

Children and Young Persons (Care and Protection) Regulation 2000

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New South Wales

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Notes—

- **Does not include amendments by**
[Private Health Facilities Act 2007 No 9](#) (not commenced)

Authorisation

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Children and Young Persons (Care and Protection) Regulation 2000



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Regulation 2000*.

2 Commencement

This Regulation commences on 18 December 2000.

3 Definitions

In this Regulation:

Children's Court Advisory Committee means the Children's Court Advisory Committee established under the *Children's Court Act 1987*.

residential unit means premises where an authorised carer provides out-of-home care to one or more children or young persons (other than the carer's own place of residence).

the Act means the *Children and Young Persons (Care and Protection) Act 1998*.

the 1987 Act means the *Children (Care and Protection) Act 1987*.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 General

5 Meaning of "related" and "relative"

A child or young person is "related" to, or a "relative" of, another person, for the purposes of the Act:

(a) if the child or young person is the child, step-child, grandchild, brother, sister, step-

brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person, or

- (b) if the other person has parental responsibility for the child or young person (but not including the Minister or a person who has parental responsibility other than in his or her personal capacity), or
- (c) if the child or young person has been placed in the care or custody of the other person in accordance with the [Adoption of Children Act 1965](#).

6 Rescission and variation of care orders—“significant change”

For the purposes of section 90 (2) of the Act, factors which indicate a significant change in the relevant circumstances of a child or young person since a care order was made or last varied include (but are not limited to) the following:

- (a) the parents of the child or young person concerned have not met their responsibilities under an applicable care plan or restoration plan,
- (b) a finding by the Children’s Court under section 82 (2) that proper arrangements have not been made for the care or protection of the child or young person.

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

For the purposes of section 186 (3) (d) of the Act, a Director-General of any department of the Public Service is prescribed as an **authorised person**.

6B Review of decisions of Children’s Guardian by Administrative Decisions Tribunal

Pursuant to section 264 (1A) (i) of the Act, the following decisions of the Children’s Guardian are reviewable by the Administrative Decisions Tribunal:

- (a) to impose or not to impose a condition on the accreditation of a designated agency, or
- (b) to vary or revoke such a condition, or
- (c) to suspend or cancel the accreditation of a designated agency.

Note—

Pursuant to section 245 (1) (b) and (i) of the Act, the following decisions are also reviewable by the Administrative Decisions Tribunal:

- (a) a decision of the relevant decision-maker to accredit or not to accredit a department or organisation as a designated agency, and
- (b) a decision of a relevant decision-maker to refuse to make a decision referred to in the preceding paragraph that the decision-maker has been requested to make.

7 Prescribed bodies: sec 248

For the purposes of section 248 (6) (f) of the Act, the following are prescribed as a

prescribed body:

- (a) a private fostering agency within the meaning of the 1987 Act (whether or not it is authorised),
- (b) a body that conducts a residential child care centre or a child care service within the meaning of the 1987 Act (whether or not it is licensed),
- (b1) a designated agency,
- (c) a private adoption agency within the meaning of the *Adoption of Children Act 1965*,
- (d) the Family Court of Australia,
- (d1) the Federal Magistrates Court of Australia,
- (e) the Commonwealth Services Delivery Agency known as “Centrelink”,
- (e1) the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs,
- (f) any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children.

7A Form of child’s or young person’s consent to order awarding sole parental responsibility to child’s or young person’s authorised carer: sec 149

- (1) A consent referred to in section 149 (5) of the Act:
 - (a) must be in writing, and
 - (b) must be signed by the child or young person concerned in the presence of a witness, and
 - (c) must bear a statement from the witness to the effect that he or she informed the child or young person, before the consent was signed and in a language and manner that the child or young person could understand:
 - (i) that the authorised carer making the application concerned will gain sole parental responsibility for the child or young person if the Children’s Court makes the order sought by the application, and
 - (ii) that any such order that is made by the Children’s Court may be varied or rescinded in accordance with section 149A of the Act, and
 - (iii) that the child or young person is entitled to obtain independent legal advice before signing the consent.
- (2) The witness referred to in subclause (1) (b) may be any person over the age of 18

years, other than the principal officer of the relevant designated agency and other than an employee of that agency who has been directly involved in the supervision of the child's or young person's placement.

7B Form of principal officer's consent to variation or rescission of order for sole parental responsibility: sec 149A

A consent referred to in section 149A (1) (b) of the Act is to be given in a form approved by the Director-General.

7C Principal officer's report as to placement of child or young person subject to order for sole parental responsibility: sec 149A

(1) A report under section 149A (2) of the Act with respect to the placement of a child or young person for whom an authorised carer has sole parental responsibility must be in writing and must include the following information:

- (a) the name, date of birth and residential address of the child or young person,
- (b) the name, residential address and telephone number of the authorised carer,
- (c) the length of time for which the child or young person has been in the care of the authorised carer, whether under the authorised carer's sole parental responsibility or otherwise,
- (d) the date of the order awarding the authorised carer sole parental responsibility for the child or young person,
- (e) the address and telephone number of the designated agency whose principal officer is providing the report,
- (f) the name and contact details of each person or body whose relationship with the child or young person would be affected by the variation or rescission of the sole parental responsibility order to which the report relates, and the nature of each such relationship.

(2) The following information, as relevant, must also be included in the report:

- (a) details of the relationship between:
 - (i) the child or young person, and
 - (ii) the authorised carer and the authorised carer's family,together with an assessment of the degree of attachment that the child or young person has to the authorised carer and the authorised carer's family,
- (b) details of the support given by the designated agency to the placement of the child or young person with the authorised carer,

- (c) any views expressed by the child or young person with respect to the proposed variation or rescission of the sole parental responsibility order to which the report relates, together with an indication of when and how any such views have been ascertained,
- (d) an assessment as to how the proposed variation or rescission of the sole parental responsibility order to which the report relates is likely to affect the safety, welfare and well-being of the child or young person, having particular regard to its impact on the needs of the child or young person for permanency,
- (e) an assessment of the arrangements that should be made (including any proposed contact orders) to preserve contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person.

Part 3 Records, reporting and information

8 Form of records

Any record made under the Act or this Regulation may be kept in written or in electronic form, but may be kept in electronic form only if it is capable of being readily printed on paper.

9 Access to records relating to Aboriginals and Torres Strait Islanders

- (1) A person who is entitled under section 14 (2) of the Act to have access to records relating to the placement of an Aboriginal or Torres Strait Islander child or young person may request access to the records orally or in writing to the Director-General.
- (2) Access to such records may be given by making the record available for inspection, or by providing a copy of the record, as specified by the person requesting access.
- (3) The Director-General must give access to records within 21 days after receiving a request under this clause, except as provided by subclause (4).
- (4) If it is not reasonably practicable to give access within 21 days, then before that period has expired the Director-General must:
 - (a) explain to the person concerned the reasons why access to the records cannot be given within that period, and
 - (b) advise the person of a date when access to the records will be given.

10 Application of mandatory reporting requirements

Section 27 (Mandatory reporting) of the Act applies to the following classes of persons:

- (a) a person who, for gain or reward, provides a regular child-minding service out of school hours for a child of or above the age of 6 years but less than 13 years at a

place other than the child's home (but not for a child who attends a school providing secondary education, being a government school, or a registered non-government school, within the meaning of the *Education Act 1990*),

- (b) a person who holds a management position in an organisation that provides a service referred to in paragraph (a) for a child referred to in that paragraph,
- (c) a person who, in the course of his or her professional work or other paid employment delivers disability services wholly or partly to children,
- (d) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of disability services wholly or partly to children.

11 Protection of information disclosed in alternative dispute resolution

(1) In this clause:

alternative dispute resolution means:

- (a) counselling or alternative dispute resolution conducted under section 37 of the Act, or
 - (b) a preliminary conference conducted under section 65 of the Act, or alternative dispute resolution arising out of such a preliminary conference, or
 - (c) alternative dispute resolution conducted under section 114 of the Act.
- (2) Evidence of anything said or of any admission made during alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (3) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution is not admissible in evidence in any proceedings before any court, tribunal or body.
- (4) Subclauses (2) and (3) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the alternative dispute resolution and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under subclause (5) (d).
- (5) A person conducting alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution only in any one or more of the following circumstances:
- (a) with the consent of the person from whom the information was obtained,

- (b) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
- (c) if there are reasonable grounds to suspect that a child or young person is at risk of harm within the meaning of section 23 of the Act,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to alternative dispute resolution to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the alternative dispute resolution for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Part 4 Care plans and alternative parenting plans

12 Care plans: sec 78

- (1) For the purposes of section 78 (5) of the Act, a care plan:
 - (a) is to be in a form approved by the Director-General following consultation with the Children's Court Advisory Committee, and
 - (b) is to include the following information:
 - (i) the date on which the care plan is made,
 - (ii) the name of each person, agency or body participating in the plan, and their relationship to the child or young person,
 - (iii) the method by which the views of the parents and child or young person were obtained (for example, by interview in person or over the telephone, and whether the persons were spoken to separately or together).
- (2) A care plan is to contain information about the following matters when relevant to the circumstances of the child or young person concerned:
 - (a) the family structure and significant family and other relationships of the child or young person,
 - (b) the history, development and experience of the child or young person,
 - (c) the relationship between the child or young person and his or her parents,
 - (d) the ethnic background and religion of the child or young person,
 - (e) whether the child or young person is of Aboriginal or Torres Strait Islander descent

- and which communities the child or young person identifies with,
- (f) the principal language spoken in the family home of the child or young person,
 - (g) issues of social, cultural, educational or economic significance in relation to the child or young person or his or her family,
 - (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family,
 - (i) if practicable, the views of the child or young person as to the services that need to be provided to him or her and his or her family,
 - (j) the views of the parents of the child or young person as to the services that need to be provided to the child or young person and his or her family,
 - (k) the views of the Director-General as to the services that need to be provided to the child or young person and his or her family,
 - (l) if the views referred to in paragraphs (i) and (j) were not obtained, the reasons why they were not obtained,
 - (m) such other matters as the Director-General considers appropriate.
- (3) The care plan is to make provision for the matters specified in section 78 (2) of the Act, and in addition is to set out the following matters:
- (a) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
 - (b) the plans or arrangements to meet the education and training needs of the child or young person,
 - (c) whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act,
 - (d) the role and responsibilities of each person, agency or body participating in the plan, and the approximate period of time during which those responsibilities are to be carried out,
 - (e) if more than one agency or body participates in the care plan, the agency or body that is to have overall responsibility for co-ordinating the plan and the delivery of services to the child or young person and his or her family,
 - (f) an initial date on which the progress of the plan is to be assessed by the agency or body having overall responsibility for co-ordinating the plan, and the frequency of

subsequent assessments by that agency or body,

- (g) indicators by which to assess the extent to which the care plan is successful,
- (h) if restoration of the child or young person is to be considered at a later time, the goals to be achieved by the parents of the child or young person to facilitate his or her restoration to their care, and the approximate period of time in which those goals are to be attained having regard to the age and developmental needs of the child or young person.

Note—

The matters for which a care plan must make provision under section 78 (2) of the Act are:

- (a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of any period for which the child or young person is removed from the care of his or her parents,
 - (b) the kind of placement proposed to be sought for the child or young person, including:
 - (i) how it relates to permanency planning for the child or young person, and
 - (ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,
 - (c) the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person,
 - (d) the agency designated to supervise the placement in out-of-home care,
 - (e) the services that need to be provided to the child or young person.
- (4) The care plan is to be accompanied by a copy of any relevant report on the health, educational or social well-being of the child or young person that, in the opinion of the Director-General, should be considered by the Children's Court.
- (5) The care plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
- (6) The care plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.

Note—

Under section 10 of the Act (The principle of participation), the Director-General is responsible for providing a child or young person with information, assistance and opportunities that will enable the child or young person to participate in decisions made under or pursuant to the Act that have a significant impact on his or her life. Those decisions include the development and review of care plans concerning the child or young person.

- (7) Until the consultation referred to in subclause (1) (a) has taken place, a care plan is to be in a form approved by the Director-General.

13 Alternative parenting plans

- (1) An alternative parenting plan that is submitted to the Children's Court under section 116 or 119 of the Act for an order approving the plan or for registration of the plan:
 - (a) is to be in a form acceptable to the Children's Court, and
 - (b) is to include the following information:
 - (i) the date on which the alternative parenting plan is made,
 - (ii) the name of each party to the plan, and their relationship to the child or young person,
 - (iii) the method by which the views of the parents and child or young person were obtained (for example, by interview in person or over the telephone, and whether the persons were spoken to separately or together), and
 - (c) is to set out the way in which the needs of the child or young person are proposed to be met, and any proposals concerning:
 - (i) allocation of parental responsibility or specific aspects of parental responsibility,
 - (ii) residential arrangements,
 - (iii) supervision,
 - (iv) contact arrangements with the parents, relatives or other persons of significance to the child or young person (in particular, whether any contact arrangements may require an application for a contact order in relation to the child or young person under section 86 of the Act),
 - (v) education and training,
 - (vi) medical care,
 - (vii) the provision of services.
- (2) An alternative parenting plan that is formulated by the Director-General or a support service organisation is to contain information about the following matters when relevant to the circumstances of the child or young person concerned:
 - (a) the family structure and significant family and other relationships of the child or young person's family,
 - (b) the history, development and experience of the child or young person,
 - (c) the relationship between the child or young person and his or her parents,

- (d) the ethnic background and religion of the child or young person,
 - (e) whether the child or young person is of Aboriginal or Torres Strait Islander descent and which communities they identify with,
 - (f) the principal language spoken in the family home of the child or young person,
 - (g) issues of social, cultural, educational or economic significance in relation to the child or young person or his or her family,
 - (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family,
 - (i) the resources required to provide the services that need to be provided to the child or young person and the availability of those resources to achieve that purpose,
 - (j) if the Director-General or any support service organisation is a party to the proceedings, their views as to the services that need to be provided to the child or young person and his or her family,
 - (k) if practicable, the views of the child or young person as to the services that need to be provided to him or her and his or her family,
 - (l) the views of the parents of the child or young person as to the services that need to be provided to the child or young person and his or her family,
 - (m) if the views referred to in paragraphs (k) and (l) were not obtained, the reasons why they were not obtained,
 - (n) such other matters as the Director-General or the support service organisation considers appropriate.
- (3) The alternative parenting plan is to specify the role and responsibilities of each party to the plan, and the approximate period of time during which those responsibilities are to be carried out.
- (4) The alternative parenting plan is to be accompanied by a copy of any relevant report on the physical, psychological, psychiatric or social well-being of the child or young person that, in the opinion of the person formulating the plan, should be considered by the Children's Court.
- (5) The alternative parenting plan is to refer to the views of any person who has expressed disagreement with any of the provisions of the plan.
- (6) The alternative parenting plan is to be signed by each person, agency or body who has agreed to participate in the plan. The plan may be, but is not required to be, signed by the child or young person concerned.

(7) In this clause:

support service organisation means a person, an agency or an organisation that provides counselling, therapy, conflict resolution or other support services to the child or young person concerned, or his or her family.

agency means any of the following:

- (a) a private fostering agency within the meaning of the 1987 Act (whether or not it is authorised),
- (b) a person or body who conducts a residential child care centre under the 1987 Act (whether or not it is licensed).

Part 5 Medical examination and treatment

14 Notice of medical examination: sec 173

For the purposes of section 173 (1) of the Act, the prescribed form of notice is Form 1 set out in Schedule 1.

15 Special medical treatment: sec 175

- (1) For the purposes of section 175 of the Act, the following medical treatments are declared to be special medical treatment:
 - (a) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* over a period or periods totalling more than 10 days in any period of 30 days,
 - (b) any medical treatment that involves an experimental procedure that does not conform to the document entitled *National Statement on Ethical Conduct in Research Involving Humans* published by the National Health and Medical Research Council in 1999, a copy of which is deposited in the head office of the Department,
 - (c) any medical treatment that involves the administration of a psychotropic drug to a child in out-of-home care for the purpose of controlling his or her behaviour.
- (2) Subclause (1) (a) does not apply to medical treatment in circumstances where the drug is administered in accordance with a written exemption granted, either generally or in a particular case, by the Director-General on the written request of the Director-General of the Department of Health.
- (3) If the Director-General of the Department of Health makes a written request under subclause (2) for an exemption in relation to the administration of a particular drug to a particular child and does not receive notification of the decision of the Director-General of the Department of Community Services within 21 days after the making of

the request, the exemption is taken to have been granted on the expiration of the 21-day period.

(4) (Repealed)

15A Administration of psychotropic drug to child in out-of-home care

An authorised carer may not consent to any special medical treatment involving the administration of a psychotropic drug to a child in out-of-home care for the purpose of controlling his or her behaviour unless:

- (a) the treatment forms part of a behaviour management plan, and
- (b) if the child resides in a residential unit, the principal officer of the designated agency has authorised the behaviour management plan.

Part 6 Out-of-home care

Division 1 General

16 Application for review of temporary care arrangement: sec 152 (6)

- (1) An application to the Children's Court for the review of a temporary care arrangement must be in writing.
- (2) A person who applies for a review of a temporary care arrangement is, as soon as practicable after the application is made, to cause a copy of the application (on which is endorsed the time, date and place set down for the hearing of the application) to be served on:
 - (a) in the case of an application made on behalf of the child or young person the subject of the arrangement—each person having parental responsibility for the child or young person who can reasonably be located, or
 - (b) in the case of an application by a person having parental responsibility for the child or young person—the child (if the child is of or above the age of 10 years) or young person.
- (3) A child or young person who applies for review of a temporary care arrangement is not required to serve a copy of the application on any other person.

17 Out-of-home care: sec 135

For the purposes of section 135 (2) (b) of the Act, the following are prescribed as not being out-of-home care:

- (a) boarding arrangements to enable children and young people to attend a school, training establishment or university for the sole purpose of obtaining an education,

- (b) a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, athletic or recreational pursuits,
- (c) a private hospital licensed under the *Private Hospitals and Day Procedure Centres Act 1988*,
- (d) (Repealed)
- (e) health services under the *Health Services Act 1997*,
- (f) adoption services under the *Adoption Act 2000*,
- (g) any place used for the detention of children and young persons pending criminal proceedings (including police custody), or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*,
- (h) placement arrangements made under section 137 (1) (c) of the Act that do not involve supervision by a designated agency,
- (i) SAAP arrangements funded under the *Supported Accommodation Assistance Act 1994* of the Commonwealth.

18 Financial assistance: sec 161

For the purposes of section 161 (2) (c) (i) of the Act, the following classes of persons are prescribed:

- (a) a person providing care for a child or young person under the supervision of a designated agency under a care plan that:
 - (i) has been developed through agreement with the parents of the child or young person, or
 - (ii) has been registered in the Children's Court under section 38 of the Act,
- (b) a person providing care for a child or young person under the supervision of a designated agency under an alternative parenting plan that has been approved or registered by the Children's Court,
- (c) a person providing care for a child or young person under the supervision of a designated agency under an order of the Supreme Court, the Children's Court, the Family Court of Australia or the Federal Magistrates Court,
- (d) the Minister,
- (e) the Director-General.

Division 2 Authorisations by designated agencies

19 Definitions

In this Division:

authorised carer means an individual authorised as an authorised carer by a designated agency.

designated agency, in relation to an authorised carer, means the designated agency that authorised the authorised carer.

supervising person means:

- (a) the Director-General (or an officer delegated the Director-General's functions for the purposes of this clause), or
- (b) an officer or employee of the designated agency that has supervisory responsibility for a child or young person in the care of an authorised carer.

20 Authorisation by a designated agency

- (1) A designated agency may authorise an individual belonging to one of the following classes of individuals as an authorised carer, but only if the designated agency has carried out an assessment of the individual under subclause (3) and has determined, following that assessment, that the individual is suitable to be an authorised carer:
 - (a) an employee engaged by the designated agency as an employee to provide care for children and young persons,
 - (b) an individual engaged by the designated agency under a contractual arrangement (other than as an employee) to provide care for children and young persons,
 - (c) an individual who is employed by an individual referred to in paragraph (b) to care for children and young persons in the course of his or her duties,
 - (d) an individual who cares for children and young persons in his or her private capacity.
- (2) A designated agency may authorise an employee referred to in subclause (1) (a) to be an authorised carer without carrying out an assessment under subclause (3) of the individual's suitability.
- (3) A designated agency may not determine that an individual is suitable to be an authorised carer under subclause (1) unless:
 - (a) the individual has furnished to the designated agency such information as the agency may reasonably require in order to assess the individual's suitability to be an authorised carer, and
 - (b) the individual has successfully completed such course of training as the

designated agency may reasonably require in order to ensure that the individual is capable of exercising the functions of an authorised carer, and

- (c) the designated agency has carried out employment screening of the individual under Part 7 of the *Commission for Children and Young People Act 1998*.

Note—

Section 37 of the *Commission for Children and Young People Act 1998* provides that it is the duty of an employer to carry out all the relevant procedures of employment screening of a preferred applicant for primary child-related employment before employing the preferred applicant. **Primary child-related employment** is defined as including child-related employment involving the fostering of children.

The *Child Protection (Prohibited Employment) Act 1998* prohibits an employer from employing a person in child-related employment without first ascertaining whether the person has been convicted of a serious sex offence. The Act also prohibits a person who has been convicted of such an offence from applying for, undertaking or remaining in child-related employment.

- (4) For the purpose of determining whether an individual is suitable to be an authorised carer, the designated agency may make such inquiries as to the individual, and as to each individual who is aged 14 years or above in the household of the individual, as the designated agency considers appropriate, (including, subject to the *Criminal Records Act 1991*, inquiries as to an individual's criminal record).
- (5) The principal officer of a designated agency is to carry out the functions of the agency under this clause, unless the Children's Guardian approves the carrying out of those functions by another officer or employee of the designated agency.

21 Conditions of authorisations

- (1) A designated agency may at any time impose such reasonable conditions as it thinks fit on the authorisation of an authorised carer.
- (2) A designated agency may at any time vary or revoke a condition of an authorisation.
- (3) The imposition, variation or revocation of a condition takes effect when it is notified to the authorised carer in writing.

22 Authorisations by designated agencies to be in writing

- (1) A designated agency that authorises a person as an authorised carer under clause 20 must give the person a copy of the authorisation in writing.
- (2) The written authorisation must set out any conditions of the authorisation imposed by the designated agency.

23 Code of Conduct for Authorised Carers

Except as provided by clause 24, an authorised carer must comply with the Code of Conduct for Authorised Carers set out in Schedule 2.

24 Code of Conduct for Residential Units—authorised carers

An authorised carer who provides out-of-home care to one or more children or young persons at a residential unit must comply with the provisions of the Code of Conduct for Residential Units set out in Schedule 3 that apply to authorised carers.

25 Personal responsibility of authorised carers

An authorised carer is personally responsible for carrying out the carer's functions and duties as an authorised carer.

26 Inspection of home or premises

An authorised carer must, at any reasonable hour and on reasonable notice, permit a supervising person:

- (a) to inspect the home or premises at which the authorised carer provides out-of-home care, and all of the authorised carer's records relating to a child or young person in out-of-home care, and
- (b) to interview any child or young person in out-of-home care.

27 Medical examination

An authorised carer must, if requested in writing by the designated agency on the written advice of a medical practitioner:

- (a) undergo, or cause a member of the authorised carer's household to undergo, such examination by a medical practitioner as is reasonably necessary to ascertain whether the authorised carer's household is a healthy environment for the care of children or young persons, and
- (b) provide a report of such examination to the designated agency and to any other supervising person who requests that the report be provided to it.

28 Notice of change of address

An authorised carer must, before changing his or her residential address, cause notice in writing of the change to be given to an officer or employee of the designated agency.

29 Information to be provided to designated agency

- (1) An authorised carer must provide the designated agency with such information concerning the care of a child or young person as the agency may from time to time reasonably require.
- (2) An authorised carer must immediately notify the designated agency if any of the following occurs:
 - (a) a child or young person leaves the care of the authorised carer, or

- (b) the child or young person is to be, or has been:
 - (i) expelled or suspended from school, or
 - (ii) absent without permission from the care of the authorised carer for a period of 24 hours or more, or
 - (iii) absent without permission (whether or not while in the care of the authorised carer) from New South Wales for any period, or
- (c) the child or young person suffers a serious accident, injury or illness, or
- (d) the child or young person dies, or
- (e) the authorised carer:
 - (i) is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
 - (ii) becomes aware that any members of his or her household have been charged with or convicted of such an offence.

30 Management of behaviour of children and young persons

- (1) An authorised carer, in correcting and managing the behaviour of a child or young person in out-of-home care:
 - (a) must not use physical coercion or physical punishment, and
 - (b) must, in any event, use only behaviour management practices approved by the designated agency.
- (2) An authorised carer who finds that the approved behaviour management practices are not sufficiently effective to correct or manage the behaviour of a child or young person is to notify that fact as soon as practicable to the designated agency.
- (3) On receiving a notification under subclause (2), the designated agency, after assessing the situation, is to determine if the problem should be addressed:
 - (a) by providing appropriate advice, support and training to the authorised carer and appropriate support to the child or young person, or
 - (b) by changing the placement arrangements.

31 Cancellation or suspension of authorisations by designated agencies

A designated agency may, by notice in writing, cancel or suspend the authorisation of an authorised carer if the agency is of the opinion that the authorised carer:

- (a) has failed to comply with any condition of the authorisation, or

- (b) has failed to comply with any obligation or restriction imposed on the authorised carer by the Act or this Regulation, or
- (c) has failed to comply with a written direction to the authorised carer by the designated agency or the Children’s Guardian under section 157 (3) of the Act, or
- (d) has failed to uphold the Charter of Rights prepared under section 162 of the Act, or
- (e) has failed to comply with the Code of Conduct for Authorised Carers or the relevant provisions of the Code of Conduct for Residential Units.

Note—

Under section 245 (1) (a) of the Act, a decision to cancel or suspend the authorisation of an authorised carer is reviewable by the Administrative Decisions Tribunal.

Division 3 Authorisations other than by designated agencies

32 Other authorisations

- (1) For the purposes of section 137 (1) (c) of the Act, the following persons are authorised as authorised carers:
 - (a) a person who provides residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency and who provides the care and control under:
 - (i) a care plan developed by the Director-General, or
 - (ii) an alternative parenting plan approved or registered by the Children’s Court under Part 1 of Chapter 7 of the Act,
 - (b) a person providing residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency under an order of the Supreme Court, the Family Court of Australia or the Federal Magistrates Court.
- (2) A person referred to in subclause (1) is authorised as an authorised carer only in relation to the child or young person concerned, and the person ceases to be an authorised carer when the person ceases to have care responsibility for the child or young person.
- (3) A person referred to in subclause (1) (a) is required to comply with the Code of Conduct for Authorised Carers set out in Schedule 2.

33 Management of behaviour of children and young persons: sec 157

- (1) This clause applies only to a person authorised as an authorised carer under clause 32 (1) (a).

- (2) An authorised carer, in correcting and managing the behaviour of a child or young person in out-of-home care, may use only behaviour management practices approved by the Director-General.

34 Code of Conduct for Residential Units—designated agencies

- (1) This clause only applies to a person authorised as an authorised carer under section 137 (1) (a) of the Act.
- (2) An authorised carer who is the principal officer of a designated agency that provides out-of-home care to one or more children or young persons is to comply with the provisions of the Code of Conduct for Residential Units set out in Schedule 3 that apply to designated agencies.

Note—

If an authorised carer fails to comply with this clause, the designated agency may have its accreditation cancelled or suspended under clause 40.

Division 4 Accreditation as a designated agency

35 Application for accreditation

- (1) An organisation or a department of the Public Service (an **applicant**) may apply in writing to the Children’s Guardian for accreditation as a designated agency.
- (2) An application is:
 - (a) to be made in the form approved by the Children’s Guardian, and
 - (b) to be accompanied by such information as the Children’s Guardian may reasonably require to assist in the determination of the application, and
 - (c) to specify the person (the **principal officer**) proposed to have the overall supervision of the arrangements for the provision of out-of-home care made by the applicant, and
 - (d) to be accompanied by a behaviour management policy statement that sets out:
 - (i) the views of the applicant on the behaviour management practices to be observed by authorised carers regarding the care, management and discipline of children and young people for whom the designated agency has supervisory responsibility, and
 - (ii) details of the procedures to be used in respect of the application of physical restraint, including consent, reporting, analysis and supervision of staff, and support and counselling to be provided to children and young persons to whom physical restraint has been applied, and

- (e) to include a statement to the effect that the applicant's behaviour management policy includes a ban on the use of all of the following:
 - (i) any form of corporal punishment, or
 - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food, or
 - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
 - (f) be accompanied by a psychotropic drugs policy statement that sets out the views of the applicant on the administration of psychotropic drugs for the purpose of controlling the behaviour of children and young persons.
- (3) The Children's Guardian may require an applicant to furnish to the Children's Guardian such further information as the Guardian may reasonably require in order to assess the applicant's suitability to be a designated agency.
- (3A) Any information that is required of an applicant under subclause (3) must be furnished to the Children's Guardian within 12 months after the date on which the application was made or within such further period as the Children's Guardian may allow.
- (4) The Children's Guardian is to notify in writing an applicant for accreditation as soon as reasonably practicable of:
- (a) the outcome of the application, and
 - (b) the reasons for the decision, and
 - (c) the means by which the applicant may apply for review of the decision of the Children's Guardian.

36 Accreditation

- (1) The Children's Guardian may accredit an applicant as a designated agency if, in the opinion of the Children's Guardian, the applicant satisfies the criteria referred to in subclause (2).
- (2) The Minister may, on the recommendation from time to time of the Children's Guardian, approve criteria developed by the Children's Guardian for use in determining:
 - (a) whether to grant an application for accreditation, and
 - (b) what period of accreditation will be granted.
- (3) The Children's Guardian must make the criteria approved for the time being under

subclause (2) available for public inspection.

- (4) Failure to comply with subclause (3) does not affect the validity of any decision of the Children's Guardian to grant or refuse accreditation to an applicant.
- (5) Without limiting this clause, the criteria adopted by the Minister must address the following matters:
 - (a) the assessment procedures (including probity testing) for determining whether a person is suitable to be an authorised carer,
 - (b) the training provided to authorised carers,
 - (c) the supervision provided to authorised carers,
 - (d) what provision is made for the involvement of children and young persons in the making of decisions that affect them,
 - (e) what provision is made for the involvement of the persons who have parental responsibility for children or young persons immediately before the children or young persons enter into out-of-home care in the making of decisions that affect those children or young persons,
 - (f) what provision is made for the involvement of authorised carers in the making of decisions concerning the child or young person in their care.

37 Alternative means of accreditation

Despite clause 36, the Children's Guardian may accredit an applicant as a designated agency if:

- (a) an organisation or body that has established standards or criteria for the care of children or young persons has determined that the applicant meets those standards or criteria, and
- (b) the Children's Guardian has recognised that organisation or body for the purposes of this clause.

38 Form and period of accreditation

- (1) The Children's Guardian may accredit an applicant as a designated agency for a period of one, three or five years.
- (2) An accreditation is to be in such form as the Children's Guardian may approve.

39 Conditions of accreditation

- (1) An accreditation is subject to the conditions set out in Schedule 4.
- (2) The Children's Guardian may impose such other reasonable conditions as the

Children's Guardian sees fit on an accreditation, or the process for accreditation, and may vary or revoke those conditions by notice in writing to the designated agency.

- (3) The imposition, variation or revocation of a condition takes effect on such date as is specified in the notice.
- (4) If the designated agency is a government department, the Children's Guardian must report to the Minister on the need to impose a condition under subclause (2).

40 Suspension and cancellation of accreditation

- (1) The Children's Guardian may suspend or cancel the accreditation of a designated agency if the Children's Guardian is satisfied that:
 - (a) the designated agency has ceased to meet any of the criteria developed in accordance with clause 36, or
 - (b) the designated agency has ceased to meet any standards or criteria referred to in clause 37, or
 - (c) the designated agency has failed to comply with a condition of accreditation imposed under clause 39, or
 - (d) the designated agency, or an authorised carer who is the principal officer of the designated agency, has failed to comply with any obligations or restrictions imposed on the agency or the carer by the Act or this Regulation.
- (2) As soon as practicable after deciding to suspend or cancel an accreditation, the Children's Guardian must give the designated agency concerned notice in writing of the decision.
- (3) The suspension or cancellation takes effect on such date as is specified in the notice.
- (4) If the designated agency is a government department, the Children's Guardian must report to the Minister before giving a notice under subclause (2).

Part 7 Children's Guardian

41 Provision of information to Children's Guardian

Information furnished to the Children's Guardian in accordance with a direction under section 185 (1) (b) of the Act is to be furnished:

- (a) in written form and, if the person furnishing the information is able to furnish it in electronic form in a format approved by the Children's Guardian, in electronic form in that format as well, or
- (b) in electronic form in a format approved by the Children's Guardian.

Part 8 Out of school hours care services

42 Definitions

In this Part:

children who are at school has the same meaning as it has in section 220A of the Act.

out of school hours care service has the same meaning as it has in section 220A of the Act.

registered premises, in relation to an out of school hours care service, means the premises (if any) in respect of which the service is registered under this Part.

registered provider, in relation to an out of school hours care service, means the person who is registered under this Part as the provider of the service.

43 Provision of unregistered service prohibited

- (1) This clause commences on 1 July 2007.
- (2) A person must not provide an out of school hours care service for any children who are at school unless:
 - (a) the service is registered under this Part, and
 - (b) the person is the registered provider for the service, and
 - (c) if the service is provided at fixed premises, the premises are the registered premises for the service.

Maximum penalty: 10 penalty units.

Note—

A person does not provide such a service just because the person is a carer for the service, or is otherwise employed within the service, whether on a paid or voluntary basis.

- (3) Subclause (2) does not apply to the proposed registered provider for the service under an application under clause 44 that has been made before 1 July 2007 but not yet determined under clause 45.

44 Application for registration

- (1) Any person who provides, or intends to provide, an out of school hours care service may apply for registration of the service.
- (2) An application for registration must be in the form approved by the Director-General and must include the following information:
 - (a) the name, address and contact details of the proposed registered provider for the

service,

- (b) the name, address and contact details of the person who is proposed to have charge of the service,
 - (c) if the service is to be provided at fixed premises, the address of the proposed registered premises for the service,
 - (d) such other information as the application form may require.
- (3) The application must be accompanied by such supporting documents and information as the application form may require.

Note—

Section 253 of the Act makes it an offence to make a false or misleading application under this clause.

45 Registration

- (1) The Director-General may determine an application for registration of an out of school hours care service by registering the service or by refusing the application.
- (2) Registration of an out of school hours care service is subject to such conditions as are imposed on the registration by this Part.
- (3) The Director-General may cancel the registration of an out of school hours care service for breach of any such condition.

46 Condition as to provision of further information

- (1) It is a condition of registration of an out of school hours care service that the registered provider for the service will furnish the Director-General with such information (including financial information) relevant to the provision of the service as the Director-General may from time to time require by notice in writing served on the registered provider.
- (2) A registered provider of an out of school hours care service is guilty of an offence if he or she fails to comply with the requirements of a notice served under this clause.

Maximum penalty: 10 penalty units.

Schedule 1 Form

(Clause 14)

Form 1 Notice of medical examination

To:

(insert name of person having care of the child or young person)

You must immediately take

.....
.....

(insert name or description of the child or young person)

for a medical examination by

(insert name or description of medical practitioner)

at

(insert name and address of hospital or place)

You may be charged with a criminal offence if you do not do as this notice requires.

This notice is issued by

(insert name and position description of person issuing the notice)

Schedule 2 Code of Conduct for Authorised Carers

(Clause 23)

1 The home

An authorised carer must ensure that the home where the child or young person will reside in out-of-home care is kept safe, clean and in good repair and is properly ventilated, lit and heated.

2 Furniture, furnishings and equipment

The home must have:

- (a) adequate furniture, furnishings and equipment for use by the children or young persons who reside at the home, having regard to their ages and physical and intellectual development, and
- (b) adequate facilities for the preparation, refrigeration and hygienic storage of food and refreshments, and
- (c) adequate facilities for the storage of equipment and bedding and for the safe keeping of the children's outdoor clothes and other personal belongings, and
- (d) sufficient equipment suitable for the indoor and outdoor recreational needs of the children, having regard to their ages and physical and intellectual development, and
- (e) access to a telephone.

3 Swimming pools

Any swimming pool at the home must be adequately fenced in accordance with the [Swimming Pools Act 1992](#).

4 Care of children and young persons

The authorised carer must, in relation to each child or young person in out-of-home care,

ensure that:

- (a) the health, education, safety, welfare, well-being and progress of the child or young person are promoted, and
- (b) the child or young person is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (c) the observance by the child or young person of his or her religion (if any) and the preservation of the child's or young person's cultural identity are encouraged, and
- (d) the same standards of care and discipline are applied to all children and young people residing in the home, and
- (e) the child or young person is encouraged to maintain a connection with birth and extended family members and other significant people, as far as it is reasonably practicable and safe to do so.

5 Bedrooms

The authorised carer:

- (a) must provide adequate sleeping accommodation for each child or young person who resides in out-of-home care, and
- (b) must ensure that sleeping accommodation that is provided for a child or young person in out-of-home care is appropriate for the age of the child or young person and takes into account the child's or young person's requirements for privacy, and
- (c) must ensure that:
 - (i) each such child or young person is provided with a separate bed or cot, equipped with a clean and comfortable mattress and bed clothing that is appropriate to the climate, and
 - (ii) linen on each such child's or young person's bed or cot is changed weekly (or more frequently if necessary), and
 - (iii) adequate facilities are provided for storage of each such child's or young person's clothing and personal belongings.

6 Study

The authorised carer must ensure that each child or young person who is in out-of-home care and who is attending school or undertaking studies is provided with facilities for quiet study that are adequate, having regard to the age of the child or young person.

7 Health and medical attention

- (1) The authorised carer must ensure that each child or young person in out-of-home care

is supplied with such medical and dental treatment as is necessary.

- (2) The authorised carer must, as soon as practicable (and, in any case, within 24 hours) after a child or young person who is in out-of-home care is admitted to hospital, cause notice of that fact to be given to:
 - (a) each person who has parental responsibility for the child or young person who can reasonably be located, and
 - (b) the principal officer of the designated agency having supervisory responsibility for the child or young person.
- (3) If a medical practitioner recommends to the authorised carer that the care or treatment of a child or young person in out-of-home care should be varied for reasons of health, the carer must use his or her best endeavours to give effect to the medical practitioner's recommendation.

8 Children and young persons not to perform unreasonable duties

An authorised carer must not require a child or young person in out-of-home care to perform duties that are unreasonable, having regard to the child's or young person's age and physical and intellectual development.

9 Discipline of children and young persons

An authorised carer:

- (a) must not physically coerce or physically punish a child or young person, and
- (b) must, in any event, comply with the behaviour management policy of the designated agency.

10 Animals

The designated agency must ensure that any animal kept in the home is kept clean and well-cared for.

11 Discharge of children and young persons

An authorised carer in whose care a child or young person has been placed must not discharge the child or young person into the care of any other person, otherwise than:

- (a) into the care of:
 - (i) a member of staff of the designated agency having supervisory responsibility for the child or young person, or
 - (ii) a person who has parental responsibility for the child or young person, or
- (b) with the written consent of the Director-General or the principal officer of the

designated agency having supervisory responsibility for the child or young person, or

- (c) pursuant to an order of a court having jurisdiction to make orders with respect to parental responsibility for children or young persons.

Schedule 3 Code of Conduct for Residential Units

(Clauses 24 and 34)

1 Admission of child or young person to out-of-home care

- (1) In deciding whether or not to admit a child or young person to out-of-home care, the designated agency must have regard to:
- (a) what options for care of the child or young person are available, and
 - (b) the views of the child or young person, and
 - (c) the welfare and interests of the child or young person.
- (2) If admission of a child or young person to care is requested by a person who is not a parent of the child or young person, the designated agency must be satisfied, before admitting the child or young person to care, that all reasonable endeavours have been made to locate the child's or young person's parents and to ascertain their views as to the child's or young person's admission to care.
- (3) Before admitting a child or young person to care, the designated agency must obtain (where practicable) a social and medical history of the child or young person and the child's or young person's parents.

2 Care of children and young persons

An authorised carer employed by the designated agency must, in relation to each child or young person in out-of-home care, ensure that:

- (a) the health, welfare and progress of the child or young person are promoted, and
- (b) the child or young person receives guidance as to generally accepted community standards of behaviour, and
- (c) the child or young person is encouraged to participate, as far as is reasonably practicable, in the ordinary life of the community, and
- (d) the observance by the child or young person of his or her religion (if any) and the preservation of the child's or young person's cultural identity are encouraged.

3 Supervision

- (1) The designated agency must ensure that the children or young persons in out-of-home care are adequately supervised, having regard to their ages and physical and

intellectual development, by adult members of the staff.

- (2) The designated agency must ensure that no person is allowed to supervise children or young persons unless the person:
 - (a) is sympathetic to the welfare of children and young persons, and
 - (b) has adequate knowledge, understanding and experience of children and young persons so as to be capable of meeting their needs, and
 - (c) is able to adequately care for and supervise children and young persons, and
 - (d) is of suitable maturity, health and personality to care for children and young persons, and
 - (e) is a fit and proper person, and
 - (f) has received suitable training in the proper care of children and young persons.
- (3) The designated agency must ensure that no member of staff employed by the agency as an authorised carer to supervise children or young persons without assistance both supervises children or young persons and performs other duties at the same time if those other duties would adversely affect the quality of supervision.

4 Bedrooms

- (1) The designated agency:
 - (a) must provide adequate sleeping accommodation, in a room that is separate from any bedroom in which an adult sleeps, for each child or young person who resides in out-of-home care, and
 - (b) must ensure that:
 - (i) each such child or young person is provided with a separate bed or cot, equipped with a clean and comfortable mattress and bed clothing that is appropriate to the climate, and
 - (ii) linen on each such child's or young person's bed or cot is changed weekly (or more frequently if necessary), and
 - (iii) adequate facilities are provided for storage of each such child's or young person's clothing and personal belongings.
- (2) The designated agency must ensure:
 - (a) that no child or young person who is of or above the age of 7 years sleeps in the same room as another child or young person (other than a relative) of the opposite sex, and

- (b) that each young person who resides in out-of-home care has sleeping accommodation that affords the young person adequate privacy.

5 Study

The designated agency must ensure that each child or young person who is in out-of-home care, and who is attending school or undertaking studies, is provided with facilities for quiet study that are adequate, having regard to the age of the child or young person.

6 Health and medical attention

- (1) The designated agency must ensure that each child or young person in out-of-home care is supplied with such medical and dental treatment as is necessary.
- (2) The designated agency must, as soon as practicable (and, in any case, within 24 hours) after a child or young person who is in out-of-home care is admitted to hospital, cause notice of that fact to be given to each person who has parental responsibility for the child or young person who can reasonably be located.
- (3) If a medical practitioner recommends to an authorised carer employed by the designated agency that the care or treatment of a child or young person in out-of-home care should be varied for reasons of health, the carer must use his or her best endeavours to give effect to the medical practitioner's recommendation.
- (4) The designated agency must ensure:
 - (a) that there is a suitable and fully-stocked first-aid kit on the premises, and
 - (b) that at least one member of the staff on duty holds approved qualifications in the administration of first-aid, and
 - (c) that all first-aid equipment, medicine, drugs and other substances potentially harmful to children or young persons are stored in cupboards that are secured by means of child-proof locks.

7 Children and young persons not to perform unreasonable duties

An authorised carer must ensure that a child or young person in out-of-home care is not required to perform duties that are unreasonable, having regard to the child's or young person's age and physical and intellectual development.

8 Discipline of children and young persons

A designated agency is to ensure that all staff and volunteers:

- (a) do not physically coerce or physically punish a child or young person, and
- (b) in any event, comply with the behaviour management policy of the designated agency.

9 Animals

The designated agency must ensure that any animal kept at the residential facility is kept clean and well-cared for.

10 Discharge of children and young persons

The designated agency must not discharge a child or young person in out-of-home care into the care of any other person, otherwise than:

- (a) into the care of a person who has parental responsibility for the child or young person, or
- (b) pursuant to an order of a court having jurisdiction to make orders with respect to parental responsibility for children or young persons.

Schedule 4 Conditions of accreditation of designated agency

(Clause 39)

1 Request for placement

- (1) A designated agency must not arrange for the placement of a child or young person in out-of-home care unless:
 - (a) the young person or, in the case of a child, a person having parental responsibility for the child, requests placement, or
 - (b) the Children's Court or another court has ordered that the child or young person be placed in out-of-home care.
- (2) A request under subclause (1) (a) may be made orally or in writing. If the request is made orally, the designated agency with which the child or young person is placed must confirm the placement in writing for the child or young person within 7 days after the placement is arranged.

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

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) it is able to meet the needs of the child or young person, and
- (b) any authorised carer with whom the child or young person is placed is able to meet the needs of the child or young person.

3 Social and medical history

A designated agency must use its best endeavours to document the social and medical history of a child or young person (and his or her family) for whom the agency arranges a

placement in out-of-home care.

4 Information to be provided to Director-General

A designated agency must provide the Director-General with such information about a child or young person in the out-of-home care of the designated agency as the Director-General may reasonably require.

5 Co-operation with entry and inspection of premises

A designated agency must co-operate with any person who lawfully enters premises of the designated agency to inspect or search those premises.

Note—

Sections 233 (Power of search and removal of children and young persons in need of care) and 235 (Entry without warrant onto premises—generally) of the Act provide for certain persons to enter and search premises.

6 Notification of failure to meet accreditation standards

A designated agency that is unable to meet a criteria of accreditation referred to in clause 36 must advise the Children's Guardian of that fact as soon as practicable after the agency becomes aware of it.