



New South Wales

# Children and Young Persons (Care and Protection) Miscellaneous Amendments Regulation 2014

under the

Children and Young Persons (Care and Protection) Act 1998

His 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*.

GABRIELLE UPTON, MP  
Minister for Family and Community Services

## Explanatory note

The object of this Regulation is to make various amendments to the *Children and Young Persons (Care and Protection) Regulation 2012* that are consequential on amendments made by the *Child Protection Legislation Amendment Act 2014*. Those amendments related to guardianship orders and the integration of the administration by the Children's Guardian of accreditation of adoption service providers under the *Adoption Act 2000* with the accreditation of designated agencies under the *Children and Young Persons (Care and Protection) Act 1998*.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 79B (1) (c) and (10), 245 (1) (k) and 264 (the general regulation-making power).

## **Children and Young Persons (Care and Protection) Miscellaneous Amendments Regulation 2014**

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) Miscellaneous Amendments Regulation 2014*.

### **2 Commencement**

This Regulation commences on 29 October 2014 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Children and Young Persons (Care and Protection) Regulation 2012

### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

*accredited adoption service provider* has the meaning it has in the *Adoption Act 2000*.

*accredited adoption service provider check* means a check with an accredited adoption service provider as to a person's suitability to adopt a child.

*approved identity information* means documents that can be used to establish the identity of a person or persons of a specified class that are of a kind approved by the Children's Guardian by an order published in the *Gazette*.

*assessment body*, in relation to an application for a guardianship order in respect of a child or young person, means the following:

- (a) if the prospective guardian is an authorised carer authorised by a designated agency (other than the Department or part of the Department) or who provides out-of-home care that is supervised by such a designated agency—the designated agency, and
- (b) in any other case—the Secretary.

*Community Services check* means a check of such information held by the Department as is determined by the Secretary.

*designated agency check* means a check with a designated agency as to a person's suitability to care for a child or to reside at a home where care is provided to a child.

*home* of a person means the dwelling of the person and any land in the immediate vicinity of that dwelling (being land that is owned or occupied by the person) and any building, structure, vehicle or other thing on that land.

### [2] Clause 3 (2A)

Insert after clause 3 (2):

- (2A) For the purposes of this Regulation, a person *resides* at another person's home if the person sleeps at the other person's home on a regular or frequent basis.

### [3] Clause 9 (as inserted by the Children and Young Persons (Care and Protection) Amendment Regulation 2014)

Renumber clause 9 as clause 23B and insert after clause 23A (as inserted by the *Children and Young Persons (Care and Protection) Further Amendment Regulation 2014*).

### [4] Clause 9A (as inserted by the Children and Young Persons (Care and Protection) Amendment Regulation 2014)

Omit the clause.

### [5] Clauses 23C–23E

Insert after clause 23B (as inserted by item [3]):

#### 23C Suitability statements relating to prospective guardians

- (1) An applicant for a guardianship order must present a suitability statement prepared by the assessment body to the Children's Court before the order is made.

- (2) A suitability statement must state that the assessment body:
- (a) is satisfied that the prospective guardian and any adult residing at the prospective guardian's home have complied with the applicable requirements of the *Child Protection (Working with Children) Act 2012*, and  
**Note.** See section 11A of the *Child Protection (Working with Children) Act 2012*.
  - (b) has obtained or conducted the suitability assessments of the prospective guardian, the prospective guardian's home and persons that reside at the prospective guardian's home required by clause 23D, and
  - (c) has provided information to the prospective guardian about the role of a guardian, and
  - (d) has considered, having regard to the functions imposed on a guardian by or under the Act, any information held by the assessment body and all the circumstances of the case:
    - (i) the risk, if any, to the child or young person of assessing the prospective guardian as suitable to be a guardian, and
    - (ii) the risk, if any, that the prospective guardian may be unable to properly perform the functions of a guardian.
- (3) The assessment body may require a prospective guardian to furnish to the assessment body such information as the assessment body may reasonably require in order to assess the prospective guardian's suitability to be a guardian of the child or young person.
- (4) The assessment body may make such other lawful inquiries as it considers necessary with respect to the prospective guardian or a person referred to in subclause (2) (b) as the assessment body considers appropriate, including any check relating to the employment or other activities of the prospective guardian or person.

### **23D Suitability assessment requirements**

- (1) The assessment body must (except as provided by subclause (2)) obtain or conduct the following in respect of the prospective guardian:
- (a) approved identity information,
  - (b) a nationwide criminal record check,
  - (c) a Community Services check,
  - (d) if the assessment body reasonably believes that a designated agency has material knowledge about the prospective guardian—a designated agency check from that agency,
  - (e) if the assessment body reasonably believes that an accredited adoption service provider has material knowledge about the prospective guardian—an accredited adoption service provider check from that accredited adoption service provider,
  - (f) references from at least two persons concerning the prospective guardian's suitability to care for a child,
  - (g) a health check—a check of a statement made by the prospective guardian (other than a prospective guardian who is the authorised carer of the child or young person) as to the physical and mental health of the prospective guardian, and a medical report in respect of that prospective guardian, in the form approved by the Secretary.

- (2) The assessment body is not required to obtain any information or conduct any check in respect of a prospective guardian who is also an authorised carer or prospective adoptive parent if the information or check is of a kind that was obtained or conducted by that body in assessing the suitability of the prospective guardian as an authorised carer or as a prospective adoptive parent under the *Adoption Act 2000*.
- (3) The assessment body must (except as provided by subclauses (4) and (5)) obtain or conduct the following in respect of any person other than a child in out-of-home care who resides at the home of a prospective guardian:
  - (a) approved identity information,
  - (b) a nationwide criminal record check (if the person is 16 or more years of age),
  - (c) a Community Services check (if the person is 16 or more years of age),
  - (d) if the assessment body reasonably believes that a designated agency has material knowledge about the person—a designated agency check from that agency,
  - (e) if the assessment body reasonably believes that an accredited adoption service provider has material knowledge about the person—an accredited adoption service provider check from that provider.
- (4) The assessment body is not required to conduct any Community Services check or nationwide criminal record check in respect of any person who is 16 or more years of age who resides at the home of a prospective guardian who is an authorised carer who was authorised by a designated agency if the person was residing at the home of the prospective guardian and was less than 16 years of age when the prospective guardian was so authorised.
- (5) The assessment body is not required to obtain or conduct any information or check under subclause (3) in respect of a person who resides at the home of a prospective guardian who is also an authorised carer or prospective adoptive parent if the information or check is of a kind that was obtained or conducted by that body in assessing the person as suitable to reside at the home of the prospective guardian as an authorised carer or as suitable to adopt a child under the *Adoption Act 2000*.
- (6) The assessment body may obtain or conduct a nationwide criminal record check of a person who is 14 or 15 years of age and who resides at the home of a prospective guardian who is not the authorised carer of the child or young person in respect of whom the guardianship order is sought.
- (7) The assessment body may obtain further information, or conduct further checks, in relation to a prospective guardian at any time before the making of a guardianship order in relation to the prospective guardian.
- (8) The assessment body must inspect a prospective guardian's home and determine whether it will provide a safe and secure environment for the child or young person in respect of whom the guardianship order is sought.
- (9) The assessment body must conduct a review of the placement of a child or young person in out-of-home care if the child or young person is to be the subject of an application for a guardianship order.
- (10) An accredited adoption service provider has **material knowledge** about a prospective guardian for the purposes of this clause if the accredited adoption service provider:
  - (a) has received an expression of interest from the prospective guardian in adopting a child or young person, or

- (b) has received an application to adopt a child or young person from the prospective guardian, or
  - (c) has known the prospective guardian to reside at the home of a person submitting such an expression of interest or application.
- (11) A designated agency has *material knowledge* about a prospective guardian for the purposes of this clause if the designated agency:
- (a) has authorised the prospective guardian as a carer, or
  - (b) has received an application from the prospective guardian to be authorised as a carer, or
  - (c) has known the prospective guardian to reside at the home of such a carer or applicant.

**23E Assessment of certain prospective applicants for guardianship orders**

For the purposes of section 79B (1) (c) of the Act, the Secretary or designated agency in relation to a child or young person is to assess whether a prospective guardian of a child or young person is suitable to be allocated all aspects of parental responsibility by obtaining or conducting the information or checks required by clause 23D.

**[6] Clause 38 Medical examination**

Omit “member of the authorised carer’s household” from clause 38 (a).

Insert instead “person who resides at the authorised carer’s home”.

**[7] Clause 45 Application for accreditation**

Insert “full” after “specify the” in clause 45 (2) (c).

**[8] Clause 45 (2) (c1)–(c3)**

Insert after clause 45 (2) (c):

- (c1) to specify the corporate and business name and ABN (if any) of the applicant, and
- (c2) to specify the street and postal address of the applicant, and
- (c3) to specify the telephone number and e-mail address (if any) of the applicant, and

**[9] Clause 46 Taking over an application for accreditation**

Insert “full” after “specified the” in clause 46 (3) (c).

**[10] Clause 48 Accreditation criteria**

Insert after clause 48 (3):

- (3A) Without limiting subclause (1), the criteria to be approved under that subclause are to be integrated, to the greatest extent possible, with the criteria for accreditation of an accredited adoption service provider under the *Adoption Act 2000*.

**[11] Clause 50A**

Insert after clause 50:

**50A Public information about accreditations**

- (1) The Children's Guardian is to publish the following information on a website maintained by the Children's Guardian as soon as practicable after granting accreditation as a designated agency:
  - (a) the corporate name and business name and ABN (if any) of the designated agency,
  - (b) whether the designated agency is provisionally or fully accredited,
  - (c) the conditions imposed on the accreditation of the designated agency,
  - (d) the accreditation for the designated agency,
  - (e) the street and postal address of the principal office of the designated agency,
  - (f) the general telephone number and e-mail address (if any) of the designated agency,
  - (g) the full name of the principal officer of the designated agency.
- (2) The Children's Guardian is to keep the information referred to in subclause (1) up to date.

**[12] Clause 60 Consequences of transfer of accreditation**

Insert after clause 60 (5):

- (6) Any act, matter or thing done by the transferor immediately before the transfer with respect to arrangements for the provision of out-of-home care continues to have effect in relation to the transferee.

**[13] Clause 61 Form and accreditation period**

Insert after clause 61 (4):

- (4A) The Children's Guardian may vary the periods referred to in subclauses (2)–(4) so as to grant an accreditation period to a designated agency that is also an accredited adoption service provider that is commensurate to the accreditation period granted to the accredited adoption service provider under the *Adoption Regulation 2003* and ending on the date on which that accreditation period ends.

**[14] Clause 61A**

Insert after clause 61:

**61A Accreditation extended after designated agency becomes an accredited adoption service provider**

- (1) The Children's Guardian may grant an extension of the accreditation period of a designated agency which becomes an accredited adoption service provider under the *Adoption Regulation 2003* after being accredited as a designated agency so that it ends on the date on which the accreditation period as an accredited adoption service provider ends.
- (2) The date the accreditation period of a designated agency ends is not extended by a suspension of accreditation under clause 66.

**[15] Clause 64 Accreditation extended to accommodate changes**

Insert “, or the administration of adoption services under the *Adoption Act 2000*,” after “the Act”.

**[16] Clause 88 Savings and transitional provisions**

Insert after clause 88 (3):

- (3A) The Children’s Guardian is to publish the information required by clause 50A in relation to a designated agency that was accredited before the commencement of that clause on a website maintained by the Children’s Guardian as soon as practicable after the commencement of this subclause.

**[17] Schedule 3 Conditions of accreditation of designated agency**

Insert before clause 10 (1) (a) and renumber paragraphs (a)–(c) as paragraphs (b)–(d), respectively:

- (a) the corporate or business name of the agency or ABN (if any) of the agency,

**[18] Schedule 3, clause 10 (3)**

Insert after clause 10 (2):

- (3) A designated agency must notify the Secretary of the following particulars within 14 days after the change occurs:
- (a) any change in the terms of the documents that govern its constitution,
- (b) any change in the terms of any trust that it has established in connection with the arrangements it makes for the provision of out-of-home care.