writing:

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- (a) the decision,
  - (b) when the decision takes effect,
  - (c) if accreditation is granted—whether full or provisional accreditation is granted,
  - (d) the reasons for the decision,
  - (e) how the applicant may apply for a review of the decision.
- (2) If an applicant is granted accreditation but did not wholly satisfy the accreditation criteria, the notice must also specify the accreditation criteria that were not wholly satisfied and the reasons for the Children's Guardian's opinion that the criteria were not wholly satisfied.

### **51 Children's Guardian may set aside decision not to accredit**

- (1) If the Children's Guardian is satisfied that an application for accreditation as a designated agency should not have been refused, the Children's Guardian may withdraw the refusal under clause 50 and issue a notice granting accreditation.
- (2) The notice may provide that accreditation is taken to have had effect on and from the date the previous decision not to accredit took effect, or such later date as may be specified in the notice.

### **52 Requirements where only provisional accreditation granted**

- (1) A designated agency granted provisional accreditation must notify the Children's Guardian in writing when the agency first makes arrangements for the provision of out-of-home care after being accredited.
- (2) The notice must be given by the next working day after the first arrangements are made.

### **53 Progression from provisional accreditation to full accreditation**

- (1) A notice given under clause 52 (1) is taken to be an application under clause 45 for full accreditation.
- (2) The Children's Guardian may, by notice in writing, waive any requirement imposed by or under clause 45 in respect of such an application if the Children's Guardian is satisfied that the requirement was met by the designated agency in the course of being granted provisional accreditation.
- (3) Without limiting clause 45 (3), the Children's Guardian may require the applicant to furnish to the Children's Guardian such information as to the applicant's practice and other matters as the Children's Guardian may reasonably require in order to assess the applicant's suitability to be granted full accreditation.

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- (4) Any information that is required under subclause (3) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
  - (5) The Children's Guardian must not determine the application within 12 months of the applicant first making arrangements for the provision of out-of-home care after its provisional accreditation.
  - (6) The provisional accreditation of a designated agency taken to have made an application under this clause ceases on the determination of the application taking effect.

**Note.** Clause 61 provides for the accreditation period for provisional accreditation to be 3 years.

#### **54 Accreditation criteria must be wholly satisfied**

- (1) A designated agency granted accreditation under this Regulation that did not wholly satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation must wholly satisfy the accreditation criteria:
  - (a) in the case of a designated agency granted full accreditation—within 12 months of its accreditation, or
  - (b) in the case of a designated agency granted provisional accreditation—within 12 months of the date the agency first made arrangements for the provision of out-of-home care after its accreditation.
- (2) The Children's Guardian may, by notice in writing given to the agency, specify a shorter period for the purposes of subclause (1) (a) or (b).

### **Subdivision 2 Transfer of accreditation**

#### **55 Application of Subdivision**

- (1) The accreditation of a designated agency (other than a departmental designated agency) may be transferred only in accordance with this Subdivision.
- (2) Subclause (1) does not prevent the transfer of accreditation of any designated agency if it is transferred in accordance with any other Act or law.

#### **56 Application for transfer of accreditation**

- (1) An application for approval to transfer accreditation from a designated agency (*the transferor*) to another organisation (*the transferee*) that is not a designated agency may be made by a transferor to the Children's Guardian in the form approved by the Children's Guardian.

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- (2) The Children's Guardian may require a transferor or transferee to furnish to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to determine the application.
- (3) Any information that is required under subclause (2) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (4) Unless prohibited by or under any Act, the Children's Guardian may disclose any information about the transferor to the transferee.

### 57 Transfer of accreditation

- (1) The Children's Guardian may, by notice in writing, approve or refuse the application to transfer accreditation.
- (2) The Children's Guardian must not approve the application unless:
  - (a) the transferor and the transferee are not in contravention of any guidelines issued by the Children's Guardian under clause 59 (1) that apply in respect of the application, and
  - (b) the transferor is not in contravention of any condition of its accreditation, and
  - (c) the transferor and the transferee are not in contravention of any condition on the process of accreditation under this clause, and
  - (d) the Children's Guardian is of the opinion that the transfer will promote the best interests of children and young persons in out-of-home care.
- (3) The Children's Guardian is to consult with the Department and the Ombudsman before determining the application.
- (4) If the transferor is funded by Ageing, Disability and Home Care within the Department in respect of the arrangements the transferor makes for the provision of out-of-home care, the Children's Guardian is to consult with the Chief Executive, Ageing, Disability and Home Care before determining the application.

### 58 When transfer takes effect

- (1) A transfer of accreditation approved under clause 57 takes effect on the later of the following days:
  - (a) when the transferee accepts the transfer by notice in writing given to the Children's Guardian,
  - (b) on the date specified in the Children's Guardian's approval.
- (2) If the transferor ceases to exist before the transfer takes effect, the transfer is taken to have had effect when the transferor ceased to exist.

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- (3) When a transfer takes effect:
- (a) the transferor ceases to be accredited as a designated agency, and
  - (b) the transferee is accredited as a designated agency, and
  - (c) the transferee's accreditation is taken to be the accreditation granted to the transferor.

**59 Transfer guidelines**

- (1) The Children's Guardian may issue written guidelines in respect of the exercise of functions under this Subdivision including, but not limited to, the following:
- (a) the granting of approvals,
  - (b) the imposition of conditions on the process of accreditation and on accreditations.
- (2) Without limiting subclause (1), the Children's Guardian is to have regard to the following matters in carrying out functions under this Subdivision:
- (a) whether, for the purposes of continuity of out-of-home care, the transferor and transferee have made all reasonable efforts to vest in the transferee the assets, rights and liabilities related to that out-of-home care that are vested in the transferor,
  - (b) whether, for the purposes of continuity of out-of-home care, the transferor and transferee have made all reasonable efforts to provide for individuals employed by the transferor for the purposes of the provision of that out-of-home care to be employed by the transferee,
  - (c) whether a proposed transfer will prejudice any legal proceedings or proposed legal proceedings to which the transferor is, or is likely to become, a party and whether the transferor and transferee have taken all reasonable steps to ensure that this does not occur.

**60 Consequences of transfer of accreditation**

- (1) This clause applies to an accreditation that has been transferred under clause 57.
- (2) Any authorised carer authorised by the transferor whose authorisation was in force immediately before the transfer took effect is taken to have been authorised by the transferee.
- (3) The accreditation period that applied to the transferor applies to the transferee and is taken to have started on the date the transferor was accredited.

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- (4) Any condition on the transferor's accreditation that was in force immediately before the transfer took effect applies to the transferee's accreditation, subject to any variation or revocation of conditions by the Children's Guardian pursuant to this Regulation.
- (5) For the purposes of clause 66 and Schedule 3, the transferee is taken to have satisfied the accreditation criteria the transferor satisfied to be accredited.

### Subdivision 3 Accreditation administration

#### 61 Form and accreditation period

- (1) An accreditation is to be in such form as the Children's Guardian may approve.
- (2) The Children's Guardian may grant an accreditation period of 1, 3 or 5 years to a designated agency being granted full accreditation if the agency did not hold provisional accreditation immediately before being granted full accreditation.
- (3) The Children's Guardian may grant an accreditation period of 1 or 3 years to a designated agency being granted full accreditation if the agency held provisional accreditation immediately before being granted full accreditation.
- (4) The Children's Guardian may grant an accreditation period of 3 years to a designated agency being granted provisional accreditation.
- (5) The date the accreditation period of a designated agency ends is not extended by a suspension of accreditation under clause 66.

#### 62 Accreditation extended on deferral until application to renew determined

- (1) This clause applies to a designated agency that has made an application to renew its accreditation if the determination of the application is deferred under clause 47.
- (2) The accreditation period is extended until the notice given under clause 50 in respect of the application takes effect.

#### 63 Accreditation extended until decision not to re-accredit takes effect

- (1) This clause applies to a designated agency that has had its application to renew its accreditation refused and the decision to refuse the application has not taken effect.
- (2) The accreditation of the agency ends when the decision takes effect.



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**64 Accreditation extended to accommodate changes**

The Children's Guardian may extend the accreditation period of a designated agency, by notice in writing given to the agency, to the date specified in the notice if the Children's Guardian is of the opinion that changes or proposed changes to the administration of out-of-home care under the Act make the extension appropriate.

**65 Conditions on accreditation and process of accreditation**

- (1) An accreditation is subject to the conditions set out in Schedule 3.
- (2) The Children's Guardian may impose such other reasonable conditions as the Children's Guardian sees fit on an accreditation, and may vary or revoke such conditions, by notice in writing given to the designated agency.
- (3) Without limiting subclause (2), the Children's Guardian may impose a condition prohibiting the designated agency from providing, arranging or supervising voluntary out-of-home care.
- (4) The Children's Guardian may impose such reasonable conditions as the Children's Guardian sees fit on the process of accreditation (including accreditation by way of a transfer under clause 57), and may vary or revoke such conditions, by notice in writing given to the applicant.
- (5) If an accreditation is transferred, a copy of the notice given under subclause (4) is to be given to the transferee.
- (6) If the Children's Guardian is satisfied a condition should be imposed under subclause (2) on a departmental designated agency, the Children's Guardian must first report to the Minister on the need to impose the condition.
- (7) A condition imposed under this clause may authorise any matter or thing to be from time to time determined or applied by any specified person or body.

**Note.** Contravention of a condition of accreditation is not an offence but is grounds for shortening the accreditation period, or suspending or cancelling the accreditation, of a designated agency.

**66 Accreditation—shortening, suspension and cancellation**

- (1) The Children's Guardian may, by notice in writing given to a designated agency:
  - (a) shorten the accreditation period of the agency to a date specified in the notice, or
  - (b) suspend the accreditation of the agency for the period specified in the notice or until a specified matter has been completed, or

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- (c) cancel the accreditation of the agency from the date specified in the notice.
- (2) The Children's Guardian may give a notice under subclause (1) to a designated agency if the Children's Guardian is satisfied of any of the following:
- (a) that the agency made a statement or furnished information in connection with the administration of the Act that the agency knew to be false or misleading in a material particular,
  - (b) that the principal officer of the agency made a statement or furnished information in connection with the administration of the Act that the principal officer knew to be false or misleading in a material particular,
  - (c) that the agency failed to comply with any condition of accreditation imposed on the agency's accreditation,
  - (d) that the agency failed to comply with any obligation or restriction imposed on the agency by or under the Act,
  - (e) that the principal officer of the agency failed to comply with any obligation or restriction imposed on the principal officer by or under the Act,
  - (f) that the agency failed, while the agency had been accredited less than 12 months, to substantially satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation,
  - (g) that the agency failed, at any time after the agency had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation.
- (3) Despite subclause (2), the Children's Guardian is not to take action under subclause (1) if the Children's Guardian is satisfied:
- (a) that the designated agency failed to comply with any condition of accreditation that relates solely to the provision, arrangement or supervision of voluntary out-of-home care (other than a condition prohibiting the agency from providing, arranging or supervising voluntary out-of-home care), or
  - (b) that the designated agency failed to comply with any other obligation or restriction imposed on the agency by or under the Act that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.

**Note.** The effect of this subclause is that the Children's Guardian will not enforce compliance by designated agencies with conditions of accreditation, and other obligations and restrictions by or under the Act, that relate solely to voluntary out-of-home care by the methods set out in subclause (1) (being

shortening the accreditation period or suspending or cancelling the accreditation of the designated agency). The Children's Guardian may instead impose a condition of accreditation prohibiting the designated agency from providing, arranging or supervising voluntary out-of-home care—see clause 65 (3). Breach of such a condition can lead to enforcement by the methods set out in subclause (1).

- (4) In the case of a departmental designated agency, the Children's Guardian must report to the Minister before issuing a notice under subclause (1).
- (5) If the Children's Guardian is satisfied that a notice under subclause (1) should not have been given to a designated agency, the Children's Guardian may, by notice in writing given to the agency, withdraw the notice and reinstate the accreditation, or, in the case of a shortening of an accreditation period, reinstate the accreditation period of the designated agency, and the accreditation is taken to have continued in existence as if the notice under subclause (1) had not been given.

#### **67 Designated agencies with suspended accreditations**

- (1) Subject to subclause (2), a designated agency remains a designated agency while the agency's accreditation is suspended.
- (2) While a designated agency's accreditation is suspended, the agency is not a designated agency for the purposes of section 138 of the Act.
- (3) The Children's Guardian may remove the suspension of a designated agency's accreditation at any time by notice in writing given to the agency.

#### **68 Designated agencies with shortened accreditation periods**

- (1) The Children's Guardian may, by notice in writing given to a designated agency, reduce the period by which the agency's accreditation period has been shortened under clause 66.
- (2) For the removal of doubt, the shortening of an accreditation period under clause 66 does not prevent the accreditation period from being extended under clause 62, 63 or 64.

### **Division 5 Voluntary out-of-home care**

#### **Subdivision 1 Preliminary**

##### **69 Definitions**

- (1) In this Division:  
*registration* means registration under clause 72 for the purposes of Part 3A of Chapter 8 of the Act.

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*relevant agency* has the same meaning as it has in section 156 of the Act.

*working day* means any day that is not a Saturday, Sunday or public holiday.

- (2) For the purposes of this Division:
- (a) an organisation provides out-of-home care for a child or young person if the organisation is responsible for the out-of-home care of the child or young person or arranges for a natural person to be responsible for that care, and
  - (b) an organisation arranges out-of-home care in respect of a child or young person if the organisation arranges for another organisation to provide out-of-home care for the child or young person.
- (3) In this Division, a reference to an organisation includes a reference to a Division of the Government Service.

### Subdivision 2 Registration of organisations

#### 70 Applications for registration

- (1) An organisation that intends to provide or arrange voluntary out-of-home care may apply to the Children's Guardian for registration.
- (2) An application:
  - (a) must be in writing in the form approved by the Children's Guardian, and
  - (b) must be accompanied by any information that the Children's Guardian may reasonably require to assist in the determination of the application, and
  - (c) must specify the name, address and contact details of the applicant organisation's principal officer.
- (3) The Children's Guardian may require an applicant for registration to provide further information.

#### 71 Criteria for determination of applications for registration

- (1) The Children's Guardian may prepare criteria for determining applications for registration.
- (2) The Children's Guardian may prepare different criteria for determining applications relating to different types of voluntary out-of-home care.
- (3) Such criteria may be applied by the Children's Guardian only if the Minister has approved them in writing.

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- (4) The Children's Guardian must ensure that criteria approved by the Minister under this clause are available for inspection without charge on the website of the Children's Guardian.

#### **72 Determination of applications for registration**

- (1) The Children's Guardian may decide an application for registration by registering the applicant or by refusing the application.
- (2) As soon as practicable after deciding an application for registration, the Children's Guardian must inform the applicant of the following by notice in writing:
- (a) the decision,
  - (b) when the decision takes effect,
  - (c) if the decision is to refuse the application:
    - (i) the reasons for the decision, and
    - (ii) how the applicant may apply for a review of the decision.

#### **73 Conditions of registration**

- (1) The registration of an organisation as a registered agency is subject to the conditions set out in Schedule 4.
- (2) The Children's Guardian may, at any time, impose such other reasonable conditions as the Children's Guardian sees fit on the registration of an organisation as a registered agency, and may vary or revoke such conditions, by notice in writing given to the organisation.
- (3) A condition imposed under this clause may authorise any matter or thing to be from time to time determined or applied by any specified person or body.
- (4) The Children's Guardian must inform the applicant of the following by notice in writing:
- (a) the decision to impose a condition under this clause,
  - (b) when the condition takes effect,
  - (c) the reasons for imposing the condition,
  - (d) how the applicant may apply for a review of the decision.

**Note.** Contravention of a condition of registration is not an offence but is grounds for cancelling the registration of an organisation.

#### **74 Cancellation of registration**

- (1) The Children's Guardian may, by notice in writing given to a registered agency, cancel the registration of the agency.

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- (2) The Children's Guardian may cancel the registration of a registered agency only if the Children's Guardian is satisfied:
  - (a) that the agency made a statement or furnished information in connection with the application for registration that the agency knew to be false or misleading in a material particular, or
  - (b) that the agency failed to comply with any condition imposed on the agency's registration, or
  - (c) that the agency failed to comply with any obligation or restriction imposed on the agency by or under the Act, or
  - (d) that the agency failed to satisfy the registration criteria that applied to the agency in respect of its application for registration.
- (3) As soon as practicable after making a decision to cancel the registration of a registered agency, the Children's Guardian must inform the agency of the following by notice in writing:
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) the reasons for the decision,
  - (d) how the agency may apply for a review of the decision.

### **Subdivision 3 Information relating to voluntary out-of-home care**

#### **75 Provision of information relating to child or young person in or leaving voluntary out-of-home care**

- (1) A relevant agency must provide the Children's Guardian with the following information in relation to each child or young person who is or has been in voluntary out-of-home care provided by the relevant agency:
  - (a) the full name of the child or young person,
  - (b) any other name by which the child or young person has previously been known,
  - (c) the gender of the child or young person,
  - (d) the date of birth of the child or young person,
  - (e) the place of birth of the child or young person,
  - (f) whether, in the opinion of the relevant agency, the child or young person is in the target group within the meaning of the *Disability Services Act 1993*,
  - (g) the date on which the child or young person was placed in voluntary out-of-home care provided by the relevant agency,

- 
- (h) the date on which the child or young person ceased to be in voluntary out-of-home care provided by the relevant agency.
  - (2) The information referred to in subclause (1) (a)–(g) must be provided in a manner and format approved by the Children’s Guardian within 5 working days of the child or young person being placed in voluntary out-of-home care provided by the relevant agency.
  - (3) The information referred to in subclause (1) (h) must be provided in a manner and format approved by the Children’s Guardian within 5 working days of the child or young person ceasing to be in voluntary out-of-home care provided by the relevant agency.

**76 Designated agency to notify Children’s Guardian after commencing supervision of care**

- (1) A designated agency must provide the Children’s Guardian with the following information (*the relevant information*) in relation to each child or young person whose voluntary out-of-home care the designated agency has agreed to supervise:
  - (a) the full name of the child or young person,
  - (b) the date on which the designated agency commenced supervision of the voluntary out-of-home care of the child or young person,
  - (c) the name of any registered agency that provides the voluntary out-of-home care supervised by the designated agency.
- (2) A designated agency must provide the relevant information within 5 working days after commencing supervision of the voluntary out-of-home care of the child or young person.
- (3) The relevant information must be provided in a format approved by the Children’s Guardian.

**77 Registered agency to provide information when child or young person in unsupervised voluntary out-of-home care**

- (1) A registered agency that provides voluntary out-of-home care for a child or young person must, as soon as is practicable, notify the Children’s Guardian if:
  - (a) the child or young person has been in voluntary out-of-home care (whether provided by the agency or any other organisation) for more than 90 days in any period of 12 months, and
  - (b) the voluntary out-of-home care is not supervised by a designated agency or the Children’s Guardian.
- (2) A registered agency may have regard to information kept on the register established and maintained under Subdivision 5, unless the agency knows the information is incorrect, to ascertain whether a child or

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young person has been in voluntary out-of-home care for more than a total of 90 days in any period of 12 months.

- (3) The information provided under subclause (1) must be in a format approved by the Children's Guardian.

### 78 Designated agency to provide information about case plans

- (1) The responsible designated agency for a child or young person must notify the Children's Guardian of the following:
- (a) the existence of any case plan prepared in respect of the child or young person that meets the needs of the child or young person and the date the case plan was prepared,
  - (b) the date of any review of such a case plan.
- (2) A notice required under subclause (1) (a) and (b) must be given within 5 working days after the case plan has been prepared or reviewed.
- (3) The responsible designated agency for a child or young person must, as soon as is practicable, notify the Children's Guardian if:
- (a) the child or young person has been in voluntary out-of-home care (whether provided by the agency or any other organisation) for more than a total of 180 days in any period of 12 months, and
  - (b) the child or young person does not have a case plan that meets his or her needs.
- (4) The information provided under subclauses (1) and (3) must be in a format approved by the Children's Guardian.
- (5) A designated agency may have regard to information kept on the register established and maintained under Subdivision 5, unless the agency knows the information is incorrect, to ascertain whether a child or young person has been in voluntary out-of-home care for more than a total of 180 days in any period of 12 months.
- (6) In this clause, *responsible designated agency* for a child or young person in voluntary out-of-home care means:
- (a) if a designated agency supervises care provided by a relevant agency (including care provided by another designated agency)—the designated agency that supervises the care, or
  - (b) if the care is provided by a designated agency and no other designated agency supervises that care, the designated agency that provides the care.

### 79 Keeping of information about case plans

- (1) A relevant agency (in relation to any voluntary out-of-home care provided or supervised by the relevant agency) and the Children's



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Guardian (in relation to any such care supervised by the Children's Guardian) must retain the following information:

- (a) a copy of any case plan that was prepared to meet the needs of the child or young person while in voluntary out-of-home care provided or supervised by the relevant agency or supervised by the Children's Guardian (as the case may be),
  - (b) a copy of any review of the case plan.
- (2) The information must be retained until the relevant child or young person reaches 18 years of age.

**Note.** There may be further record keeping obligations in relation to the information under the *State Records Act 1998*.

#### **Subdivision 4 Publicly available list of agencies that provide or arrange voluntary out-of-home care**

##### **80 List of agencies that may provide or arrange voluntary out-of-home care**

The Children's Guardian must establish and maintain a list of the following:

- (a) the names of all designated agencies that provide or arrange voluntary out-of-home care,
- (b) the names of all registered agencies,
- (c) any other information the Children's Guardian considers appropriate for inclusion on the list.

##### **81 Public availability of list**

The list established and maintained under clause 80 must be made available for inspection without charge on the website of the Children's Guardian.

#### **Subdivision 5 Limited-access register of information about children and young persons in voluntary out-of-home care**

##### **82 Children's Guardian to establish and maintain register**

- (1) The Children's Guardian must cause a register (referred to as *the register* in this Subdivision) to be established and maintained.
- (2) The register must contain the following information (to the extent that it is known by the Children's Guardian) in respect of each child or young person whose voluntary out-of-home care is provided by a relevant agency:
  - (a) the name of the relevant agency,

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- (b) the full name of the child or young person placed in voluntary out-of-home care provided by the relevant agency,
- (c) any other name by which the child or young person has been previously known,
- (d) the gender of the child or young person,
- (e) the date of birth of the child or young person,
- (f) the place of birth of the child or young person,
- (g) the date on which the child or young person was placed in voluntary out-of-home care provided by the relevant agency,
- (h) the date on which the child or young person ceased to be in voluntary out-of-home care provided by the relevant agency,
- (i) the existence of any case plan prepared in respect of the child or young person, and the date the case plan was prepared,
- (j) the date of any review of such a case plan,
- (k) whether the voluntary out-of-home care of the child or young person is supervised by a designated agency or the Children's Guardian and, if so, the name of that supervising agency or body,
- (l) the date on which that supervision commenced,
- (m) any other information concerning a child or young person in voluntary out-of-home care, or the family of such a child or young person, that the Children's Guardian and the Privacy Commissioner agree is appropriate for inclusion on the register,
- (n) whether the child or young person is in the target group within the meaning of the *Disability Services Act 1993*,
- (o) the number of days that the child or young person has been in voluntary out-of-home care in any 12 month period.

### 83 Restricted access to register

The register must not be made available to any person other than the following:

- (a) a relevant agency,
- (b) a member of staff of the Department,
- (c) the Ombudsman,
- (d) the Commissioner of Police or any other police officer holding the rank of inspector or above in the NSW Police Force, but only in connection with the investigation of a missing person or a possible criminal offence,
- (e) the State Coroner, but only in connection with a death or suspected death that the State Coroner is investigating,

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- (f) the Minister,
  - (g) an Official Community Visitor appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
  - (h) the Privacy Commissioner,
  - (i) any other organisation or person approved by the Privacy Commissioner.

**84 Children and young persons and their parents may request details on register**

- (1) A person whose details are included on the register, or a parent of such a person, may request the Children's Guardian to provide the person with all of the information that is included on the register in relation to the person.
- (2) The Children's Guardian must comply with such a request as soon as practicable after the request is made.

**85 Children and young persons and their parents may request amendments of details on register**

- (1) A person whose details are included on the register, or the parent of such a person, may request the Children's Guardian to amend any information included on the register in relation to the person that is incorrect.
- (2) The Children's Guardian must comply with such a request if satisfied that the information is incorrect.

**Subdivision 6 Miscellaneous**

**86 Management of behaviour of children and young persons in voluntary out-of-home care**

- (1) A voluntary carer in correcting and managing the behaviour of a child or young person in voluntary out-of-home care:
  - (a) must not use:
    - (i) any physical coercion or physical punishment (including corporal punishment), or
    - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
    - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
  - (b) must, in any event, use only behaviour management practices approved by the body (being a relevant agency or the Children's

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Guardian) that authorised the carer to provide the voluntary out-of-home care.

- (2) A voluntary carer who finds that the approved behaviour management practices are not sufficiently effective to manage the behaviour of a child or young person is to notify that fact as soon as practicable to the relevant agency or the Children's Guardian (as appropriate).
- (3) On receiving a notification under subclause (2), the relevant agency or the Children's Guardian, after assessing the situation and consulting the parent of the child or young person, is to determine if the problem should be addressed:
  - (a) by providing appropriate advice, support and training to the voluntary carer and appropriate support to the child or young person, or
  - (b) by changing the placement arrangements.
- (4) A relevant agency must ensure that each voluntary carer authorised by it to provide voluntary out-of-home care complies with this clause.

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## **Part 7 Children's Guardian**

### **87 Provision of information to Children's Guardian**

Information furnished to the Children's Guardian in accordance with a direction under section 185 (1) (b) of the Act is to be furnished:

- (a) in written form and, if the person furnishing the information is able to furnish it in electronic form in a format approved by the Children's Guardian, in electronic form in that format as well, or
- (b) in electronic form in a format approved by the Children's Guardian.

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Part 8 Miscellaneous

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### Part 8 Miscellaneous

#### 88 Savings

Any act, matter or thing that, immediately before the repeal of the *Children and Young Persons (Care and Protection) Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

**Note.** Section 30 of the *Interpretation Act 1987* also provides that the repeal of a regulation does not affect the operation of any savings or transitional provision contained in the regulation. For repealed savings and transitional provisions that may have ongoing operation, see Schedule 6 (Savings and transitional provisions) to the *Children and Young Persons (Care and Protection) Regulation 2000*.

**Schedule 1     Forms**

(Clause 24)

**Form 1     Notice of medical examination**

To: .....

*[insert name of person having care of the child or young person]*

You must immediately take .....

.....

*[insert name or description of the child or young person]*

for a medical examination by .....

.....

*[insert name or description of medical practitioner]*

at .....

.....

*[insert name and address of hospital or place]*

You may be charged with a criminal offence if you do not do as this notice requires.

This notice is issued by .....

.....

*[insert name and position description of person issuing the notice]*

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Schedule 2 Code of Conduct for Authorised Carers

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## Schedule 2 Code of Conduct for Authorised Carers

(Clauses 34 (4) and 43 (3))

### 1 The home

An authorised carer must ensure that the home where the child or young person will reside in out-of-home care is kept safe, clean and in good repair and is properly ventilated, lit and heated.

### 2 Furniture, furnishings and equipment

The home must have:

- (a) adequate furniture, furnishings and equipment for use by the children or young persons who reside at the home, having regard to their ages and physical and intellectual development, and
- (b) adequate facilities for the preparation, refrigeration and hygienic storage of food and refreshments, and
- (c) adequate facilities for the storage of equipment and bedding and for the safe keeping of the children's or young persons' outdoor clothes and other personal belongings, and
- (d) sufficient equipment suitable for the indoor and outdoor recreational needs of the children or young persons, having regard to their ages and physical and intellectual development, and
- (e) access to a telephone.

### 3 Swimming pools

Any swimming pool at the home must be adequately fenced in accordance with the *Swimming Pools Act 1992*.

### 4 Care of children and young persons

The authorised carer must, in relation to each child or young person in out-of-home care, ensure that:

- (a) the health, education, safety, welfare, well-being and progress of the child or young person are promoted, and
- (b) the child or young person is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (c) the observance by the child or young person of his or her religion (if any) and the preservation of the child's or young person's cultural identity are encouraged, and
- (d) the same standards of care and discipline are applied to all children and young persons residing in the home, and



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- (e) the child or young person is encouraged to maintain a connection with birth and extended family members and other significant people, as far as it is reasonably practicable and safe to do so.

## 5 Bedrooms

The authorised carer:

- (a) must provide adequate sleeping accommodation for each child or young person who resides in out-of-home care, and
- (b) must ensure that sleeping accommodation that is provided for a child or young person in out-of-home care is appropriate for the age of the child or young person and takes into account the child's or young person's requirements for privacy, and
- (c) must ensure that:
  - (i) each such child or young person is provided with a separate bed or cot, equipped with a clean and comfortable mattress and bed clothing that is appropriate to the climate, and
  - (ii) linen on each such child's or young person's bed or cot is changed weekly (or more frequently if necessary), and
  - (iii) adequate facilities are provided for storage of each such child's or young person's clothing and personal belongings.

## 6 Study

The authorised carer must ensure that each child or young person who is in out-of-home care and who is attending school or undertaking studies is provided with facilities for quiet study that are adequate, having regard to the age of the child or young person.

## 7 Health and medical attention

- (1) The authorised carer must ensure that each child or young person in out-of-home care is supplied with such medical and dental treatment as is necessary.
- (2) The authorised carer must, as soon as practicable (and, in any case, within 24 hours) after a child or young person who is in out-of-home care is admitted to hospital, cause notice of that fact to be given to:
  - (a) each person who has parental responsibility for the child or young person who can reasonably be located, and
  - (b) the principal officer of the designated agency having supervisory responsibility for the child or young person.

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Schedule 2 Code of Conduct for Authorised Carers

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- (3) If a medical practitioner recommends to the authorised carer that the care or treatment of a child or young person in out-of-home care should be varied for reasons of health, the carer must use his or her best endeavours to give effect to the medical practitioner's recommendation.

### 8 Children and young persons not to perform unreasonable duties

An authorised carer must not require a child or young person in out-of-home care to perform duties that are unreasonable, having regard to the child's or young person's age and physical and intellectual development.

### 9 Discipline of children and young persons

An authorised carer:

- (a) must not use:
- (i) any physical coercion or physical punishment (including corporal punishment), or
  - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
  - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
- (b) must, in any event, use only behaviour management practices approved by the designated agency.

### 10 Animals

The designated agency must ensure that any animal kept in the home is kept clean and well-cared for.

### 11 Discharge of children and young persons

An authorised carer in whose care a child or young person has been placed must not discharge the child or young person into the care of any other person, otherwise than:

- (a) into the care of:
- (i) a member of staff of the designated agency having supervisory responsibility for the child or young person, or
  - (ii) a person who has parental responsibility for the child or young person, or
- (b) with the written consent of the Director-General or the principal officer of the designated agency having supervisory responsibility for the child or young person, or

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- (c) pursuant to an order of a court having jurisdiction to make orders with respect to parental responsibility for children or young persons.

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Schedule 3 Conditions of accreditation of designated agency

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### **Schedule 3 Conditions of accreditation of designated agency**

(Clause 65)

#### **Part 1 Preliminary**

##### **1 Interpretation**

In this Schedule, a reference to arranging the placement of a child or young person in out-of-home care includes arranging or providing voluntary out-of-home care.

#### **Part 2 General conditions of accreditation**

##### **2 Request for placement**

- (1) A designated agency must not arrange for the placement of a child or young person in out-of-home care unless:
  - (a) the young person or, in the case of a child, a person having parental responsibility for the child, requests placement, or
  - (b) the Children's Court or another court has ordered that the child or young person be placed in out-of-home care.
- (2) A request for care may be made orally or in writing. If the request is made orally, the designated agency that arranged the placement of the child or young person must, within 7 days after the placement, confirm the placement in writing to the person having parental responsibility for the child or young person.

##### **3 Agency to ensure that needs of the child or young person are able to be met**

A designated agency must not arrange for the placement of a child or young person in out-of-home care unless the agency is satisfied that:

- (a) the designated agency, or any organisation or body that it has arranged to provide the care, is able to meet the needs of the child or young person, and
- (b) any authorised carer or voluntary carer with whom the child or young person is placed is able to meet the needs of the child or young person.

##### **4 Social and medical history**

A designated agency must use its best endeavours to document the social and medical history of a child or young person (and his or her

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family) for whom the agency arranges a placement in statutory out-of-home care or supported out-of-home care.

**5 Information to be provided to Director-General**

A designated agency must provide the Director-General with such information about a child or young person in the out-of-home care of the designated agency as the Director-General may reasonably require.

**6 Information to be provided to Children's Guardian**

A designated agency must provide the Children's Guardian with:

- (a) any information about a child or young person in voluntary out-of-home care provided, arranged or supervised by the designated agency that the Children's Guardian may reasonably require by notice in writing, and
- (b) any information about the voluntary out-of-home care provided, arranged or supervised by the designated agency that the Children's Guardian may reasonably require by notice in writing.

**7 Co-operation with entry and inspection of premises**

A designated agency must co-operate with any person who lawfully enters premises of the designated agency to inspect or search those premises.

**Note.** Sections 233 (Power of search for and removal of children and young persons in need of care and protection) and 235 (Entry without warrant into premises—generally) of the Act provide for certain persons to enter and search premises.

**8 Notification of failure to satisfy accreditation criteria**

A designated agency that is unable to satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of the fact, unless the Children's Guardian has notified the agency that such advice is not required.

**9 Notification of failure to comply with accreditation conditions**

A designated agency that is unable to comply with a condition of accreditation imposed under clause 65 must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of it.

**10 Notification of contact details**

- (1) A designated agency must give the Children's Guardian, by notice in writing, the following information:

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Schedule 3 Conditions of accreditation of designated agency

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- (a) the street and postal address of the agency's principal place of business,
  - (b) the agency's general telephone number,
  - (c) the agency's general email address (if any),
- unless the agency has already provided the information by way of its application for accreditation or for any other reason.
- (2) The designated agency must notify a change of any of the information referred to in subclause (1) no later than one business day after the change occurs.

### 11 Entry to premises

- (1) For the purposes of the exercise of the functions the Children's Guardian has to accredit designated agencies and to monitor their responsibilities under the Act, this Regulation and the *Children and Young Persons (Savings and Transitional) Regulation 2000*, a designated agency must, at any reasonable hour, permit the Children's Guardian, or a person authorised in writing by the Children's Guardian for the purposes of this clause, to:
- (a) enter premises owned or occupied by the agency, and
  - (b) inspect the premises, and
  - (c) observe and converse with any person present in the premises, and
  - (d) make such examination and inquiry while in the premises as the Children's Guardian or person thinks necessary for the exercise of those functions.
- (2) For that purpose, a designated agency must:
- (a) provide the Children's Guardian with such assistance and facilities as is or are reasonably necessary to enable the Children's Guardian to exercise the functions referred to in subclause (1), and
  - (b) authorise any person subject to the direction of the agency to answer questions or otherwise furnish information to the Children's Guardian.
- (3) A designated agency is not required to permit entry to premises under this clause if the agency was not given reasonable notice that entry would be required, unless:
- (a) the Children's Guardian has certified, by notice in writing, that giving notice before requiring entry would frustrate the purpose of requiring entry, and

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- (b) that notice was given to the agency before the agency's permission was demanded.
  - (4) The Children's Guardian must not enter a part of the premises that is private to a person being cared for by the designated agency, whether a child or young person or otherwise, without the consent of the person, unless, with due regard to the age and developmental capacity of the person, the Children's Guardian is of the opinion that the person lacks the capacity to consent.
  - (5) In making a determination under subclause (4) about capacity to consent, the Children's Guardian must take into account any opinion the designated agency expresses about the matter.
  - (6) In exercising a power under this clause, the Children's Guardian must not enter the private residence of an authorised carer without the consent of the authorised carer.

**12 Designated agencies that arrange, provide or supervise voluntary out-of-home care, or cease to do so, must notify Children's Guardian**

A designated agency must notify the Children's Guardian within 14 days of its commencing to operate, or ceasing to operate, as an agency that arranges, provides or supervises voluntary out-of-home care.

**Part 3 Conditions imposed in particular circumstances**

**13 Application successor must operate in manner proposed in application**

A designated agency accredited by way of an application taken over pursuant to clause 46 must not contravene an undertaking given by the agency under clause 46 (3) (b).

**14 Transferee must adopt policies, procedures and practice of transferor**

The transferee of an accreditation must adopt the policies, procedures and practice of the transferor that, immediately before the transfer, related to the arrangements the transferor was making for the provision of out-of-home care.

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Schedule 4 Registered agencies—conditions of registration

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### **Schedule 4 Registered agencies—conditions of registration**

(Clause 73)

#### **1 Request for placement**

- (1) A registered agency must not arrange or provide voluntary out-of-home care for a child or young person unless a parent of the child or young person has requested the care in accordance with this clause.
- (2) A request under subclause (1) may be made orally or in writing. If the request is made orally, the registered agency that arranged the placement of the child or young person must confirm the placement in writing to the parent of the child or young person within 7 days after the placement is arranged.

#### **2 Registered agency to ensure that it is able to meet the needs of the child or young person**

A registered agency must not arrange or provide voluntary out-of-home care for a child or young person unless the agency is satisfied that the following are able to meet the needs of the child or young person:

- (a) the registered agency,
- (b) any other relevant agency or voluntary carer that the registered agency has arranged to provide the care.

#### **3 Information to be provided to Children's Guardian**

A registered agency must provide the Children's Guardian with:

- (a) any information about a child or young person in voluntary out-of-home care provided or arranged by the registered agency that the Children's Guardian may reasonably require by notice in writing, and
- (b) any information about the voluntary out-of-home care provided or arranged by the registered agency that the Children's Guardian may reasonably require by notice in writing.

#### **4 Co-operation with entry and inspection of premises**

A registered agency must co-operate with any person who lawfully enters premises of the registered agency to inspect or search those premises.

#### **5 Notification of failure to satisfy registration criteria**

A registered agency that is unable to satisfy the registration criteria that apply to the agency in respect of its application for registration must



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advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of the fact.

#### **6 Notification of failure to comply with registration conditions**

A registered agency that is unable to comply with a condition of registration imposed under clause 73 must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of it.

#### **7 Notification of contact details**

- (1) A registered agency must give the Children's Guardian, by notice in writing, the following information:
  - (a) the street and postal address of the agency's principal place of business,
  - (b) the agency's general telephone number,
  - (c) the agency's general e-mail address (if any),unless the agency has already provided the information by way of its application for registration or for any other reason.
- (2) The registered agency must notify a change of any of the information referred to in subclause (1) no later than one business day after the change occurs.

#### **8 Entry to premises**

- (1) For the purposes of the exercise of the functions the Children's Guardian has to register agencies and to monitor their responsibilities under the Act and this Regulation, a registered agency must, at any reasonable hour, permit the Children's Guardian, or a person authorised in writing by the Children's Guardian for the purposes of this clause, to:
  - (a) enter premises owned or occupied by the agency, and
  - (b) inspect the premises, and
  - (c) observe and converse with any person present in the premises, and
  - (d) make such examination and inquiry while in the premises as the Children's Guardian or person thinks necessary for the exercise of those functions.
- (2) For that purpose, a registered agency must:
  - (a) provide the Children's Guardian with such assistance and facilities as is or are reasonably necessary to enable the Children's Guardian to exercise the functions referred to in subclause (1), and

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- (b) authorise any person subject to the direction of the agency to answer questions or otherwise furnish information to the Children's Guardian.
- (3) A registered agency is not required to permit entry to premises under this clause if the agency was not given reasonable notice that entry would be required, unless:
  - (a) the Children's Guardian has certified, by notice in writing, that giving notice before requiring entry would frustrate the purpose of requiring entry, and
  - (b) that notice was given to the agency before the agency's permission was demanded.
- (4) The Children's Guardian must not enter a part of the premises that is private to a person being cared for by the registered agency, whether a child or young person or otherwise, without the consent of the person, unless, with due regard to the age and developmental capacity of the person, the Children's Guardian is of the opinion that the person lacks the capacity to consent.
- (5) In making a determination under subclause (4) about capacity to consent, the Children's Guardian must take into account any opinion the registered agency expresses about the matter.
- (6) In exercising a power under this clause, the Children's Guardian must not enter the private residence of a person providing care without the consent of the person.