



# Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003

under the

Children and Young Persons (Care and Protection) Act 1998

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

CARLEM TEBBUTT, M.L.C.,  
Minister for Community Services

## Explanatory note

The object of this Regulation is to amend the *Children and Young Persons (Care and Protection) Regulation 2000* in order to make provision for out-of-home care of children and young persons, consequent on the commencement of provisions of the *Children and Young Persons (Care and Protection) Act 1998* dealing with out-of-home care. In particular, this Regulation:

- (a) revises the information required to be included in care plans and alternative parenting plans presented to the Children's Court, and
- (b) prescribes certain arrangements as not constituting out-of-home care (such as boarding schools and holiday camps), and
- (c) sets out requirements and codes of conduct for authorised carers (being persons authorised to provide out-of-home care to children and young persons) who care for children at their own residences or in residential units, and
- (d) requires an authorised carer of a child in out-of-home care to obtain approval before consenting to the administration of a psychotropic drug to the child, and
- (e) provides for the authorisation of authorised carers by designated agencies, and
- (f) authorises certain other classes of persons as authorised carers, and
- (g) provides for the accreditation of designated agencies by the Children's Guardian, and sets out certain conditions for accreditation, and

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- (h) prescribes certain classes of persons providing out-of-home care as persons to whom the Director-General of the Department of Community Services may grant financial assistance, and
- (i) gives the Administrative Decisions Tribunal jurisdiction to review a decision by the Children's Guardian to impose or not to impose a condition on the accreditation of a designated agency, or to vary such a condition, or to suspend or cancel the accreditation of a designated agency, and
- (j) makes other miscellaneous and consequential amendments.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 78, 119, 137, 139, 175, 186, 248 and 264 (the general regulation-making power).

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under the

Children and Young Persons (Care and Protection) Act 1998

### **1 Name of Regulation**

This Regulation is the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003*.

### **2 Commencement**

This Regulation commences on 15 July 2003.

### **3 Amendment of Children and Young Persons (Care and Protection) Regulation 2000**

The *Children and Young Persons (Care and Protection) Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

#### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3:

*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).

#### [2] Clause 6 Rescission and variation of care orders—"significant change"

Omit "a failure of the parents of the child or young person concerned to meet their responsibilities" from clause 6 (a).

Insert instead "the parents of the child or young person concerned have not met their responsibilities".

#### [3] Clauses 6A and 6B

Insert after clause 6:

##### 6A Delegation of functions of Children's Guardian: sec 186

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

##### 6B 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 the accreditation of a designated agency, or
- (b) to vary or revoke such a condition, or
- (c) to suspend or cancel the accreditation of a designated agency.

**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 department or organisation as a designated agency, and

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- (b) a decision of a relevant decision-maker to refuse to make a decision referred to in the preceding paragraph that the decision-maker has been requested to make.

**[4] Clause 7 Prescribed bodies: sec 248**

Insert after clause 7 (b):

- (b1) a designated agency,

**[5] Clause 12**

Omit the clause. Insert instead:

**12 Care plans: sec 78**

- (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, 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,

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- (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,
  - (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,

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- (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 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.

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- (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.
- (7) Until the consultation referred to in subclause (1) (a) has taken place, a care plan is to be in a form approved by the Director-General.

### [6] Clause 13 Alternative parenting plans

Omit clause 13 (1) and (2). Insert instead:

- (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 person or over the telephone, and whether the persons were spoken to separately or together), and



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- (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,
  - (ii) residential arrangements,
  - (iii) supervision,
  - (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),
  - (v) education and training,
  - (vi) medical care,
  - (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 family structure and significant family and other relationships of the child or young person's family,
  - (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 they identify 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,

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- (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) the resources required to provide the services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
- (j) 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,
- (k) 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,
- (l) 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,
- (m) if the views referred to in paragraphs (k) and (l) were not obtained, the reasons why they were not obtained,
- (n) such other matters as the Director-General or the support service organisation considers appropriate.

**[7] Clause 15 Special medical treatment: sec 175**

Omit "a child or young person in residential care" from clause 15 (1) (c).

Insert instead "a child in out-of-home care".

**[8] Clause 15 (2)**

Omit "and (c)".

**[9] Clause 15 (3)**

Omit "or young person".

**[10] Clause 15 (4)**

Omit the subclause.

**[11] Clause 15A**

Insert after clause 15:

**15A Administration of psychotropic drug to child in out-of-home care**

An authorised carer may not consent to any special medical treatment involving the administration of a psychotropic drug to a child in 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.

**[12] Part 6, Division 1**

Insert after the heading to Part 6:

**Division 1 General**

**[13] Clauses 17–41**

Insert after clause 16:

**17 Out-of-home care: sec 135**

For the purposes of section 135 (2) (b) of the Act, the following are prescribed as not being out-of-home care:

- (a) boarding arrangements to enable children and young people to attend a school, training establishment or university for the sole purpose of obtaining an education,
- (b) a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, athletic or recreational pursuits,
- (c) a private hospital licensed under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (d) a nursing home licensed under the *Nursing Homes Act 1988*,

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- (e) health services under the *Health Services Act 1997*,
- (f) adoption services under the *Adoption Act 2000*,
- (g) 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*,
- (h) placement arrangements made under section 137 (1) (c) of the Act that do not involve supervision by a designated agency,
- (i) SAAP arrangements funded under the *Supported Accommodation Assistance Act 1994* of the Commonwealth.

**18 Financial assistance: sec 161**

For the purposes of section 161 (2) (c) (i) of the Act, the following classes of persons are prescribed:

- (a) a person providing care for a child or young person under the supervision of a designated agency under a care plan that:
  - (i) has been developed through agreement with the parents of the child or young person, or
  - (ii) has been registered in the Children's Court under section 38 of the Act,
- (b) a person providing care for a child or young person under the supervision of a designated agency under an alternative parenting plan that has been approved or registered by the Children's Court,
- (c) a person providing care for a child or young person under the supervision of a designated agency under an order of the Supreme Court, the Children's Court, the Family Court of Australia or the Federal Magistrates Court,
- (d) the Minister,
- (e) the Director-General.

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## **Division 2 Authorisations by designated agencies**

### **19 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.

### **20 Authorisation by a designated agency**

- (1) A designated agency may authorise an individual belonging to one of the following classes of individuals as an authorised carer, but only if the designated agency has carried out an assessment of the individual under subclause (3) and has determined, following that assessment, that the individual is suitable to be an authorised carer:
  - (a) an employee engaged by the designated agency as an employee to provide care for children and young persons,
  - (b) an individual engaged by the designated agency under a contractual arrangement (other than as an employee) to provide care for children and young persons,
  - (c) an individual who is employed by an individual referred to in paragraph (b) to care for children and young persons in the course of his or her duties,
  - (d) an individual who cares for children and young persons in his or her private capacity.
- (2) A designated agency may authorise an employee referred to in subclause (1) (a) to be an authorised carer without carrying out an assessment under subclause (3) of the individual's suitability.

- (3) A designated agency may not determine that an individual is suitable to be an authorised carer under subclause (1) unless:
- (a) the individual has furnished to the designated 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 designated agency may reasonably require in order to ensure that the individual is capable of exercising the functions of an authorised carer, and
  - (c) the designated agency has carried out employment screening of the individual under Part 7 of the *Commission for Children and Young People Act 1998*.

**Note.** Section 37 of the *Commission for Children and Young People Act 1998* provides that it is the duty of an employer to carry out all the relevant procedures of employment screening of a preferred applicant for primary child-related employment before employing the preferred applicant. **Primary child-related employment** is defined as including child-related employment involving the fostering of children.

The *Child Protection (Prohibited Employment) Act 1998* prohibits an employer from employing a person in child-related employment without first ascertaining whether the person has been convicted of a serious sex offence. The Act also prohibits a person who has been convicted of such an offence from applying for, undertaking or remaining in child-related employment.

- (4) For the purpose of determining whether an individual is suitable to be an authorised carer, 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 designated agency considers appropriate, (including, subject to the *Criminal Records Act 1991*, inquiries as to an individual's criminal record).
- (5) The principal officer of a designated agency is to carry out the functions of the agency under this clause, unless the Children's Guardian approves the carrying out of those functions by another officer or employee of the designated agency.

## 21 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.
- (3) The imposition, variation or revocation of a condition takes effect when it is notified to the authorised carer in writing.

**22 Authorisations by designated agencies to be in writing**

- (1) A designated agency that authorises a person as an authorised carer under clause 20 must give the person a copy of the authorisation in writing.
- (2) The written authorisation must set out any conditions of the authorisation imposed by the designated agency.

**23 Code of Conduct for Authorised Carers**

Except as provided by clause 24, an authorised carer must comply with the Code of Conduct for Authorised Carers set out in Schedule 2.

**24 Code of Conduct for Residential Units—authorised carers**

An authorised carer who provides out-of-home care to one or more children or young persons at a residential unit must comply with the provisions of the Code of Conduct for Residential Units set out in Schedule 3 that apply to authorised carers.

**25 Personal responsibility of authorised carers**

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

**26 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.

**27 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.

**28 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.

**29 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, or
  - (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, or
  - (c) the child or young person suffers a serious accident, injury or illness, or
  - (d) the child or young person dies, or



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- (e) the authorised carer:
    - (i) is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
    - (ii) becomes aware that any members of his or her household have been charged with or convicted of such an offence.

**30 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 physical coercion or physical punishment, 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.

**31 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) has failed to comply with any condition of the authorisation, or
- (b) has failed to comply with any obligation or restriction imposed on the authorised carer by the Act or this Regulation, or

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- (c) 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
- (d) has failed to uphold the Charter of Rights prepared under section 162 of the Act, or
- (e) has failed to comply with the Code of Conduct for Authorised Carers or the relevant provisions of the Code of Conduct for Residential Units.

**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**

**32 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.

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**33 Management of behaviour of children and young persons:  
sec 157**

- (1) This clause applies only to a person authorised as an authorised carer under clause 32 (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.

**34 Code of Conduct for Residential Units—designated agencies**

- (1) This clause only applies to a person authorised as an authorised carer under section 137 (1) (a) of the Act.
- (2) An authorised carer who is the principal officer of a designated agency that provides out-of-home care to one or more children or young persons is to comply with the provisions of the Code of Conduct for Residential Units set out in Schedule 3 that apply to designated agencies.

**Note.** If an authorised carer fails to comply with this clause, the designated agency may have its accreditation cancelled or suspended under clause 40.

**Division 4 Accreditation as a designated agency**

**35 Application for accreditation**

- (1) An organisation or a department of the Public Service (an *applicant*) may apply in writing to the Children’s Guardian for 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) to specify the person (the *principal officer*) proposed to have the overall supervision of the arrangements for the provision of out-of-home care made by the applicant, and

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- (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 people 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:
    - (i) any form of 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
  - (f) 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 Guardian may reasonably require in order to assess the applicant's suitability to be a designated agency.
- (4) The Children's Guardian is to notify in writing an applicant for accreditation as soon as reasonably practicable of:
- (a) the outcome of the application, and
  - (b) the reasons for the decision, and
  - (c) the means by which the applicant may apply for review of the decision of the Children's Guardian.

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**36 Accreditation**

- (1) The Children's Guardian may accredit an applicant as a designated agency if, in the opinion of the Children's Guardian, the applicant satisfies the criteria referred to in subclause (2).
- (2) The Minister may, on the recommendation from time to time of the Children's Guardian, approve criteria developed by the Children's Guardian for use in determining:
  - (a) whether to grant an application for accreditation, and
  - (b) what period of accreditation will be granted.
- (3) The Children's Guardian must make the criteria approved for the time being under subclause (2) available for public inspection.
- (4) Failure to comply with subclause (3) does not affect the validity of any decision of the Children's Guardian to grant or refuse accreditation to an applicant.
- (5) Without limiting this clause, the criteria adopted by the Minister must address the following matters:
  - (a) the assessment procedures (including probity testing) for determining whether a person is suitable to be an authorised carer,
  - (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.

**37 Alternative means of accreditation**

Despite clause 36, the Children's Guardian may accredit an applicant as a designated agency if:

- (a) an organisation or body that has established standards or criteria for the care of children or young persons has determined that the applicant meets those standards or criteria, and
- (b) the Children's Guardian has recognised that organisation or body for the purposes of this clause.

**38 Form and period of accreditation**

- (1) The Children's Guardian may accredit an applicant as a designated agency for a period of one, three or five years.
- (2) An accreditation is to be in such form as the Children's Guardian may approve.

**39 Conditions of accreditation**

- (1) An accreditation is subject to the conditions set out in Schedule 4.
- (2) The Children's Guardian may impose such other reasonable conditions as the Children's Guardian sees fit on an accreditation, or the process for accreditation, and may vary or revoke those conditions by notice in writing to the designated agency.
- (3) The imposition, variation or revocation of a condition takes effect on such date as is specified in the notice.
- (4) If the designated agency is a government department, the Children's Guardian must report to the Minister on the need to impose a condition under subclause (2).

**40 Suspension and cancellation of accreditation**

- (1) The Children's Guardian may suspend or cancel the accreditation of a designated agency if the Children's Guardian is satisfied that:
  - (a) the designated agency has ceased to meet any of the criteria developed in accordance with clause 36, or
  - (b) the designated agency has ceased to meet any standards or criteria referred to in clause 37, or

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- (c) the designated agency has failed to comply with a condition of accreditation imposed under clause 39, or
  - (d) the designated agency, or an authorised carer who is the principal officer of the designated agency, has failed to comply with any obligations or restrictions imposed on the agency or the carer by the Act or this Regulation.
- (2) As soon as practicable after deciding to suspend or cancel an accreditation, the Children's Guardian must give the designated agency concerned notice in writing of the decision.
  - (3) The suspension or cancellation takes effect on such date as is specified in the notice.
  - (4) If the designated agency is a government department, the Children's Guardian must report to the Minister before giving a notice under subclause (2).

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

### **41 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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**[14] Schedules 2–4**

Insert after Schedule 1:

**Schedule 2 Code of Conduct for Authorised Carers**

(Clause 23)

**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 outdoor clothes and other personal belongings, and
- (d) sufficient equipment suitable for the indoor and outdoor recreational needs of the children, 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 people residing in the home, and
- (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) adequate facilities are provided for storage of each such child's or young person's clothing and personal belongings.
  - (iii) linen on each such child's or young person's bed or cot is changed weekly (or more frequently if necessary), and

## 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.
- (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 physically coerce or physically punish a child or young person, and
- (b) must, in any event, comply with the behaviour management policy of the designated agency.

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

**Schedule 3 Code of Conduct for Residential Units**

(Clauses 24 and 34)

**1 Admission of child or young person to out-of-home care**

- (1) In deciding whether or not to admit a child or young person to out-of-home care, the designated agency must have regard to:
  - (a) what options for care of the child or young person are available, and
  - (b) the views of the child or young person, and
  - (c) the welfare and interests of the child or young person.
- (2) If admission of a child or young person to care is requested by a person who is not a parent of the child or young person, the designated agency must be satisfied, before admitting the child or young person to care, that all reasonable endeavours have been made to locate the child's or young person's parents and to ascertain their views as to the child's or young person's admission to care.

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- (3) Before admitting a child or young person to care, the designated agency must obtain (where practicable) a social and medical history of the child or young person and the child's or young person's parents.

### 2 Care of children and young persons

An authorised carer employed by the designated agency must, in relation to each child or young person in out-of-home care, ensure that:

- (a) the health, welfare and progress of the child or young person are promoted, and
- (b) the child or young person receives guidance as to generally accepted community standards of behaviour, and
- (c) the child or young person is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (d) 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.

### 3 Supervision

- (1) The designated agency must ensure that the children or young persons in out-of-home care are adequately supervised, having regard to their ages and physical and intellectual development, by adult members of the staff.
- (2) The designated agency must ensure that no person is allowed to supervise children or young persons unless the person:
  - (a) is sympathetic to the welfare of children and young persons, and
  - (b) has adequate knowledge, understanding and experience of children and young persons so as to be capable of meeting their needs, and
  - (c) is able to adequately care for and supervise children and young persons, and
  - (d) is of suitable maturity, health and personality to care for children and young persons, and
  - (e) is a fit and proper person, and

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- (f) has received suitable training in the proper care of children and young persons.
  - (3) The designated agency must ensure that no member of staff employed by the agency as an authorised carer to supervise children or young persons without assistance both supervises children or young persons and performs other duties at the same time if those other duties would adversely affect the quality of supervision.

#### **4 Bedrooms**

- (1) The designated agency:
  - (a) must provide adequate sleeping accommodation, in a room that is separate from any bedroom in which an adult sleeps, for each child or young person who resides in out-of-home care, and
  - (b) 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.
- (2) The designated agency must ensure:
  - (a) that no child or young person who is of or above the age of 7 years sleeps in the same room as another child or young person (other than a relative) of the opposite sex, and
  - (b) that each young person who resides in out-of-home care has sleeping accommodation that affords the young person adequate privacy.

**5 Study**

The designated agency 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.

**6 Health and medical attention**

- (1) The designated agency 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 designated agency 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 each person who has parental responsibility for the child or young person who can reasonably be located.
- (3) If a medical practitioner recommends to an authorised carer employed by the designated agency 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.
- (4) The designated agency must ensure:
  - (a) that there is a suitable and fully-stocked first-aid kit on the premises, and
  - (b) that at least one member of the staff on duty holds approved qualifications in the administration of first-aid, and
  - (c) that all first-aid equipment, medicine, drugs and other substances potentially harmful to children or young persons are stored in cupboards that are secured by means of child-proof locks.

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**7 Children and young persons not to perform unreasonable duties**

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

**8 Discipline of children and young persons**

A designated agency is to ensure that all staff and volunteers:

- (a) do not physically coerce or physically punish a child or young person, and
- (b) in any event, comply with the behaviour management policy of the designated agency.

**9 Animals**

The designated agency must ensure that any animal kept at the residential facility is kept clean and well-cared for.

**10 Discharge of children and young persons**

The designated agency must not discharge a child or young person in out-of-home care into the care of any other person, otherwise than:

- (a) into the care of a person who has parental responsibility for the child or young person, or
- (b) pursuant to an order of a court having jurisdiction to make orders with respect to parental responsibility for children or young persons.

**Schedule 4 Conditions of accreditation of designated agency**

(Clause 39)

**1 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

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- (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 under subclause (1) (a) may be made orally or in writing. If the request is made orally, the designated agency with which the child or young person is placed must confirm the placement in writing for the child or young person within 7 days after the placement is arranged.

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

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) it is able to meet the needs of the child or young person, and
- (b) any authorised carer with whom the child or young person is placed is able to meet the needs of the child or young person.

### **3 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 family) for whom the agency arranges a placement in out-of-home care.

### **4 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.

### **5 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 and removal of children and young persons in need of care) and 235 (Entry without warrant onto premises—generally) of the Act provide for certain persons to enter and search premises.



**6 Notification of failure to meet accreditation standards**

A designated agency that is unable to meet a criteria of accreditation referred to in clause 36 must advise the Children's Guardian of that fact as soon as practicable after the agency becomes aware of it.