



New South Wales

Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015

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*.

BRAD HAZZARD, MP
Minister for Family and Community Services

Explanatory note

The objects of this Regulation are to make provision for the following:

- (a) assessing the suitability of persons to be authorised carers, including by assessing the suitability of persons who reside on the same property as persons who are, or are seeking to become, authorised carers,
- (b) the provisional and emergency authorisation of persons as authorised carers,
- (c) the cancellation and suspension of authorisations,
- (d) the transfer of authorisations from designated agencies to the Department of Family and Community Services,
- (e) the establishment of the Carers Register, the information required to be put on the register and access to and correction of the register.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 137, 181 and 264 (the general regulation-making power).

Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015

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 (Authorised Carers) Regulation 2015*.

2 Commencement

This Regulation commences on the day on which this Regulation is published on the NSW legislation website.

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

[1] Clause 3 Definitions

Omit the definitions of *accredited adoption service provider check*, *approved identity information*, *assessment body*, *Community Services check*, *designated agency check* and *home* from clause 3 (1).

Insert in alphabetical order:

adult means a person who is 18 years of age or older.

Carers Register means the register established under clause 86B.

code of conduct for authorised carers means the code of conduct approved by the Minister for the purposes of this definition and published on the relevant website of the Department, as in force from time to time.

Note. See www.community.nsw.gov.au.

Community Services check—see clause 1 of Schedule 2.

current working with children application means a current application within the meaning of the *Child Protection (Working with Children) Act 2012*.

designated agency check—see clause 1 of Schedule 2.

interim bar means an interim bar imposed under section 17 of the *Child Protection (Working with Children) Act 2012*.

prospective adoptive parent means a person who has submitted an application under the *Adoption Act 2000* to adopt a child and that application has not been withdrawn or finally dealt with by the making of or refusal to make an adoption order.

prospective guardian has the same meaning as it has in section 79A of the Act.

reportable allegation has the same meaning as it has in Part 3A of the *Ombudsman Act 1974* but also includes conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of that Act.

working with children check clearance has the same meaning as it has in the *Child Protection (Working with Children) Act 2012*.

working with children clearance information has the same meaning as it has in clause 86A.

[2] Clauses 3 (1) (definitions of “departmental designated agency” and “registered agency”), 20 (1) (b) and (c), 45 (1) and (2) (c) and 69 (3)

Omit “Division of the Government Service” wherever occurring.

Insert instead “Public Service agency”.

[3] Clause 3 (2) (a)

Omit the paragraph. Insert instead:

- (a) a Public Service agency or other organisation includes a reference to part of an agency or organisation, and

[4] Clause 3 (2A)

Omit the subclause.

[5] Clause 7 Administrative review of decisions of Children's Guardian

Omit the note to the clause. Insert instead:

Note. Section 245 (1) of the Act sets out a number of other decisions that are administratively reviewable by the Civil and Administrative Tribunal.

[6] Clause 23C Suitability statements relating to prospective guardians

Omit clause 23C (2) (b). Insert instead:

- (b) has obtained or conducted the suitability assessments of the prospective guardian and persons that reside on the same property as the prospective guardian in accordance with this clause and Schedule 2, and

[7] Clause 23C (4)–(6)

Omit clause 23C (4). Insert instead:

- (4) 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.
- (5) For the purposes of Schedule 2 (Uniform suitability assessment requirements) the prospective guardian and each person who resides on the same property as the prospective guardian for more than 21 days (other than a child in out-of-home care) are assessable persons.
- (6) In this clause (and Schedule 2 to the extent that it relates to this clause):
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.

[8] Clauses 23D and 23E

Omit the clauses.

[9] Clause 29 Definitions

Omit the definition of **authorised carer**. Insert instead:

authorised carer means a natural person authorised (including provisionally authorised) as an authorised carer by a designated agency.

[10] Clauses 30–31B

Omit clauses 30 and 31. Insert instead:

30 Authorisation of individual caring in private capacity

- (1) A natural person may apply in writing to a designated agency to be authorised as an authorised carer.
- (2) On receipt of any such application, the designated agency must provide the applicant with the following information:
 - (a) information about the rights and responsibilities of authorised carers,
 - (b) information about the process for authorising applicants including the criteria that an applicant must satisfy to be authorised,

- (c) information about permanent placement options for a child or young person in out-of-home care.
- (3) An applicant can withdraw an application (by verbal or written notice to the designated agency) at any time before the application has been determined by the agency.
- (4) A designated agency must not authorise an applicant under this clause unless the agency has determined that the applicant is capable and suitable to be an authorised carer.
- (5) A designated agency must not determine under subclause (4) that an applicant is capable and suitable to be authorised as an authorised carer unless:
 - (a) the applicant has furnished to the agency such information as the agency may reasonably require in order to assess the applicant's capability and suitability to be an authorised carer, and
 - (b) the agency is satisfied that the applicant and any adult residing on the same property as the applicant have complied with the requirements of the *Child Protection (Working with Children) Act 2012* for engaging in child-related work as an authorised carer, and
 - (c) the agency has obtained or conducted the suitability assessments of the applicant and persons that reside on the same property as the applicant in accordance with this clause and Schedule 2 and has determined that the result of each element of the assessment is satisfactory, and
 - (d) the applicant has completed to the satisfaction of the agency any education or training required by the agency, and
 - (e) the applicant has provided a signed statement that the applicant has read, understood and will comply with the code of conduct for authorised carers, and
 - (f) the agency has taken into account:
 - (i) the functions of an authorised carer and any risk that the applicant would be unable to properly perform those functions, and
 - (ii) any risk to a child or young person were the applicant to be authorised (including risks from the applicant's home or persons who reside on the same property as the applicant), and
 - (iii) any relevant information available to the agency.
- (6) For the purposes of Schedule 2, the designated agency is an assessment body and the applicant and each person who resides on the same property as the applicant for more than 21 days (other than a child in out-of-home care) are assessable persons.
- (7) A designated agency may determine an application under this clause by:
 - (a) approving the application and authorising the applicant as an authorised carer, or
 - (b) refusing the application.
- (8) An authorisation of an authorised carer comes into force when a Carer Authorisation Number is allocated to the authorised carer under clause 86B.
- (9) The principal officer of a designated agency is to carry out the functions of the agency under subclauses (5) and (7), unless the Children's Guardian approves the carrying out of those functions by another person.
- (10) Failure to comply with subclause (9) does not affect the validity of the authorisation of any authorised carer under this clause.

31 Provisional authorisation

- (1) A designated agency may, in an emergency, authorise a natural person who is a relative or kin of a child or young person or who is known to the child or young person as an authorised carer for the child or young person on a provisional basis (a **provisional authorisation**).
- (2) A designated agency must not authorise a person under this clause unless the agency has determined that the person is capable and suitable to be authorised as an authorised carer on a provisional basis.
- (3) A designated agency must not determine that a person is capable and suitable to be authorised as an authorised carer on a provisional basis unless:
 - (a) the person has furnished to the agency such information as the agency may reasonably require in order to assess the person's suitability to be authorised as an authorised carer on a provisional basis, and
 - (b) the agency has carried out an inspection of the person's home and determined that it will provide a safe and secure environment for any child or young person in out-of-home care who may reside in the home, and
 - (c) having regard to the functions imposed on an authorised carer by or under the Act, any information possessed by the agency and all the circumstances of the case, the agency has estimated:
 - (i) the risk, if any, to any child or young person in authorising the person as an authorised carer on a provisional basis, and
 - (ii) the risk, if any, that the person may be unable to properly perform the functions of an authorised carer on a provisional basis.
- (4) A designated agency may obtain or conduct the suitability assessment requirements set out in Schedule 2 in respect of the person who is to be authorised as an authorised carer on a provisional basis and any person who resides on the same property as the person.
- (5) For the purposes of Schedule 2, the designated agency is an assessment body and the person who is authorised as an authorised carer on a provisional basis and any adult who resides on the same property as the person for more than 21 days (other than a child in out-of-home care) are assessable persons.
- (6) A provisional authorisation:
 - (a) authorises the authorised carer to provide out-of-home care to any child or young person who is a relative or kin of the carer or who knows the carer and who is placed in the care of the carer by a designated agency, and
 - (b) takes effect on the day that the first such child or young person is placed with the carer.
- (7) A designated agency must, when authorising a person as an authorised carer on a provisional basis, make all reasonable efforts to inform the person (and any adult who resides on the same property as the person) of the relevant requirements of the *Child Protection (Working with Children) Act 2012*.

Note. See sections 6 (3) (c) and 10 of the *Child Protection (Working with Children) Act 2012* and the regulations under that Act that relate to those sections.
- (8) It is a condition of a provisional authorisation that:
 - (a) the authorised carer take all reasonable steps to become authorised as an authorised carer under clause 30, and

- (b) the authorised carer furnishes to the agency such further information as the agency may reasonably require in order to continue to assess the carer's suitability to continue to be authorised as an authorised carer on a provisional basis.
- (9) The principal officer of a designated agency is to carry out the functions of the agency under subclauses (1) and (3), unless the Children's Guardian approves the carrying out of those functions by another person.
- (10) Failure to comply with subclause (9) does not affect the validity of the authorisation of any authorised carer under this clause.
- (11) A person who is authorised as an authorised carer on a provisional basis and who does not have a current application under clause 30 is, at the time the provisional authorisation takes effect, taken to have made such an application.
- (12) The Children's Guardian, when it becomes aware that a provisional authorisation has continued for more than 3 months, must monitor the designated agency's progress in determining the application that is made (or taken to have been made) under clause 30.
- (13) The Children's Guardian may direct a designated agency to cancel a provisional authorisation that has continued for 3 months or more by notice in writing to the designated agency. A designated agency must comply with any such direction.
- (14) The cancellation of a provisional authorisation of a person is taken to be a decision by the designated agency to refuse an application by the person under clause 30.
- (15) A provisional authorisation of a person ceases to have effect when an application by the person for authorisation as an authorised carer is determined under clause 30.

31A Assessment of persons residing on same property as carer

- (1) A designated agency must, as soon as practicable after becoming aware that a person (other than a child or young person in out-of-home care) has resided or will reside for more than 21 days on the same property as an authorised carer who has been authorised under clause 30 or 31, obtain or conduct a suitability assessment of the person in accordance with Schedule 2.

Note. A designated agency also has obligations under the *Child Protection (Working With Children) Act 2012* in respect of persons residing on the same property as authorised carers.

- (2) For the purposes of Schedule 2 (Uniform suitability assessment requirements) the designated agency is an assessment body and the person who resides on the same property as the authorised carer is an assessable person.

31B Emergency authorisation of staff and contractors

- (1) A designated agency may, in an emergency, authorise a natural person as an authorised carer if the person is:
 - (a) an employee of the agency whose duties include providing, or supervising the provision of, care to children or young persons, or
 - (b) a **contractor** being a natural person engaged by the agency (other than an employee of the agency) under a contract to provide services that include providing, or supervising the provision of, care to children or young persons, or

- (c) an employee of a contractor whose duties as an employee include providing care to children or young persons.
- (2) A designated agency must not authorise a person under this clause unless the agency has determined that the person is suitable to be an authorised carer.
- (3) A designated agency must not determine under subclause (2) that a person is suitable to be authorised as an authorised carer unless:
 - (a) the person has furnished to the agency such information as the agency may reasonably require in order to assess the person's suitability to be an authorised carer, and
 - (b) the agency is satisfied that the person has complied with the requirements of the *Child Protection (Working with Children) Act 2012* for engaging in child-related work as an authorised carer, and
 - (c) the agency has determined that the person is capable and suitable to be authorised as an authorised carer taking into account:
 - (i) the functions of an authorised carer and any risk that the person would be unable to properly perform those functions, and
 - (ii) any relevant information available to the agency.
- (4) For the purpose of determining under subclause (2) whether a person is suitable to be an authorised carer, the designated agency may make such inquiries as to the person as the agency considers appropriate, including:
 - (a) a nationwide criminal record check, and
 - (b) any other relevant probity check relating to the previous employment or other activities of the person.
- (5) The principal officer of a designated agency is to carry out the functions of the agency under subclauses (1), (3) and (4), unless the Children's Guardian approves the carrying out of those functions by another person.
- (6) Failure to comply with subclause (5) does not affect the validity of the authorisation of any authorised carer under this clause.

[11] Clause 32 Other carers authorised by Department to enable special care

Omit clause 32 (2). Insert instead:

- (2) The Department, in its capacity as a designated agency, may authorise a natural person as an authorised carer who can provide special out-of-home care if the person is:
 - (a) an employee of a special care provider whose duties include providing, or supervising the provision of, care to children or young persons, or
 - (b) a *contractor*, being a natural person engaged by a special care provider (other than an employee of the special care provider) under a contract to provide services that include providing, or supervising the provision of, care to children or young persons, or
 - (c) an employee of a contractor whose duties as an employee include providing care to children or young persons.

[12] Clause 32 (3) and (4)

Omit "an individual" wherever occurring. Insert instead "a person".

[13] Clause 32 (3) (a)

Omit "individual". Insert instead "person".

[14] Clause 33 Authorised carers authorised by designated agency to give respite to usual authorised carers

Omit clause 33 (2). Insert instead:

- (2) A designated agency may authorise a natural person as an authorised carer who can provide respite for other authorised carers if the person is:
- (a) an employee of a respite care provider whose duties include providing, or supervising the provision of, care to children or young persons, or
 - (b) a *contractor*, being a natural person engaged by a respite care provider (other than an employee of the respite care provider) under a contract to provide services that include providing, or supervising the provision of, care to children or young persons, or
 - (c) an employee of a contractor whose duties as an employee include providing care to children or young persons.

[15] Clause 33 (3) and (6)

Omit “an individual” wherever occurring. Insert instead “a person”.

[16] Clause 33 (3) (a), (4) and (7)

Omit “individual” wherever occurring. Insert instead “person”.

[17] Clause 33 (7)

Omit “individuals”. Insert instead “persons”.

[18] Clause 34 Conditions of authorisations

Insert “, including a condition that provides that the authorised carer may provide out-of-home care only to specified children or young persons or to children or young persons belonging to a specified class” after “authorised carer” in clause 34 (1).

[19] Clause 34 (4A)

Insert after clause 34 (4):

- (4A) It is a condition of an authorisation that an authorised carer may provide out-of-home care only to a child or young person who is a relative or kin of the carer or who knows the carer unless the carer has completed a course of training on the provision of care for a child or young person who is not a relative or kin of the carer.

[20] Clause 35 Authorisations by designated agencies to be in writing

Omit “clause 30, 31, 32 or 33” from clause 35 (1). Insert instead “this Division”.

[21] Clause 41A

Insert after clause 41:

41A Surrender of authorisation

A person authorised as an authorised carer under this Division may surrender the authorisation at any time by notice in writing to the designated agency that authorised the person.

[22] Clauses 42B–42D

Insert after clause 42A:

42B Automatic cancellation—working with children requirements no longer met

- (1) The authorisation of a person as an authorised carer is automatically cancelled if the person:
 - (a) no longer has a working with children check clearance or a current working with children application, or
 - (b) is subject to an interim bar.
- (2) The cancellation of the authorisation takes effect:
 - (a) when the person is notified that the person's current working with children application has been terminated or refused or that the person's clearance has been cancelled or that the person is subject to an interim bar, or
 - (b) if the clearance is cancelled under section 24 (Surrender of clearances) of the *Child Protection (Working with Children) Act 2012*—when the person notifies the Children's Guardian that the person wishes to surrender the person's clearance, or
 - (c) if the clearance ceases to have effect because 5 years have passed since it was granted and the holder of the clearance does not apply for a new clearance before it ceases to have effect—on the day that the clearance ceases to have effect.
- (3) The designated agency that supervises the out-of-home care of a child or young person in the care of a person whose authorisation is cancelled under this clause must, within 48 hours of becoming aware of that cancellation, ensure that the child or young person no longer resides with the person (unless the person's authorisation is revived under this clause before the end of those 48 hours).
- (4) The authorisation of a person may be revived (by the designated agency that authorised the person) at any time within 2 years after the cancellation of the authorisation under this clause took effect, if the person:
 - (a) has a working with children check clearance or a current working with children application, and
 - (b) is not subject to an interim bar.

42C Automatic cancellation—cessation of employment or contract

The authorisation of a person who is authorised as an authorised carer in the course of the person's employment or under a contract arrangement is automatically cancelled if the person ceases that employment or is no longer providing care under that contractual arrangement.

42D Automatic suspension of authorisation

- (1) In this clause:

inappropriate resident means a person who resides on the same property as an authorised carer and who is required to have a working with children check clearance or a current working with children application in order to reside on that property and who:

 - (a) does not have a working with children check clearance or a current working with children application, or

- (b) is subject to an interim bar.
- (2) The authorisation of a person as an authorised carer is automatically suspended if an inappropriate resident resides on the same property as the authorised carer.
- (3) The suspension of the authorisation takes effect when the authorised carer is notified that an inappropriate resident resides on the same property as the authorised carer.
- (4) A suspension under this clause ceases to have effect if no inappropriate resident resides on the same property as the authorised carer.
- (5) The designated agency that supervises the out-of-home care of a child or young person in the care of an authorised carer must, within 48 hours of becoming aware that an inappropriate resident resides on the same property as the authorised carer, ensure that the child or young person no longer resides with the authorised carer (unless the suspension of the authorised carer ceases to have effect under this clause before the end of those 48 hours).

[23] Clause 43A

Insert after clause 43:

43A Transferred authorisations

The authorisation of a person as an authorised carer of a child or young person in out-of-home care is taken to be an authorisation by the Department if the Department, under section 141 (1) of the Act, supervises the placement of the child or young person.

[24] Part 6, Division 6

Insert after clause 86:

Division 6 Carers Register

86A Definitions

In this Division:

identification information in respect of a person means the following:

- (a) the person's full name (including any other names that the person is or has been known by),
- (b) the person's gender,
- (c) the person's date of birth.

suitability assessment in respect of a person means the suitability assessment required in respect of the person under Division 2 of Part 6 and Schedule 2.

working with children clearance information in respect of a person means the following:

- (a) whether the person has a current working with children check clearance and, if so, the working with children number for the clearance and the date on which that clearance is due to expire,
- (b) whether the person has a current working with children application and, if so, the application number,
- (c) whether the person is subject to an interim bar,

- (d) whether the person is subject to a decision of the Children's Guardian under the *Child Protection (Working with Children) Act 2012* the effect of which is that the person must not engage in child-related work,
- (e) whether the person had a working with children check clearance that has expired.

working with children number means the number given for a working with children check clearance under the *Child Protection (Working with Children) Act 2012*.

86B Establishment of Carers Register

- (1) For the purposes of section 181 (1) (d) of the Act, the Children's Guardian is to establish a register (the **Carers Register**) for the purpose of the authorisation of persons as authorised carers, and is to maintain the register, in accordance with this Division.
- (2) Despite any other provision of this Part, information must be entered on the Carers Register about the following persons:
 - (a) a person who has made an application for authorisation under clause 30 (including a person who is provisionally authorised under clause 31 and who is taken to have made such an application),
 - (b) a person who is authorised as an authorised carer under clause 30,
 - (c) a person who resides for more than 21 days on the same property as another person at any time while that other person is a person referred to in paragraph (a) or (b).
- (3) Information must not be entered on the Carers Register about a person other than a person referred to in subclause (2).
- (4) The Children's Guardian is to cause a unique number to be allocated to each person who is authorised as an authorised carer under clause 30 (a **Carer Authorisation Number**) and may allocate unique numbers to such other persons as the Children's Guardian sees fit.

86C Entering information on Carers Register

- (1) A designated agency that does not know information at the time that the information is required by this Division to be entered on the Carers Register must enter the information on the Carers Register as soon as practicable after it becomes known to the designated agency.
- (2) A designated agency is not required to enter information on the Carers Register if the information is already on the register.

86D Information about carer applicants

- (1) A designated agency must, within 14 days after an application is made by a person seeking to be authorised by the designated agency as an authorised carer, enter the following information on the Carers Register:
 - (a) the person's identification information,
 - (b) the date on which the application was made or taken to be made,
- (2) A designated agency must, before approving an application by a person to be authorised by the designated agency as an authorised carer (or within 14 days after any such application is refused, withdrawn or otherwise terminated) enter the following information on the Carers Register:
 - (a) whether the person identifies as an Aboriginal or Torres Strait Islander person,

- (b) the person's working with children clearance information,
 - (c) whether the person has been authorised as an authorised carer (or similar) in another Australian jurisdiction,
 - (d) the home address of the person and, if that home has been inspected by the designated agency, the date on which the inspection occurred and whether the designated agency considered the outcome of the inspection to be satisfactory or unsatisfactory,
 - (e) the date of completion of each other suitability assessment obtained or conducted by the designated agency in respect of the person and whether the designated agency considered the outcome of each assessment to be satisfactory or unsatisfactory,
 - (f) the date on which the person completed any education or training required by the designated agency and whether the result of any such education and training was satisfactory or unsatisfactory,
 - (g) whether the designated agency determined that the person was capable and suitable to be an authorised carer and the date on which that determination occurred,
 - (h) if the application is approved—that fact,
 - (i) if the authorisation is subject to a condition that the authorised carer may provide out-of-home care only to a child or young person who is a relative or kin of the carer or who knows the carer—that fact,
 - (j) if the application is withdrawn—that fact, the date on which the application was withdrawn and whether the designated agency had any concerns about the person's suitability to care for a child or young person or to reside on the same property as an authorised carer, being concerns that the agency would disclose in response to any designated agency check submitted to the designated agency in respect of the person,
 - (k) if the application is terminated because of the death of the person—the fact that the person is dead and the date on which the person died (or if that is not known, the date on which the agency became aware that the person had died),
 - (l) if the application is refused—that fact, the date on which the application was refused and whether the refusal was on the grounds of a policy specific to the agency concerning carer eligibility or suitability.
- (3) A designated agency must within 14 days after determining to approve an application by a person to be authorised by the designated agency as an authorised carer enter that determination and the date of the determination on the Carers Register.

86E Information about persons residing on same property as carer applicants

- (1) In this clause:
- carer applicant* does not include a person who is provisionally authorised as an authorised carer.
- relevant resident* in respect of a carer applicant means a person (other than a child or young person in out-of-home care) who resides for more than 21 days on the same property as the carer applicant.
- (2) A designated agency must, within 14 days after becoming aware that a person is a relevant resident in respect of a carer applicant to the agency, enter the identification information of the relevant resident on the Carers Register.

- (3) A designated agency must, before approving an application by a carer applicant (or within 14 days after any such application is refused, withdrawn or otherwise terminated) enter the following information on the Carers Register about each relevant resident in respect of the carer applicant:
- (a) whether the relevant resident identifies as an Aboriginal or Torres Strait Islander person,
 - (b) the relevant resident's working with children clearance information,
 - (c) the date of completion of each suitability assessment obtained or conducted by the designated agency in respect of the relevant resident and whether the designated agency considered the outcome of each assessment to be satisfactory or unsatisfactory,
 - (d) if the relevant resident has died—that fact and the date on which the relevant resident died (or if that is not known, the date on which the agency became aware that the relevant resident had died),
 - (e) if the person is no longer a relevant resident because he or she no longer resides on the property—that fact and the date on which the person ceased to reside on the property (or if that is not known, the date on which the agency became aware that the person had ceased to reside on the property).

86F Information about persons provisionally authorised as carers

A designated agency must, within 14 days after a provisional authorisation by the designated agency takes effect in respect of a person under clause 31, enter the following information on the Carers Register:

- (a) the person's identification information,
- (b) the person's working with children clearance information,
- (c) the date on which the provisional authorisation took effect,
- (d) whether the person identifies as an Aboriginal or Torres Strait Islander person,
- (e) the home address of the person and, if that home has been inspected by the designated agency, the date of the inspection and whether the designated agency considered the outcome of the inspection to be satisfactory or unsatisfactory.

Note. A person who is provisionally authorised as an authorised carer is taken to have made an application under clause 30 to be authorised as an authorised carer. This means that a designated agency will also be required to enter information under clause 86D in respect of the person.

86G Information about authorised carers

A designated agency must enter the following information about a person who is or has been an authorised carer (authorised by the agency) on the Carers Register within 14 days after becoming aware of the information:

- (a) if the person died while authorised by the agency—that fact,
- (b) if the person's authorisation by the agency has been suspended—that fact and the date of that suspension,
- (c) if the person's suspension by the agency has ceased to have effect—that fact and the date that the suspension ceased,
- (d) if the person's authorisation by the agency has been surrendered or cancelled—that fact, the date of that surrender or cancellation and any concerns the agency has arising from that surrender or cancellation in relation to the person's suitability to care for a child or young person, or

to reside on the same property as an authorised carer (being information that the agency would disclose in any designated agency check submitted to the agency in respect of the person).

86H Information about persons residing on same property as authorised carer

- (1) In this clause:
relevant resident in respect of an authorised carer means a person (other than a child or young person in out-of-home care) who resides for more than 21 days on the same property as the authorised carer.
- (2) A designated agency must, within 14 days after becoming aware that a person is a relevant resident in respect of an authorised carer (who has been authorised or provisionally authorised by the agency), enter the following information on the Carers Register.
 - (a) the relevant resident's identification information,
 - (b) whether the relevant resident identifies as an Aboriginal or Torres Strait Islander person,
 - (c) the relevant resident's working with children clearance information.
- (3) A designated agency must enter the following information about a relevant resident in respect of an authorised carer (who has been authorised or provisionally authorised by the agency) on the Carers Register within 14 days after becoming aware of the information:
 - (a) that required suitability assessments have been obtained or conducted by the agency in respect of the relevant resident (including the date on which any Community Services check took place),
 - (b) if the relevant resident has died—that fact,
 - (c) if the relevant resident has ceased to reside with the authorised carer—that fact.

86I Reportable allegations

- (1) A designated agency must enter information about a reportable allegation regarding conduct of the following persons on the Carers Register:
 - (a) a person who is or has been an authorised carer (authorised by the designated agency),
 - (b) a relevant resident within the meaning of clause 86H in respect of any such authorised carer.
- (2) A designated agency must enter the following information about a reportable allegation on the Carers Register within 14 days after the principal officer of the designated agency becoming aware of the allegation:
 - (a) the fact that the allegation has been made,
 - (b) the fact that the investigation into the allegation has not concluded,
 - (c) the date that the principal officer became aware of the allegation.
- (3) However, subclause (2) does not apply if the Ombudsman is required to be notified about the reportable allegation under section 25C of the *Ombudsman Act 1974*, in which case:
 - (a) if the Ombudsman advises the designated agency (within 21 days after the notification) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after that advice is given, or

- (b) if the Ombudsman does not advise the designated agency (within 21 days after the notification) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after the end of the 21-day period.
- (4) A designated agency must, after completing an investigation into a reportable allegation enter on the Carers Register information that the investigation has been finalised and either:
 - (a) that the agency has concerns arising from the investigation that the agency would disclose in response to any designated agency check submitted to the agency in respect of the person against whom the allegation was made, or
 - (b) that the agency does not have such concerns.
- (5) Information under subclause (4) must be entered on the Carers Register within 14 days after the principal officer of the designated agency becomes satisfied that the investigation has been concluded unless the results of the investigation are required to be provided to the Ombudsman under section 25F of the *Ombudsman Act 1974*, in which case:
 - (a) if the Ombudsman advises the designated agency (within 21 days after the results are provided) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after that advice is given, or
 - (b) if the Ombudsman does not advise the designated agency (within 21 days after the results are provided) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after the end of the 21-day period.
- (6) The Ombudsman may direct the Children’s Guardian to place an entry (a **flag**) on the Carers Register in relation to a person or to remove any such flag.
- (7) The Children’s Guardian must comply with any such direction as soon as is practicable after the direction is given.
- (8) Despite any other provision of this Regulation, a designated agency must not enter information on the Carers Register about a reportable allegation in respect of a person (or continue any suitability assessment of the person) if a flag has been placed on the Carers Register in relation to the person unless:
 - (a) the agency has consulted the Ombudsman and the Ombudsman has approved the agency entering the information or continuing the suitability assessment, or
 - (b) the flag is removed (in which case the information must be entered within 14 after the flag is removed).

86J Amending the register—general

- (1) A designated agency must amend, or request the Children’s Guardian to amend, the Carers Register if the designated agency becomes aware that information on the register about any of the following is incorrect:
 - (a) a carer applicant in respect of the designated agency,
 - (b) a person authorised (including provisionally authorised) as an authorised carer by the designated agency,
 - (c) a person who resides on the same property as another person during any period that the other person is a person referred to in paragraph (a) or (b).

- (2) The Children's Guardian must cause the register to be amended if the Children's Guardian becomes aware (either from a designated agency or otherwise) that information on the register is incorrect.
- (3) The Children's Guardian must, as soon as practicable after amending the register in respect of a person referred to in subclause (1) (a)–(c), notify the relevant designated agency of the amendment.

86K Amending the register—overturned decisions

- (1) The Children's Guardian must ensure that when the Carers Register is amended, to take account of any of the following decisions or records that have subsequently been overturned or changed (either by the relevant designated agency or by a tribunal or court), information about the original decision or record is available only to the relevant designated agency, the Children's Guardian or a person referred to in clause 86M (2):
 - (a) a decision to refuse to grant an authorisation as an authorised carer,
 - (b) a decision to cancel an authorisation,
 - (c) a decision to suspend an authorisation,
 - (d) a record as to whether refusal to grant an authorisation was based on the grounds of a policy concerning carer eligibility or suitability specific to the agency,
 - (e) a record that a designated agency has concerns about the suitability of a person to care for a child or young person or to reside on the same property as an authorised carer, being a person:
 - (i) who withdrew an application for an authorisation, or
 - (ii) who surrendered an authorisation, or
 - (iii) whose authorisation was cancelled,
 - (f) a record that a designated agency has concerns arising from an investigation into a reportable allegation that the agency would disclose in response to any designated agency check submitted to the agency in respect of the person against whom the allegation was made.
- (2) Nothing in this clause limits clause 86N (Access to register—person whose information is on register).

86L Amending the register—request by person whose information is on register

- (1) A person whose details are included on the Carers Register, or if the person is under 18 years of age, a 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 any such request if satisfied that the information is incorrect.
- (3) The Children's Guardian must notify the person making the request (and the relevant designated agency) of any action taken by the Children's Guardian under this clause and provide reasons if the Children's Guardian has determined not to fully comply with the request.

86M Access to register—general

- (1) The Children's Guardian must ensure that information on the Carers Register is not disclosed except as provided by this Division or where required or permitted to be disclosed under any other Act or law.

- (2) The Children's Guardian must, on request by any of the following persons or bodies, provide access to information held on the Carers Register to that person or body:
 - (a) the Secretary,
 - (b) the Minister,
 - (c) the Ombudsman.
- (3) The Children's Guardian may provide access to information held on the Carers Register to any of the following:
 - (a) a designated agency (other than the Department), but only to the extent that the information relates to:
 - (i) a person who has applied to be, or has been, authorised as an authorised carer by the agency, or who resided on the same property as such a person at any time during which that person is or was a carer applicant or an authorised carer, or
 - (ii) a person whose suitability to be a guardian is, or has been, assessed by the agency, or who resided on the same property as such a person at any time during which that person is or was a prospective guardian,
 - (b) an accredited adoption service provider, but only to the extent that the information relates to a person whose suitability to be an adoptive parent is, or has been, assessed by the accredited adoption service provider or who resided on the same property as such a person at any time during which that person is or was a prospective adoptive parent,
 - (c) any other person or body approved in writing by the Privacy Commissioner.
- (4) The Children's Guardian and the Ombudsman may enter into arrangements for the Ombudsman to be consulted before the Children's Guardian determines whether to provide access under subclause (3) to information about a reportable allegation.

86N Access to register—person whose information is on register

- (1) A person whose details are included on the Carers Register, or if the person is under 18 years of age, 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 any such request:
 - (a) in respect of information other than information about a reportable allegation as soon as practicable after the request is made, and
 - (b) in respect of information about a reportable allegation unless a flag (within the meaning of clause 86I (6)) is on the Carers Register in relation to the person.
- (3) The Children's Guardian must notify the person making the request of any action taken by the Children's Guardian under this clause and provide reasons if the Children's Guardian has determined not to comply with the request but not if the Children's Guardian reasonably believes that the notice may alert the person about a reportable allegation referred to in subclause (2) (b).

[25] **Schedule 2**

Insert after Schedule 1:

Schedule 2 Uniform suitability assessment requirements

1 Definitions

In this Regulation:

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

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.

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 young person or to reside on the same property as an authorised carer.

2 Assessment body must obtain information or conduct checks

- (1) An assessment body must obtain or conduct the following in respect of an assessable person:
 - (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 (other than the Department) has material knowledge about the assessable 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 assessable person—an accredited adoption service provider check from that accredited adoption service provider,
 - (f) if the assessable person is being assessed by the assessment body as to his or her suitability to be a guardian or an authorised carer:
 - (i) references from at least 2 persons concerning the assessable person's suitability to care for a child, and
 - (ii) a health check, being a check of a statement made by the assessable person as to the physical and mental health of the person, and a medical report in respect of that person, in the form approved by the Secretary, and
 - (iii) an inspection of the assessable person's home to determine whether it will provide a safe and secure environment for any child or young person in out-of-home care or subject to a guardianship order who may reside in the home.
- (2) An assessment body is not required to obtain any information or conduct any check in respect of an assessable person who is:
 - (a) an authorised carer who is authorised by the assessment body if the information or check was obtained or conducted by the assessment body

- in assessing whether the person is suitable to be authorised as an authorised carer, or
- (b) a current applicant for a guardianship order for whom the assessment body has prepared a suitability statement if the information or check was obtained or conducted by the assessment body in preparing the suitability statement, or
 - (c) a prospective adoptive parent whom the assessment body has assessed as suitable to adopt a child under the *Adoption Act 2000* if the information or check was obtained or conducted by the assessment body in assessing whether the person is suitable to adopt a child.
- (3) A health check under subclause (1) (f) (ii) is not required in respect of the assessment of a person to be a guardian of a child or young person if the person is the authorised carer of the child or young person.
- (4) An accredited adoption service provider has **material knowledge** about an assessable person for the purposes of this clause if the accredited adoption service provider:
- (a) has received an expression of interest from the assessable person in adopting a child or young person, or
 - (b) has received an application to adopt a child or young person from the assessable person, or
 - (c) has known the assessable person to reside on the same property as any such person who submitted an expression of interest or application.
- (5) A designated agency has **material knowledge** about an assessable person for the purposes of this clause if the designated agency:
- (a) has authorised the assessable person as an authorised carer, or
 - (b) has received an application from the assessable person to be authorised as an authorised carer, or
 - (c) has assessed the assessable person's suitability for a guardianship order, or
 - (d) has known the assessable person to reside on the same property as any such authorised carer or person who submitted an application or was assessed for a guardianship order.

3 Exemptions for assessable residents

- (1) In this clause:
- assessable resident** means a person who is an assessable person because the person resides on the same property as another person and who is not an authorised carer, a carer applicant, a guardian, a prospective guardian or a child in out-of-home care.
- (2) An assessment body is not required to obtain any information or conduct any check in respect of an assessable resident if the information or check has already been obtained or conducted by the assessment body in determining that the assessable resident was suitable to reside on the same property as an authorised carer, a guardian or an adoptive parent.
- (3) A nationwide criminal record check of an assessable resident who resides on the same property as a person who has applied for a guardianship order or to be authorised as an authorised carer:
- (a) is not required if the assessable person is under 16 years of age, and

- (b) must not be obtained or conducted if the assessable person is under 14 years of age.
- (4) A Community Services check of an assessable resident who resides on the same property as a person who has applied for guardianship orders or to be authorised as an authorised carer must not be obtained or conducted if the assessable person is under 16 years of age.
- (5) A Community Services check or nationwide criminal record check is not required in respect of the following persons:
 - (a) a person who has become an assessable resident because the person turned 18 years of age while residing on the same property as an authorised carer and who has resided on the same property as the authorised carer for at least 2 years immediately before the person turned 18 years of age,
 - (b) a person who has become an assessable resident because the person turned 16 years of age while residing on the same property as an authorised carer and who was residing on the same property as the authorised carer when the authorised carer was so authorised.

4 Special exemption if adoption suitability check conducted

An assessment body is not required to obtain any information or conduct any check in respect of an assessable person if the information or check has been obtained or conducted by an adoption service provider and the information or results of the check have been provided to the assessment body.

5 Assessment body may obtain other information

The assessment body may obtain further information or conduct further checks with respect to an assessable person as the assessment body considers appropriate including any check relating to the employment or other activities of the assessable person.

6 Assessment body can cease assessment of unsuitable person

If the assessment body forms an opinion that an assessable person is an unsuitable person, it is not required to continue to obtain any information or conduct any check in respect of the assessable person or any person who resides on the same property as the assessable person.

[26] Schedule 3 Conditions of accreditation of designated agency

Insert after clause 6:

6A Information about reportable allegations

- (1) A designated agency must ensure that procedures are in place so that the principal officer of the agency is notified as soon as practicable of the making of any reportable allegation in relation to conduct of any of the following:
 - (a) a person who is or has been authorised as an authorised carer by the designated agency,
 - (b) a person who resides or has resided on the same property as another person while that other person is or was such an authorised carer.
- (2) A designated agency must not disclose (in a designated agency check or otherwise) information about any reportable allegation regarding conduct of a person if a flag (within the meaning of clause 86I) is on the Carers Register in

respect of a person unless the agency has consulted the Ombudsman and the Ombudsman has approved the agency disclosing the information.

- (3) Nothing in subclause (2) prevents information being provided to the Ombudsman or the Children's Guardian.

[27] Schedule 5

Insert after Schedule 4:

Schedule 5 Savings, transitional and other provisions

Part 1 Amendments consequent on making of Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015

1 Definition

In this Part:

amending Regulation means the *Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015*.

commencement day means the day on which the amending Regulation commenced.

2 Assessment of uncompleted applications

Clause 30 (as substituted by the amending Regulation) applies to the authorisation of a person who has applied to be an authorised carer before the commencement day if the person's application has not been finally determined before that day.

3 Existing authorised carers

A person who is an authorised carer immediately before the commencement day and who was authorised by a designated agency under:

- (a) clause 30 (1) (d) is taken to be authorised as an authorised carer by the designated agency under clause 30 (as substituted by the amending Regulation), or
- (b) clause 30 (1) (a)–(c) is taken to be authorised as an authorised carer by the designated agency under clause 31B (as inserted by the amending Regulation), or
- (c) clause 31 (but not clause 30) is taken to be provisionally authorised as an authorised carer by the designated agency under clause 31 (as substituted by the amending Regulation).

4 Existing emergency authorisations

- (1) This clause applies to a person who is taken to be provisionally authorised under clause 3 (c) of this Schedule.
- (2) A person to which this clause applies who has not made an application under clause 30 before the commencement day is taken, on that day, to have made an application under clause 30 (as in force immediately before the commencement day).

- (3) Clause 30 (as in force immediately before the commencement day) continues to apply to the assessment of a person to whom this clause applies as if that clause had not been substituted by the amending Regulation.
- (4) Despite subclause (3), if the assessment of a person to whom this clause applies has not been completed within 3 months after the commencement day, clause 30 (as in force immediately before the commencement day) ceases to apply and the person must be assessed under clause 30 (as substituted by the amending Regulation).

5 Existing residents

- (1) This clause applies to a person (the *adult resident*) residing on the same property as an authorised carer if the person commenced residing on the property before the commencement day.
- (2) No suitability assessment is required under Division 2 of Part 6 or Schedule 2 in respect of an adult resident if the relevant authorised carer was authorised under:
 - (a) clause 30 before the commencement day, or
 - (b) clause 31 before the commencement day and under clause 30 (as preserved by clause 4 (3) of this Schedule) within 3 months after the commencement day.

6 Carers Register—former authorised carers or carer applicants

A designated agency may, with the approval of the Children's Guardian, enter information on the Carers Register about any of the following:

- (a) a person whose application to the designated agency for authorisation as an authorised carer was refused or withdrawn before the commencement day,
- (b) a person who has been authorised by the designated agency but who was not authorised immediately before the commencement day,
- (c) an adult who resided on the same property as a person referred to in paragraph (a) and (b) while that person was an applicant or an authorised carer.

7 Carers Register—existing authorised carers

- (1) This clause applies to a person who, because of clause 3 (a) or (c) of this Schedule, is taken to be authorised (or provisionally authorised) by a designated agency under clause 30 or 31 of this Regulation.
- (2) The designated agency must enter on the Carers Register the following information about the authorised carer within 3 months after the commencement day:
 - (a) the person's identification information within the meaning of clause 86A,
 - (b) the home address of the person,
 - (c) whether the person identifies as an Aboriginal or Torres Strait Islander person,
 - (d) the person's working with children clearance information,
 - (e) the date on which the person was originally authorised (or provisionally authorised) by the designated agency,

- (f) if the authorised carer's authorisation is subject to a condition that the authorised carer may provide out-of-home care only to a child or young person who is a relative or kin of the carer or who knows the carer—that fact.

8 Carers Register—existing carer applicants

- (1) This clause applies to a person who, before the commencement day, applied to a designated agency to be authorised as an authorised carer and whose application has not been withdrawn or finally determined immediately before that day.
- (2) The designated agency must enter on the Carers Register the information about the person that is specified in clause 86D (1) within 14 days after the commencement day.

9 Carers Register—existing residents

Clause 86H extends to a relevant resident who resided on the same property as an authorised carer before the commencement day and in such a case:

- (a) the designated agency must enter information under clause 86H (2) or (3) (a) about the relevant resident on the Carers Register within 3 months after the commencement day (rather than within 14 days), and
- (b) the designated agency must enter information under clause 86H (3) (b) or (c) about the relevant resident on the Carers Register within 14 days after becoming aware of the information or, if the designated agency became aware of the information before the commencement day, within 14 days after the commencement day.

10 Carers Register—reportable allegations—current investigations

- (1) Clause 86I (2) and (3) extends to a reportable allegation made before the commencement day but not if the principal officer of the relevant designated agency is satisfied that the investigation into the allegation has been concluded before the commencement day.
- (2) In any such case the information required to be entered under clause 86I (2) must be entered on the Carers Register within 14 days after the commencement day unless the Ombudsman is required to be notified about the allegation under section 25C of the *Ombudsman Act 1974*, in which case:
 - (a) if the Ombudsman advises the designated agency (within 21 days after the notification) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after whichever of the following occurs last:
 - (i) that advice is given,
 - (ii) the commencement day, or
 - (b) if the Ombudsman does not advise the designated agency (within 21 days after the notification) that the information may be entered on the Carers Register—the information must be entered on the Carers Register within 14 days after whichever of the following occurs last:
 - (i) the end of the 21-day period,
 - (ii) the commencement day.
- (3) This clause is subject to clause 86I (8).

11 Carers Register—reportable allegations—concluded investigations

- (1) This clause applies to information referred to in clause 86I (3) about a reportable allegation if the principal officer of the relevant designated agency is satisfied that the investigation into the allegation has been concluded before the commencement day.
- (2) A designated agency may enter on the Carers Register information to which this clause applies and must enter such information if directed in writing to do so by the Children's Guardian within the time specified in the direction.
- (3) A direction under this clause may relate to a specific allegation or to allegations belonging to a specified class.
- (4) This clause is subject to clause 86I (8).

12 Application of clause 86C

Clause 86C applies to clauses 6–11 of this Schedule as if those clauses were part of Division 6 of Part 6.