



Children and Young Persons (Savings and Transitional) 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*.

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

Explanatory note

The object of this Regulation is to make savings and transitional provisions consequent on the commencement of certain provisions of Chapter 8 (Out-of-home care) of the *Children and Young Persons (Care and Protection) Act 1998* (Division 1 of Part 3 of that Chapter excepted, that Division having commenced on 18 December 2000). Out-of-home care was previously known as foster care.

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 (the power to make regulations of a savings or transitional nature).

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Clause 1 Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003

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1 Name of Regulation

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

2 Commencement

This Regulation commences on 15 July 2003.

3 Amendment of Children and Young Persons (Savings and Transitional) Regulation 2000

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

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 9 Wards

Insert “or a protected person” after “a ward” in clause 9.

[2] Part 3A

Insert after clause 22:

Part 3A Out-of-home care

Division 1 General

22A Interim accreditation as designated agency

- (1) This clause applies to the following bodies or organisations that, immediately before 15 July 2003, were providing out-of-home care to a child or young person, or arranging for the provision of such care:
 - (a) a government department,
 - (b) a residential child care centre licensed under the old Act,
 - (c) a residential child care centre referred to in clause 34 of the *Children (Care and Protection) Regulation 1996* (being a centre funded through the Department’s Substitute Care Program),
 - (d) an authorised private fostering agency authorised under the old Act,
 - (e) a private fostering agency funded through the Department’s Substitute Care Program,
 - (f) any other body or organisation funded through the Department or the Department of Ageing, Disability and Home Care to provide the out-of-home care.
- (2) A body or organisation to which this clause applies is taken to be accredited as a designated agency under the new Act during the transition period applicable to the body or organisation.

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- (3) The transition period applicable to a body or organisation is the period that begins on 15 July 2003 and that ends:
- (a) when the body or organisation is accredited as a designated agency otherwise than under this clause, or
 - (b) on 1 July 2005, if the body or organisation fails to make an application for accreditation as a designated agency under Division 4 of Part 6 of the *Children and Young Persons (Care and Protection) Regulation 2000* or under clause 22C of this Regulation,
- whichever is the sooner.

22B Conditions on interim accreditation

- (1) In this clause:

designated agency means a body or organisation that is taken to be accredited as a designated agency under clause 22A during the transition period applicable to the body or organisation in accordance with that clause.

funded designated agency means a designated agency that is funded through the Department or the Department of Ageing, Disability and Home Care to provide out-of-home care, or to arrange for the provision of such care.

non-funded designated agency means a designated agency other than a funded designated agency.

- (2) A funded designated agency must continue to comply with any conditions imposed by the Department or the Department of Ageing, Disability and Home Care on the funding to provide out-of-home care, or to arrange the provision of out-of-home care, during the transitional period applicable under clause 22A, to the funded designated agency.
- (3) A non-funded designated agency that, immediately before 15 July 2003, was a licensed residential child care centre or an authorised private fostering agency under the old Act must continue to comply with:
- (a) any conditions of the licence or authority under clause 6 or 7 of Schedule 1 to the old Act in relation to the agency, and

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- (b) any requirements imposed by Parts 5 and 6 and Schedules 2 and 3 of the *Children (Care and Protection) Regulation 1996* in relation to the agency, in force immediately before 15 July 2003 as if those conditions and requirements were still in force.
- (4) A non-funded designated agency (other than one to which subclause (3) applies) must comply with:
- (a) the requirements and standards specified in one of the following documents:
- (i) the document titled *NSW Standards for Substitute Care Services* published by the Department in September 1998,
- (ii) the document titled *SAAP Standards* (Supported Accommodation Assistance Program Standards) published by the Department in September 1998,
- (iii) the document titled *Standards in Action: Practice Requirements and Guidelines for Services Funded Under the Disability Services Act* published by the Ageing and Disability Department in 1998, or
- (b) the requirements and standards approved by the Minister on the recommendation of the Children's Guardian.
- (5) A designated agency that fails to comply with this clause is taken to have failed to comply with a condition of accreditation as a designated agency under the new Act.

22C Transitional form of accreditation

- (1) The object of this clause is to enable a designated agency within the meaning of clause 22B to achieve the standard that would entitle the designated agency to be accredited as a designated agency under Division 4 of Part 6 of the *Children and Young Persons (Care and Protection) Regulation 2000* within a maximum period of 10 years from 15 July 2003 by progressively achieving minimum standards set for the designated agency by the Children's Guardian in accordance with a timetable set for the designated agency by the Children's Guardian.

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- (2) A designated agency within the meaning of clause 22B may, at any time before 15 July 2005, apply in writing to the Children's Guardian to be accredited as a designated agency in accordance with this clause.
- (3) On receipt of an application under this clause from a designated agency, the Children's Guardian, in consultation with the designated agency, is to determine a timetable, ending not later than 14 July 2013, for the progression of the designated agency to the standards that would entitle the designated agency to be accredited under Division 4 of Part 6 of the *Children and Young Persons (Care and Protection) Regulation 2000*.
- (4) A designated agency that applies to be accredited under this clause must meet the minimum standards determined by Minister on the recommendation from time to time of the Children's Guardian by the dates determined with the consent of the designated agency by the Children's Guardian.
- (5) The Children's Guardian is to keep the dates determined by it under review and may change any date from time to time by notice to the designated agency concerned. The Children's Guardian cannot determine an earlier date without the consent of the designated agency concerned.
- (6) If a designated agency, not being a government department, fails to achieve the standards determined by the Children's Guardian by the date determined by the Children's Guardian for the achievement of those standards, the Children's Guardian may require the designated agency, by notice in writing, to show cause within a period of not less than 28 days specified by the Children's Guardian in the notice, why the designated agency's application for accreditation should not be terminated.
- (7) If the designated agency is a government department, the Children's Guardian must report a failure of the designated agency to meet the standards determined as referred to in subclause (6) to the Minister.
- (8) If the designated agency, not being a government department, fails to show cause as required by the Children's Guardian, the Children's Guardian may terminate the designated agency's application for accreditation.

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- (9) The Children’s Guardian may terminate a designated agency’s application for accreditation under this clause with the consent of the designated agency.
- (10) If a designated agency’s application for accreditation is terminated under this clause otherwise than with the consent of the designated agency:
- (a) the termination of the application is taken to be a decision not to accredit the designated agency, and
 - (b) no further application for accreditation may be made by the designated agency under this clause.
- Note.** Under section 245 (1) (b) of the Act, a decision of the relevant decision-maker to accredit or not to accredit a department or organisation as a designated agency is reviewable by the Administrative Decisions Tribunal.
- (11) A body or organisation that applied to the Children’s Guardian for voluntary accreditation between 1 July 2002 and 14 July 2003 by completing an “Application for Accreditation” form issued by the Children’s Guardian is taken to have applied for accreditation as a designated agency under this clause.
- (12) This clause ceases to have effect on 1 July 2013.

22D Deemed authorisation as authorised carer authorised by designated agency

- (1) This clause applies to the following persons:
- (a) a person in whose care a child or young person was placed by an authorised private fostering agency under the old Act and who, immediately before the commencement of this clause, had the care of that child or young person,
 - (b) a person in whose care a child or young person was placed by a private fostering agency funded through the Department’s Substitute Care Program under the old Act and who, immediately before the commencement of this clause, had the care of that child or young person,
 - (c) a person who, immediately before the commencement of this clause, cared for a child or young person at a licensed residential child care centre under the old Act,

- (d) a person in whose care a child or young person was placed by, or with the written approval of, the Minister or the Director-General under the old Act and who, immediately before the commencement, had the care of that child or young person,
 - (e) a person in whose custody a ward or protected person was placed by the Minister under section 91 (1) (d) or (f) of the old Act and who, immediately before the commencement of this clause, had the custody of that ward or protected person.
- (2) A person to whom this clause applies is taken to be an authorised carer authorised by a designated agency under section 137 (1) (b) of the new Act.
 - (3) The designated agency that is taken to have authorised the person as an authorised carer is:
 - (a) in the case of a person referred to in subclause (1) (a) or (b)—the private fostering agency who placed the child or young person in the care of the person, or
 - (b) in the case of a person referred to in subclause (1) (c)—the licensed residential child care centre, or
 - (c) in the case of a person referred to in subclause (1) (d) or (e)—the Department.
 - (4) In this clause, *ward* and *protected person* have the same meanings as in the old Act.

22E Interim authorisation as authorised carer for holder of fostering authority

- (1) This clause applies to a person who, immediately before the commencement of this clause, held a fostering authority under section 43 of the old Act.
- (2) A person to whom this clause applies is taken to be an authorised carer authorised by a designated agency under section 137 (1) (b) of the new Act.
- (3) However, if the fostering authority held by the person specified the child or young person to whom it applied, the person is taken to be an authorised carer only in relation to that child or young person, and the person ceases to be an authorised carer in relation to that child or young person:

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- (a) when the child or young person leaves the care of that person, or
 - (b) 2 years after the commencement of this clause, or
 - (c) when the child or young person reaches 18 years of age, whichever is the sooner.
- (4) The Department is taken to be the designated agency that authorised the person as an authorised carer.

22F Child or young person in out-of-home care under order of Children's Court

A child or young person who, immediately before the commencement of this clause, was in the care of a person (other than a person to whom he or she is related) under an order of the Children's Court is taken to be a child or young person in out-of-home care.

22G Review of placements effected by order of Children's Court

- (1) This clause applies to a child or young person who, immediately before the commencement of this clause, was in out-of-home care under an order of the Children's Court.
- (2) A review under section 150 of the new Act of the placement of the child or young person is to be conducted before the anniversary of the making of the final order placing the child or young person in out-of-home care and thereafter within every period of 12 months after that anniversary.
- (3) Nothing in this clause prevents a review of the placement of the child or young person under section 150 (2) (c) or (d).

22H Financial assistance

- (1) A person receiving an allowance by the Director-General under section 19 (2) of the old Act immediately before the commencement of this clause with respect to a child or young person is taken to have been granted financial assistance with respect to that child or young person under section 161 of the new Act.
- (2) A person receiving a payment from the Minister under section 91 (1) (b) or (2) of the old Act immediately before the commencement of this clause with respect to a child or young

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person is taken to have been granted financial assistance with respect to that child or young person under section 161 of the new Act.

Division 2 Temporary retention of certain fostering provisions

22I Continuation of certain provisions of Children (Care and Protection) Regulation 1996

On and from 1 September 2003 until the commencement of section 170 of the new Act, the provisions of clauses 5, 62–70 and 76–79 of the *Children (Care and Protection) Regulation 1996* are taken not to have been repealed but to have continued in force.

BY AUTHORITY
