

# Children's Guardian Regulation 2022

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Children's Guardian Regulation 2022



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children's Guardian Regulation 2022*.

### 2 Commencement

- (1) Subject to subsection (2), this Regulation commences on the day on which it is published on the NSW legislation website.
- (2) Part 2 and Schedule 1 commence on 18 July 2022.

### 3 Definitions

The Dictionary in Schedule 8 defines certain terms used in this Regulation.

#### Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

### 4 Residential care workers

- (1) For the Act, definition of **residential care worker**, paragraph (b) the following persons are prescribed—
  - (a) a person who provides security services in a residential setting for a residential care provider,
  - (b) a person who spends 60% or more of the time the person works for a residential care provider in a residential setting doing the following—
    - (i) developing or implementing case management plans for children in statutory out-of-home care or supported out-of-home care,
    - (ii) providing administrative support.
- (2) To avoid doubt, this Regulation does not apply to a person who—
  - (a) is authorised or provisionally authorised as an authorised carer under the *Children*

*and Young Persons (Care and Protection) Regulation 2012*, clause 30 or 31, and

- (b) only provides statutory out-of-home care or supported out-of-home care in a private capacity.

## **Part 2 Residential care workers register**

### **Division 1 Preliminary**

#### **5 Dealing with information for purposes of keeping register**

For the Act, section 85(1A), the following persons are prescribed—

- (a) a residential care provider,
- (b) the Children's Guardian,
- (c) the Secretary.

#### **6 Emergency authorisations not subject to Division 2**

- (1) A residential care provider is not required to comply with Division 2 in relation to a residential care worker who provides statutory out-of-home care or supported out-of-home care under an emergency authorisation given under the *Children and Young Persons (Care and Protection) Regulation 2022*, section 22.
- (2) The residential care provider must instead, within 72 hours after giving the emergency authorisation, notify the Children's Guardian of the authorisation and give the Children's Guardian the following information—
  - (a) the worker's full name, any former name and any known aliases,
  - (b) the worker's date of birth,
  - (c) if the worker holds a working with children check clearance—
    - (i) the working with children number for the clearance, and
    - (ii) the date on which the clearance ceases to have effect,
  - (d) if the worker has a current application for a working with children check clearance that has not been finally determined, withdrawn or terminated—the application number.

#### **7 Secretary not subject to Division 2 for certain workers**

The Secretary is not required to comply with Division 2 for a caseworker.

## **Division 2 Worker checks and recording on register**

### **8 Residential care provider check**

A residential care provider that is required to undertake a check of a relevant individual with another residential care provider under this Division must—

- (a) request information about the relevant individual from the other residential care provider using the form approved by the Children's Guardian, and
- (b) consider the information received in response to the request.

### **9 Residential care provider must conduct certain checks—the Act, s 85(2)(d)**

(1) A residential care provider that proposes to conduct a referee check of an applicant must, before conducting the check, undertake each of the following—

- (a) a check to verify the applicant's relevant details,
- (b) a nationwide criminal record check for the applicant,
- (c) a check of the residential care workers register to determine if the applicant is a relevant individual for another residential care provider,
- (d) if the residential care workers register indicates the applicant is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider.

(2) A residential care provider is not required to undertake—

- (a) a check of a relevant individual with another residential care provider if—
  - (i) the provider undertook the check with the other provider in the previous 12 months, and
  - (ii) the result was satisfactory, or
- (b) a nationwide criminal record check if—
  - (i) the check has been undertaken by the residential care provider in the previous 12 months, and
  - (ii) the result was satisfactory.

(3) A residential care provider is not required to undertake a check required by subsection (1) if—

- (a) the provider is satisfied that the applicant is not suitable to be a residential care worker, or
- (b) the applicant withdraws the application.



**10 Information to be recorded on register—the Act, s 85(2)(a)**

- (1) A residential care provider that proposes to conduct a referee check of an applicant must, before conducting the check, record the following information about the applicant on the residential care workers register—
  - (a) the applicant's full name, any former name and any known aliases,
  - (b) the applicant's date of birth,
  - (c) if the applicant holds a working with children check clearance—
    - (i) the working with children number for the clearance, and
    - (ii) the date on which the clearance ceases to have effect,
  - (d) if the applicant has a current application for a working with children check clearance that has not been finally determined, withdrawn or terminated—the application number,
  - (e) for a check under section 9(1)(b) or (d)—
    - (i) the date the check was completed, and
    - (ii) the outcome of the check,
  - (f) whether the applicant was referred to the provider by a labour hire agency.
- (2) As soon as practicable after making a decision about whether or not to engage an applicant as a residential care worker, the residential care provider must record the following information on the residential care workers register—
  - (a) the decision,
  - (b) if the decision is to not offer the applicant the position—the date the decision was made.
- (3) A residential care provider must, as soon as practicable after engaging an applicant as a residential care worker, record on the residential care workers register the date the applicant commences work as a residential care worker.
- (4) A residential care provider may, with a person's consent, record the following information on the residential care workers register—
  - (a) the person's gender,
  - (b) whether the person identifies as an Aboriginal person or a Torres Strait Islander person.

## **11 Residential care worker recommencing work within 12 months**

- (1) This section applies to a person if—
  - (a) a residential care provider intends to engage the person as a residential care worker, and
  - (b) the person was engaged as a residential care worker by the residential care provider within the previous 12 months.
- (2) Before offering to engage the person, the residential care provider—
  - (a) must undertake a check to verify the person's relevant details, and
  - (b) may undertake the following checks—
    - (i) a nationwide criminal record check,
    - (ii) a check of the residential care workers register to determine if the person is a relevant individual for another residential care provider,
    - (iii) if the residential care workers register indicates the person is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider.
- (3) The residential care provider must, as soon as practicable after engaging the person, record the following information on the residential care workers register—
  - (a) the type and date of each check undertaken under this section,
  - (b) the date the person recommenced work as a residential care worker with the provider.

## **12 Recording reportable allegations on residential care workers register—the Act, s 85(2)(a)**

- (1) This section applies to a residential care worker engaged by a residential care provider.
- (2) The residential care provider must make a recording on the residential care workers register within 7 business days after becoming aware of a reportable allegation having been made about the residential care worker.
- (3) The recording must specify—
  - (a) that the allegation was made, and
  - (b) the date the provider became aware of the allegation.
- (4) The residential care provider must make a recording on the residential care workers

register within 14 business days after—

- (a) completing an investigation into a reportable allegation about the residential care worker, or
- (b) becoming aware of the completion of an investigation into a reportable allegation about the residential care worker.

(5) The recording must specify—

- (a) the outcome of the investigation, and
- (b) the date the investigation was completed.

### **13 Updating information on register—the Act, s 85(2)(b) and (c)**

- (1) A residential care provider must update information on the residential care workers register about a relevant person as soon as practicable after becoming aware the information is incorrect or incomplete.
- (2) The residential care provider must, as soon as practicable after updating the register, notify the relevant person that the information has been updated.
- (3) A residential care provider must give a relevant person written notice of the reasons for not updating the residential care workers register if—
  - (a) the relevant person makes a written request to the provider to update the information, and
  - (b) the provider decides to not update the register because the information is not incomplete or incorrect.
- (4) If a residential care provider is incapable of updating information on the residential care workers register as required by this section, the Children's Guardian may—
  - (a) update the information on the register on the provider's behalf, and
  - (b) notify both the person to whom the information relates and the provider that the information on the register was updated.
- (5) This section applies in addition to the [Privacy and Personal Information Protection Act 1998](#), section 15.
- (6) In this section—

**relevant person**, for a residential care provider, means a person whose information the residential care provider is required to have access to under the Act, section 86(2).

### **14 Residential care provider must update register in certain circumstances—the Act, s**

**85(2)(c)**

- (1) A residential care provider must, within 14 business days after a person ceasing to work as a residential care worker with the provider, update the residential care workers register to record the date the person ceased work.
- (2) If the provider has relevant information to disclose about a residential care worker, the provider must, within 14 business days after the person ceases to work as a residential care worker, update the residential care workers register to indicate that it has relevant information to disclose.

**14A Advanced stage in a recruitment process**

For the Act, section 85(3), definition of **advanced stage**, the stage in a recruitment process at which the residential care provider decides to conduct a referee check of the applicant is prescribed.

**Part 3 Carers register—the Act, s 85(2)**

**Division 1 Information kept on carers register**

**15 Information to be recorded on carers register**

Schedule 2 sets out the information a designated agency must record on the carers register.

**16 Information on carers register must be accurate**

- (1) A designated agency must update information on the carers register about a relevant person as soon as practicable after becoming aware the information is incorrect or incomplete.
- (2) The designated agency must, as soon as practicable after updating the register, notify the relevant person that the information has been updated.
- (3) A designated agency must give a relevant person written notice of the reasons for not updating the carers register if—
  - (a) the relevant person makes a written request to the agency to update the information, and
  - (b) the agency decides to not update the register because the information is not incorrect or incomplete.
- (4) If a designated agency is incapable of updating information on the register as required by this section, the Children's Guardian may—
  - (a) update the information on the register on the agency's behalf, and

(b) notify both the person to whom the information relates and the agency that the information was updated.

(5) This section applies in addition to the *Privacy and Personal Information Protection Act 1998*, section 15.

(6) In this section—

**relevant person**, for a designated agency, means the following—

(a) a carer (a **relevant authorised carer**) authorised by the designated agency to provide statutory out-of-home care or supported out-of-home care in a private capacity,

(b) a person who was formerly a relevant authorised carer,

(c) a person who has applied to be a relevant authorised carer,

(d) a person, other than a child in out-of-home care, who resides for more than 21 days on the same property as a relevant authorised carer.

## Division 2 Access to carers register

### 17 General access to carers register

The Children's Guardian may give access to information held on the carers register to the following—

(a) a designated agency, but only to the extent the information relates to a relevant person for the designated agency within the meaning of section 16,

(b) an accredited adoption service provider, but only to the extent the information relates to—

(i) a person whose suitability to be an adoptive parent is being, or has been, assessed by the accredited adoption service provider, or

(ii) a person, other than a child in out-of-home care, who resides for more than 21 days on the same property as a person referred to in subparagraph (i),

(c) the parent of a child whose information is recorded on the register, but only to the extent the information relates to the child.

### 18 Access to information about original decision or record

(1) The Children's Guardian must ensure information held by the Children's Guardian about a decision (the **original decision**) is not made available to a person if—

(a) the original decision was—

- (i) to refuse to grant an authorisation as an authorised carer, or
    - (ii) to cancel an authorisation as an authorised carer, or
    - (iii) to suspend an authorisation as an authorised carer, and
  - (b) the original decision has been overturned by—
    - (i) a designated agency, or
    - (ii) a court, or
    - (iii) a tribunal.
- (2) The Children's Guardian must ensure a historical version of a record held by the Children's Guardian is not made available to a person if the record has been subsequently changed by a designated agency and is a record of—
- (a) the agency's refusal to grant an authorisation as an authorised carer based on an agency specific policy about carer eligibility or suitability, or
  - (b) the agency's concerns about the suitability of a person to care for, or reside on the same property as, a child following—
    - (i) the person withdrawing an application for an authorisation as an authorised carer, or
    - (ii) the person surrendering an authorisation as an authorised carer, or
    - (iii) cancellation of the person's authorisation as an authorised carer, or
  - (c) concerns the agency had arising from an investigation into a reportable allegation.
- (3) The Children's Guardian may make an original decision or a historical version of a record available to the following—
- (a) a designated agency if the designated agency made the original decision or historical version of the record,
  - (b) the Children's Guardian,
  - (c) the Minister,
  - (d) the Ombudsman,
  - (e) the Secretary.

## **Part 4 Out-of-home care**

### **Division 1 Accreditation**

**19 Application for accreditation—the Act, Sch 3A, s 4(2)(c)**

- (1) An application for accreditation as a designated agency must include a policy (a ***behaviour support policy***) that—
  - (a) sets out behaviour support practices, including the giving of support and counselling, to be applied by authorised carers in the care, management and discipline of children under the supervisory responsibility of the applicant, and
  - (b) describes procedures for the use of physical restraint, including consent processes and reporting on the use of restraint, and
  - (c) recognises that the following are prohibited—
    - (i) physical coercion or physical punishment,
    - (ii) punishment in the form of immobilisation,
    - (iii) force-feeding or the deprivation of food,
    - (iv) punishment intended to humiliate or frighten a child.
- (2) An application for accreditation as a designated agency must also include—
  - (a) a psychotropic drugs policy that sets out the steps the applicant will take on becoming aware that a psychotropic drug has been prescribed to a child in statutory out-of-home care, and
  - (b) a statement setting out the applicant's views on the administration of psychotropic drugs to children.
- (3) In this section—

***psychotropic drug*** means medication—

  - (a) issued under a prescription of a medical practitioner, and
  - (b) that can affect cognition, perception, thinking, mood, behaviour or level of arousal by acting on the central nervous system.

**20 Notice of decision to grant or refuse accreditation—the Act, Sch 3A, s 6(5)**

Written notice of a decision to grant or refuse accreditation as a designated agency must include the following—

- (a) the reasons for the decision,
- (b) the date the decision takes effect,
- (c) conditions imposed on the accreditation by the Children's Guardian,

- (d) if accreditation is granted on the basis the applicant substantially satisfies the accreditation criteria—
  - (i) the criteria not satisfied, and
  - (ii) the reasons the criteria were not considered to be satisfied, and
  - (iii) that the criteria must be satisfied within 12 months after the accreditation is granted,
- (e) how the applicant may apply for a review of the decision.

#### **21 Extension of period of accreditation—the Act, Sch 3A, s 11(4)**

- (1) The Children's Guardian may extend the period of accreditation of a designated agency if satisfied—
  - (a) proposed legislative or other changes to the administration of out-of-home care, including to accreditation criteria, make the extension appropriate, or
  - (b) events beyond the control of the agency, including a natural disaster or a public health emergency, make it unreasonable to require the agency to renew the accreditation.
- (2) The extension—
  - (a) must be given by written notice, and
  - (b) is for the period set out in the notice.

#### **22 Conditions of accreditation**

For the Act, Schedule 3A, section 12(1)(a), the conditions in Schedule 3 are prescribed.

### **Division 2 Transfer of accreditation—the Act, Sch 3A, s 21(e)**

#### **23 Transfers to which Division applies**

This Division applies to a transfer of accreditation under the Act, Schedule 3A, section 16 from a former agency to a new agency.

#### **24 Information to be provided**

- (1) The Children's Guardian may, by written notice, require a former agency or new agency to provide information to the Children's Guardian if the Children's Guardian—
  - (a) is deciding whether to transfer accreditation, and
  - (b) reasonably requires the information to make the decision.
- (2) The information must be provided in the way, and by the date, specified in the notice.



## **25 Matters to be considered**

- (1) The Children's Guardian must consider the following when deciding whether to transfer accreditation—
  - (a) whether suitable arrangements have been made to ensure continuity of care for children in out-of-home care provided by or arranged by the former agency,
  - (b) whether the transfer will prejudice legal proceedings or proposed legal proceedings to which the former agency is, or is likely to become, a party.
- (2) The Children's Guardian must refuse to transfer accreditation if the Children's Guardian is of the opinion the transfer will not promote the best interests of children in out-of-home care.
- (3) The Children's Guardian may refuse to transfer accreditation if the former agency has failed to comply with a condition of accreditation.
- (4) The Children's Guardian must consult the Department before deciding whether to transfer accreditation.

## **26 Notice of transfer**

- (1) The Children's Guardian must give the former agency and the new agency written notice of the Children's Guardian's decision about the transfer of accreditation.
- (2) The notice must set out the following—
  - (a) the decision,
  - (b) the reasons for the decision,
  - (c) if the transfer is approved—
    - (i) the date the transfer takes effect, and
    - (ii) the conditions applying to the transfer.

## **27 Effect of transfer**

- (1) On the transfer taking effect—
  - (a) the former agency ceases to be accredited as a designated agency, and
  - (b) the new agency is accredited as a designated agency, and
  - (c) the new agency is accredited for the remainder of the period of the transferred accreditation, and
  - (d) a condition of the accreditation imposed by the Children's Guardian and in force immediately before the transfer continues to apply unless varied or revoked by the

Children's Guardian, and

- (e) the new agency is taken to have adopted the former agency's policies, procedures and practice about the provision of out-of-home care, as in force immediately before the transfer, and
  - (f) an authorised carer, authorised by the former agency, whose authorisation was in force immediately before the transfer is taken to be authorised by the new agency.
- (2) Anything concerning the provision of out-of-home care done by the former agency is taken to have been done by the new agency.

## **28 Disclosure of information**

Unless prohibited under an Act, the Children's Guardian may disclose to a new agency information in the possession of the Children's Guardian regarding the former agency.

## **Division 3 Miscellaneous—the Act, s 184(1)**

### **29 Designated agency ceasing to provide or arrange out-of-home care**

- (1) A designated agency must give the Children's Guardian written notice if the agency ceases to—
- (a) provide out-of-home care, or
  - (b) arrange out-of-home care.
- (2) The notice must be given within 10 business days after the agency ceases to provide or arrange out-of-home care.

### **30 Information about designated agencies to be publicly available**

- (1) The Children's Guardian must ensure the following information about a designated agency is made publicly available on the Office of the Children's Guardian's website—
- (a) the agency's corporate and business names and ABN,
  - (b) whether the agency is provisionally accredited or fully accredited,
  - (c) the conditions imposed on the agency's accreditation by the Children's Guardian,
  - (d) the street and postal addresses of the agency's principal office,
  - (e) the agency's general telephone number and email address,
  - (f) the full name of the agency's principal officer.
- (2) The information—
- (a) must be made available as soon as practicable after the agency is accredited, and

(b) must be kept up to date.

## **Part 5 Regulation of specialised substitute residential care—the Act, s 8ZD**

### **Division 1 Information**

#### **31 Child in specialised substitute residential care**

- (1) A designated agency must give written notice to the Children's Guardian if the designated agency—
  - (a) provides or supervises specialised substitute residential care for a child, and
  - (b) becomes aware the child has been—
    - (i) in unsupervised care for more than a total of 90 days in a period of 12 months, or
    - (ii) in specialised substitute residential care, whether provided by the agency or another organisation, for more than a total of 180 days in a period of 12 months.
- (2) The notice must be given as soon as practicable.
- (3) In this section—

***unsupervised care*** means specialised substitute residential care that is not provided or supervised by a designated agency.

#### **32 Case plans**

A designated agency that prepares or reviews a case plan for a child in specialised substitute residential care must—

- (a) within 5 business days after preparing or reviewing the plan, give the Children's Guardian written notice of—
  - (i) the preparation or review of the plan, and
  - (ii) the date on which the preparation or review of the plan was completed, and
- (b) if the plan does not meet the child's needs—notify the Children's Guardian as soon as practicable after becoming aware the plan does not meet the child's needs, and
- (c) keep the plan or review until the child is 18 years of age.

**Note—**

See the [State Records Act 1998](#) in relation to other record keeping obligations.

### **33 Record of entities that may provide or supervise specialised substitute residential care**

- (1) The Children's Guardian may keep a record of the following—
  - (a) the names of entities providing or supervising specialised substitute residential care,
  - (b) the information about an entity providing or supervising specialised substitute residential care the Children's Guardian considers appropriate for inclusion in the record.
- (2) The record may be published on the Office of the Children's Guardian's website.

## **Division 2 Specialised substitute residential care register—the Act, s 85(2)**

### **34 Restricted access to register**

The specialised substitute residential care register must only be made available to the following—

- (a) a designated agency providing, or supervising, specialised substitute residential care for a child,
- (b) an entity providing specialised substitute residential care for a child, if—
  - (i) the entity was immediately before 1 September 2022 a registered agency under the *Children and Young Persons (Care and Protection) Regulation 2012*, or
  - (ii) the entity has completed a self-assessment under Schedule 4, section 6,
- (c) the Minister,
- (d) a person who is employed by or in the Department,
- (e) the Ombudsman,
- (f) the Privacy Commissioner,
- (g) an Official Community Visitor,
- (h) the Commissioner of Police or another police officer holding the rank of inspector or above in the NSW Police Force, but only for the purpose of the investigation of a missing person or a possible criminal offence,
- (i) the State Coroner or a Deputy State Coroner, but only in connection with a death or suspected death the Coroner or Deputy Coroner is investigating.

### **35 Entity providing specialised substitute residential care**

- (1) An entity must, within 5 business days after a child commences specialised substitute residential care with the entity, enter on the specialised substitute residential care register—
  - (a) the following information about the child, unless the information is already on the register—
    - (i) the child's full name and other names the child is or has been known by,
    - (ii) the child's gender,
    - (iii) the child's date and place of birth,
    - (iv) whether the child is an Aboriginal person or a Torres Strait Islander person,
    - (v) whether the child has a significant disability, and
  - (b) the name of the entity, and
  - (c) the date the specialised substitute residential care commenced, and
  - (d) if a case plan has been prepared for the child—the date the plan was prepared and each review date for the plan.
- (2) The entity must, within 5 business days after the child finishes the specialised substitute residential care with the entity, enter on the specialised substitute residential care register the date the specialised substitute residential care ceased to be provided by the entity.
- (3) If the entity does not have access to the specialised substitute residential care register under section 34(b), the reference in subsection (1) to 5 business days after a child commences specialised substitute residential care with the entity is taken to be a reference to the later of the following—
  - (a) 5 business days after a child commences specialised substitute residential care with the entity,
  - (b) 5 business days after the entity has access to the specialised substitute residential care register.
- (4) In this section—

**significant disability** means a disability that—

  - (a) is attributable to 1 or more intellectual, psychiatric, sensory or physical impairments, and
  - (b) is permanent or likely to be permanent, and

(c) results in—

- (i) significantly reduced capacity in 1 or more major life activities, including communication, learning, mobility, decision-making or self-care, and
- (ii) the need for support, whether or not of an ongoing nature.

### **36 Designated agency supervising specialised substitute residential care**

A designated agency must, within 5 business days after a child commences specialised substitute residential care supervised by the designated agency, enter on the specialised substitute residential care register—

- (a) the child's full name and other names the child is or has been known by, and
- (b) the name of the entity providing the specialised substitute residential care, and
- (c) the designated agency's name, and
- (d) the date the supervision commenced.

### **37 Children and parents may request details on register**

- (1) A person may apply to the Children's Guardian for a copy of the information recorded on the specialised substitute residential care register about the person.
- (2) If the person is a child, the application may be made by a parent of the child.
- (3) The Children's Guardian must give the information to the applicant as soon as practicable after the application is made.

### **38 Children and parents may request correction of register**

- (1) A person may apply to the Children's Guardian to update the specialised substitute residential care register to correct information about the person that is incorrect or incomplete.
- (2) If the person is a child, the application may be made by a parent of the child.
- (3) The Children's Guardian must update the register if the Children's Guardian is satisfied the information is incorrect or incomplete.
- (4) The Children's Guardian must give the applicant written notice of the reasons for not updating the register if the Children's Guardian decides the information is not incorrect or incomplete.

## **Division 3 Miscellaneous**

### **39 Code of practice**

For the Act, section 8DA(1), the code of practice in Schedule 4 is prescribed for entities providing specialised substitute residential care.

### **40 Supervision meetings**

A designated agency supervising the provision of specialised substitute residential care by an entity must arrange supervision meetings with the entity at least once in each calendar month.

## **Part 6 Adoption**

### **Division 1 Accreditation of adoption service providers**

#### **41 Notice of decision to grant or refuse accreditation—the Act, Sch 3B, s 6(5)**

Written notice of a decision to grant or refuse accreditation must include the following—

- (a) the reasons for the decision,
- (b) the date the decision takes effect,
- (c) conditions imposed on the accreditation by the Children's Guardian,
- (d) if accreditation is granted on the basis the applicant substantially satisfies the accreditation criteria—
  - (i) the criteria not satisfied, and
  - (ii) the reasons the criteria were not considered to be satisfied, and
  - (iii) that the criteria must be satisfied within 12 months after the accreditation is granted,
- (e) how the applicant may apply for a review of the decision.

#### **42 Extension of period of accreditation—the Act, Sch 3B, s 11(4)**

- (1) The Children's Guardian may extend the period of accreditation of an accredited adoption service provider if satisfied—
  - (a) proposed legislative or other changes to the administration of adoption services, including to accreditation criteria, make the extension appropriate, or
  - (b) events beyond the control of the provider, including a natural disaster or a public health emergency, make it unreasonable to require the provider to renew the accreditation.
- (2) The extension—

- (a) must be given by written notice, and
- (b) is for the period set out in the notice.

#### **43 Conditions of accreditation**

For the Act, Schedule 3B, section 12(1)(a), the conditions in Schedule 5 are prescribed.

### **Division 2 Transfer of accreditation—the Act, Sch 3B, s 22(e)**

#### **44 Transfers to which Division applies**

This Division applies to a transfer of accreditation under the Act, Schedule 3B, section 17 from a former organisation to a new organisation.

#### **45 Information to be provided**

- (1) The Children's Guardian may, by written notice, require a former organisation or new organisation to provide information to the Children's Guardian if the Children's Guardian—
  - (a) is deciding whether to transfer accreditation, and
  - (b) reasonably requires the information to make the decision.
- (2) The information must be provided in the way, and by the date, specified in the notice.

#### **46 Matters to be considered**

- (1) The Children's Guardian must consider the following when deciding whether to transfer accreditation—
  - (a) whether suitable arrangements have been made to ensure continuity of adoption services provided by the former organisation,
  - (b) whether the transfer will prejudice legal proceedings or proposed legal proceedings to which the former organisation is, or is likely to become, a party.
- (2) The Children's Guardian may refuse to transfer accreditation if the former organisation has failed to comply with a condition of accreditation.
- (3) The Children's Guardian must, before deciding whether to transfer accreditation, consult with—
  - (a) the Department, and
  - (b) if the new organisation will provide intercountry adoption services—the Commonwealth Central Authority within the meaning of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth.



#### **47 Notice of transfer**

- (1) The Children's Guardian must give the former organisation and the new organisation written notice of the Children's Guardian's decision about the transfer of accreditation.
- (2) The notice must set out the following—
  - (a) the decision,
  - (b) the reasons for the decision,
  - (c) if the transfer is approved—
    - (i) the date the transfer takes effect, and
    - (ii) the conditions applying to the transfer.

#### **48 Effect of transfer**

- (1) On the transfer taking effect—
  - (a) the former organisation ceases to be accredited as an adoption service provider, and
  - (b) the new organisation is accredited as an adoption service provider, and
  - (c) the new organisation is accredited for the remainder of the period of the transferred accreditation, and
  - (d) a condition of the accreditation imposed by the Children's Guardian and in force immediately before the transfer continues to apply unless varied or revoked by the Children's Guardian, and
  - (e) the new organisation is taken to have adopted the former organisation's policies, procedures and practice about the provision of adoption services, as in force immediately before the transfer.
- (2) Anything concerning the provision of adoption services done by the former organisation is taken to have been done by the new organisation.

#### **49 Disclosure of information**

Unless prohibited under an Act, the Children's Guardian may disclose to a new organisation information in the possession of the Children's Guardian regarding the former organisation.

### **Division 3 Miscellaneous**

#### **50 Accredited adoption service provider ceasing to provide adoption services—the Act, s**

**184(1)**

- (1) An accredited adoption service provider must give the Children's Guardian written notice if the provider ceases to provide adoption services.
- (2) The notice must be given within 10 business days after the provider ceases to provide adoption services.
- (3) As soon as practicable after the provider ceases to provide adoption services, the provider must ensure records kept by the provider under the Act, this Regulation or the *Adoption Act 2000* are given to the Secretary.

**51 Information about accredited adoption service providers to be publicly available—the Act, s 184(1)**

- (1) The Children's Guardian must ensure the following information about an accredited adoption service provider is made publicly available on the Office of the Children's Guardian's website—
  - (a) the provider's corporate and business names and ABN,
  - (b) whether the provider is provisionally accredited or fully accredited,
  - (c) the adoption services the provider is accredited to provide,
  - (d) the conditions imposed on the provider's accreditation by the Children's Guardian,
  - (e) the duration of the provider's accreditation,
  - (f) the street and postal addresses of the provider's principal office,
  - (g) the provider's general telephone number and email address,
  - (h) the full name of the provider's principal officer.
- (2) The information—
  - (a) must be made available as soon as practicable after the provider is accredited, and
  - (b) must be kept up to date.

**Part 7 Child employment**

**Division 1 Preliminary**

**52 Definitions**

In this Part—

**arts student** means a person enrolled in a tertiary course in film, television, radio,

theatre or photography—

- (a) accredited by the Australian Skills Quality Authority, or
- (b) at a university.

**employer's exemption—**

- (a) has the same meaning as in the Act, section 94(1)(b), and
- (b) to avoid doubt, includes a performer representative exemption.

**performer representative** has the same meaning as in the [Entertainment Industry Act 2013](#).

**performer representative exemption** means an exemption granted by section 55(1)(a).

**preparatory activity** means activities connected to a child's employment in an activity for which an employer's authority is required, including rehearsals, wardrobe fittings, publicity activities and the making of sound recordings.

### **53 Persons taken to employ children—the Act, s 91(a)**

- (1) Children taking part in an activity regulated by an employer's authority are taken to be employed by a person responsible for directing the children in the activity if—
  - (a) the person pays, or agrees to pay, another person for at least 1 child taking part in the activity, or
  - (b) the person is an arts student and the activity occurs as a requirement of the person's studies.

- (2) Performer representatives for children are taken to employ the children they represent.

- (3) In this section—

**pay** includes conferring a material benefit on a person.

## **Division 2 Employers' authorities and exemptions**

### **54 Activities requiring employer's authority**

For the Act, section 92(1)(d), the following activities are prescribed—

- (a) a preparatory activity,
- (b) a still photographic session,
- (c) modelling work,

- (d) promotional work,
- (e) performance art,
- (f) public speaking.

**55 Exemption from requirement to hold employer's authority**

- (1) For the Act, section 93(1)(c), the following persons are exempt from the requirement to hold an employer's authority—
  - (a) a person who only acts as the performer representative of a child,
  - (b) a person who employs a child who is—
    - (i) at least 10 years of age, and
    - (ii) only employed outside school hours, and
    - (iii) employed for no more than 10 hours per week.
- (2) For the Act, section 102(4)(b), the Children's Guardian may revoke an exemption granted by this section.

**56 Condition of employer's authority or exemption—the Act, ss 97(1)(a) and 102(5)**

It is a condition of an employer's authority and an employer's exemption that the employer must give the Children's Guardian information about the employment of children by the employer that the Children's Guardian reasonably requires.

**57 Fee for employer's authority—the Act, s 94(2)(b)**

- (1) The prescribed fee for an application for an employer's authority is—
  - (a) for a still photographic session—

<b>Duration of authority</b>	<b>Fee</b>
More than 6 months and up to 12 months	\$1,075
More than 3 months and up to 6 months	\$914
More than 1 week and up to 3 months	\$806
1 week or less	\$100

- (b) otherwise—

<b>Duration of authority</b>	<b>Fee</b>
More than 6 months and up to 12 months	\$2,400

More than 3 months and up to 6 months	\$2,040
More than 1 week and up to 3 months	\$1,830
1 week or less	\$200

- (2) An arts student is not required to pay a fee for an employer's authority.

### **Division 3 Obligations of employers**

#### **58 Code of Practice**

- (1) For the Act, section 97(1B), the Code of Practice in Schedule 6 is prescribed.
- (2) It is a condition of an employer's authority and an employer's exemption, other than a performer representative exemption, that the employer must—
- (a) comply with the Code of Practice, and
  - (b) use the employer's best endeavours to ensure all adults employed by the employer comply with the Code of Practice.
- (3) It is a condition of a performer representative exemption that the performer representative must—
- (a) comply with the Code of Practice, sections 3-5, and
  - (b) use the performer representative's best endeavours to ensure all adults employed by the performer representative comply with the Code of Practice, sections 3-5, and
  - (c) not cause or procure a child to be employed if the performer representative knows, or would reasonably be expected to know, the child will be employed in contravention of the Code of Practice, section 26(1), (4) or (6).
- (4) It is a condition of an employer's authority and an employer's exemption, other than a performer representative exemption, that the employer must ensure a copy of 1 of the following is given to the parent of a child before the child commences employment with the employer—
- (a) the Code of Practice,
  - (b) a document, approved by the Children's Guardian, that explains the Code of Practice.

#### **59 Code of conduct—the Act, s 97(1)(a)**

- (1A) It is a condition of an employer's authority and an employer's exemption, other than a performer representative exemption, that the employer must comply with this

section.

- (1) The employer must prepare a code of conduct addressing the safety and welfare of children employed by the employer.
- (2) The employer's code of conduct must be prepared in accordance with guidelines approved by the Children's Guardian.
- (3) An employer must provide a copy of the code of conduct to each of the following persons before the person has contact with a child employed by the employer—
  - (a) a person employed by the employer,
  - (b) a parent of each child employed by the employer.

#### **59A Offence—failure to comply with employer's exemption condition**

An employer must not fail to comply with a condition of an employer's exemption.

Maximum penalty—50 penalty units.

**Note—**

Employment of a child in contravention of a condition of an employer's authority is also an offence—see the Act, section 97(2).

## **Part 8 Miscellaneous**

### **60 Head of relevant entity**

For the Act, section 17(1)(b), the following persons are prescribed as the head of a relevant entity—

- (a) for an adult who, under the *Child Protection (Working with Children) Act 2012*, section 10, is required to hold a working with children check clearance because the adult resides on the same property as an authorised carer for 3 weeks or more—the head of the relevant entity that authorised the authorised carer with whom the adult resides,
- (b) for the Cancer Institute (NSW) constituted by the *Cancer Institute (NSW) Act 2003*—the Secretary of the Ministry of Health,
- (c) for the NSW Health Service, as referred to in the *Health Services Act 1997*, section 115—the Secretary of the Ministry of Health.

### **61 Subdelegation of functions**

For the Act, section 133(3)(b), the head of a government sector agency, within the meaning of the *Government Sector Employment Act 2013*, section 3(1), is prescribed.

## **62 Disclosure of information about reportable allegation or reportable conviction**

For the Act, section 57(4)(b)(viii), a person, other than the Minister or the Secretary, is prescribed if the person had parental responsibility for a child immediately before—

- (a) the child was placed in out-of-home care, or
- (b) the Children's Court made an order allocating parental responsibility for the child.

## **63 Direction to give information to Children's Guardian—the Act, s 180(7)**

Information directed to be given to the Children's Guardian under the Act, section 180(1)(b) must be written and in the form specified by the Children's Guardian.

## **64 Restriction on inspection of documents—the Act, s 114(1)**

Records made in connection with the administration or execution of the Act, Part 7 are open to inspection by, and may be made available to, the following—

- (a) officers of the Children's Court,
- (b) the Secretary,
- (c) the principal officer of an accredited adoption service provider, for proceedings involving the service provider,
- (d) if the records are for the exercise of the Children's Guardian's functions under the Act, Part 7 or under the *Child Protection (Working with Children) Act 2012*—the Children's Guardian.

# **Schedule 1 Savings and transitional provisions**

## **Part 1 Provisions consequential on commencement of [Children's Guardian Regulation 2022](#)**

### **1 Definitions**

In this Part—

**commencement day** means 18 July 2022.

**existing worker**, of a residential care provider, means a person other than a caseworker, who, immediately after the commencement of this Regulation, section 4—

- (a) works for the residential care provider, and
- (b) is a residential care worker to whom this Regulation applies.

### **2 Existing applications for employment**

This Regulation, Part 2, Division 2 extends to an application for employment as a

residential care worker to which this Regulation applies, that was made, but not finally dealt with, before the commencement day.

### **3 Existing workers**

- (1) Within 90 days after the commencement day a residential care provider must, for an existing worker of the residential care provider—
  - (a) conduct a check to verify the worker's relevant details, and
  - (b) record the following information about the worker on the residential care workers register—
    - (i) the information specified in this Regulation, section 10(1)(a)-(d),
    - (ii) the information specified in this Regulation, section 10(4), if the worker consents to the information being recorded on the residential care workers register,
    - (iii) the date a nationwide criminal record check was conducted and the outcome of the check,
    - (iv) the date the worker commenced work with the provider.
- (2) As soon as practicable after the commencement day, and within 180 days after the commencement day, a residential care provider must, for an existing worker, undertake—
  - (a) a check of the residential care workers register to determine if the worker is a relevant individual for another residential care provider, and
  - (b) if the residential care workers register indicates the worker is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider in accordance with this Regulation, Part 2, Division 2.
- (3) As soon as practicable after conducting a check under subsection (2), the residential care provider that conducted the check must record the following information on the residential care workers register—
  - (a) the date the check was conducted,
  - (b) the outcome of the check.

### **4 Reportable allegations—current investigations**

- (1) This Regulation, section 12 extends to a reportable allegation made before the commencement day if the investigation of the allegation is not complete on the commencement day.



- (2) The requirement in section 12(1) for the residential care provider to record on the residential care workers register information about a reportable allegation within 7 business days of becoming aware of the allegation is to be taken as a requirement to record the information within 7 business days of the commencement day.

## **Part 2 Provisions consequential on commencement of [Children's Guardian \(Amendment\) Regulation \(No 2\) 2022](#)**

### **5 Continuation of carers register**

The carers register kept under Part 3 is taken to be a continuation of the carers register kept under the [Children and Young Persons \(Care and Protection\) Regulation 2012](#) immediately before 1 September 2022.

### **6 Transfer of information to specialised substitute residential care register**

Information on the register established and maintained under the [Children and Young Persons \(Care and Protection\) Regulation 2012](#), clause 82 immediately before 1 September 2022 is transferred to the specialised substitute residential care register kept under the Act, section 85(1)(c).

### **7 Child employment**

An act, matter or thing that, immediately before the repeal of the [Children and Young Persons \(Care and Protection\) \(Child Employment\) Regulation 2015](#), had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 2 Information to be recorded on carers register**

section 15

### **1 Definitions**

In this Schedule—

**application number** has the meaning given by the [Child Protection \(Working with Children\) Act 2012](#).

**continuing residence approval** has the meaning given by the [Child Protection \(Working with Children\) Act 2012](#).

**suitability assessment**, in relation to a person, means the suitability assessment required under the [Children and Young Persons \(Care and Protection\) Regulation 2022](#), Part 6, Division 2.

**working with children check status information** means the following information about a person—

- (a) whether the person has—

- (i) a working with children check clearance, or
  - (ii) a current application and, if the person has a current application, the application number, or
  - (iii) a continuing residence approval,
- (b) if the person has a current working with children check clearance—
- (i) the working with children number, and
  - (ii) the expiry date,
- (c) whether the person is subject to 1 or more of the following decisions of the Children's Guardian under the *Child Protection (Working with Children) Act 2012*—
- (i) a decision to refuse to grant a working with children check clearance,
  - (ii) a decision to cancel a working with children check clearance,
  - (iii) a decision to impose an interim bar on a working with children check clearance holder or applicant,
- (d) whether the person has previously held a working with children check clearance that has expired.

## **2 Information about authorised carers and applicants**

- (1) This section sets out the information to be entered on the carers register about the following persons—
- (a) a relevant authorised carer,
  - (b) a person who was formerly a relevant authorised carer,
  - (c) a person who has applied to be a relevant authorised carer.
- (2) A designated agency must enter the following information on the carers register within 14 business days after a person first applies to be an authorised carer—
- (a) the person's full name and other names the person is or has been known by,
  - (b) the person's gender,
  - (c) the person's date of birth,
  - (d) the date on which the person's application was made or taken to be made.
- (3) A designated agency must, before approving a person's application to be an authorised carer, or within 14 business days after the application is refused, withdrawn or otherwise terminated, enter the following information on the carers

register—

- (a) the person's home address,
  - (b) whether the person has been authorised as an authorised carer, or similar, in another State or a Territory,
  - (c) the person's working with children check status information,
  - (d) the date and the outcome of—
    - (i) if the person's home has been inspected by the agency—the inspection, and
    - (ii) other suitability assessments completed by the agency,
  - (e) if the agency required the person to complete education or training before being authorised—the education or training completed,
  - (f) whether the agency has determined the person is capable and suitable to be an authorised carer and the date the determination was made,
  - (g) whether the person identifies as an Aboriginal person or a Torres Strait Islander person,
  - (h) if the application is withdrawn—
    - (i) the date the application was withdrawn, and
    - (ii) concerns the agency had about the person's suitability to care for, or reside on the same property as, a child,
  - (i) if the application is terminated because of the death of the person—
    - (i) the date the person died, or
    - (ii) if the date the person died is not known—the date the agency became aware the person died,
  - (j) if the application is refused—
    - (i) the date the application was refused, and
    - (ii) whether the refusal was on the grounds of a policy specific to the agency about carer eligibility or suitability.
- (4) For a relevant authorised carer who is provisionally authorised, the following information must be entered on the carers register within 14 business days after the first child is placed with the carer—
- (a) the date the first child was placed with the carer,

(b) the information required to be entered on the register under subsection (3)(a), (c), (d)(i), (f) and (g).

(5) A designated agency must, within 14 business days after approving an application for authorisation as an authorised carer, enter the following on the carers register—

(a) the date of the approval,

(b) if the approval is subject to a condition that the authorised carer may provide out-of-home care only to a child who is a relative or kin of the carer or who knows the carer—that condition.

### **3 Other information about authorised carers**

(1) This section applies to the following persons—

(a) a relevant authorised carer,

(b) a person who was formerly a relevant authorised carer.

(2) A designated agency must enter the following information on the carers register within 14 business days after becoming aware of the information—

(a) if a person died while authorised by the agency—

(i) the date the person died, or

(ii) if the date the person died is not known—the date the agency became aware the person died,

(b) if a person's authorisation by the agency has been suspended—the date of the suspension,

(c) if the suspension of a person's authorisation by the agency has ended—the date the suspension ended,

(d) if a person's authorisation by the agency has been surrendered or cancelled—

(i) the date of the surrender or cancellation, and

(ii) concerns, associated with the surrender or cancellation, the agency had about the person's suitability to care for, or reside on the same property as, a child.

### **4 Information about relevant resident**

(1) A designated agency must, within 14 business days after becoming aware a person is a relevant resident, enter the following information about the person on the carers register—

(a) the person's full name and other names the person is or has been known by,

- (b) the person's gender,
  - (c) the person's date of birth,
  - (d) whether the person identifies as an Aboriginal person or a Torres Strait Islander person,
  - (e) the person's working with children check status information.
- (2) A designated agency must enter on the carers register the following information about a relevant resident within 14 business days after becoming aware of the information—
- (a) the date and the outcome of suitability assessments completed by the agency,
  - (b) if the person has died—
    - (i) the date the person died, or
    - (ii) if the date the person died is not known—the date the agency became aware the person died,
  - (c) if the person no longer resides on the same property as the authorised carer or applicant—
    - (i) the date the person ceased to reside on the property, or
    - (ii) if the date the person ceased to reside on the property is not known—the date the agency became aware the person ceased to reside on the property.

## **5 Recording reportable allegations on carers register**

- (1) A designated agency must, within 7 business days after becoming aware of a reportable allegation, record the following information on the carers register—
- (a) that the allegation has been made,
  - (b) the date the designated agency became aware of the allegation.
- (2) A designated agency must, within 14 business days after finalising, or becoming aware of the finalisation of, the investigation of a reportable allegation, record the following information on the carers register—
- (a) the outcome of the investigation,
  - (b) the date the investigation was finalised.

## **Schedule 3 Conditions of accreditation—designated agencies**

section 22

### **Part 1 General conditions of accreditation**

#### **1 Emergency authorisations**

A designated agency must, when authorising a person as an authorised carer under the *Children and Young Persons (Care and Protection) Regulation 2022*, section 22, comply with relevant guidelines issued by the Children's Guardian.

#### **2 Arranging out-of-home care**

- (1) A designated agency must not arrange out-of-home care for a child unless—
  - (a) the Children's Court or another court has ordered the child be placed in out-of-home care, or
  - (b) for a child under the age of 16 years—at the request of a person having parental responsibility for the child, or
  - (c) for a child who is at least 16 years of age—at the request of the child.
- (2) A request for out-of-home care may be made orally or in writing.
- (3) A designated agency that arranges out-of-home care must confirm the following requests in writing with the person with parental responsibility for the child within 5 business days after making the arrangements—
  - (a) an oral request under subsection (1)(b),
  - (b) a request under subsection (1)(c).

#### **3 Agency to ensure needs of child are able to be met**

A designated agency must not arrange out-of-home care for a child unless the agency is satisfied the following are able to meet the needs of the child—

- (a) the designated agency,
- (b) an authorised carer with whom the child is placed.

#### **4 Care in private home**

A designated agency must not arrange out-of-home care to be provided to a child in a private home unless the authorised carer providing the care is authorised under the *Children and Young Persons (Care and Protection) Regulation 2022*, section 18 or 19.

## **5 Social and medical history**

A designated agency that arranges the placement of a child in out-of-home care must use the agency's best endeavours to document the social and medical history of the child and the child's family.

## **6 Cooperation with authorised persons**

A designated agency must cooperate with an authorised person who enters the premises of the designated agency to inspect or search the premises under the Act, Schedule 2.

# **Part 2 Conditions requiring information be given to Children's Guardian or Secretary**

## **7 Information about child in care**

- (1) A designated agency that arranges out-of-home care for a child must give—
  - (a) the Secretary the information about the child the Secretary may reasonably require, and
  - (b) the Children's Guardian the information about the child the Children's Guardian may reasonably require.
- (2) A designated agency that places a child less than 12 years of age in residential care must give the Children's Guardian the following information—
  - (a) the child's full name,
  - (b) information about the residential unit in which the child is placed,
  - (c) the reasons the child is placed in residential care.
- (3) The information must be given to the Secretary and the Children's Guardian in writing.

## **8 Information about reportable allegations**

A designated agency must ensure procedures are in place for the principal officer of the agency to be notified as soon as practicable if a reportable allegation is made about—

- (a) a person who is or has been authorised as an authorised carer by the designated agency, or
- (b) an adult who is a relevant resident.

## **9 Notification of inability to satisfy accreditation criteria**

- (1) A designated agency that is unable to satisfy 1 or more accreditation criteria applying to the agency must notify the Children's Guardian as soon as practicable after becoming aware the agency is unable to satisfy the criteria.

- (2) Subsection (1) does not apply if the Children's Guardian has given the agency written notice that notification is not required.

#### **10 Notification of inability to comply with accreditation condition**

A designated agency that is unable to comply with a condition of the agency's accreditation must notify the Children's Guardian as soon as practicable after the agency becomes aware the agency is unable to comply with the condition.

#### **11 Notification of change to contact details**

- (1) A designated agency must give the Children's Guardian and the Secretary written notice of a change to 1 or more of the following—

- (a) the agency's ABN,
- (b) the agency's business address,
- (c) the agency's business name,
- (d) the agency's email address,
- (e) the agency's telephone number,
- (f) the agency's principal officer.

- (2) Notice must be given within 1 business day after the change.

#### **12 Notification of change to governance arrangements**

- (1) A designated agency must give the Secretary written notice of a change in—

- (a) the terms of the documents governing the agency's constitution, or
- (b) the terms of a trust the agency has established in connection with the arrangements the agency makes for out-of-home care.

- (2) Notice must be given within 10 business days after the change.

### **Schedule 4 Code of practice for entities providing specialised substitute residential care**

section 39

#### **Part 1 Preliminary**

##### **1 Definitions**

In this Schedule—

***centre-based care*** means specialised substitute residential care provided other than in a



private home.

**relevant legislation** means—

- (a) children's care legislation, and
- (b) the following Acts and the regulations under the Acts—
  - (i) the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
  - (ii) the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

**staff**, of an entity providing specialised substitute residential care, includes—

- (a) a member of the governing body of the entity, and
- (b) a person engaged, whether or not the person is paid, by the entity—
  - (i) in management of the services provided by the entity, or
  - (ii) in delivering the services provided by the entity, or
  - (iii) to deliver services on behalf of the entity.

## 2 Application of code

This code of practice applies to an entity, including a designated agency, providing specialised substitute residential care.

## 3 Object of code

The object of this code of practice is to establish the minimum obligations an entity providing specialised substitute residential care must comply with to—

- (a) facilitate compliance with the Child Safe Standards, and
- (b) promote improved child safety, and
- (c) promote improved quality and consistency of, and coordination in, the delivery of services to children in specialised substitute residential care, and
- (d) reduce the risk of children entering, remaining in or exiting specialised substitute residential care without appropriate planning and care.

## 4 Guiding principles

- (1) The principal officer of an entity providing specialised substitute residential care must ensure that in providing the care the entity complies with the guiding principles set out in subsections (2)–(6).
- (2) **Decision-making is child centred** Decision-making, service planning and service delivery

for a child in specialised substitute residential care are child centred and take active account of the following—

- (a) the child's preferences, likes and dislikes,
- (b) the child's strengths, skills and abilities,
- (c) the child's personal goals and aspirations.

- (3) **Role of parents** The parents of a child in specialised substitute residential care have ultimate responsibility for decisions about the child and the services the child receives.
- (4) **Decision-making is collaborative** Decision-making, service planning and service delivery for a child in specialised substitute residential care should be collaborative and involve continuous consultation with the following—
- (a) the child,
  - (b) the parents of the child,
  - (c) other providers of specialised substitute residential care,
  - (d) providers of supports and services used by the child and the child's family.
- (5) **Cultural safety** In decision-making, service planning and service delivery for specialised substitute residential care, the entity must consider the needs of the following—
- (a) Aboriginal children and families and Torres Strait Islander children and families,
  - (b) children and families from culturally and linguistically diverse backgrounds.
- (6) **Diversity and inclusion** In decision-making, service planning and service delivery for specialised substitute residential care, the entity must take account of the following—
- (a) the needs of children with a disability and the needs of families of children with a disability,
  - (b) the gender identity and sexuality of children in care,
  - (c) the gender identity and sexuality of the parents of a child in care.

## Part 2 Compliance

### 5 Compliance with relevant legislation

An entity providing specialised substitute residential care must ensure all staff of the entity are aware of and comply with the relevant legislation.

## **6 Self-assessment of compliance with Child Safe Standards**

- (1) The principal officer of an entity providing specialised substitute residential care must complete a self-assessment of the entity's compliance with the Child Safe Standards.
- (2) The self-assessment must be—
  - (a) completed in the form approved by the Children's Guardian, and
  - (b) given to the Children's Guardian—
    - (i) if the entity was, immediately before 1 September 2022, a registered entity under the *Children and Young Persons (Care and Protection) Regulation 2012*—on or before 1 March 2023, or
    - (ii) otherwise—within 14 days after the entity first provides specialised substitute residential care for a child.

## **Part 3 Systems, policies and procedures**

### **7 Statements about child safety**

- (1) The principal officer of an entity providing specialised substitute residential care must ensure the entity has the following documents—
  - (a) a publicly available statement of the entity's commitment to child safety,
  - (b) a document informing staff of the entity of the entity's commitment to child safety and their obligation to contribute to creating a child safe organisation.
- (2) The principal officer must be able to demonstrate, to the satisfaction of the Children's Guardian, the steps the entity has taken to ensure the documents—
  - (a) have been read and understood by all staff, and
  - (b) are applied by all staff in their work, and
  - (c) are accessible to, and can be understood by, the children for whom the entity provides specialised substitute residential care and their families.
- (3) The principal officer must, if required by the Children's Guardian, provide the Children's Guardian with the documents.

### **8 Code of conduct**

- (1) The principal officer of an entity providing specialised substitute residential care must ensure the entity has a code of conduct setting out the standards of behaviour expected of staff interacting with children for whom the entity provides specialised substitute residential care.

- (2) The code of conduct must require staff to report—
  - (a) instances of another staff member having—
    - (i) engaged in reportable conduct, or
    - (ii) been involved in a reportable incident for the purposes of the *National Disability Insurance Scheme Act 2013* of the Commonwealth, section 73Z, and
  - (b) allegations or concerns that another staff member has—
    - (i) engaged in reportable conduct, or
    - (ii) been involved in a reportable incident for the purposes of the *National Disability Insurance Scheme Act 2013* of the Commonwealth, section 73Z, and
  - (c) other concerns about the safety, wellbeing or welfare of a child receiving services from the entity.
- (3) The principal officer of an entity providing specialised substitute residential care must—
  - (a) ensure all staff of the entity—
    - (i) read and understand the code of conduct, and
    - (ii) sign a statement that they have read, understood and will comply with the code of conduct, and
  - (b) enforce the code of conduct, and
  - (c) take action to address breaches, or suspected breaches, of the code of conduct.

## **9 Risk management**

The principal officer of an entity providing specialised substitute residential care must ensure the entity has, and implements, a risk management plan focusing on preventing, identifying and lowering risks to children for whom the entity provides specialised substitute residential care.

## **10 Intake, assessment and service planning**

- (1) The principal officer of an entity providing specialised substitute residential care must ensure the entity has procedures setting out the actions to be taken—
  - (a) before a child is provided with specialised substitute residential care, and
  - (b) while the child is being provided with the care.
- (2) The entity's procedures must address how the entity will—

- (a) obtain information about a child, and
- (b) assess a child's needs, and
- (c) plan the delivery of services to children.

### **11 Complaint handling**

The principal officer of an entity providing specialised substitute residential care must ensure the entity has a complaint handling policy to respond to complaints made by—

- (a) children for whom the entity provides specialised substitute residential care, and
- (b) the parents of children for whom the entity provides specialised substitute residential care.

## **Part 4 Intake and assessment**

### **Division 1 Information and planning**

#### **12 Information gathering**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure the entity obtains the following information about the child—
  - (a) information recorded on the specialised substitute residential care register, including—
    - (i) the number of days the child has spent in care over the previous 12 months, and
    - (ii) the designated agency currently providing or supervising care for the child, and
    - (iii) a case plan for the child,
  - (b) relevant information from a designated agency—
    - (i) currently providing or supervising care for the child, or
    - (ii) that has recorded on the specialised substitute residential care register the development of a case plan for the child,
  - (c) relevant information held by other organisations or people who are or have been involved in supporting the safety, welfare and wellbeing of the child,
  - (d) relevant information about—
    - (i) the formal and informal supports in place for the child and the child's family, and

- (ii) the child's living and socialisation skills and daily routine, and
  - (iii) specific risks for the child and how the risks will be managed in the specialised substitute residential care environment,
- (e) information about the needs of the child, including—
- (i) health, medication and disability needs, and
  - (ii) environmental, risk management and mobility needs, and
  - (iii) emotional, behavioural, cognitive and developmental needs, and
  - (iv) nutrition and dietary needs, and
  - (v) cultural, language and communication needs,
- (f) information about the needs of the parents of the child,
- (g) emergency contact details for the parents of the child and other relevant family members.
- (2) The entity must obtain the information before the specialised substitute residential care is provided for the child.
- (3) However, if the entity does not have access to the specialised substitute residential care register, the information required by subsection (1)(a) and (b) may be obtained within 5 business days after the entity gains access to the register.

### **13 Information to be given**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure that, before the entity provides the care, the child and the parents of the child are given information about the following—
- (a) the services the entity can arrange and provide,
  - (b) the cost of each service,
  - (c) the provider of each service,
  - (d) the role in decision-making about the ongoing care and support of the child of the following—
    - (i) the entity,
    - (ii) other service providers,
    - (iii) the child,
    - (iv) the parents of the child,

- (e) the information that will be recorded on the specialised substitute residential care register,
  - (f) that the child and the parents of the child may receive information on the specialised substitute residential care register about the child and request that errors in the information are corrected,
  - (g) complaint handling processes, both internal and external.
- (2) Information must be provided in a way and using language that is readily understood by the child and the parents of the child.

#### **14 Sharing of information**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure that, before the entity provides the care, the child and the parents of the child are informed that relevant information about the child may be shared with other agencies.
- (2) The principal officer—
- (a) must ask the parents of the child to sign an acknowledgment that they have been informed about the sharing of information with other agencies, and
  - (b) may ask the child to sign the acknowledgment.
- (3) In this section—

**relevant information** about a child means information relevant to the child's safety, welfare or wellbeing, including information that will be entered on the specialised substitute residential care register.

#### **15 Intake meetings**

The principal officer on an entity providing specialised substitute residential care for a child must, if practicable, schedule meetings for intake and assessment at places and times convenient for the child and the parents of the child.

#### **16 Service planning**

- (1) This section applies to the following information about a child in specialised substitute residential care—
- (a) information obtained from the entity's intake process,
  - (b) information obtained from the entity's regular planning and review of the services provided for the child.
- (2) The principal officer of the entity providing the care must use the information to ensure the entity meets the child's ongoing care needs, including the following—

- (a) health, medical, mobility and behavioural needs,
- (b) communication and personal care needs,
- (c) maintenance of relationships with family and significant others,
- (d) cultural, spiritual and religious needs,
- (e) participation in educational, vocational, social and leisure activities.

## **Division 2 Placement**

### **17 Placement matching**

- (1) The principal officer of an entity providing specialised substitute residential care must ensure that when considering the provision of care to a child the entity considers the following—
  - (a) whether the care is appropriate for the needs of the child and the child's family,
  - (b) the child's culture, age, disability, language, religion, gender and sexuality,
  - (c) the individual needs and preferences of the child,
  - (d) the benefits of placing the child with peers of a similar age and developmental stage and who have similar interests,
  - (e) the current supports available to the child,
  - (f) additional supports required to meet the child's needs.
- (2) The principal officer must ensure the child is not placed in centre-based care with another person unless an assessment has been undertaken of the following—
  - (a) risks posed to the child by other persons in the centre-based care,
  - (b) risks posed by the child to other persons in the centre-based care.
- (3) The principal officer must request that the parents of the child make alternative care arrangements if of the opinion that the care is not appropriate for the needs of the child and the child's family.

### **18 Age specific placement requirements**

- (1) The principal officer of an entity providing specialised substitute residential care must ensure that when considering the provision of care for a child who is less than 7 years of age the following principles are considered—
  - (a) family care with a focus on individualised care must be the preferred option,
  - (b) centre-based care must not be used unless the child has complex health needs



that can only be met by centre-based care.

- (2) The principal officer must ensure that a child who is less than 16 years of age must not be placed in centre-based care with an adult unless the principal officer—
  - (a) has conducted a risk assessment and is satisfied—
    - (i) the placement is appropriate for the child's needs and circumstances, and
    - (ii) the adult presents no risk to the child because the medical support needed by the adult is high, and
    - (iii) there is no other suitable option for the child, and
  - (b) has obtained the written consent of the parent or guardian of the child before the care is provided.
- (3) The principal officer must ensure that a child who is 16 or 17 years of age is not placed with adults or other children in centre-based care unless the principal officer—
  - (a) is satisfied the care is suitable for the individual needs of the child, and
  - (b) has conducted a risk assessment, and
  - (c) has obtained the written consent of the parent or guardian of the child before the care is provided.
- (4) The principal officer must regularly review the care of a child in centre-based care with adults to ensure the care remains suitable.
- (5) In this section—

***complex health need*** means a medical condition or a disability requiring specialist medical, nursing or other health care treatments that are not able to be effectively delivered in a home-like environment.

## **19 Placement to be confirmed in writing**

The principal officer of an entity providing specialised substitute residential care for a child must give written notice to the parents of the child confirming the provision of the care within 5 business days after provision of the care begins.

## **Part 5 Supervision and case planning**

### **20 Supervision**

- (1) The principal officer of an entity providing specialised substitute residential care for a child who has been in specialised substitute residential care for a total of 90 days or more in a 12-month period must—

- (a) ensure the care is supervised by a designated agency, and
  - (b) consult the parents of the child about the supervision and give the parents the name and contact details of the designated agency providing the supervision.
- (2) The principal officer must notify the designated agency if the provision of the care no longer requires supervision.
- (3) The principal officer must report a breach by a designated agency of this Regulation, section 40 to the Children's Guardian.

## **21 Case planning**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure a case plan—
- (a) addresses the following—
    - (i) the child's health, medical, mobility, behavioural and personal care needs,
    - (ii) maintenance of relationships with the child's family and significant others,
    - (iii) the child's cultural, spiritual and religious needs,
    - (iv) participation by the child in educational, vocational, social and leisure activities,
    - (v) risks associated with the child's care and appropriate management strategies,
    - (vi) age-related considerations, including developmental needs and the child's transition to adulthood,
    - (vii) long-term care planning, including arrangements for the child to transition out of specialised substitute residential care, and
  - (b) is reviewed—
    - (i) when the child's ongoing care and support needs or care arrangements change, and
    - (ii) at least once every 12 months.
- (2) If a child receives specialised substitute residential care from more than 1 care provider, the case plan must be prepared by—
- (a) the care provider that provides the majority of the care, or
  - (b) if no care provider provides the majority of the care—the designated agency supervising the care.

## **Part 6 Staff recruitment and training**

### **22 Recruitment**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure the entity engages staff with appropriate skills and qualifications for the roles the staff are engaged to fill.
- (2) The principal officer must ensure the entity has systems in place to ensure the entity undertakes appropriate pre-employment checks for all staff.
- (3) The pre-employment checks must include the following—
  - (a) checks required under the *Child Protection (Working with Children) Act 2012* and the *National Disability Insurance Scheme (Worker Checks) Act 2018*,
  - (b) professional reference checks with previous or current employers,
  - (c) verification of qualifications.

### **23 Training**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure the entity provides—
  - (a) child safety awareness training to staff and volunteers, including training in identifying and reporting risks of significant harm to children, and
  - (b) regular supervision of, and support to, staff caring for children in specialised substitute residential care.
- (2) Child safety awareness training must be completed before the staff member or volunteer commences providing care to a child in specialised substitute residential care.

## **Part 7 Miscellaneous**

### **24 Record keeping**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure the entity keeps the following records—
  - (a) information obtained in the intake, assessment and service planning processes,
  - (b) details of the services the entity has agreed to provide to the child and the child's parents,
  - (c) consents given by the parents of the child,
  - (d) the responsibilities of the parties involved in providing or supporting the provision

of specialised substitute residential care to the child,

- (e) the child's case plan and each review of the plan,
- (f) records about the safety, welfare and wellbeing of children in the specialised substitute residential care provider's care.

- (2) The principal officer of an entity providing specialised substitute residential care to a child must give the parents of the child a copy of the records kept under subsection (1)(b)-(d).
- (3) Records must be made available for inspection by the Children's Guardian on the request of the Children's Guardian.

**Note—**

See the [State Records Act 1998](#) in relation to other record keeping obligations.

## **25 Child leaving specialised substitute residential care**

- (1) The principal officer of an entity providing specialised substitute residential care for a child must ensure that at the end of the care the child is released to the care of a parent of the child or a person authorised by a parent of the child.
- (2) If the parent of the child refuses to resume the care of the child, the principal officer must—
  - (a) report the matter to the Child Protection Helpline, and
  - (b) arrange short-term care or an alternative emergency placement for the child.
- (3) The short-term care or alternative emergency placement must, if practicable, be arranged in collaboration with the parents of the child.
- (4) The principal officer must ensure the specialised substitute residential care register is updated with information about the end of the provision of the specialised substitute residential care for the child within 5 business days.

## **26 Reporting**

- (1) A person who is required to make a report under the [Children and Young Persons \(Care and Protection\) Act 1998](#), section 27 and who, in the person's work, has reasonable grounds to suspect a child is at risk of significant harm must make a report to the Child Protection Helpline.
- (2) The principal officer of an entity providing specialised substitute residential care for a child must—
  - (a) ensure the staff of the entity understand their mandatory reporting obligations, and

- (b) notify the Children's Guardian of all reportable allegations and convictions against a person engaged by the entity whether arising from the person's work or otherwise,
- (c) report allegations of reportable incidents involving children who are NDIS participants to the NDIS Quality and Safeguards Commission.

(3) In this section—

**NDIS participant** means a person who is a participant in the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* of the Commonwealth.

**NDIS Quality and Safeguards Commission** means the NDIS Quality and Safeguards Commission established under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, section 181A.

## 27 Behaviour support

The principal officer of an entity providing specialised substitute residential care for a child must ensure behaviour support for children in specialised substitute residential care is delivered consistently with obligations imposed by relevant legislation.

## Schedule 5 Conditions of accreditation—adoption service providers

section 43

### 1 Definition

In this Schedule—

**domestic adoption services** means adoption services other than intercountry adoption services.

### 2 Principal officer

(1) An accredited adoption service provider must—

- (a) appoint a person as the principal officer of the accredited adoption service provider, and
- (b) appoint a person to act in the office of principal officer if the office is vacant or the principal officer is absent.

(2) An accredited adoption service provider must not—

- (a) appoint a person as principal officer for the provider unless the provider has—
  - (i) verified the person's identity, and
  - (ii) ensured the person complies with relevant requirements of the *Child*

*Protection (Working with Children) Act 2012*, and

- (iii) conducted or obtained the results of a nationwide criminal record check of the person, and
  - (iv) obtained a community services check of the person, and
  - (v) obtained at least 2 references concerning the person's suitability to be appointed as the principal officer, and
  - (vi) determined the person is a suitable person to be the principal officer, or
- (b) appoint a person to act in the office of principal officer unless the provider has—
- (i) verified the person's identity, and
  - (ii) ensured the person has a working with children check clearance or a current application.
- (3) As soon as practicable after a person is appointed as principal officer, or to act in the role of principal officer, for an accredited adoption service provider, the provider must give the Children's Guardian and the Secretary written notice of the following—
- (a) the name of the person,
  - (b) if the person is appointed as principal officer—that the provider has complied with subsection (2)(a),
  - (c) if the person is appointed to act in the role of principal officer—that the provider has complied with subsection (2)(b).
- (4) An accredited adoption service provider must not allow a person to act in the role of principal officer for more than 90 days unless the provider has complied with subsection (2)(a) for the person and given the Children's Guardian and the Secretary written notice that the provider has complied.
- (5) In this section—

**community services check** means a check, as determined by the Secretary, of the information held by the Department.

### **3 Intercountry adoption services**

- (1) An accredited adoption service provider must not provide intercountry adoption services in connection with a foreign country unless accredited by the Children's Guardian to provide the services in connection with the country.
- (2) An accredited adoption service provider accredited to provide intercountry adoption services must not provide adoption services in New South Wales to persons who are

not resident or domiciled in—

(a) New South Wales, or

(b) a foreign country for which the provider is accredited.

(3) An accredited adoption service provider must not deal directly with an authority of a foreign country to facilitate the intercountry adoption of children.

**Note—**

Deals should be through the Commonwealth.

(4) An accredited adoption service provider must not agree to appoint a person to act on the provider's behalf in adoption proceedings in a foreign country unless the appointment is approved by the Secretary.

#### **4 Domestic adoption services**

An accredited adoption service provider must not provide domestic adoption services in New South Wales to persons who are not resident or domiciled in New South Wales.

#### **5 Sharing premises**

An accredited adoption service provider must not share premises with the following—

(a) an association of adoptive parents,

(b) an organisation established to represent adoptive parents,

(c) an organisation with an object of seeking aid for, or providing aid to, persons or organisations in a foreign country.

#### **6 Fees**

An accredited adoption service provider must make publicly available on its website the fees the provider charges for adoption services.

#### **7 Giving reports and information to Secretary and Children's Guardian**

(1) An accredited adoption service provider must give the Children's Guardian and the Secretary copies of the following reports within 30 days after the report is completed—

(a) the provider's annual report, to the extent the report deals with adoption services,

(b) a report the provider is required to give to a government authority, including a government authority in a foreign country, about the provision of adoption services.

(2) The Secretary or the Children's Guardian may, by written notice given to an accredited adoption service provider, require the provider to give the Secretary or the Children's Guardian information specified in the notice in the way and by the date

specified in the notice.

- (3) An accredited adoption service provider must comply with the notice.

## **8 Conflict of interest**

- (1) An accredited adoption service provider that becomes aware a staff member has a conflict of interest must, as soon as practicable after becoming aware of the conflict of interest, give the Children's Guardian and the Secretary written notice of the conflict of interest.

- (2) For this section, a staff member has a conflict of interest if the staff member—

- (a) has an interest that may affect the staff member's conduct associated with the provision of adoption services, or
- (b) is an associate of a person who has an interest that may affect the staff member's conduct associated with the provision of adoption services.

- (3) In this section—

**associate** means the following—

- (a) a spouse or former spouse,
- (b) a de facto partner or former de facto partner,
- (c) a child, grandchild, sibling, parent or grandparent,
- (d) a business partner.

**staff member**, of an accredited adoption service provider, includes—

- (a) a member of the governing body of the provider, and
- (b) a person engaged, whether or not the person is paid, by the provider—
  - (i) in connection with the provision of adoption services, or
  - (ii) to assist the provider to provide adoption services, or
  - (iii) to provide adoption services on behalf of the provider.

## **9 Notification of change to contact details**

- (1) An accredited adoption service provider must give the Children's Guardian and the Secretary written notice of a change to 1 or more of the following—

- (a) the provider's ABN,
- (b) the provider's business address,



- (c) the provider's business name,
- (d) the provider's email address,
- (e) the provider's telephone number,
- (f) the provider's principal officer.

(2) Notice must be given within 1 business day after the change.

#### **10 Notification of change to governance arrangements**

- (1) An accredited adoption service provider must give the Secretary written notice of a change in—
- (a) the terms of the documents governing the provider's constitution, or
  - (b) the terms of a trust the provider has established in connection with the provision of adoption services, or
  - (c) the criteria used to assess the suitability of applicants to adopt a child.

(2) Notice must be given within 10 business days after the change.

#### **11 Assessment criteria for prospective adoptive parents**

- (1) An accredited adoption service provider must give each prospective adoptive parent a document setting out the criteria used to assess the prospective parent's suitability as an adoptive parent.
- (2) An accredited adoption service provider that uses assessment criteria that are different from the assessment criteria prescribed for the purposes of the [Adoption Act 2000](#) must—
- (a) give the Secretary written notice of the assessment criteria used, and
  - (b) publish the criteria on the provider's website.

#### **12 Cooperation with authorised persons**

An accredited adoption service provider must cooperate with an authorised person who enters the provider's premises to inspect or search the premises under the Act, Schedule 2.

## Schedule 6 Code of Practice—child employment

section 58

### Part 1 General

#### Division 1 Preliminary

##### 1 Objects

The objects of this Code of Practice are as follows—

- (a) to protect children in employment from exploitation and abuse,
- (b) to prevent inappropriate or unreasonable demands being made of children in employment,
- (c) to ensure a person employing a child in regulated activities takes responsibility for the child's interactions with adults,
- (d) to ensure children are provided with a safe work environment.

##### 2 Definition

In this Code of Practice—

**parent's nominee**, in relation to a child, means an adult authorised in writing by a parent of the child to exercise the functions of the parent under this Code.

#### Division 2 Records

##### 3 Record keeping

A record required to be kept under this Schedule must be kept for at least 6 years and with reasonable safeguards to prevent the following—

- (a) unauthorised access, use, modification or disclosure,
- (b) loss.

##### 4 Records to be given to Children's Guardian

- (1) A record required to be kept under this Schedule must, if required by the Children's Guardian by written notice, be given to the Children's Guardian along with the additional information relating to the record specified in the notice.
- (2) Records and information must be given to the Children's Guardian within the time and in the form specified in the notice.

## **5 Records for employed child**

The following records must be kept for each employed child—

- (a) the name, address and personal telephone number of the child,
- (b) the name, address and telephone number of 1 or both of the parents of the child,
- (c) the name, address and telephone number of the parent's nominee,
- (d) the child's date of birth,
- (e) the nature of the work the child is employed to undertake,
- (f) if employment of the child requires consent under a law—the consent,
- (g) the date, time and place of work for each occasion the child is employed,
- (h) the employer's authority reference number applying on each occasion the child is employed,
- (i) the name, address and telephone number of the child's supervisor for each occasion the child is employed.

## **6 Incident register**

- (1) An incident register must be kept in the form approved by the Children's Guardian.
- (2) The following incidents must be recorded on the incident register, for each child employed by the employer—
  - (a) an accident involving the child,
  - (b) an injury to the child,
  - (c) an incident subject to a complaint made by the child, the child's parent or the parent's nominee,

### **Examples—**

complaints relating to the contract of employment, including not being paid for services, and more serious complaints, including allegations of physical abuse or sexual misconduct occurring during the child's employment

- (d) an incident involving a breach of this Code of Practice, other than this section.
- (3) The record of an incident must include the following—
  - (a) the name of the child,
  - (b) the time, date and location of the incident,
  - (c) the action taken in response to the incident.

- (4) The record of an incident must be made and given to the Children's Guardian within 72 hours of the employer becoming aware of the incident.

## **Division 3 Insurance and risk management**

### **7 Notification to Children's Guardian**

- (1) A child must not be employed unless the prospective employer has, at least 7 days before the child is employed, given the Children's Guardian written notice, in the form approved by the Children's Guardian, of the following—
  - (a) the employer's intention to employ the child,
  - (b) the address or location of the proposed place of work,
  - (c) the period in which the child will be employed,
  - (d) risks associated with the employment of the child, to the extent the risk can reasonably be identified by the employer, including—
    - (i) a risk associated with the proposed place of work, and
    - (ii) a risk associated with the child's proposed role or employment schedule,
  - (e) the strategies the employer proposes to adopt to minimise identified risks,
  - (f) modifications to this Code of Practice sought by the employer.
- (2) The Children's Guardian may accept a notice under subsection (1) less than 7 days before the child is employed in a particular case or class of cases.

### **8 Insurance**

- (1) A child must be covered by a policy of personal accident insurance with benefits for injuries no less than the benefits payable for the same injuries under—
  - (a) the *Workers Compensation Act 1987*, or
  - (b) the *Workplace Injury Management and Workers Compensation Act 1998*.
- (2) This section does not apply to a child covered under—
  - (a) the *Workers Compensation Act 1987*, or
  - (b) the *Workplace Injury Management and Workers Compensation Act 1998*.

## **Division 4 General welfare**

### **9 Punishment prohibited**

A child must not be subjected to physical punishment, social isolation, immobilisation or

other behaviour likely to humiliate or frighten the child.

## **10 Contact with parents**

A child must at all times be able to make contact with a parent, or a parent's nominee, and the employer must facilitate the making of contact whenever—

- (a) the child requests contact, or
- (b) it is otherwise in the interests of the child.

## **11 Schooling requirements**

A child of compulsory school-age under the *Education Act 1990* must not be employed in the child's usual hours of school attendance unless—

- (a) the employment is for a period in which the child is not required to attend school under an approval given by—
  - (i) the principal of the school the child attends, or
  - (ii) the Secretary of the Department of Education, or
- (b) the child is enrolled at a school to undertake courses of study by distance education, or
- (c) the child is registered for home schooling under the *Education Act 1990*, Part 7, Division 2 and the employment is permitted by the conditions of registration.

## **12 Food and drink**

- (1) A child must, at regular intervals, be provided with food that is varied, sufficient, nutritious and appropriate having regard to the age, taste and culture of the child.
- (2) Water and other nutritious drinks must be readily available to the child at all times during the child's employment.

## **13 Toilet facilities**

A child must have access to clean and easily accessible toilet, hand-washing and hand-drying facilities at the place of work where the child is employed.

## **14 Recreation and rest facilities**

- (1) A child must be given adequate recreation materials and rest facilities during breaks in work.
- (2) The recreation materials and rest facilities must be appropriate for a child of the child's age and level of maturity.

### **15 Dressing room facilities**

A child must be given appropriate dressing room facilities to allow the child to dress and undress in private.

### **16 Protection from the elements**

A child must be adequately clothed and otherwise protected from extremes of climate while the child is employed.

### **17 Notification of illness or injury**

A parent of a child or a parent's nominee must be notified immediately if during the child's employment—

- (a) the child is injured or becomes ill, or
- (b) the child appears to the relevant employer to have become ill, or
- (c) the child reports feeling ill.

### **18 Industrial instruments or agreements**

If there is an inconsistency between a provision of this Code of Practice and a provision of an industrial instrument or agreement applying to a child, the provision that is more beneficial to the child prevails.

**Note—**

The *Industrial Relations Act 1996*, section 9B(2) provides that a reference in an Act or instrument to an industrial instrument or agreement, however described, includes a reference to a relevant federal industrial instrument or agreement.

### **19 Work directions**

- (1) Before a child is cast in a role or situation, the employer must—
  - (a) fully inform the child and a parent of the child of the nature of the role or situation, and
  - (b) take into account comments made by the child or the parent.
- (2) A child must not be cast in a role or situation that is inappropriate for the child, having regard to the child's age, maturity, emotional or psychological development and sensitivity.
- (3) A child must not—
  - (a) be exposed to scenes likely to cause distress to the child, or
  - (b) be allowed to become distressed for the purpose of obtaining a more realistic depiction of a particular emotion or reaction.

- (4) A child must not be employed in a situation in which—
  - (a) the genitals or anus of the child or another person is exposed, or
  - (b) the buttocks or breasts of the child are exposed, or
  - (c) the buttocks of another person are exposed, or
  - (d) the breasts of another person are exposed, except for the purpose of breastfeeding an infant.

## **Division 5 Supervision and travel**

### **20 Supervision**

- (1) When working, a child must be supervised in a way appropriate for the child's age and level of maturity.
- (2) A child less than 6 years of age must be supervised by 1 of the following—
  - (a) the child's parent or a parent's nominee,
  - (b) an adult who holds an approved child care qualification,
  - (c) a registered nurse or a midwife.
- (3) A child who is at least 6 years of age must be supervised by 1 of the following—
  - (a) the child's parent or a parent's nominee,
  - (b) an adult with training and experience in the care of children of the child's age.
- (4) A supervisor must not at any time supervise more than—
  - (a) 2 children, if 1 or more of the children are less than 3 years of age, or
  - (b) 5 children, if no child is less than 3 years of age and 1 or more of the children are at least 3 years of age and less than 6 years of age, or
  - (c) 10 children, if all of the children are at least 6 years of age.
- (5) A child being supervised must be in the view of the person providing the supervision at all times.
- (6) A supervisor must not have other responsibilities.
- (7) In this section—

**approved child care qualification** means the following qualifications approved by the Australian Children's Education and Care Quality Authority—

  - (a) an approved certificate III level education and care qualification,

- (b) an approved diploma level education and care qualification,
- (c) an approved early childhood teaching qualification.

**Australian Children's Education and Care Quality Authority** means the Australian Children's Education and Care Quality Authority established by the *Children (Education and Care Services) National Law (NSW)*, section 224.

## **21 Nursing or midwifery supervision**

A child less than 3 years of age must not be employed unless—

- (a) a registered nurse or a midwife who is neither the child's employer nor a parent of the child is present to supervise the child's employment at all times, and
- (b) the nurse or midwife advises the child's employer—
  - (i) the child is suitable to be employed, and
  - (ii) the environment in which the child will work, including the lighting and temperature, will not cause distress or harm to the child, and
- (c) the employer follows the advice of the nurse or midwife in all matters relating to the care of the child, including the use of make-up.

## **22 Babies less than 12 weeks of age**

- (1) A baby must not be employed unless the employer's authority expressly authorises the employment of a baby.
- (2) The registered nurse or midwife advising the employer under section 21 must not advise the employer a baby is suitable for employment unless the nurse or midwife is satisfied of the following—
  - (a) the baby was delivered full term and in good health,
  - (b) the baby's birth weight was at least 3kg,
  - (c) the baby has not had postnatal problems,
  - (d) the baby is feeding successfully,
  - (e) the baby's weight gain from birth has been satisfactory.
- (3) A baby must not be exposed to direct lighting during the baby's employment.
- (4) Make-up must not be applied to a baby during the baby's employment unless the make-up is non-irritating and uncontaminated.
- (5) A baby must not be handled by more than 4 people, including the baby's parents and



the nurse or midwife required by section 21, during a single period of employment.

- (6) A person who has a respiratory or skin infection must not be allowed to come into contact with a baby during the baby's employment.
- (7) In this section—

**baby** means an infant less than 12 weeks of age.

## 23 Travel

- (1) A child must be accompanied by a parent of the child or a parent's nominee when travelling between—
  - (a) the child's home and the child's place of work, or
  - (b) between places of work.
- (2) Subsection (1) does not apply to a child who is at least 13 years of age if—
  - (a) the distance travelled is less than 10km, and
  - (b) the travel is by public transport, and
  - (c) the travel will be completed in daylight hours.
- (3) A child's journey home must commence within 30 minutes after the child finishes work unless the child is accompanied by a parent of the child or a parent's nominee.
- (4) If the child's work requires the child to spend 1 or more nights away from the child's home, the child and the child's parent, or a parent's nominee, must be provided with appropriate accommodation.

## Part 2 Hours of work

### 24 Definition

In this Part—

**work** includes preparatory activities.

### 25 Calculation

- (1) The calculation of a child's hours of work in a 24-hour period must include the following—
  - (a) time, in excess of 90 minutes, spent travelling from the child's home to the child's place of work,
  - (b) if the child's employer is responsible for taking the child to the child's place of work—the time between the child's arrival at the place of work and the child's

commencement of work,

- (c) the entire time the child is required to be at the place of work, excluding a rest break required by—
  - (i) section 26(3), or
  - (ii) a prevailing industrial instrument or agreement if the instrument or agreement provides the rest break is not to be counted towards the hours of work,
- (d) time, in excess of 90 minutes, spent travelling from the child's place of work to the child's home,
- (e) if the child's employer is responsible for taking the child to the child's home from the child's place of work—the time between the child finishing work and the start of the journey to the child's home.

(2) In this section—

**employer** includes a performer representative.

## **26 Limitations on hours of work**

- (1) A child must not work for more than—
  - (a) 1 shift a day, and
  - (b) 5 consecutive days.
- (2) A child must not work for more than 4 hours on a day the child also receives schooling.
- (3) A child must be given the following rest breaks—
  - (a) adequate rest breaks determined by taking into account—
    - (i) the age and needs of the child, and
    - (ii) the type of work the child is engaged in,
  - (b) a 1-hour rest break in each 4-hour period.
- (4) A child must not start work less than 12 hours after previously finishing work, whether with the same or a different employer.
- (5) A child must not work after 9pm if the child is to receive schooling the next day.
- (6) A child must not work and receive schooling for more than 50 hours in a week.

**27 Hours of work—entertainment or exhibition**

- (1) This section applies to the employment of a child in the following—
  - (a) film, television, radio or shopping centre performances,
  - (b) still photography, including the production of images for broadcasting, modelling purposes and other exhibitions.
- (2) A child must not work other than as follows—

<b>Age of child</b>	<b>Maximum days per week</b>	<b>Hours during which child may be employed</b>	<b>Maximum hours per day</b>
Under 6 months	1 day	6am-6pm	4 hours
6 months-under 3 years	2 days	6am-6pm	4 hours
3 years-under 8 years	4 days	6am-11pm	6 hours
8 years-under 15 years, or under 16 years for models	5 days	6am-11pm	8 hours

**28 Hours of work—live performances**

- (1) This section applies to the employment of a child in a live performance other than a performance referred to in section 27.
- (2) A child must not work other than as follows—

<b>Age of child</b>	<b>Maximum days per week</b>	<b>Hours during which child may be employed</b>	<b>Maximum hours per day</b>
Under 6 months	1 day	6am-6pm	4 hours
6 months-under 3 years	2 days	6am-6pm	4 hours
3 years-under 6 years	4 days	6am-9pm	4 hours
6 years-under 8 years	4 days	6am-10pm	6 hours
8 years-under 15 years	4 days	6am-11pm	8 hours

## Schedule 7 Penalty notice offences

### 1 Application of Schedule

- (1) For the purposes of the Act, section 172—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) that limited kind of offence, or
  - (b) an offence committed in those limited circumstances.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 92(1)-(3)	\$5,500
Section 97(2) for breach of the condition in this Regulation, section 58 relating to—	
(a) Schedule 6, sections 3-6, 8, 12-14 and 23	\$110
(b) Schedule 6, sections 7, 11, 21 and 22	\$550
(c) Schedule 6, sections 9, 10, 15, 19 and 20	\$1,100
(d) Schedule 6, sections 16 and 17	\$220
(e) Schedule 6, sections 26-28	\$330
Section 97(2) for breach of the condition in this Regulation, section 59	\$110
<b>Offences under this Regulation</b>	
Section 59A for failure to comply with the condition in section 58(2) relating to—	
(a) Schedule 6, sections 3-6, 8, 12-14 and 23	\$110
(b) Schedule 6, sections 7, 11, 21 and 22	\$550

(c) Schedule 6, sections 9, 10, 15, 19 and 20	\$1,100
(d) Schedule 6, sections 16 and 17	\$220
(e) Schedule 6, sections 26–28	\$330
Section 59A for failure to comply with the condition in section 58(3)(a) or (b)	\$110
Section 59A for failure to comply with the condition in section 58(3)(c)	\$330
Section 59A for failure to comply with the condition in section 58(4)	\$110
Section 59A for failure to comply with the condition in section 59	\$110

## Schedule 8 Dictionary

section 3

**applicant** means a person who has applied to be a residential care worker.

**application number**, for Schedule 2—see Schedule 2, section 1.

**arts student**, for Part 7—see section 52.

**carers register** means the register kept under the Act, section 85(1)(a).

**case plan** means the plan under the Act, section 8ZA(2).

**caseworker** means a person who—

- (a) is employed by, or in, the Department to develop or implement case management plans for children, and
- (b) provides statutory out-of-home care or supported out-of-home care only—
  - (i) outside the person's primary duties, and
  - (ii) at a place where accommodation is provided on a temporary basis.

**centre-based care**, for Schedule 4—see Schedule 4, section 1.

**commencement day**, for Schedule 1—see section 1.

**continuing residence approval**, for Schedule 2—see Schedule 2, section 1.

**current application** has the meaning given by the [Child Protection \(Working with Children\) Act 2012](#).

**domestic adoption services**, for Schedule 5—see Schedule 5, section 1.

**existing worker**, for Schedule 1—see section 1.

**intercountry adoption services** means adoption services provided in connection with the adoption of children who are not Australian citizens and who have been brought into Australia, or are proposed

to be brought into Australia—

- (a) to be adopted under the laws of Australia, or
- (b) for an adoption under the laws of a foreign country being recognised under the laws of Australia.

**labour hire agency** means a person who on a commercial basis provides services for finding work for individuals.

**parent's nominee**, for Schedule 6—see Schedule 6, section 2.

**performer representative**, for Part 7—see section 52.

**preparatory activity**, for Part 7—see section 52.

**register** means the residential care workers register that may be kept by the Children's Guardian under the Act, section 85(1)(b).

**relevant authorised carer** has the same meaning as in the Act, section 85(1B)(a).

**relevant details** has the same meaning as in the *Child Protection (Working with Children) Act 2012*, section 9A(2).

**relevant individual**, for a residential care provider, means a person who is 1 or both of following—

- (a) a person who currently works for the residential care provider as a residential care worker,
- (b) a person who has previously worked for the residential care provider as a residential care worker and about whom the provider has recorded on the residential care workers register that there is relevant information to disclose.

**relevant information**, about an applicant or residential care worker, means information relating to the safety, welfare or wellbeing of children.

**relevant legislation**, for Schedule 4—see Schedule 4, section 1.

**relevant resident** means a person, other than a child in out-of-home care, who resides for more than 21 days on the same property as—

- (a) a relevant authorised carer, or
- (b) a person who has applied to be a relevant authorised carer.

**residential setting** means—

- (a) a home, managed by a designated agency, or
- (b) a place where accommodation is provided on a temporary basis.

**specialised substitute residential care register** means the register kept under the Act, section 85(1)(c).

**staff**, for Schedule 4—see Schedule 4, section 1.

**the Act** means the [Children's Guardian Act 2019](#).

**work**, for Schedule 6, Part 2—see Schedule 6, section 24.

**working with children check status information**, for Schedule 2—see Schedule 2, section 1.

**working with children number** has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).