



New South Wales

Children and Young Persons Legislation Amendment Regulation 2011

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 object of this Regulation is to amend the *Children and Young Persons (Care and Protection) Regulation 2000* and the *Children and Young Persons (Savings and Transitional) Regulation 2000*. The bulk of the amendments are made as a consequence of the commencement of amendments to the *Children and Young Persons (Care and Protection) Act 1998* (**the Principal Act**) by the *Children and Young Persons (Care and Protection) Amendment Act 2010*.

This Regulation generally makes amendments to the *Children and Young Persons (Care and Protection) Regulation 2000* relating to voluntary out-of-home care. More specifically, this Regulation:

- (a) makes a number of law revision amendments as a consequence of changes to the structure of the Government Service and other statute law changes (such as the *Children and Young Persons (Care and Protection) Amendment Act 2010*), including changing references to registered organisations to registered agencies, and
- (b) clarifies which boarding services, holiday camps, outdoor recreation centres and similar facilities and other placement arrangements are included or excluded from being out-of-home care for the purposes of the Principal Act, and
- (c) provides for circumstances where the Children's Guardian is not to shorten the accreditation period of, or suspend or cancel the accreditation of, a designated agency (being circumstances relating solely to the provision, arrangement or supervision of voluntary out-of-home care), and
- (d) clarifies the distinction between providing and arranging voluntary out-of-home care for the purposes of the Regulation, and

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- (e) clarifies what information a relevant agency must provide to the Children's Guardian in relation to children and young persons in voluntary out-of-home care, and
- (f) increases the time within which a designated agency must provide information to the Children's Guardian after commencing supervision of the voluntary out-of-home care of a child or young person from 2 days to 5 working days (being consistent with other notifications that must be made to the Children's Guardian), and
- (g) modifies provisions relating to notifications that must be given to the Children's Guardian in relation to a child or young person in voluntary out-of-home care in line with changes to section 156A of the Principal Act, and
- (h) clarifies what information must be kept on the Children's Guardian's register of information about children and young persons in voluntary out-of-home care, and
- (i) makes changes to the savings and transitional provisions governing the commencement of the regulation of voluntary out-of-home care (including extending the conclusion of the transitional period to 30 June 2011), and
- (j) provides for the management of the behaviour of children and young persons in voluntary out-of-home care in a manner similar to that governing statutory out-of-home care and supported out-of-home care, and
- (k) makes amendments to the schedule of conditions of accreditation of designated agencies to take account of the role of those agencies in arranging or providing voluntary out-of-home care, and
- (l) makes amendments to the schedule of conditions of registration of registered agencies, including the removal of the obligation on a registered agency to use its best endeavours to document the social and medical history of a child or young person (and his or her family) when it arranges a placement in voluntary out-of-home care (such obligations may be dealt with under the Children's Guardian intake procedures under section 156A (4) of the Principal Act).

This Regulation also makes amendments to the *Children and Young Persons (Savings and Transitional) Regulation 2000* as follows:

- (a) to take account of the amalgamation of the former Departments of Community Services and of Ageing, Disability and Home Care into the Department of Human Services,
- (b) to enable a body or an organisation with interim accreditation as a designated agency during the relevant transition period to continue to hold that interim accreditation even if a branch or part of the body or organisation is accredited as a designated agency or is refused such accreditation,
- (c) to make it clear that the procedural limitations on the power of the Children's Guardian to impose conditions on the accreditation of a transitional designated agency under that Regulation do not apply to the imposition of a condition that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 135 (3) (c), 156 (2), 186 (3) (d), 248 and 264 (the general regulation making power) of, and clause 1 of Schedule 3 to, that Act.

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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 Legislation Amendment Regulation 2011*.

2 Commencement

This Regulation commences on 7 February 2011 and is required to be published on the NSW legislation website.

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

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[1] Clause 3 Definitions

Omit “a department of the Public Service” from the definition of *departmental designated agency* in clause 3 (1).

Insert instead “a Division of the Government Service”.

[2] Clause 3 (1)

Omit “a department of the Public Service” from the definition of *private organisation*.

Insert instead “a Division of the Government Service”.

[3] Clause 3 (1)

Insert in alphabetical order:

registered agency means a Division of the Government Service or other organisation registered under clause 40G of this Regulation for the purposes of Part 3A of Chapter 8 of the Act.

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

[4] Clause 3 (2) (a)

Omit the paragraph. Insert instead:

- (a) a Division of the Government Service or other organisation includes a reference to a branch or part of a Division or organisation, and

[5] Clause 6 Rescission and variation of care orders—“significant change”

Omit “restoration plan” from clause 6 (a).

Insert instead “permanency plan involving restoration”.

[6] Clause 6A Delegation of functions of Children’s Guardian: sec 186

Omit “Director-General of any department of the Public Service”.

Insert instead “Department Head of any Department of the Public Service”.

[7] Clause 6B Review of decisions of Children’s Guardian by Administrative Decisions Tribunal

Omit “department or organisation” from paragraph (a) of the note to the clause.

Insert instead “Division of the Government Service or an organisation (or branch or other part of a Division or an organisation)”.

[8] Clause 7 Prescribed bodies: sec 248

Omit clause 7 (a) and (b). Insert instead:

- (a) a children’s service,

[9] Clause 7 (b2) and (c)

Omit the paragraphs. Insert instead:

- (b2) a registered agency,
- (c) an accredited adoption service provider within the meaning of the *Adoption Act 2000*,

[10] Clause 11 Protection of information disclosed in alternative dispute resolution

Omit “subclause (5) (d)” from clause 11 (4) (b).

Insert instead “subclause (5) (c)”.

[11] Clause 11A Provision and collection of information

Omit clause 11A (1) (b). Insert instead:

- (b) the assessment of the suitability of a Division of the Government Service or an organisation to be accredited as a designated agency,
- (c) the assessment of the suitability of a Division of the Government Service or an organisation to be registered as a registered agency.

[12] Clause 11A (3)

Omit “designated agency”. Insert instead “relevant agency”.

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

Omit clause 17 (a). Insert instead:

- (a) boarding services provided by an educational institution, or a body affiliated to an educational institution, to enable children and young people to attend the institution,

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[14] Clause 17 (b)

Insert “, but does not include any such camp, centre or facility the primary purpose of which is to give respite to the carers of children and young people or to address the challenging behaviour of children and young people” after “pursuits”.

[15] Clause 17 (j)

Insert after clause 17 (i):

- (j) placement arrangements provided to give respite to children and young persons who are carers and their siblings.

[16] Clause 17 (2)

Insert at the end of the clause:

- (2) In this clause, *educational institution* means a school, training establishment or university.

[17] Clause 35 Application for accreditation

Omit “department of the Public Service” in clause 35 (1).

Insert instead “Division of the Government Service”.

[18] Clause 40 Accreditation—shortening, suspension and cancellation

Insert after clause 40 (2):

- (2A) Despite subclause (2), the Children’s Guardian is not to take action under subclause (1) if the Children’s Guardian is satisfied:
 - (a) that the designated agency failed to comply with any condition of accreditation that relates solely to the provision, arrangement or supervision of voluntary out-of-home care (other than a condition prohibiting the agency from providing, arranging or supervising voluntary out-of-home care), or
 - (b) that the designated agency failed to comply with any other obligation or restriction imposed on the agency by or under the Act that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.

Note. The effect of this subclause is that the Children’s Guardian will not enforce compliance by designated agencies with conditions of accreditation, and other obligations and restrictions by or under the Act, that relate solely to voluntary out-of-home care by the methods set out in subclause (1) (being the shortening the accreditation period or suspending or cancelling the accreditation of the designated agency). The Children’s Guardian may instead impose a condition of

accreditation prohibiting the designated agency from providing, arranging or supervising voluntary out-of-home care—see clause 39 (2A). Breach of such a condition can lead to enforcement by the methods set out in subclause (1).

[19] Clause 40C Definitions

Omit the definitions of *registered organisation* and *voluntary arrangement*.

[20] Clause 40C

Insert in alphabetical order:

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

[21] Clause 40C (2) and (3)

Insert at the end of clause 40C:

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

[22] Clause 40H Conditions on registration

Insert “as a registered agency” after “an organisation” wherever occurring in clause 40H (1) and (2).

[23] Clause 40I

Omit the clause. Insert instead:

40I Cancellation of registration

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

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

[24] Part 6, Division 5, Subdivision 3, heading

Omit the heading. Insert instead:

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

[25] Clause 40J

Omit the clause. Insert instead:

**40J Provision of information relating to child or young person in or
leaving voluntary out-of-home care**

- (1) A relevant agency must provide the Children's Guardian with the following information in relation to each child or young person who is or has been in voluntary out-of-home care provided by the relevant agency:
 - (a) the full name of the child or young person,
 - (b) any other name by which the child or young person has previously been known,
 - (c) the gender of the child or young person,

- (d) the date of birth of the child or young person,
 - (e) the place of birth of the child or young person,
 - (f) whether, in the opinion of the relevant agency, the child or young person is in the target group within the meaning of the *Disability Services Act 1993*,
 - (g) the date on which the child or young person was placed in voluntary out-of-home care provided by the relevant agency,
 - (h) the date on which the child or young person ceased to be in voluntary out-of-home care provided by the relevant agency.
- (2) The information referred to in subclause (1) (a)–(g) must be provided in a manner and format approved by the Children’s Guardian within 5 working days of the child or young person being placed in voluntary out-of-home care provided by the relevant agency.
- (3) The information referred to in subclause (1) (h) must be provided in a manner and format approved by the Children’s Guardian within 5 working days of the child or young person ceasing to be in voluntary out-of-home care provided by the relevant agency.

[26] Clauses 40K (1), 40O (a) and 40Q (2)

Omit “out-of-home care under a voluntary arrangement”.

Insert instead “voluntary out-of-home care”.

[27] Clause 40K Designated agency to notify Children’s Guardian after commencing supervision of care

Omit “the registered organisation that provides or arranges” from clause 40K (1) (c).

Insert instead “any registered agency that provides”.

[28] Clause 40K (2)

Omit “2 days”. Insert instead “5 working days”.

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[29] **Clauses 40L, 40M and 40N**

Omit the clauses. Insert instead:

40L Registered agency to provide information when child or young person in unsupervised voluntary out-of-home care

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

40M Designated agency to provide information about case plans

- (1) The responsible designated agency for a child or young person must notify the Children's Guardian of the following:
 - (a) the existence of any case plan prepared in respect of the child or young person that meets the needs of the child or young person and the date the case plan was prepared, and
 - (b) the date of any review of such a case plan.
- (2) A notice required under subclause (1) (a) and (b) must be given within 5 working days after the case plan has been prepared or reviewed.
- (3) The responsible designated agency for a child or young person must, as soon as is practicable, notify the Children's Guardian if:
 - (a) the child or young person has been in voluntary out-of-home care (whether provided by the agency or any other organisation) for more than a total of 180 days in any period of 12 months, and

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- (b) the child or young person does not have a case plan that meets his or her needs.
 - (4) The information provided under subclauses (1) and (3) must be in a format approved by the Children’s Guardian.
 - (5) A designated agency may have regard to information kept on the register established and maintained under Subdivision 5, unless the agency knows the information is incorrect, to ascertain whether a child or young person has been in voluntary out-of-home care for more than a total of 180 days in any period of 12 months.
 - (6) In this clause, *responsible designated agency* for a child or young person in voluntary out-of-home care means:
 - (a) if a designated agency supervises care provided by a relevant agency (including care provided by another designated agency)—the designated agency that supervises the care, or
 - (b) if the care is provided by a designated agency and no other designated agency supervises that care, the designated agency that provides the care.

40N Keeping of information about case plans

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

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

[30] Part 6, Division 5, Subdivision 4, heading

Omit “**organisations**”. Insert instead “**agencies**”.

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[31] Clause 40O List of agencies that may provide or arrange voluntary out-of-home care

Omit clause 40O (b). Insert instead:

- (b) the names of all registered agencies,

[32] Clause 40Q Children’s Guardian to establish and maintain register

Omit “or arranged” wherever occurring in clause 40Q (2).

[33] Clause 40Q (2) (k)

Omit the paragraph. Insert instead:

- (k) whether the voluntary out-of-home care of the child or young person is supervised by a designated agency or the Children’s Guardian and, if so, the name of that supervising agency or body,

[34] Clause 40Q (2) (n) and (o)

Insert after clause 40Q (2) (m):

- (n) whether the child or young person is in the target group within the meaning of the *Disability Services Act 1993*,
- (o) the number of days that the child or young person has been in voluntary out-of-home care in any 12 month period.

[35] Part 6, Division 5, Subdivision 6, heading

Omit the heading. Insert instead:

Subdivision 6 Miscellaneous

[36] Clause 40U Application of provisions relating to voluntary arrangements for out-of-home care

Omit the clause.

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

Omit “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” from clause 40V (1).

Insert instead “(other than a designated agency) that was providing or arranging voluntary out-of-home care”.

[38] Clause 40V (1) and (2) (b)

Omit “24 January 2011” wherever occurring. Insert instead “30 June 2011”.

[39] Clause 40W

Insert after clause 40V:

40W Management of behaviour of children and young persons in voluntary out-of-home care

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

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

[40] Schedule 4 Conditions of accreditation of designated agency

Insert before Part 1:

Part 1A Preliminary

1A Interpretation

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

[41] Schedule 4, clause 1 (2)

Omit the subclause. Insert instead:

- (2) A request for care may be made orally or in writing. If the request is made orally, the designated agency that arranged the placement of the child or young person must, within 7 days after the placement, confirm the placement in writing to the person having parental responsibility for the child or young person.

[42] Schedule 4, clause 2

Omit the clause. Insert instead:

2 Agency to ensure that needs of the child or young person are able to be met

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

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

[43] Schedule 4, clause 3

Insert “statutory out-of-home care or supported” before “out-of-home care”.

[44] Schedule 5, heading

Omit the heading to Schedule 5. Insert instead:

Schedule 5 Registered agencies—conditions of registration

[45] Schedule 5, clauses 1–2

Omit clauses 1–3. Insert instead:

1 Request for placement

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

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

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

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

[46] Schedule 5, clauses 4–9

Omit “organisation”, “organisation’s” and “organisations” wherever occurring.

Insert instead “agency”, “agency’s” and “agencies”, respectively.

[47] Schedule 5, clause 5, note

Omit the note.

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Schedule 2 Amendment of Children and Young Persons (Savings and Transitional) Regulation 2000

Schedule 2 Amendment of Children and Young Persons (Savings and Transitional) Regulation 2000

[1] Clause 3 Definitions

Insert “or 22AA” after “clause “22A” in the definition of *transitional designated agency*.

[2] Clause 22A Interim accreditation as designated agency

Insert after clause 22A (3):

- (4) For the avoidance of doubt, if a branch or part of a body or organisation to which this clause applies makes an application for accreditation, the decision to accredit or not to accredit the branch or part does not terminate the accreditation under this clause of the body or organisation.

[3] Clause 22AA

Insert after clause 22A:

22AA Interim accreditation as designated agency of Community Services branch and Ageing, Disability and Home Care branch

- (1) The following branches or parts of the Department of Human Services are taken to be accredited as designated agencies under the new Act, this Regulation and the principal Regulation:
 - (a) Community Services,
 - (b) Ageing, Disability and Home Care.
- (2) Accreditation under this clause ceases to have effect in relation to a branch or part of the Department of Human Services on whichever of the following occurs first:
 - (a) the decision on the application for accreditation by the branch or part takes effect,
 - (b) the application for accreditation by the branch or part is withdrawn,
 - (c) the branch or part’s accreditation is cancelled,
 - (d) 14 July 2013.
- (3) For the avoidance of doubt, if a branch or part of Community Services or Ageing, Disability and Home Care makes an application for accreditation, the decision to accredit or not to

accredit the branch or part does not terminate the accreditation under this clause of Community Services or Ageing, Disability and Home Care (as the case may be).

- (4) A reference in clause 22B to a department of the Public Service includes a reference to a branch or part of a department.

[4] Clauses 22B (8), 22CA (1), 22CB (1) and 22CD (1)

Insert “or 22AA” after “clause 22A” wherever occurring.

[5] Clause 22CB Conditions on accreditation of transitional designated agencies

Insert after clause 22CB (5):

- (6) Subclauses (2)–(4) do not apply to the imposition under clause 39 (2) of the principal Regulation of a condition that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.
- (7) A condition imposed on the accreditation of the Department of Community Services or the Department of Ageing, Disability and Home Care in accordance with this clause and in force immediately before the abolition of those departments is taken to be a condition imposed in accordance with this clause on the accreditation under clause 22AA of Community Services or Ageing, Disability and Home Care (as the case may be).