

# Children and Young Persons (Care and Protection) Regulation 2012

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New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Health Practitioner Regulation Amendment Act 2017 No 50](#) (not commenced — to commence on 8.1.2018)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2017 No 63](#) (not commenced — to commence on 7.12.2017)

### Authorisation

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New South Wales

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# Children and Young Persons (Care and Protection) Regulation 2012



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Regulation 2012*.

### 2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Children and Young Persons (Care and Protection) Regulation 2000* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**accreditation criteria** means standards and other criteria approved under clause 48 (1).

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

**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](http://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](#).

**departmental designated agency** means a designated agency that is a Public Service agency.

**designated agency check**—see clause 1 of Schedule 2.

**full accreditation**—see clause 49 (3) (a).

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

**provisional accreditation**—see clause 49 (3) (b).

**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.

**registered agency** means a Public Service agency or other organisation registered under clause 72 for the purpose of providing or arranging voluntary out-of-home care in accordance with Part 3A of Chapter 8 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.

**the Act** means the [Children and Young Persons \(Care and Protection\) Act 1998](#).

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

**working day**, in relation to the Children's Guardian, means a day on which the principal office of the Children's Guardian is open.

**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) In this Regulation, a reference to:

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

(b) an organisation that has applied for accreditation as a designated agency includes

a designated agency that has applied for renewal of accreditation as a designated agency.

(2A) (Repealed)

(3) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 General**

### **4 (Repealed)**

### **5 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 permanency plan involving restoration,
- (b) a finding by the Children’s Court under section 82 (3) of the Act that proper arrangements have not been made for the care or protection of the child or young person,
- (c) an application for a guardianship order has been made with respect to the child or young person,
- (d) in the case of a guardianship order—the guardian is unable or unwilling to meet the guardian’s responsibilities with respect to the child or young person.

### **6 Delegation of functions of Children’s Guardian**

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

### **7 Administrative review of decisions of Children’s Guardian**

A person affected by any of the following decisions of the Children’s Guardian may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision:

- (a) to impose or not to impose a condition on:
  - (i) the process of accreditation as a designated agency, or
  - (ii) the accreditation of a designated agency, or
  - (iii) the registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act,

- (b) to vary or revoke any such condition,
- (c) to shorten the accreditation period, or suspend or cancel the accreditation, of a designated agency,
- (d) to refuse an application for registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act,
- (e) to cancel the registration of an organisation for the purposes of Part 3A of Chapter 8 of the Act.

**Note—**

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

## **8 Prescribed bodies**

- (1) For the purposes of paragraph (f) of the definition of **prescribed body** in section 248 (6) of the Act, the following are prescribed:
  - (a) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
  - (b) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*,
  - (c) a designated agency,
  - (d) a registered agency,
  - (e) an accredited adoption service provider within the meaning of the *Adoption Act 2000*,
  - (f) the Family Court of Australia,
  - (g) the Federal Circuit Court of Australia,
  - (h) the Commonwealth Department of Human Services,
  - (i) the Commonwealth Department of Immigration and Citizenship,
  - (j) 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.
- (2) For the purposes of paragraph (b) of the definition of **prescribed body** in section 245B (1) of the Act, the following are prescribed:
  - (a) nurses,

- (b) registered medical practitioners,
- (c) registered midwives,
- (d) registered psychologists,
- (e) persons registered under the Health Practitioner Regulation National Law to practise as occupational therapists (other than as students),
- (f) speech pathologists eligible for membership of Speech Pathology Australia.

**Note—**

The terms **nurse**, **registered medical practitioner**, **registered midwife**, **registered psychologist** and **Health Practitioner Regulation National Law** are defined in section 21 of the [Interpretation Act 1987](#).

**9** (Renumbered as clause 23B)

**9A-11 (Repealed)**

**12 When acts of Children’s Guardian take effect**

- (1) This clause applies to anything the Children’s Guardian is required or authorised to do under this Regulation or the [Children and Young Persons \(Savings and Transitional\) Regulation 2000](#) if done by way of a written instrument.
- (2) The instrument takes effect on the date of its execution unless it otherwise provides.

**Part 3 Records, reporting and information**

**13 Form of records**

Any record made under the Act or this Regulation may be kept in written or in electronic form.

**14 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 those records.
- (2) A request under this clause:
  - (a) is to be made to the Secretary, and
  - (b) may be made orally or in writing, and
  - (c) must be accompanied by documentary proof of the person’s identity.
- (3) The Secretary is to give access to such records by:
  - (a) making the records available for inspection, or

- (b) providing a copy of the records.
- (4) The Secretary must give access to records within 20 working days after receiving such a request, except as provided by this clause.
- (5) If it is not reasonably practicable to give access within 20 working days, then before that period has expired the Secretary must:
  - (a) explain to the person concerned the reasons why access to the records cannot be given within that period, and
  - (b) extend (or further extend) by up to 10 working days (with a maximum extension under this subclause of 15 working days for any particular request).
- (6) The period can also be extended (and further extended) by agreement with the person requesting access to the records.
- (7) In this clause, **working day** means any day that is not a Saturday, Sunday or public holiday.

**Note—**

Other legislation also governs access to records, including but not limited to the following:

- (a) section 29 of the Act,
- (b) the [Health Records and Information Privacy Act 2002](#),
- (c) the [Privacy and Personal Information Protection Act 1998](#).

## **15 Application of mandatory reporting requirements**

Section 27 of the Act applies to the following classes of persons:

- (a) a person who, in the course of his or her professional work or other paid employment delivers disability services wholly or partly to children,
- (b) 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.

## **16 Extension of alternative reporting arrangements to employees and contractors of relevant Aboriginal organisations**

- (1) The operation of section 27A of the Act is extended to employees of, or persons engaged by, any organisation that is, or is eligible to become, an ordinary member or associate member of the Aboriginal Health and Medical Research Council of NSW (a **relevant Aboriginal organisation**) and who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:

- (a) a reference in section 27A of the Act to a staff member is taken to include a reference to an employee of, or person engaged by, a relevant Aboriginal organisation, and
- (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any employee of, or person engaged by, a relevant Aboriginal organisation.

**17 Extension of alternative reporting arrangements to employees or contractors of affiliated health organisations**

- (1) The operation of section 27A of the Act is extended to employees of, or persons engaged by, affiliated health organisations and who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:
  - (a) a reference in section 27A of the Act to a staff member is taken to include a reference to an employee of, or person engaged by, an affiliated health organisation, and
  - (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any employee of, or person engaged by, an affiliated health organisation.

- (3) In this clause:

**affiliated health organisation** has the same meaning as in the [Health Services Act 1997](#).

**18 Extension of alternative reporting arrangements to registered medical practitioners and general practice nurses**

- (1) The operation of section 27A of the Act is extended to registered medical practitioners, and general practice nurses, to whom section 27 of the Act applies but who are not employed in or engaged by the NSW Health Service.
- (2) For that purpose:
  - (a) a reference in section 27A of the Act to a staff member is taken to include a reference to such a registered medical practitioner or general practice nurse, and
  - (b) the NSW Health Service is taken to be the relevant agency under section 27A of the Act in relation to any such registered medical practitioner or general practice nurse.

- (3) In this clause:

**general practice nurse** means a nurse who is employed or engaged to work in the

medical practice of a general practitioner (whether or not the nurse is employed by the medical practice).

**general practitioner** means a registered medical practitioner who has qualifications in general practice recognised by the Royal Australian College of General Practitioners and who practises as a general practitioner.

## 19 (Repealed)

## 20 Provision and collection of information

- (1) A person is authorised to provide to the Children’s Guardian, and the Children’s Guardian is authorised to collect and use, any information relevant to the exercise of the functions of the Children’s Guardian under this Regulation or the *Children and Young Persons (Savings and Transitional) Regulation 2000*, including, but not limited to, information relevant to the following:
  - (a) the assessment of an individual’s suitability to be an authorised carer,
  - (b) the assessment of the suitability of a Public Service agency or an organisation to be accredited as a designated agency,
  - (c) the assessment of the suitability of a Public Service agency or an organisation to be registered as a registered agency.
- (2) A person is authorised to provide to a designated agency, and the agency is authorised to collect and use, any information relevant to the exercise of the agency’s functions under those regulations, including information relevant to the assessment of an individual’s suitability to be an authorised carer.
- (3) A person is authorised to provide to a relevant agency (within the meaning of section 156 (1) of the Act), and the relevant agency is authorised to collect and use, any information relevant to voluntary out-of-home care that is provided, arranged or supervised by the agency.
- (4) This clause does not operate to limit the information the Children’s Guardian or a relevant agency may collect or use to information provided by another person authorised to do so under this clause.
- (5) This clause is subject to any prohibition on the provision of information under any other law.

## 21 Senior officers of other Australian law enforcement agencies

For the purposes of paragraph (b) of the definition of **senior officer** in section 29 (6) of the Act, the following classes of persons employed in the following law enforcement agencies are prescribed as senior officers of those agencies:

- (a) persons who are commissioned police officers of the Australian Federal Police,
- (b) persons holding a rank of or above the rank of Superintendent in the Northern Territory Police Force,
- (c) persons holding appointment as commissioned police officers of the Queensland Police Service,
- (d) persons holding the rank of inspector or above in South Australia Police,
- (e) persons holding the rank of inspector or above in the Tasmanian Police Service,
- (f) persons holding or acting in the rank of inspector or above in the Victorian police force,
- (g) persons holding appointment as commissioned police officers of the Western Australian Police Force.

## **Part 4 Care plans and alternative parenting plans**

### **22 Care plans**

- (1) For the purposes of section 78 (5) of the Act, a care plan:
  - (a) is to be in a form approved by the Secretary following consultation with the Children's Court Advisory Committee established under the [Children's Court Act 1987](#), 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 Secretary 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 Secretary 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 in general terms 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 Secretary, 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 Secretary 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.

## **23 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, and
    - (ii) residential arrangements, and
    - (iii) supervision, and
    - (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), and
    - (v) education and training, and
    - (vi) medical care, and
    - (vii) the provision of services.
- (2) An alternative parenting plan that is formulated by the Secretary 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 matters referred to in clause 22 (2) (a)-(j) and (l) and (3) (a),
  - (b) if the Secretary 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,
  - (c) such other matters as the Secretary 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.

## **Part 4A Guardianship orders**

### **23A Financial assistance to guardians**

A guardian of a child or young person who is provided with financial assistance under section 79C of the Act must, within 21 days of the child or young person leaving the guardian's care, advise the Secretary in writing of that fact.

### **23B Form of child's or young person's consent to guardianship order**

- (1) A consent referred to in section 79A (3) (d) 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 that, at least 14 days before the consent was signed, the witness explained the nature and effect of the guardianship order to the child or young person and informed the child or young person in a language and manner that the child or young person could understand:
    - (i) that, if the order is made, all aspects of parental responsibility for the child or young person will be allocated under the order to a specified person (or jointly to more than one specified person), and
    - (ii) that any such order may be varied or rescinded under section 90 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) is to be:

(a) the principal officer of the designated agency responsible for supervising the placement of the child or young person or an employee of that agency who has been directly involved in the supervision of the child or young person's placement, or

(b) an Australian legal practitioner.

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

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

(2) A suitability statement must state that the assessment body:

(a) is satisfied that the prospective guardian and any adult residing at the prospective guardian's home have complied with the applicable requirements of the *Child Protection (Working with Children) Act 2012*, and

**Note—**

See section 11A of the *Child Protection (Working with Children) Act 2012*.

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

(c) has provided information to the prospective guardian about the role of a guardian, and

(d) has considered, having regard to the functions imposed on a guardian by or under the Act, any information held by the assessment body and all the circumstances of the case:

(i) the risk, if any, to the child or young person of assessing the prospective guardian as suitable to be a guardian, and

(ii) the risk, if any, that the prospective guardian may be unable to properly perform the functions of a guardian.

(3) The assessment body may require a prospective guardian to furnish to the assessment body such information as the assessment body may reasonably require in order to assess the prospective guardian's suitability to be a guardian of the child or young person.

(4) The assessment body 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.

#### **23D, 23E (Repealed)**

### **Part 5 Medical examination and treatment**

#### **24 Notice of medical examination**

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

**Note—**

Section 80 (1) of the [Interpretation Act 1987](#) provides that where a form is prescribed by, or approved under, an Act, strict compliance with the form is not necessary but substantial compliance is sufficient.

#### **25 (Repealed)**

#### **26 Administration of psychotropic drug to child in statutory out-of-home care**

(1) An authorised carer for a child in statutory out-of-home care must immediately notify the designated agency that has supervisory responsibility for the placement of the child if a medical practitioner prescribes administration of a psychotropic drug to the child.

(2) On receiving notification under subclause (1), the principal officer of the designated agency must prepare, or cause to be prepared and approve, a behaviour support plan for the child that takes into account administration of the drug.

(3) This clause applies in relation to the administration of a psychotropic drug that is also a drug of addiction even if the drug is administered in accordance with an exemption referred to in section 175 (4A) of the Act.

**Note—**

For example, methylphenidate (also known as Ritalin) is a psychotropic drug and is also a drug of addiction referred to in paragraph (c1) of the definition of **special medical treatment** in section 175 (5). Methylphenidate is also the subject of an exemption under section 175 (4A).

(4) In this clause:

**drug of addiction** means a drug of a kind referred to in paragraph (c1) of the definition of **special medical treatment** in section 175 (5).

## **Part 6 Out-of-home care**

### **Division 1 General**

#### **27 Application for review of temporary care arrangement**

- (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.

#### **28 Arrangements and services that are not out-of-home care**

- (1) For the purposes of section 135 (3) (c) of the Act, the following are prescribed as not being out-of-home care:
  - (a) boarding services provided by an educational institution, or a body affiliated to an educational institution, to enable children and young people to attend the institution,
  - (b) a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, religious, athletic or recreational pursuits, but does not include any such camp, centre or facility the primary purpose of which is to give respite to the carers of

children and young people or to address the challenging behaviour of children and young people,

- (c) a private health facility licensed under the *Private Health Facilities Act 2007*,
- (d) health services under the *Health Services Act 1997*,
- (e) adoption services under the *Adoption Act 2000*,
- (f) 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*,
- (g) placement with a person authorised as an authorised carer under section 137 (1) (c) of the Act in accordance with arrangements that do not involve supervision by a designated agency,
- (h) SAAP arrangements funded under the *Supported Accommodation Assistance Act 1994* of the Commonwealth,
- (i) placement arrangements provided to give respite to children and young persons who are carers and their siblings.

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

## Division 2 Authorisations by designated agencies

### 29 Definitions

In this Division:

**authorised carer** means a natural person authorised (including provisionally 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 Secretary (or an officer delegated the Secretary'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.

### 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.

### **32 Other carers authorised by Department to enable special care**

- (1) In this clause:

**special care provider** means an organisation that the Department has determined is suitable to provide special out-of-home care for children or young persons.

**special out-of-home care** for a child or young person means out-of-home care provided for a child or young person who has an intellectual, psychiatric, sensory, physical or similar impairment (or a combination of such impairments) that:

- (a) is permanent or is likely to be permanent, and
  - (b) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.
- (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.
- (3) The Department must not authorise a person under subclause (2) unless the relevant special care provider has:
- (a) informed the Department that the special care provider is satisfied that the person has complied with the requirements of the *Child Protection (Working with Children) Act 2012* for the child-related work as an authorised carer, and
  - (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.

**Note—**

Section 10 of the *Child Protection (Working with Children) Act 2012* requires adults residing at the homes of authorised carers (other than carers who are exempt from that Act) to hold working with children check clearances. The designated agency that authorises the authorised carer concerned must ensure that the adults comply with the requirement.

- (4) The Department must not place a child or young person in the out-of-home care of a person authorised under subclause (2) unless the Department has:
- (a) determined that the child or young person has special needs for out-of-home care that can be best met by such a placement, and

(b) consulted the Children's Guardian about the placement.

**33 Authorised carers authorised by designated agency to give respite to usual authorised carers**

(1) In this clause:

**respite care provider** means an organisation providing temporary respite relief for authorised carers.

(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.

(3) The designated agency must not authorise a person under subclause (2) unless the relevant respite care provider has:

- (a) informed the agency that the respite care provider is satisfied that the person has complied with the requirements of the [Child Protection \(Working with Children\) Act 2012](#) for the child-related work as an authorised carer, and
- (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.

**Note—**

Section 10 of the [Child Protection \(Working with Children\) Act 2012](#) requires adults residing at the homes of authorised carers (other than carers who are exempt from that Act) to hold working with children check clearances. The designated agency that authorises the authorised carer concerned must ensure that the adults comply with the requirement.

- (4) The principal officer of a designated agency is to carry out the functions of the agency under subclause (2), unless the Children's Guardian approves the carrying out of those functions by another person.
- (5) Failure to comply with subclause (4) does not affect the validity of any authorisation of an authorised carer under this clause.
- (6) A designated agency must not place a child or young person in the out-of-home care of a person authorised under subclause (2) unless the agency has given the Children's

Guardian notice in writing of the name, and the street and postal address of the principal place of business, of the respite care provider.

- (7) A designated agency must notify the Children's Guardian in writing if any child or young person is placed in the out-of-home care of any person or persons authorised by the agency under this clause for a period or periods amounting to more than 90 days in any 12 month period.

#### **34 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, 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.
- (2) A designated agency may at any time vary or revoke a condition of an authorisation imposed under subclause (1).
- (3) The imposition, variation or revocation of a condition takes effect when it is notified to the authorised carer in writing.
- (4) It is a condition of an authorisation that the authorised carer must comply with the code of conduct for authorised carers.
- (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.
- (5) In this clause:

**code of conduct for authorised carers** means the code of conduct for authorised carers 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—**

The relevant website of the Department is [www.community.nsw.gov.au](http://www.community.nsw.gov.au).

#### **35 Authorisations by designated agencies to be in writing**

- (1) A designated agency that authorises a person as an authorised carer under this Division must cause the person to be given a copy of the authorisation in writing.
- (2) The written authorisation must set out any conditions of the authorisation imposed by the designated agency.

#### **36 Personal responsibility of authorised carers**

An authorised carer is personally responsible for carrying out the carer's functions and



duties as an authorised carer.

### **37 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.

### **38 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 person who resides at the authorised carer's home 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.

### **39 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.

### **40 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,
  - (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,
- (c) the child or young person suffers a serious accident, injury or illness,
- (d) the child or young person dies,
- (e) the authorised carer:
  - (i) becomes a parent to another child or young person, or
  - (ii) is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
  - (iii) becomes aware that any members of his or her household have been charged with or convicted of such an offence,
- (f) a child, young person or other person joins the authorised carer's household.

#### **41 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:
    - (i) any physical coercion or physical punishment (including 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
  - (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.

#### **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.

#### **42 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) is no longer a suitable person to be an authorised carer, or
- (b) has failed to comply with any condition of the authorisation, or
- (c) has failed to comply with any obligation or restriction imposed on the authorised carer by the Act or this Regulation, or
- (d) 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
- (e) has failed to uphold the Charter of Rights prepared under section 162 of the Act.

**Note—**

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

#### **42A Cancellation of authorisation on making of a guardianship order**

- (1) On the making of a guardianship order making an authorised carer the guardian of a child or young person named in the order, the authorisation of the authorised carer is taken to be automatically cancelled to the extent only that it relates to the child or young person.

**Note—**

This subclause does not affect an authorisation as an authorised carer so far as it relates specifically or generally to children or young persons other than the child or young person who is the subject of the guardianship order.

- (2) The reference to the making of a guardianship order in subclause (1) extends to an order taken to be a guardianship order under clause 35 of Schedule 3 to the Act on the commencement of section 79A of the Act.

#### **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.

#### **42CA Presumption that authorisation will be cancelled**

(1) For the purposes of section 137 (2) (e) of the Act, the occurrence of any of the following events raises a presumption that the authorisation of a person as an authorised carer is to be cancelled:

(a) if the authorisation relates to the out-of-home care of a particular child or young person—the person has not provided out-of-home care to that child or young person for 3 months or more,

(b) the person has not provided out-of-home care to any child or young person under the authorisation for 2 years or more.

(2) A designated agency must cancel its authorisation of a person as an authorised carer on the occurrence of any such event unless the agency is satisfied that its authorisation should not be cancelled in the particular case.

#### **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).

### **Division 3 Authorisations other than by designated agencies**

#### **43 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 Secretary, 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 Circuit Court of Australia.
- (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) (Repealed)

#### **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.

#### **44 Management of behaviour of children and young persons**

- (1) This clause applies only to a person authorised as an authorised carer under clause 43 (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 Secretary.

### **Division 4 Accreditation as a designated agency**

#### **Subdivision 1 Accreditation**

##### **45 Application for accreditation**

- (1) An organisation or a Public Service agency (an **applicant**) may apply in writing to the Children's Guardian for:
  - (a) accreditation as a designated agency, or
  - (b) the renewal of 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) if the applicant is an organisation that is not a Public Service agency—to specify the full name of the individual proposed to be the applicant’s principal officer on accreditation, and
    - (c1) to specify the corporate and business name and ABN (if any) of the applicant, and
    - (c2) to specify the street and postal address of the applicant, and
    - (c3) to specify the telephone number and e-mail address (if any) of the applicant, and
  - (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 persons 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 physical coercion or physical punishment (including corporal punishment),
    - (ii) any punishment that takes the form of immobilisation, force-feeding or depriving of food,
    - (iii) any punishment that is intended to humiliate or frighten a child or young person, and
  - (f) to 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 Children’s Guardian may reasonably require in order to assess the applicant’s suitability to be a designated agency.
- (4) Any information that is required under subclause (3) must be furnished to the Children’s Guardian on or before the reasonable date specified by the Children’s Guardian by notice in writing.

#### **46 Taking over an application for accreditation**

- (1) An application made by an organisation for accreditation as a designated agency may

be taken over by another organisation only in accordance with this clause.

- (2) The Children's Guardian may authorise an organisation (***the successor***) to take over an application for accreditation as a designated agency made by another organisation (***the predecessor***), by notice in writing given to the successor.
- (3) The Children's Guardian must not authorise a successor to take over an application unless:
  - (a) the predecessor has requested that action, and
  - (b) the successor has given the Children's Guardian a written undertaking that it will operate in the manner proposed in the application or as otherwise agreed in writing by the successor and the Children's Guardian, and
  - (c) the successor has, by notice in writing given to the Children's Guardian, specified the full name of the individual proposed to be the successor's principal officer on accreditation.

**Note—**

In addition to the conditions set out in Schedule 3, the process of accreditation of an organisation that takes over an application under this clause may also be subject to conditions imposed under clause 65 (3) (Conditions on accreditation and process of accreditation).

- (4) A copy of the notice under subclause (2) must be given to the predecessor, if the predecessor continues to exist, and, on and from receipt of the notice, the predecessor is taken not to be an applicant for accreditation as a designated agency.
- (5) Unless prohibited by or under any Act, the Children's Guardian may disclose to the successor any information in his or her possession regarding the predecessor.
- (6) A condition imposed on the process of accreditation in respect of an application for accreditation continues to apply to the process despite the application being taken over under this clause.

**47 Deferral of determination of application to renew accreditation**

- (1) If a designated agency has applied for the renewal of an accreditation, the Children's Guardian may, by notice in writing to the agency, defer determining the application.
- (2) The deferral has effect until a notice given under clause 50 in respect of the application takes effect.
- (3) The deferral does not affect any requirement made under clause 45 (3) to furnish information in respect of the application, whether the requirement was imposed before or during the deferral.
- (4) If the Children's Guardian defers determining the application for 6 months or more



from the date the deferral took effect, the Children's Guardian must inform the Minister in writing of the deferral.

**Note—**

The accreditation period of a designated agency whose application for renewal of accreditation has been deferred is extended under clause 62 until the application is determined.

**48 Accreditation criteria**

- (1) On the recommendation of the Children's Guardian, the Minister may, from time to time, approve standards and other criteria for use in determining:
  - (a) whether to grant an application for accreditation as a designated agency, and
  - (b) what accreditation period will be granted.
- (2) Without limiting subclause (1), criteria may be approved under that subclause in respect of a class or classes of applicants.
- (3) Without limiting subclause (1), the following matters are to be addressed by criteria approved under that subclause:
  - (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.
- (3A) Without limiting subclause (1), the criteria to be approved under that subclause are to be integrated, to the greatest extent possible, with the criteria for accreditation of an accredited adoption service provider under the [Adoption Act 2000](#).
- (4) The Children's Guardian must make criteria approved under subclause (1) available for public inspection.
- (5) Failure to comply with subclause (4) does not affect the validity of any decision of the Children's Guardian to accredit or not to accredit an applicant.

#### **49 Determination of application for accreditation**

- (1) The Children's Guardian may grant accreditation as a designated agency to an applicant if, in the opinion of the Children's Guardian, the applicant wholly or substantially satisfies the accreditation criteria referred to in clause 48.
- (2) The Children's Guardian may come to the opinion that an applicant satisfies a particular accreditation criterion if a body, recognised by the Children's Guardian for the purposes of this subclause, has determined that the applicant meets a standard or other criterion recognised by the Children's Guardian for the purposes of this subclause in respect of the accreditation criterion.
- (3) The Children's Guardian may grant the following accreditation:
  - (a) if the applicant has made arrangements for the provision of out-of-home care in accordance with the Act and the regulations at any time during the period commencing 12 months before the application was made and ending when the application is determined—**full accreditation**,
  - (b) in any other case—**provisional accreditation**.

#### **50 Accreditation notice**

- (1) As soon as reasonably practicable after determining an application for accreditation, the Children's Guardian must inform the applicant of the following by notice in writing:
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) if accreditation is granted—whether full or provisional accreditation is granted,
  - (d) the reasons for the decision,
  - (e) how the applicant may apply for a review of the decision.
- (2) If an applicant is granted accreditation but did not wholly satisfy the accreditation criteria, the notice must also specify the accreditation criteria that were not wholly satisfied and the reasons for the Children's Guardian's opinion that the criteria were not wholly satisfied.

#### **50A Public information about accreditations**

- (1) The Children's Guardian is to publish the following information on a website maintained by the Children's Guardian as soon as practicable after granting accreditation as a designated agency:
  - (a) the corporate name and business name and ABN (if any) of the designated agency,

- (b) whether the designated agency is provisionally or fully accredited,
  - (c) the conditions imposed on the accreditation of the designated agency,
  - (d) the accreditation for the designated agency,
  - (e) the street and postal address of the principal office of the designated agency,
  - (f) the general telephone number and e-mail address (if any) of the designated agency,
  - (g) the full name of the principal officer of the designated agency.
- (2) The Children's Guardian is to keep the information referred to in subclause (1) up to date.

**51 Children's Guardian may set aside decision not to accredit**

- (1) If the Children's Guardian is satisfied that an application for accreditation as a designated agency should not have been refused, the Children's Guardian may withdraw the refusal under clause 50 and issue a notice granting accreditation.
- (2) The notice may provide that accreditation is taken to have had effect on and from the date the previous decision not to accredit took effect, or such later date as may be specified in the notice.

**52 Requirements where only provisional accreditation granted**

- (1) A designated agency granted provisional accreditation must notify the Children's Guardian in writing when the agency first makes arrangements for the provision of out-of-home care after being accredited.
- (2) The notice must be given by the next working day after the first arrangements are made.

**53 Progression from provisional accreditation to full accreditation**

- (1) A notice given under clause 52 (1) is taken to be an application under clause 45 for full accreditation.
- (2) The Children's Guardian may, by notice in writing, waive any requirement imposed by or under clause 45 in respect of such an application if the Children's Guardian is satisfied that the requirement was met by the designated agency in the course of being granted provisional accreditation.
- (3) Without limiting clause 45 (3), the Children's Guardian may require the applicant to furnish to the Children's Guardian such information as to the applicant's practice and other matters as the Children's Guardian may reasonably require in order to assess the applicant's suitability to be granted full accreditation.

- (4) Any information that is required under subclause (3) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (5) The Children's Guardian must not determine the application within 12 months of the applicant first making arrangements for the provision of out-of-home care after its provisional accreditation.
- (6) The provisional accreditation of a designated agency taken to have made an application under this clause ceases on the determination of the application taking effect.

**Note—**

Clause 61 provides for the accreditation period for provisional accreditation to be 3 years.

**54 Accreditation criteria must be wholly satisfied**

- (1) A designated agency granted accreditation under this Regulation that did not wholly satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation must wholly satisfy the accreditation criteria:
  - (a) in the case of a designated agency granted full accreditation—within 12 months of its accreditation, or
  - (b) in the case of a designated agency granted provisional accreditation—within 12 months of the date the agency first made arrangements for the provision of out-of-home care after its accreditation.
- (2) The Children's Guardian may, by notice in writing given to the agency, specify a shorter period for the purposes of subclause (1) (a) or (b).

**Subdivision 2 Transfer of accreditation**

**55 Application of Subdivision**

- (1) The accreditation of a designated agency (other than a departmental designated agency) may be transferred only in accordance with this Subdivision.
- (2) Subclause (1) does not prevent the transfer of accreditation of any designated agency if it is transferred in accordance with any other Act or law.

**56 Application for transfer of accreditation**

- (1) An application for approval to transfer accreditation from a designated agency (**the transferor**) to another organisation (**the transferee**) that is not a designated agency may be made by a transferor to the Children's Guardian in the form approved by the Children's Guardian.

- (2) The Children's Guardian may require a transferor or transferee to furnish to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to determine the application.
- (3) Any information that is required under subclause (2) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (4) Unless prohibited by or under any Act, the Children's Guardian may disclose any information about the transferor to the transferee.

#### **57 Transfer of accreditation**

- (1) The Children's Guardian may, by notice in writing, approve or refuse the application to transfer accreditation.
- (2) The Children's Guardian must not approve the application unless:
  - (a) the transferor and the transferee are not in contravention of any guidelines issued by the Children's Guardian under clause 59 (1) that apply in respect of the application, and
  - (b) the transferor is not in contravention of any condition of its accreditation, and
  - (c) the transferor and the transferee are not in contravention of any condition on the process of accreditation under this clause, and
  - (d) the Children's Guardian is of the opinion that the transfer will promote the best interests of children and young persons in out-of-home care.
- (3) The Children's Guardian is to consult with the Department and the Ombudsman before determining the application.
- (4) If the transferor is funded by Ageing, Disability and Home Care within the Department in respect of the arrangements the transferor makes for the provision of out-of-home care, the Children's Guardian is to consult with the Chief Executive, Ageing, Disability and Home Care before determining the application.

#### **58 When transfer takes effect**

- (1) A transfer of accreditation approved under clause 57 takes effect on the later of the following days:
  - (a) when the transferee accepts the transfer by notice in writing given to the Children's Guardian,
  - (b) on the date specified in the Children's Guardian's approval.
- (2) If the transferor ceases to exist before the transfer takes effect, the transfer is taken

to have had effect when the transferor ceased to exist.

- (3) When a transfer takes effect:
- (a) the transferor ceases to be accredited as a designated agency, and
  - (b) the transferee is accredited as a designated agency, and
  - (c) the transferee's accreditation is taken to be the accreditation granted to the transferor.

### **59 Transfer guidelines**

- (1) The Children's Guardian may issue written guidelines in respect of the exercise of functions under this Subdivision including, but not limited to, the following:
- (a) the granting of approvals,
  - (b) the imposition of conditions on the process of accreditation and on accreditations.
- (2) Without limiting subclause (1), the Children's Guardian is to have regard to the following matters in carrying out functions under this Subdivision:
- (a) whether, for the purposes of continuity of out-of-home care, the transferor and transferee have made all reasonable efforts to vest in the transferee the assets, rights and liabilities related to that out-of-home care that are vested in the transferor,
  - (b) whether, for the purposes of continuity of out-of-home care, the transferor and transferee have made all reasonable efforts to provide for individuals employed by the transferor for the purposes of the provision of that out-of-home care to be employed by the transferee,
  - (c) whether a proposed transfer will prejudice any legal proceedings or proposed legal proceedings to which the transferor is, or is likely to become, a party and whether the transferor and transferee have taken all reasonable steps to ensure that this does not occur.

### **60 Consequences of transfer of accreditation**

- (1) This clause applies to an accreditation that has been transferred under clause 57.
- (2) Any authorised carer authorised by the transferor whose authorisation was in force immediately before the transfer took effect is taken to have been authorised by the transferee.
- (3) The accreditation period that applied to the transferor applies to the transferee and is taken to have started on the date the transferor was accredited.

- (4) Any condition on the transferor's accreditation that was in force immediately before the transfer took effect applies to the transferee's accreditation, subject to any variation or revocation of conditions by the Children's Guardian pursuant to this Regulation.
- (5) For the purposes of clause 66 and Schedule 3, the transferee is taken to have satisfied the accreditation criteria the transferor satisfied to be accredited.
- (6) Any act, matter or thing done by the transferor immediately before the transfer with respect to arrangements for the provision of out-of-home care continues to have effect in relation to the transferee.

### **Subdivision 3 Accreditation administration**

#### **61 Form and accreditation period**

- (1) An accreditation is to be in such form as the Children's Guardian may approve.
- (2) The Children's Guardian may grant an accreditation period of 1, 3 or 5 years to a designated agency being granted full accreditation if the agency did not hold provisional accreditation immediately before being granted full accreditation.
- (3) The Children's Guardian may grant an accreditation period of 1 or 3 years to a designated agency being granted full accreditation if the agency held provisional accreditation immediately before being granted full accreditation.
- (4) The Children's Guardian may grant an accreditation period of 3 years to a designated agency being granted provisional accreditation.
- (4A) The Children's Guardian may vary the periods referred to in subclauses (2)–(4) so as to grant an accreditation period to a designated agency that is also an accredited adoption service provider that is commensurate to the accreditation period granted to the accredited adoption service provider under the [Adoption Regulation 2003](#) and ending on the date on which that accreditation period ends.
- (5) The date the accreditation period of a designated agency ends is not extended by a suspension of accreditation under clause 66.

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

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

suspension of accreditation under clause 66.

**62 Accreditation extended on deferral until application to renew determined**

- (1) This clause applies to a designated agency that has made an application to renew its accreditation if the determination of the application is deferred under clause 47.
- (2) The accreditation period is extended until the notice given under clause 50 in respect of the application takes effect.

**63 Accreditation extended until decision not to re-accredit takes effect**

- (1) This clause applies to a designated agency that has had its application to renew its accreditation refused and the decision to refuse the application has not taken effect.
- (2) The accreditation of the agency ends when the decision takes effect.

**64 Accreditation extended to accommodate changes**

The Children's Guardian may extend the accreditation period of a designated agency, by notice in writing given to the agency, to the date specified in the notice if the Children's Guardian is of the opinion that changes or proposed changes to the administration of out-of-home care under the Act, or the administration of adoption services under the [Adoption Act 2000](#), make the extension appropriate.

**65 Conditions on accreditation and process of accreditation**

- (1) An accreditation is subject to the conditions set out in Schedule 3.
- (2) The Children's Guardian may impose such other reasonable conditions as the Children's Guardian sees fit on an accreditation, and may vary or revoke such conditions, by notice in writing given to the designated agency.
- (3) Without limiting subclause (2), the Children's Guardian may impose a condition prohibiting the designated agency from providing, arranging or supervising voluntary out-of-home care.
- (4) The Children's Guardian may impose such reasonable conditions as the Children's Guardian sees fit on the process of accreditation (including accreditation by way of a transfer under clause 57), and may vary or revoke such conditions, by notice in writing given to the applicant.
- (5) If an accreditation is transferred, a copy of the notice given under subclause (4) is to be given to the transferee.
- (6) If the Children's Guardian is satisfied a condition should be imposed under subclause (2) on a departmental designated agency, the Children's Guardian must first report to the Minister on the need to impose the condition.



- (7) A condition imposed under this clause may authorise any matter or thing to be from time to time determined or applied by any specified person or body.

**Note—**

Contravention of a condition of accreditation is not an offence but is grounds for shortening the accreditation period, or suspending or cancelling the accreditation, of a designated agency.

**66 Accreditation—shortening, suspension and cancellation**

- (1) The Children’s Guardian may, by notice in writing given to a designated agency:
- (a) shorten the accreditation period of the agency to a date specified in the notice, or
  - (b) suspend the accreditation of the agency for the period specified in the notice or until a specified matter has been completed, or
  - (c) cancel the accreditation of the agency from the date specified in the notice.
- (2) The Children’s Guardian may give a notice under subclause (1) to a designated agency if the Children’s Guardian is satisfied of any of the following:
- (a) that the agency made a statement or furnished information in connection with the administration of the Act that the agency knew to be false or misleading in a material particular,
  - (b) that the principal officer of the agency made a statement or furnished information in connection with the administration of the Act that the principal officer knew to be false or misleading in a material particular,
  - (c) that the agency failed to comply with any condition of accreditation imposed on the agency’s accreditation,
  - (d) that the agency failed to comply with any obligation or restriction imposed on the agency by or under the Act,
  - (e) that the principal officer of the agency failed to comply with any obligation or restriction imposed on the principal officer by or under the Act,
  - (f) that the agency failed, while the agency had been accredited less than 12 months, to substantially satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation,
  - (g) that the agency failed, at any time after the agency had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation.
- (3) Despite subclause (2), the Children’s Guardian is not to take action under subclause (1) if the Children’s Guardian is satisfied:

- (a) that the designated agency failed to comply with any condition of accreditation that relates solely to the provision, arrangement or supervision of voluntary out-of-home care (other than a condition prohibiting the agency from providing, arranging or supervising voluntary out-of-home care), or
- (b) that the designated agency failed to comply with any other obligation or restriction imposed on the agency by or under the Act that relates solely to the provision, arrangement or supervision of voluntary out-of-home care.

**Note—**

The effect of this subclause is that the Children’s Guardian will not enforce compliance by designated agencies with conditions of accreditation, and other obligations and restrictions by or under the Act, that relate solely to voluntary out-of-home care by the methods set out in subclause (1) (being shortening the accreditation period or suspending or cancelling the accreditation of the designated agency). The Children’s Guardian may instead impose a condition of accreditation prohibiting the designated agency from providing, arranging or supervising voluntary out-of-home care—see clause 65 (3). Breach of such a condition can lead to enforcement by the methods set out in subclause (1).

- (4) In the case of a departmental designated agency, the Children’s Guardian must report to the Minister before issuing a notice under subclause (1).
- (5) If the Children’s Guardian is satisfied that a notice under subclause (1) should not have been given to a designated agency, the Children’s Guardian may, by notice in writing given to the agency, withdraw the notice and reinstate the accreditation, or, in the case of a shortening of an accreditation period, reinstate the accreditation period of the designated agency, and the accreditation is taken to have continued in existence as if the notice under subclause (1) had not been given.

**67 Designated agencies with suspended accreditations**

- (1) Subject to subclause (2), a designated agency remains a designated agency while the agency’s accreditation is suspended.
- (2) While a designated agency’s accreditation is suspended, the agency is not a designated agency for the purposes of section 138 of the Act.
- (3) The Children’s Guardian may remove the suspension of a designated agency’s accreditation at any time by notice in writing given to the agency.

**68 Designated agencies with shortened accreditation periods**

- (1) The Children’s Guardian may, by notice in writing given to a designated agency, reduce the period by which the agency’s accreditation period has been shortened under clause 66.
- (2) For the removal of doubt, the shortening of an accreditation period under clause 66 does not prevent the accreditation period from being extended under clause 62, 63 or 64.

## **Division 5 Voluntary out-of-home care**

### **Subdivision 1 Preliminary**

#### **69 Definitions**

(1) In this Division:

**registration** means registration under clause 72 for the purposes of Part 3A of Chapter 8 of the Act.

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

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

(2) For the purposes of this Division:

(a) an organisation provides out-of-home care for a child or young person if the organisation is responsible for the out-of-home care of the child or young person or arranges for a natural person to be responsible for that care, and

(b) an organisation arranges out-of-home care in respect of a child or young person if the organisation arranges for another organisation to provide out-of-home care for the child or young person.

(3) In this Division, a reference to an organisation includes a reference to a Public Service agency.

### **Subdivision 2 Registration of organisations**

#### **70 Applications for registration**

(1) An organisation that intends to provide or arrange voluntary out-of-home care may apply to the Children's Guardian for registration.

(2) An application:

(a) must be in writing in the form approved by the Children's Guardian, and

(b) must be accompanied by any information that the Children's Guardian may reasonably require to assist in the determination of the application, and

(c) must specify the name, address and contact details of the applicant organisation's principal officer.

(3) The Children's Guardian may require an applicant for registration to provide further information.

### **71 Criteria for determination of applications for registration**

- (1) The Children's Guardian may prepare criteria for determining applications for registration.
- (2) The Children's Guardian may prepare different criteria for determining applications relating to different types of voluntary out-of-home care.
- (3) Such criteria may be applied by the Children's Guardian only if the Minister has approved them in writing.
- (4) The Children's Guardian must ensure that criteria approved by the Minister under this clause are available for inspection without charge on the website of the Children's Guardian.

### **72 Determination of applications for registration**

- (1) The Children's Guardian may decide an application for registration by registering the applicant or by refusing the application.
- (2) As soon as practicable after deciding an application for registration, the Children's Guardian must inform the applicant of the following by notice in writing:
  - (a) the decision,
  - (b) when the decision takes effect,
  - (c) if the decision is to refuse the application:
    - (i) the reasons for the decision, and
    - (ii) how the applicant may apply for a review of the decision.

### **73 Conditions of registration**

- (1) The registration of an organisation as a registered agency is subject to the conditions set out in Schedule 4.
- (2) The Children's Guardian may, at any time, impose such other reasonable conditions as the Children's Guardian sees fit on the registration of an organisation as a registered agency, and may vary or revoke such conditions, by notice in writing given to the organisation.
- (3) A condition imposed under this clause may authorise any matter or thing to be from time to time determined or applied by any specified person or body.
- (4) The Children's Guardian must inform the applicant of the following by notice in writing:
  - (a) the decision to impose a condition under this clause,

- (b) when the condition takes effect,
- (c) the reasons for imposing the condition,
- (d) how the applicant may apply for a review of the decision.

**Note—**

Contravention of a condition of registration is not an offence but is grounds for cancelling the registration of an organisation.

**74 Cancellation of registration**

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

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

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

- (1) A relevant agency must provide the Children’s Guardian with the following information

in relation to each child or young person who is or has been in voluntary out-of-home care provided by the relevant agency:

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

**76 Designated agency to notify Children’s Guardian after commencing supervision of care**

- (1) A designated agency must provide the Children’s Guardian with the following information (***the relevant information***) in relation to each child or young person whose voluntary out-of-home care the designated agency has agreed to supervise:
- (a) the full name of the child or young person,
  - (b) the date on which the designated agency commenced supervision of the voluntary out-of-home care of the child or young person,
  - (c) the name of any registered agency that provides the voluntary out-of-home care supervised by the designated agency.
- (2) A designated agency must provide the relevant information within 5 working days after commencing supervision of the voluntary out-of-home care of the child or young person.

- (3) The relevant information must be provided in a format approved by the Children's Guardian.

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

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

**78 Designated agency to provide information about case plans**

- (1) The responsible designated agency for a child or young person must notify the Children's Guardian of the following:
  - (a) the existence of any case plan prepared in respect of the child or young person that meets the needs of the child or young person and the date the case plan was prepared,
  - (b) the date of any review of such a case plan.
- (2) A notice required under subclause (1) (a) and (b) must be given within 5 working days after the case plan has been prepared or reviewed.
- (3) The responsible designated agency for a child or young person must, as soon as is practicable, notify the Children's Guardian if:
  - (a) the child or young person has been in voluntary out-of-home care (whether provided by the agency or any other organisation) for more than a total of 180 days in any period of 12 months, and
  - (b) the child or young person does not have a case plan that meets his or her needs.
- (4) The information provided under subclauses (1) and (3) must be in a format approved by the Children's Guardian.

- (5) A designated agency may have regard to information kept on the register established and maintained under Subdivision 5, unless the agency knows the information is incorrect, to ascertain whether a child or young person has been in voluntary out-of-home care for more than a total of 180 days in any period of 12 months.
- (6) In this clause, **responsible designated agency** for a child or young person in voluntary out-of-home care means:
  - (a) if a designated agency supervises care provided by a relevant agency (including care provided by another designated agency)—the designated agency that supervises the care, or
  - (b) if the care is provided by a designated agency and no other designated agency supervises that care, the designated agency that provides the care.

#### **79 Keeping of information about case plans**

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

**Note—**

There may be further record keeping obligations in relation to the information under the [State Records Act 1998](#).

### **Subdivision 4 Publicly available list of agencies that provide or arrange voluntary out-of-home care**

#### **80 List of agencies that may provide or arrange voluntary out-of-home care**

The Children’s Guardian must establish and maintain a list of the following:

- (a) the names of all designated agencies that provide or arrange voluntary out-of-home care,
- (b) the names of all registered agencies,
- (c) any other information the Children’s Guardian considers appropriate for inclusion on the list.



## **81 Public availability of list**

The list established and maintained under clause 80 must be made available for inspection without charge on the website of the Children's Guardian.

## **Subdivision 5 Limited-access register of information about children and young persons in voluntary out-of-home care**

### **82 Children's Guardian to establish and maintain register**

- (1) The Children's Guardian must cause a register (referred to as **the register** in this Subdivision) to be established and maintained.
- (2) The register must contain the following information (to the extent that it is known by the Children's Guardian) in respect of each child or young person whose voluntary out-of-home care is provided by a relevant agency:
  - (a) the name of the relevant agency,
  - (b) the full name of the child or young person placed in voluntary out-of-home care provided by the relevant agency,
  - (c) any other name by which the child or young person has been previously known,
  - (d) the gender of the child or young person,
  - (e) the date of birth of the child or young person,
  - (f) the place of birth of the child or young person,
  - (g) the date on which the child or young person was placed in voluntary out-of-home care provided by the relevant agency,
  - (h) the date on which the child or young person ceased to be in voluntary out-of-home care provided by the relevant agency,
  - (i) the existence of any case plan prepared in respect of the child or young person, and the date the case plan was prepared,
  - (j) the date of any review of such a case plan,
  - (k) whether the voluntary out-of-home care of the child or young person is supervised by a designated agency or the Children's Guardian and, if so, the name of that supervising agency or body,
  - (l) the date on which that supervision commenced,
  - (m) any other information concerning a child or young person in voluntary out-of-home care, or the family of such a child or young person, that the Children's

Guardian and the Privacy Commissioner agree is appropriate for inclusion on the register,

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

### **83 Restricted access to register**

The register must not be made available to any person other than the following:

- (a) a relevant agency,
- (b) a member of staff of the Department,
- (c) the Ombudsman,
- (d) the Commissioner of Police or any other police officer holding the rank of inspector or above in the NSW Police Force, but only in connection with the investigation of a missing person or a possible criminal offence,
- (e) the State Coroner, but only in connection with a death or suspected death that the State Coroner is investigating,
- (f) the Minister,
- (g) an Official Community Visitor appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
- (h) the Privacy Commissioner,
- (i) any other organisation or person approved by the Privacy Commissioner.

### **84 Children and young persons and their parents may request details on register**

- (1) A person whose details are included on the register, or a parent of such a person, may request the Children's Guardian to provide the person with all of the information that is included on the register in relation to the person.
- (2) The Children's Guardian must comply with such a request as soon as practicable after the request is made.

### **85 Children and young persons and their parents may request amendments of details on register**

- (1) A person whose details are included on the register, or the parent of such a person, may request the Children's Guardian to amend any information included on the register in relation to the person that is incorrect.

- (2) The Children's Guardian must comply with such a request if satisfied that the information is incorrect.

## **Subdivision 6 Miscellaneous**

### **86 Management of behaviour of children and young persons in voluntary out-of-home care**

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

## **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 persons 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).

**Part 7 Children's Guardian**

**87 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 Miscellaneous**

**88 Savings and transitional provisions**

- (1) Any act, matter or thing that, immediately before the repeal of the *Children and Young Persons (Care and Protection) Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Section 149A of the Act (as in force immediately before its repeal by the amending Act) and clauses 10 and 11 of this Regulation (as in force before their repeal by the amending Regulation) continue to apply to and in respect of an order referred to in

clause 34 of Schedule 3 to the Act despite the repeal of that section and those clauses.

(3) Subclause (2) has effect on and from 29 October 2014 (the day on which the amending Act commences).

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

(4) In this clause:

**amending Act** means the *Child Protection Legislation Amendment Act 2014*.

**amending Regulation** means the *Children and Young Persons (Care and Protection) Further Amendment Regulation 2014*.

**Note—**

Section 30 of the *Interpretation Act 1987* also provides that the repeal of a regulation does not affect the operation of any savings or transitional provision contained in the regulation. For repealed savings and transitional provisions that may have ongoing operation, see Schedule 6 (Savings and transitional provisions) to the *Children and Young Persons (Care and Protection) Regulation 2000*.

## Schedule 1 Forms

(Clause 24)

### 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 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.

### **Schedule 3 Conditions of accreditation of designated agency**

(Clause 65)

#### **Part 1 Preliminary**

##### **1 Interpretation**

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

#### **Part 2 General conditions of accreditation**

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

##### **3 Agency to ensure that needs of the child or young person are able to be met**

A designated agency must not arrange for the placement of a child or young person in

out-of-home care unless the agency is satisfied that:

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

#### **4 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 statutory out-of-home care or supported out-of-home care.

#### **5 Information to be provided to Secretary**

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

#### **6 Information to be provided to Children's Guardian**

A designated agency must provide the Children's Guardian with:

- (a) any information about a child or young person in voluntary out-of-home care provided, arranged or supervised by the designated agency that the Children's Guardian may reasonably require by notice in writing, and
- (b) any information about the voluntary out-of-home care provided, arranged or supervised by the designated agency that the Children's Guardian may reasonably require by notice in writing.

#### **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.

## **7 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 for and removal of children and young persons in need of care and protection) and 235 (Entry without warrant into premises—generally) of the Act provide for certain persons to enter and search premises.

## **8 Notification of failure to satisfy accreditation criteria**

A designated agency that is unable to satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of the fact, unless the Children's Guardian has notified the agency that such advice is not required.

## **9 Notification of failure to comply with accreditation conditions**

A designated agency that is unable to comply with a condition of accreditation imposed under clause 65 must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of it.

## **10 Notification of contact details**

- (1) A designated agency must give the Children's Guardian, by notice in writing, the following information:

- (a) the corporate or business name of the agency or ABN (if any) of the agency,
- (b) the street and postal address of the agency's principal place of business,
- (c) the agency's general telephone number,
- (d) the agency's general email address (if any),

unless the agency has already provided the information by way of its application for accreditation or for any other reason.

- (2) The designated agency must notify a change of any of the information referred to in subclause (1) no later than one business day after the change occurs.
- (3) A designated agency must notify the Secretary of the following particulars within 14 days after the change occurs:
- (a) any change in the terms of the documents that govern its constitution,
  - (b) any change in the terms of any trust that it has established in connection with the

arrangements it makes for the provision of out-of-home care.

## **11 Entry to premises**

- (1) For the purposes of the exercise of the functions the Children's Guardian has to accredit designated agencies and to monitor their responsibilities under the Act, this Regulation and the *Children and Young Persons (Savings and Transitional) Regulation 2000*, a designated agency must, at any reasonable hour, permit the Children's Guardian, or a person authorised in writing by the Children's Guardian for the purposes of this clause, to:
  - (a) enter premises owned or occupied by the agency, and
  - (b) inspect the premises, and
  - (c) observe and converse with any person present in the premises, and
  - (d) make such examination and inquiry while in the premises as the Children's Guardian or person thinks necessary for the exercise of those functions.
- (2) For that purpose, a designated agency must:
  - (a) provide the Children's Guardian with such assistance and facilities as is or are reasonably necessary to enable the Children's Guardian to exercise the functions referred to in subclause (1), and
  - (b) authorise any person subject to the direction of the agency to answer questions or otherwise furnish information to the Children's Guardian.
- (3) A designated agency is not required to permit entry to premises under this clause if the agency was not given reasonable notice that entry would be required, unless:
  - (a) the Children's Guardian has certified, by notice in writing, that giving notice before requiring entry would frustrate the purpose of requiring entry, and
  - (b) that notice was given to the agency before the agency's permission was demanded.
- (4) The Children's Guardian must not enter a part of the premises that is private to a person being cared for by the designated agency, whether a child or young person or otherwise, without the consent of the person, unless, with due regard to the age and developmental capacity of the person, the Children's Guardian is of the opinion that the person lacks the capacity to consent.
- (5) In making a determination under subclause (4) about capacity to consent, the Children's Guardian must take into account any opinion the designated agency expresses about the matter.
- (6) In exercising a power under this clause, the Children's Guardian must not enter the

private residence of an authorised carer without the consent of the authorised carer.

**12 Designated agencies that arrange, provide or supervise voluntary out-of-home care, or cease to do so, must notify Children’s Guardian**

A designated agency must notify the Children’s Guardian within 14 days of its commencing to operate, or ceasing to operate, as an agency that arranges, provides or supervises voluntary out-of-home care.

**Part 3 Conditions imposed in particular circumstances**

**13 Application successor must operate in manner proposed in application**

A designated agency accredited by way of an application taken over pursuant to clause 46 must not contravene an undertaking given by the agency under clause 46 (3) (b).

**14 Transferee must adopt policies, procedures and practice of transferor**

The transferee of an accreditation must adopt the policies, procedures and practice of the transferor that, immediately before the transfer, related to the arrangements the transferor was making for the provision of out-of-home care.

**Schedule 4 Registered agencies—conditions of registration**

(Clause 73)

**1 Request for placement**

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

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

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

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

### **3 Information to be provided to Children's Guardian**

A registered agency must provide the Children's Guardian with:

- (a) any information about a child or young person in voluntary out-of-home care provided or arranged by the registered agency that the Children's Guardian may reasonably require by notice in writing, and
- (b) any information about the voluntary out-of-home care provided or arranged by the registered agency that the Children's Guardian may reasonably require by notice in writing.

### **4 Co-operation with entry and inspection of premises**

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

### **5 Notification of failure to satisfy registration criteria**

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

### **6 Notification of failure to comply with registration conditions**

A registered agency that is unable to comply with a condition of registration imposed under clause 73 must advise the Children's Guardian of the fact as soon as practicable after the agency becomes aware of it.

### **7 Notification of contact details**

(1) A registered agency must give the Children's Guardian, by notice in writing, the following information:

- (a) the street and postal address of the agency's principal place of business,
- (b) the agency's general telephone number,
- (c) the agency's general e-mail address (if any),

unless the agency has already provided the information by way of its application for registration or for any other reason.

(2) The registered agency must notify a change of any of the information referred to in subclause (1) no later than one business day after the change occurs.

### **8 Entry to premises**

(1) For the purposes of the exercise of the functions the Children's Guardian has to register agencies and to monitor their responsibilities under the Act and this

Regulation, a registered agency must, at any reasonable hour, permit the Children's Guardian, or a person authorised in writing by the Children's Guardian for the purposes of this clause, to:

- (a) enter premises owned or occupied by the agency, and
  - (b) inspect the premises, and
  - (c) observe and converse with any person present in the premises, and
  - (d) make such examination and inquiry while in the premises as the Children's Guardian or person thinks necessary for the exercise of those functions.
- (2) For that purpose, a registered agency must:
- (a) provide the Children's Guardian with such assistance and facilities as is or are reasonably necessary to enable the Children's Guardian to exercise the functions referred to in subclause (1), and
  - (b) authorise any person subject to the direction of the agency to answer questions or otherwise furnish information to the Children's Guardian.
- (3) A registered agency is not required to permit entry to premises under this clause if the agency was not given reasonable notice that entry would be required, unless:
- (a) the Children's Guardian has certified, by notice in writing, that giving notice before requiring entry would frustrate the purpose of requiring entry, and
  - (b) that notice was given to the agency before the agency's permission was demanded.
- (4) The Children's Guardian must not enter a part of the premises that is private to a person being cared for by the registered agency, whether a child or young person or otherwise, without the consent of the person, unless, with due regard to the age and developmental capacity of the person, the Children's Guardian is of the opinion that the person lacks the capacity to consent.
- (5) In making a determination under subclause (4) about capacity to consent, the Children's Guardian must take into account any opinion the registered agency expresses about the matter.
- (6) In exercising a power under this clause, the Children's Guardian must not enter the private residence of a person providing care without the consent of the person.

## **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.