



New South Wales

Children and Young Persons (Care and Protection) Amendment (Voluntary Out-of-Home Care) Regulation 2010

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*.

LINDA BURNEY, MP
Minister for Community Services

Explanatory note

The objects of this Regulation are:

- (a) to make provision for voluntary out-of-home care (that is, out-of-home care in respect of a child or young person that is arranged by a parent of the child or young person), including the registration of organisations that provide or arrange such care, and
- (b) to extend the provision that currently excludes certain holiday camps, outdoor recreation centres and similar facilities from the description of *out-of-home care* so that it also includes any such holiday camp, outdoor recreation centre or similar facility where children or young persons undertake or receive education, training or instruction in religious pursuits, and
- (c) to prescribe an agency for the purposes of enabling it to enter into alternative reporting arrangements under the Act, and
- (d) to specify the ranks of senior police officers who are required to certify that obtaining the consent of a person who reported information (which is otherwise needed to allow the disclosure of that information to a law enforcement agency) would prejudice the investigation of a serious offence.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, as amended by the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, including the definition of *relevant agency* in section 27A (1) (relating to alternative reporting arrangements), the definition of *senior officer* in section 29 (6) (relating to information), section 135 (3) (c) (relating to the prescription of things that are not out-of-home care), section 156 (2) (relating to voluntary out-of-home care) and section 264 (the general regulation-making power).

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Clause 1 Children and Young Persons (Care and Protection) Amendment (Voluntary Out-of-Home Care) Regulation 2010

**Children and Young Persons (Care and Protection)
Amendment (Voluntary Out-of-Home Care) Regulation
2010**

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 (Voluntary Out-of-Home Care) Regulation 2010*.

2 Commencement

This Regulation commences on 24 January 2010 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Children and Young Persons (Care and Protection) Regulation 2000

- [1] **Clause 6 Rescission and variation of care orders—“significant change”**
Omit “section 82 (2)” from clause 6 (b).
Insert instead “section 82 (3) of the Act”.
- [2] **Clause 6B Review of decisions of Children’s Guardian by Administrative
Decisions Tribunal**
Insert after clause 6B (a) (ii):
 (iii) the registration of an organisation for the purposes
 of Part 3A of Chapter 8 of the Act, or
- [3] **Clause 6B (d) and (e)**
Insert at the end of clause 6B (c):
 , or
 (d) to refuse an application for registration of an organisation
 for the purposes of Part 3A of Chapter 8 of the Act, or
 (e) to cancel the registration of an organisation for the
 purposes of Part 3A of Chapter 8 of the Act.
- [4] **Clause 7 Prescribed bodies: sec 248**
Insert after clause 7 (b1):
 (b2) an organisation that provides out-of-home care in respect
 of children or young persons, and that is registered for the
 time being by the Children’s Guardian for the purposes of
 Part 3A of Chapter 8 of the Act,
- [5] **Clause 10A**
Insert after clause 10:
- 10A Alternative reporting arrangements**
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 is prescribed under
paragraph (h) of the definition of *relevant agency* in
section 27A (1) of the Act for the purposes of that section.

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[6] Clause 11A Provision and collection of information

Insert after clause 11A (2):

- (2A) 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.

[7] Clause 11B

Insert after clause 11A:

11B 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 officer 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.

[8] Clause 17 Arrangements and services that are not out-of-home care: sec 135

Omit “section 135 (2) (b)”. Insert instead “section 135 (3) (c)”.

[9] Clause 17 (b)

Insert “religious,” after “academic,”.

[10] Clause 18 Financial assistance: sec 161

Omit the clause.

- [11] **Clause 24 Code of Conduct for Residential Units—authorised carers**
Insert “(other than voluntary out-of-home care)” after “care”.
- [12] **Clause 34 Code of Conduct for Residential Units—designated agencies**
Insert “(other than voluntary out-of-home care)” after “care” in clause 34 (2).
- [13] **Clause 39 Conditions on accreditation and process of accreditation**
Insert after clause 39 (2):
- (2A) 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.
- [14] **Part 6, Division 5**
Insert after Division 4:

Division 5 Voluntary out-of-home care

Subdivision 1 Preliminary

40C Definitions

In this Division:

registered organisation means an organisation registered under clause 40G of this Regulation for the purposes of Part 3A of Chapter 8 of the Act.

registration means registration under clause 40G for the purposes of Part 3A of Chapter 8 of the Act.

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

voluntary arrangement has the same meaning as it has in Part 3A of Chapter 8 of the Act.

40D Restriction on who may provide or arrange voluntary out-of-home care

- (1) Voluntary out-of-home care may be provided for a child or young person only by:
- (a) a relevant agency, or
 - (b) a person authorised to provide voluntary out-of-home care under a voluntary arrangement.

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- (2) A person, other than a person referred to in subclause (1) (a) or (b), who provides voluntary out-of-home care for a child or young person is guilty of an offence.
Maximum penalty (subclause (2)): 10 penalty units.
- (3) Arrangements for the provision of voluntary out-of-home care may be made only by a relevant agency.
- (4) A person, other than a relevant agency:
 - (a) who arranges with a parent of a child or young person for voluntary out-of-home care in respect of the child or young person, or
 - (b) who advertises or holds himself, herself or itself out as being willing to arrange voluntary out-of-home care in respect of a child or young person,is guilty of an offence.
Maximum penalty (subclause (4)): 10 penalty units.

Subdivision 2 Registration of organisations

40E 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.

40F 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.
- (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.

40G 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.

40H Conditions on registration

- (1) The registration of an organisation is subject to the conditions set out in Schedule 5.
- (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, 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.

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40I Cancellation of registration

- (1) The Children's Guardian may, by notice in writing given to a registered organisation, cancel the registration of the organisation.
- (2) The Children's Guardian may give a notice under subclause (1) to a registered organisation only if the Children's Guardian is satisfied:
 - (a) that the organisation made a statement or furnished information in connection with the application for registration that the organisation knew to be false or misleading in a material particular, or
 - (b) that the organisation failed to comply with any condition imposed on the organisation's registration, or
 - (c) that the organisation failed to comply with any obligation or restriction imposed on the organisation by or under the Act, or
 - (d) that the organisation failed to satisfy the registration criteria that applied to the organisation in respect of its application for registration.
- (3) As soon as practicable after making a decision to cancel the registration of an organisation, the Children's Guardian must inform the organisation 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 organisation may apply for a review of the decision.

Subdivision 3 Information relating to voluntary arrangements

40J Provision of information after a child or young person is placed in voluntary out-of-home care

- (1) A relevant agency must provide the Children's Guardian with the following information (*the relevant information*) in relation to each child or young person whose out-of-home care under a voluntary arrangement is provided or arranged 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) the date on which the child or young person was placed in voluntary out-of-home care provided or arranged by the relevant agency,
 - (g) the date on which the child or young person ceased to be in voluntary out-of-home care provided or arranged by the relevant agency,
 - (h) the existence of any case plan prepared in respect of the child or young person and the date the case plan was prepared,
 - (i) the date of any review of such a case plan.
- (2) The relevant information must be provided in a manner and format approved, and within the time required, by the Children's Guardian.

40K 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 out-of-home care under a voluntary arrangement 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 the registered organisation that provides or arranges the voluntary out-of-home care supervised by the designated agency.
- (2) A designated agency must provide the relevant information within 2 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.

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40L Provision of information when child or young person has been in voluntary out-of-home care more than 3 months

- (1) A registered organisation that is responsible for the provision or arrangement of out-of-home care for a child or young person under a voluntary arrangement for more than 3 months in any period of 12 months must notify the Children's Guardian of the name of the child or young person and:
 - (a) the name of any designated agency that is supervising the care of the child or young person, or
 - (b) if there is no designated agency supervising the care of the child or young person—whether or not a report has been made by an employee or member of the registered organisation under section 27 of the Act in respect of the child or young person.
- (2) The notice must be given within 2 days after the expiry of the 3-month period.
- (3) The information provided must be in a format approved by the Children's Guardian.

40M Provision of information about case plan

- (1) A designated agency that provides, arranges or supervises the out-of-home care of a child or young person must notify the Children's Guardian:
 - (a) when a case plan is prepared that meets the needs of a child or young person under a voluntary arrangement, and
 - (b) if the child or young person has remained in out-of-home care under a voluntary arrangement for more than 180 days in any period of 12 months and such a case plan has not been prepared—whether or not a report has been made by an employee or member of the designated agency under section 27 of the Act in respect of the child or young person.
- (2) The notice required under subclause (1) (a) must be given within 2 days after the case plan has been prepared.
- (3) The notice required under subclause (1) (b) must be given within 2 days after the child or young person has been in care under a voluntary arrangement for more than 180 days in any period of 12 months.
- (4) The information provided must be in a format approved by the Children's Guardian.

40N Keeping of information about case plans

- (1) A relevant agency must retain the following information in relation to any child or young person in voluntary out-of-home care provided, arranged or supervised by the relevant agency:
 - (a) a copy of any case plan that has been prepared to meet the needs of the child or young person,
 - (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.

Subdivision 4 Publicly available list of organisations that provide or arrange voluntary out-of-home care

40O List of agencies and organisations 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 out-of-home care under a voluntary arrangement,
- (b) the names of all organisations registered for the time being by the Children's Guardian for the purposes of Part 3A of Chapter 8 of the Act,
- (c) any other information the Children's Guardian considers appropriate for inclusion on the list.

40P Public availability of list

The list established and maintained under clause 40O 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

40Q 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

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child or young person whose out-of-home care under a voluntary arrangement is provided or arranged by a relevant agency:

- (a) the name of the relevant agency,
- (b) the full name of the child or young person placed in voluntary out-of-home care provided or arranged 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 or arranged by the relevant agency,
- (h) the date on which the child or young person ceased to be in voluntary out-of-home care provided or arranged 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) the designated agency (if any) that supervises the care of the child or young person,
- (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.

40R 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 of Human Services,
- (c) the Ombudsman,
- (d) the Commissioner of Police, 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,
- (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.

40S 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.

40T 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 Transitional arrangements

40U Application of provisions relating to voluntary arrangements for out-of-home care

- (1) Section 156A of the Act, as inserted by the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, extends to a child or young person who was in out-of-home care immediately before 24 January 2010.
- (2) However, for the purposes of the application of Part 3A of Chapter 8 of the Act to a child or young person who was in out-of-home care immediately before 24 January 2010, any reference in section 156A (2) of the Act to a period of 12 months is a reference only to a period of 12 months commencing on or after 24 January 2010.

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40V Transitional arrangements: organisations providing or arranging voluntary out-of-home care may continue to do so for the transitional period

- (1) An organisation that was providing or arranging out-of-home care under an arrangement with the parents of a child or young person that was voluntary and in force immediately before 24 January 2010 is taken to be registered under this Division during the transition period.
- (2) For the purposes of this clause, the *transition period*, in relation to an organisation, is the period that began on 24 January 2010 and that ends:
 - (a) if the organisation is registered by the Children's Guardian under clause 40G—on the date that the registration takes effect, or
 - (b) on 24 January 2011,whichever is earlier.

[15] Schedule 4, Conditions of accreditation of designated agency

Insert after clause 4:

4A 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.

[16] Schedule 4, clause 9A

Insert after clause 9:

9A 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.

[17] **Schedule 5**

Insert after Schedule 4:

**Schedule 5 Conditions of registration of
organisation under Part 3A of
Chapter 8 of Act**

(Clause 40H)

1 Request for placement

- (1) A registered organisation must not arrange for the placement of a child or young person in voluntary out-of-home care unless a person having parental responsibility for the child or young person requests placement.
- (2) A request under subclause (1) may be made orally or in writing. If the request is made orally, the registered organisation 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 Registered organisation to ensure that it is able to meet the needs of the child or young person

A registered organisation must not arrange for the placement of a child or young person in voluntary out-of-home care unless the organisation is satisfied that it is able to meet the needs of the child or young person.

3 Social and medical history

A registered organisation 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 organisation arranges a placement in voluntary out-of-home care.

4 Information to be provided to Children's Guardian

A registered organisation 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 organisation 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 organisation that the

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Children's Guardian may reasonably require by notice in writing.

5 Co-operation with entry and inspection of premises

A registered organisation must co-operate with any person who lawfully enters premises of the registered organisation 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.

6 Notification of failure to satisfy registration criteria

A registered organisation that is unable to satisfy the registration criteria that apply to the organisation in respect of its application for registration must advise the Children's Guardian of the fact as soon as practicable after the organisation becomes aware of the fact.

7 Notification of failure to comply with registration conditions

A registered organisation that is unable to comply with a condition of registration imposed under clause 40H of this Regulation must advise the Children's Guardian of the fact as soon as practicable after the organisation becomes aware of it.

8 Notification of contact details

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

9 Entry to premises

- (1) For the purposes of the exercise of the functions the Children's Guardian has to register organisations and to monitor their responsibilities under the Act and this Regulation, a registered organisation 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 organisation, 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 organisation 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
organisation to answer questions or otherwise furnish
information to the Children's Guardian.
- (3) A registered organisation is not required to permit entry to
premises under this clause if the organisation 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 organisation before the
organisation'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
organisation, 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 organisation 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.