



New South Wales

# Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2008

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*.

LINDA BURNEY, M.P.,  
Minister for Community Services

## Explanatory note

The object of this Regulation is to amend the *Children and Young Persons (Savings and Transitional) Regulation 2000* (**the transitional Regulation**) to clarify the application of provisions of the *Children and Young Persons (Care and Protection) Regulation 2000* (**the principal Regulation**) to designated agencies with interim accreditation under the transitional Regulation.

This Regulation also makes amendments:

- (a) consequential on amendments made to the principal Regulation, and
- (b) to make further provision for the imposition of conditions on, and the transfer of, the accreditation of a designated agency with interim accreditation, and
- (c) to make further provision for the progressive transition of a designated agency with interim accreditation to accreditation under the principal Regulation.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 137, 139 and 264 (the general regulation-making power) and clause 1 (1) of Schedule 3.

**2008 No 471**

Clause 1 Children and Young Persons (Savings and Transitional) Amendment  
(Out-of-Home Care) Regulation 2008

---

**Children and Young Persons (Savings and Transitional)  
Amendment (Out-of-Home Care) Regulation 2008**

under the

Children and Young Persons (Care and Protection) Act 1998

**1 Name of Regulation**

This Regulation is the *Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2008*.

**2 Commencement**

This Regulation commences on 5 January 2009.

**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.

---

## Schedule 1 Amendments

(Clause 3)

### [1] Clause 3 Definitions

Insert in alphabetical order:

*accreditation criteria* has the same meaning as it has in the principal Regulation.

*the principal Regulation* means the *Children and Young Persons (Care and Protection) Regulation 2000*.

*transitional designated agency* means a designated agency accredited by force of clause 22A.

### [2] Clause 22A Interim accreditation as transitional designated agency

Omit clause 22A (2) and (3). Insert instead:

- (2) For the purposes of the new Act, a body or organisation to which this clause applies is taken to be accredited as a designated agency under the new Act, this Regulation and the principal Regulation during the transition period of the body or organisation, but only in respect of the kind of out-of-home care it was providing immediately before 15 July 2003.
- (3) The transition period of a body or organisation to which this clause applies is the period that began on 15 July 2003 and that ends:
  - (a) if the body or organisation has made an application for accreditation—when the decision on the application takes effect, or
  - (b) if the body or organisation has made an application for accreditation and the application is withdrawn—when the application is withdrawn, or
  - (c) if the body or organisation's accreditation is cancelled—when the cancellation takes effect, or
  - (d) on 14 July 2013,whichever occurs first.

## 2008 No 471

Children and Young Persons (Savings and Transitional) Amendment  
(Out-of-Home Care) Regulation 2008

Schedule 1 Amendments

---

### [3] Clauses 22B, 22C and 22CA–22CD

Omit clauses 22B and 22C. Insert instead:

#### **22B Requirements for progressive achievement by transitional designated agencies**

- (1) The object of this clause is to enable a transitional designated agency, by 14 July 2013, to progressively satisfy the accreditation criteria that apply to the agency and be accredited under clause 36A of the principal Regulation.
- (2) The transitional designated agency must meet the minimum standards or other criteria determined by the Minister, from time to time, on the recommendation of the Children's Guardian, for the transitional designated agency by the dates determined by the Children's Guardian.
- (3) 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.
- (4) The Children's Guardian may require the transitional designated agency to furnish to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to assess whether the transitional designated agency has complied with subclause (2).
- (5) If a transitional designated agency, not being a department of the Public Service, fails to comply with subclause (2), the Children's Guardian may require the transitional designated agency, by notice in writing, to show cause within such reasonable period as is specified in the notice (being at least 28 days from the date on which the notice was given), why the transitional designated agency's application for accreditation should not be refused.
- (6) If the transitional designated agency fails to show cause under subclause (5), to the satisfaction of the Children's Guardian, the Children's Guardian may refuse the application.  
**Note.** Under section 245 (1) (b) of the Act, a decision of the relevant decision-maker is reviewable by the Administrative Decisions Tribunal.
- (7) If the transitional designated agency is a department of the Public Service and fails to comply with subclause (2), the Children's Guardian must report the failure to the Minister.

- 
- (8) The principal Regulation does not apply to a transitional designated agency accredited under clause 22A, except as provided by this Division.
  - (9) This clause ceases to have effect on 14 July 2013.

**22C Application of principal Regulation to applications by transitional designated agency for accreditation**

- (1) This clause applies to a transitional designated agency that made, before 14 July 2005, an application under this Regulation to the Children’s Guardian for accreditation as a designated agency and the application has not been determined or withdrawn.
- (2) Any such application by a transitional designated agency is to be dealt with in accordance with the principal Regulation, except as provided by this clause.
- (3) A transitional designated agency may withdraw its application for accreditation at any time.
- (4) A body or agency 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.
- (5) An application by an agency referred to in subclause (1) or (3) is taken to be an application for accreditation under the principal Regulation, made in accordance with that Regulation, and clause 35 of that Regulation does not apply to any such application.
- (6) An application for accreditation by a transitional designated agency may not be:
  - (a) taken over under clause 35A of the principal Regulation, or
  - (b) deferred under clause 35B of that Regulation.
- (7) If the Children’s Guardian is satisfied that a transitional designated agency’s application for accreditation should not have been refused, the Children’s Guardian may reinstate the application and the application is taken to have continued in existence as if it had not been refused and the agency is taken to have continued to be a transitional designated agency.
- (8) Clause 36C (Children’s Guardian may set aside decision not to accredit) of the principal Regulation does not apply to an application by a transitional designated agency for accreditation.

## 2008 No 471

Children and Young Persons (Savings and Transitional) Amendment  
(Out-of-Home Care) Regulation 2008

Schedule 1 Amendments

---

### **22CA Application of principal Regulation to transfer of accreditations of transitional designated agencies**

- (1) An accreditation of a transitional designated agency under clause 22A may be transferred in accordance with the provisions of the principal Regulation.
- (2) If the accreditation of a transitional designated agency is transferred in accordance with clause 37B of the principal Regulation:
  - (a) the transferee is taken to be a transitional designated agency, and
  - (b) the transition period that applied to the transferor applies to the transferee.

### **22CB Conditions on accreditation of transitional designated agencies**

- (1) The Children's Guardian may impose conditions on an accreditation of a transitional designated agency under clause 22A in accordance with the principal Regulation, except as provided by this clause.
- (2) A condition may be imposed under clause 39 (2) of the principal Regulation on the accreditation of a transitional designated agency only if:
  - (a) the Children's Guardian has, on reasonable grounds, a concern that an act or omission of the transitional designated agency (including, but not limited to, an act or omission of its principal officer) may adversely affect the safety, welfare or well-being of a child or young person or class of children or young persons, and
  - (b) the Children's Guardian has, given a notice in accordance with subclause (3) to the transitional designated agency, and
  - (c) the transitional designated agency has not addressed the concern specified in that notice within the period specified under subclause (3) (c), and
  - (d) having considered any notification given by the transitional designated agency as referred to in subclause (3) (d), the Children's Guardian is of the opinion that imposition of a condition is appropriate.
- (3) The notice is to be in writing and must contain the following matters:
  - (a) particulars of the concern that the Children's Guardian has,

- 
- (b) a request that the transitional designated agency address the concern by the date specified in the notice (being at least 28 days from the date on which the notice was given),
  - (c) notice that a specified condition may be imposed on the transitional designated agency's accreditation if the agency does not address the concern before the date specified in the notice,
  - (d) notice that the transitional designated agency may, no later than 28 days from the date on which the notice was given, notify the Children's Guardian in writing that:
    - (i) the agency believes that there is no reasonable grounds for the Children's Guardian's concern, or
    - (ii) that the period specified under paragraph (b) does not give the agency a reasonable time to address the concern, or
    - (iii) that the condition proposed pursuant to the notice is unreasonable and set out the grounds for this belief.
  - (4) Any condition imposed under clause 39 (2) of the principal Regulation on the accreditation of a transitional designated agency must be in substantially the same terms as the condition proposed under subclause (3) (c).
  - (5) A condition may not be imposed under clause 39 (3) of the principal Regulation on the accreditation of a transitional designated agency.

**22CD Action against accreditation of transitional designated agency**

- (1) The Children's Guardian may take action under clause 40 of the principal Regulation in relation to an accreditation of a transitional designated agency under clause 22A, except as provided by this clause.
- (2) The Children's Guardian may not suspend or cancel the accreditation of a transitional designated agency on the grounds set out in clause 40 (2) (f) or (g) of the principal Regulation.
- (3) If the accreditation of a transitional designated agency is suspended, the transition period for the agency is not extended by the suspension.
- (4) The accreditation of a transitional designated agency may not be shortened under clause 40 of the principal Regulation.

**[4] Part 3A, Division 2**

Omit the Division.

## 2008 No 471

Children and Young Persons (Savings and Transitional) Amendment  
(Out-of-Home Care) Regulation 2008

Schedule 1 Amendments

---

### [5] Part 5

Insert after clause 25:

## **Part 5 Provisions consequent on making of Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008**

### **26 Interpretation**

- (1) In this Part:  
*the amending Regulation* means the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008*.
- (2) Words and expressions that occur in this Part have the same meanings as they have in the principal Regulation.

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

Clause 6B (a) (i) of the principal Regulation, as inserted by the amending Regulation, applies to a condition imposed before the commencement of that provision.

### **28 Applications for accreditation**

Clauses 35A, 35B, 36, 36A and 36B of the principal Regulation, as inserted or substituted by the amending Regulation, apply to applications for accreditation made, but not determined, before the commencement of those clauses.

### **30 Accreditation criteria**

Accreditation criteria approved before the substitution of clause 36 by the amending Regulation that were approved in accordance with clause 36 as in force at the time of the relevant approval are taken to have been approved in accordance with that clause as substituted by the amending Regulation.

### **31 Granting provisional accreditation**

Provisional accreditation may be granted in respect of an application for accreditation whether or not the application was made before the commencement of clause 36A of the principal Regulation, as inserted by the amending Regulation.



**32 Setting aside decision not to accredit**

- (1) Clause 36C of the principal Regulation, as inserted by the amending Regulation, applies to an application for accreditation determined before the commencement of that clause.
- (2) A notice under clause 36C (1) of the principal Regulation that sets aside a decision not to accredit may provide that the decision to accredit is taken to have had effect on and from the date the decision being set aside took effect, or such later date as may be specified in the notice, even if that date is before the commencement of that clause.

**33 Transfer of accreditation**

Subdivision 2 of Division 4 of Part 6 of the principal Regulation, as inserted by the amending Regulation, applies to a designated agency accredited before the commencement of that Subdivision.

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

For the avoidance of doubt, clause 40 of the principal Regulation, as substituted by the amending Regulation, does not apply to any proceedings under that clause if the relevant act or omission referred to in clause 40 (2) occurred before the substitution.

**35 Conditions of accreditation**

The amendments made to Schedule 4 of the principal Regulation by the amending Regulation apply to an accreditation in force immediately before the commencement of the amendments.