

# Children and Young Persons (Care and Protection) Regulation 2022

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New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027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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# Children and Young Persons (Care and Protection) Regulation 2022



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	6
1 Name of Regulation .....	6
2 Commencement .....	6
3 Interpretation .....	6
<b>Part 2 General</b> .....	8
4 Rescission and variation of care orders—the Act, s 264(1A)(d) .....	8
5 Prescribed bodies .....	8
<b>Part 3 Records, reporting and information</b> .....	8
<b>Division 1 Records</b> .....	8
6 Access to records relating to Aboriginal persons and Torres Strait Islanders—the Act, s 14(5) .....	8
<b>Division 2 Reporting</b> .....	9
7 Application of mandatory reporting requirements—the Act s 264(1A)(b) .....	9
8 Extension of alternative reporting arrangements—the Act s 27A(10) .....	10
9 Senior officers of Australian law enforcement agencies—the Act, s 29(6) .....	10
<b>Part 4 Care plans and alternative parenting plans</b> .....	11
10 Care plans—the Act, s 78(6) .....	11
11 Alternative parenting plans—the Act, s 264(1A)(e) .....	11
<b>Part 5 Guardianship orders</b> .....	11

12 Form of child’s or young person’s consent to guardianship order—the Act, s 79A(3).....	11
13 Assessment of prospective guardians—the Act, s 79B .....	12
14 Financial assistance to guardians—the Act, s 79C(5) .....	13
<b>Part 6 Out-of-home care</b> .....	<b>13</b>
<b>Division 1 General</b> .....	<b>13</b>
15 Arrangements and services that are not out-of-home care—the Act, s 135(3).....	13
16 Application for review of temporary care arrangement—the Act, s 152(6) .....	14
<b>Division 2 Authorisations by designated agencies—the Act, s 137(2)</b> .....	<b>14</b>
<b>Subdivision 1 Authorisation</b> .....	<b>14</b>
17 Application to be an authorised carer in a private capacity .....	14
18 Determination of application .....	15
<b>Subdivision 2 Provisional authorisation</b> .....	<b>16</b>
19 Provisional authorisation .....	16
20 Assessment of capability and suitability to be provisionally authorised .....	16
21 Administration of provisional authorisation .....	17
<b>Subdivision 3 Other authorisations</b> .....	<b>17</b>
22 Emergency authorisation of residential care worker .....	17
23 Authorisation of residential care workers—the Act, s 137 .....	18
24 Authorisation of residential care workers under sections 22 and 23 .....	19
25 Authorisation of caseworkers .....	19
26 Authorisation of interstate residential care workers—the Act, s 137 .....	19
27 Other carers authorised by Department to enable special care .....	20
28 Authorised carer authorised by designated agency to give respite to usual authorised carer .....	21
<b>Subdivision 4 Conditions of authorisation</b> .....	<b>22</b>
Note.....	22
29 Training.....	22
30 Designated agency may impose conditions .....	23
31 Personal responsibility of authorised carer.....	23
32 Notice of change of address .....	23

33 Information to be provided to designated agency .....	23
34 Medical examination.....	24
<b>Subdivision 5 Cancellation, suspension and surrender of authorisation</b> .....	<b>25</b>
35 Cancellation or suspension of authorisation by designated agency .....	25
36 Automatic cancellation—making of guardianship order .....	25
37 Automatic cancellation—working with children requirements no longer met.....	26
38 Automatic cancellation—cessation of employment or contract.....	27
39 Presumption authorisation will be cancelled .....	27
40 Automatic suspension of authorisation .....	27
41 Surrender of authorisation.....	28
<b>Subdivision 6 Miscellaneous</b> .....	<b>28</b>
42 Assessment of persons residing on same property as carer.....	28
43 Authorisation by designated agency to be in writing .....	29
<b>Division 3 Authorisation other than by designated agency</b> .....	<b>29</b>
44 Other authorisation .....	29
45 Transferred authorisation.....	29
<b>Division 4 Behaviour management—the Act, s 137(2)(g)</b> .....	<b>30</b>
46 Children and young persons supervised by a designated agency .....	30
47 Children and young persons not supervised by a designated agency .....	30
<b>Part 7 Medical examination and treatment</b> .....	<b>31</b>
48 Notice of medical examination .....	31
49 Administration of psychotropic drugs to child in statutory out-of-home care—the Act, s 264(1A)(g) .....	31
<b>Part 8 Miscellaneous</b> .....	<b>32</b>
50 Savings and transitional provisions .....	32
<b>Schedule 1 Notice of medical examination</b> .....	<b>32</b>
<b>Schedule 2 Uniform suitability assessment requirements</b> .....	<b>33</b>

<b>Schedule 3 Care plans</b> .....	36
<b>Schedule 4 Alternative parenting plans</b> .....	39
<b>Schedule 5 Prescribed bodies</b> .....	41

# Children and Young Persons (Care and Protection) Regulation 2022



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Regulation 2022*.

### 2 Commencement

This Regulation commences on 1 September 2022.

**Note—**

This Regulation replaces the *Children and Young Persons (Care and Protection) Regulation 2012*, which is repealed on 1 September 2022 by section 10(2) of the *Subordinate Legislation Act 1989*.

### 3 Interpretation

(1) In this Regulation—

**accredited adoption service provider** has the same meaning as in the *Children's Guardian Act 2019*.

**adult** means an individual who is at least 18 years of age.

**assessable person**, see Schedule 2, section 1.

**assessment body** means—

- (a) for a person who has applied to be an authorised carer—the designated agency to which the application was made, and
- (b) for a prospective guardian who is an authorised carer—the designated agency that—
  - (i) authorised the prospective guardian as an authorised carer, or
  - (ii) has supervisory responsibility for a child or young person in the care of the authorised carer, and

(c) for a prospective guardian who is not an authorised carer—the Secretary.

**community services check** see Schedule 2, section 1.

**co-resident** means a person, other than a child in out-of-home care, who resides for 3 weeks or more on the same property as—

- (a) the authorised carer, or
- (b) the person who has applied to be an authorised carer, or
- (c) the prospective guardian.

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

**NCAT** means the Civil and Administrative Tribunal of New South Wales established by the *Civil and Administrative Tribunal Act 2013*.

**private health facility** means a private health facility licensed under the *Private Health Facilities Act 2007*.

**provisional authorisation**—see section 19.

**residential care** has the same meaning as in the *Children’s Guardian Act 2019*.

**residential care worker** means a person who provides residential care but does not include a volunteer.

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

**uniform suitability assessment** means an assessment conducted in accordance with Schedule 2.

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

**WWCCC application** means an application for a WWCCC that has not been finally determined, withdrawn or terminated.

**Note—**

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

- (2) In this Regulation, a reference to a Public Service agency or other organisation includes a reference to part of an agency or organisation.

## Part 2 General

### 4 Rescission and variation of care orders—the Act, s 264(1A)(d)

The matters that may be taken into account by the Children’s Court in determining, under the Act, section 90(2), whether there has been significant change in a relevant circumstance of a child or young person since a care order was made or last varied include the following—

- (a) the parents of the child or young person have not met their responsibilities under a care plan or permanency plan involving restoration,
- (b) the Children’s Court, having conducted a progress review under the Act, section 82(3), is not satisfied proper arrangements have been made for the care and protection of the child or young person,
- (c) an application has been made for a guardianship order for the child or young person,
- (d) for a guardianship order—the guardian is unable or unwilling to meet the guardian’s responsibilities to the child or young person.

### 5 Prescribed bodies

- (1) For the Act, section 248(6), definition of **prescribed body**, paragraph (g), the bodies listed in Schedule 5, section 1 are prescribed.

**Note—**

A body prescribed for the Act, section 248(6) is, by virtue of the Act, section 245B(1), definition of **prescribed body**, also a prescribed body for the Act, Chapter 16A.

- (2) For the Act, section 245B(1), definition of **prescribed body**, paragraphs (b) and (c), the classes of persons listed in Schedule 5, section 2 are prescribed.

## Part 3 Records, reporting and information

### Division 1 Records

#### 6 Access to records relating to Aboriginal persons and Torres Strait Islanders—the Act, s 14(5)

- (1) A person who is entitled under the Act, section 14(2) to have access to records relating to the placement of an Aboriginal or Torres Strait Islander child or young person may request access to the records.
- (2) The request—
  - (a) must be made to the Secretary, and
  - (b) may be oral or written, and



- (c) must be accompanied by proof of the applicant's identity.
- (3) The Secretary may give access to the records in the following ways—
  - (a) by making the records available for inspection,
  - (b) by providing a copy of the records.
- (4) The Secretary must give access to the records within 20 business days after receiving a request.
- (5) If it is not reasonably practicable to give access within 20 business days, the Secretary must, before 20 business days have passed—
  - (a) explain to the applicant the reason access to the records cannot be given within 20 business days, and
  - (b) extend the period in which the records must be provided by up to 10 business days.
- (6) More than 1 extension may be made under subsection (5)(b) with the total of all extensions for a particular request being a maximum of 15 business days.
- (7) The period in which records must be provided may also be extended more than once by agreement with the applicant.
- (8) In this section—
  - business day** means a day that is not—
    - (a) a Saturday or Sunday, or
    - (b) a public holiday or bank holiday throughout the State.

**Note—**

Other legislation also governs access to records, including the following—

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

## **Division 2 Reporting**

### **7 Application of mandatory reporting requirements—the Act s 264(1A)(b)**

The Act, section 27 applies to the following classes of persons—

- (a) a person who, while practising a profession or in other paid employment, provides disability services, wholly or partly, to children,

- (b) a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of disability services, wholly or partly, to children.

#### **8 Extension of alternative reporting arrangements—the Act s 27A(10)**

- (1) The operation of the Act, section 27A is extended to relevant service providers to whom the Act, section 27 applies but who are not employed in, or engaged by, the NSW Health Service.
- (2) A reference in the Act, section 27A to a staff member is taken to include a reference to a relevant service provider.
- (3) The NSW Health Service is taken to be the relevant agency under the Act, section 27A for a relevant service provider.
- (4) In this section—

**relevant service provider** means the following—

- (a) an employee of, or a person engaged by, an affiliated health organisation within the meaning of the *Health Services Act 1997*,
- (b) an employee of, or a person engaged by, a private health facility that provides services to the public on behalf of a statutory health organisation within the meaning of the *Health Services Act 1997* or the Ministry of Health,
- (c) an employee of, or a person engaged by, an organisation that is or is eligible to become an ordinary member or associate member of the Aboriginal Health and Medical Research Council of NSW,
- (d) a medical practitioner,
- (e) a nurse who is employed or engaged to work in the medical practice of a medical practitioner who is registered in the specialty of general practice or otherwise practices in general medical practice, whether or not the nurse is employed by the medical practice.

#### **9 Senior officers of Australian law enforcement agencies—the Act, s 29(6)**

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

- (a) persons holding the rank of superintendent or above in the Australian Federal Police,
- (b) persons holding the rank of superintendent or above in the Northern Territory Police Force,

- (c) persons holding appointment as commissioned police officers of the Queensland Police Service,
- (d) persons holding the rank of inspector or above in South Australia Police,
- (e) persons holding the rank of inspector or above in Tasmania Police,
- (f) persons holding or acting in the rank of inspector or above in Victoria Police,
- (g) persons holding appointment as commissioned police officers of the Western Australia Police Force.

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

### **10 Care plans—the Act, s 78(6)**

A care plan must include the information required by Schedule 3.

### **11 Alternative parenting plans—the Act, s 264(1A)(e)**

An alternative parenting plan submitted to the Children’s Court under the Act, section 116 or 119 must comply with Schedule 4.

## **Part 5 Guardianship orders**

### **12 Form of child’s or young person’s consent to guardianship order—the Act, s 79A(3)**

- (1) For the Act, section 79A(3)(d), the consent of a child or young person must—
  - (a) be written, and
  - (b) be signed by the child or young person in the presence of a relevant witness, and
  - (c) include a statement from the relevant witness that the witness complied with subsections (2) and (3).
- (2) The relevant person must explain to the child or young person the nature of the guardianship order to which the consent relates.
- (3) The explanation must—
  - (a) be given at least 14 days before the consent is signed by the child or young person, and
  - (b) be given in a way and use language the child or young person can understand, and
  - (c) include the following information—
    - (i) if the order is made, all aspects of parental responsibility for the child or young

person will be allocated under the order to a specified person or persons,

(ii) an order may be rescinded or varied under the Act, section 90,

(iii) the child or young person is entitled to obtain independent legal advice before signing the consent.

(4) In this section—

**relevant witness** means—

(a) the principal officer of the designated agency responsible for supervising the placement of the child or young person, or

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

(c) an Australian legal practitioner.

### **13 Assessment of prospective guardians—the Act, s 79B**

(1) The assessment body assessing a prospective guardian's suitability to have parental responsibility for a child or young person—

(a) must give information to the prospective guardian about the role of a guardian, and

(b) must conduct a review of the placement of the child or young person in out-of-home care.

(2) The prospective guardian must give the assessment body information the assessment body reasonably requires to assess the prospective guardian's suitability.

(3) For the Act, section 79B(1A), the prescribed suitability assessments are—

(a) the applicable requirements of the *Child Protection (Working with Children) Act 2012*, section 11A, and

(b) a uniform suitability assessment of—

(i) the prospective guardian, and

(ii) a co-resident of the prospective guardian.

(4) An assessment body must give the applicant for the guardianship order a statement (a **suitability statement**) setting out—

(a) the results of the suitability assessments, and

(b) the steps the assessment agency has taken to comply with this section.

- (5) The applicant for the guardianship order must present the suitability statement to the Children's Court before the order is made.

**14 Financial assistance to guardians—the Act, s 79C(5)**

It is a condition of financial assistance under the Act, section 79C that the guardian of a child or young person who is provided assistance must, within 21 days after the child or young person leaves the guardian's care, advise the Secretary in writing the child or young person has left the guardian's care.

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

**Division 1 General**

**15 Arrangements and services that are not out-of-home care—the Act, s 135(3)**

- (1) For the Act, section 135(3)(c) the following are not out-of-home care—
- (a) adoption services under the *Adoption Act 2000*,
  - (b) specialised substitute residential care under the *Children's Guardian Act 2019*,
  - (c) boarding services provided by an educational institution, or a body affiliated with an educational institution, to enable children and young people to attend the institution,
  - (d) a place used for the detention of children and young persons pending criminal proceedings, including police custody, or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*,
  - (e) health services under the *Health Services Act 1997*,
  - (f) a private health facility,
  - (g) a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, religious, athletic or recreational pursuits,
  - (h) placement with a person authorised as an authorised carer under the Act, section 137(1)(c) in accordance with arrangements not involving supervision by a designated agency,
  - (i) placement arrangements provided to give respite to children and young persons who are carers and their siblings,
  - (j) accommodation provided by specialist homelessness services funded by the Department.
- (2) In this section—

***educational institution*** means a school, training establishment or university.

**16 Application for review of temporary care arrangement—the Act, s 152(6)**

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

**Division 2 Authorisations by designated agencies—the Act, s 137(2)**

**Subdivision 1 Authorisation**

**17 Application to be an authorised carer in a private capacity**

- (1) A natural person may apply in writing to a designated agency to be an authorised carer.
- (2) On receipt of an application, the designated agency must provide the applicant with information about the following—
  - (a) the rights and responsibilities of authorised carers,
  - (b) the authorisation process including the criteria an applicant must satisfy,
  - (c) permanent placement options for a child or young person in out-of-home care.
- (3) An application must be accompanied by the information the designated agency reasonably requires to assess the applicant’s capability and suitability to be an authorised carer.
- (4) An application may be withdrawn, by written notice or verbally, before it is determined.

## **18 Determination of application**

- (1) A designated agency determines an application by—
  - (a) approving the application and authorising the applicant as an authorised carer, or
  - (b) refusing the application.
- (2) A designated agency must not authorise an applicant as an authorised carer unless the agency is satisfied the applicant is capable and suitable to be an authorised carer.
- (3) Before authorising an applicant as an authorised carer the designated agency must—
  - (a) be satisfied the applicant and each adult residing on the same property as the applicant have complied with the requirements of the *Child Protection (Working with Children) Act 2012* for engaging in child-related work as an authorised carer, and
  - (b) obtain or conduct a uniform suitability assessment of the applicant and each co-resident of the applicant and determine the result of each element of the assessment is satisfactory, and
  - (c) be satisfied the applicant has completed the education or training required by the agency, and
  - (d) receive from the applicant a signed statement that the applicant has read, understood and will comply with the code of conduct for authorised carers approved by the Minister under the Act, section 248C, and
  - (e) take into account—
    - (i) the functions of an authorised carer and the risk the applicant would be unable to properly perform the functions, and
    - (ii) risks to a child or young person if the applicant is authorised, including risks from the applicant's home and from a person who resides on the same property as the applicant, and
    - (iii) relevant information available to the agency.
- (4) Authorisation of an applicant as an authorised carer under this section takes effect when the designated agency gives the applicant written notice of the authorisation.
- (5) The principal officer of a designated agency must carry out the functions of the agency under this section, unless the Children's Guardian approves the carrying out of the functions by another person.
- (6) Failure to comply with subsection (5) does not affect the validity of an authorisation under this section.

## Subdivision 2 Provisional authorisation

### 19 Provisional authorisation

- (1) A designated agency may, in an emergency, authorise a person as an authorised carer for a child or young person on a provisional basis (a **provisional authorisation**) if the person is—
  - (a) a relative or kin of the child or young person, or
  - (b) known to the child or young person.
- (2) A provisional authorisation takes effect on the day the first child or young person is placed with the carer.

### 20 Assessment of capability and suitability to be provisionally authorised

- (1) A designated agency must not provisionally authorise a person under section 19 unless the agency has determined the person is capable and suitable to be provisionally authorised.
- (2) Before determining a person is capable and suitable to be provisionally authorised, the designated agency must—
  - (a) obtain from the person the information the agency reasonably requires to assess the person's capability and suitability, and
  - (b) carry out an inspection of the person's home and be satisfied it will provide a safe and secure environment for a child or young person in out-of-home care who may reside in the home, and
  - (c) consider the following matters in light of the functions imposed on an authorised carer by or under the Act, information held by the agency and all the circumstances of the case—
    - (i) risks to a child or young person if the applicant is provisionally authorised,
    - (ii) the risk the person may be unable to properly perform the functions of an authorised carer.
- (3) In assessing a person for provisional authorisation, a designated agency may obtain or conduct a uniform suitability assessment for the person and each co-resident of the person.
- (4) The principal officer of a designated agency must carry out the functions of the agency under this section, unless the Children's Guardian approves the carrying out of the functions by another person.
- (5) Failure to comply with subsection (4) does not affect the validity of a provisional



authorisation under this section.

## **21 Administration of provisional authorisation**

- (1) A designated agency must, when provisionally authorising a person as an authorised carer, make all reasonable efforts to inform the person, and each adult who resides on the same property as the person, of the relevant requirements of the *Child Protection (Working with Children) Act 2012*.

### **Note—**

See the *Child Protection (Working with Children) Act 2012*, sections 6(3)(c) and 10 and the regulations under that Act relating to those sections.

- (2) A person who is provisionally authorised and who has not, at the time the provisional authorisation takes effect, made an application under section 17 is taken to have a made an application.
- (3) It is a condition of a provisional authorisation that the provisionally authorised person must—
  - (a) submit further information the agency reasonably requires to assess the person's suitability to continue to be provisionally authorised, and
  - (b) take all reasonable steps to become authorised.
- (4) The Children's Guardian must monitor a designated agency's progress in determining a provisionally authorised person's application made, or taken to have been made, under section 17, if the Children's Guardian becomes aware the person has been provisionally authorised for more than 3 months.
- (5) A designated agency must cancel a provisional authorisation that has been in effect for 3 months or more if directed to do so by the Children's Guardian by written notice.
- (6) The cancellation of the provisional authorisation of a person is taken to be a decision by the designated agency to refuse, under section 18, the person's application.
- (7) The provisional authorisation of a person ceases to have effect when an application by the person for authorisation as an authorised carer is determined under section 18.

## **Subdivision 3 Other authorisations**

### **22 Emergency authorisation of residential care worker**

- (1) A designated agency may, in an emergency, authorise a person as an authorised carer if the person is—
  - (a) an employee of the agency whose duties include providing, or supervising the provision of, care to children or young persons, or

- (b) a **contractor**, being a natural person engaged by the agency under a contract to provide services including providing, or supervising the provision of, care to children or young persons, or
  - (c) an employee of a contractor whose duties as an employee include providing care to children or young persons.
- (2) The authorisation—
- (a) may be for a maximum of 72 hours, and
  - (b) takes effect when a child or young person is placed with the person.
- (3) A designated agency must not authorise the person unless—
- (a) the agency is satisfied the person has complied with the requirements of the *Child Protection (Working with Children) Act 2012* for engaging in child-related work as an authorised carer, and
  - (b) the agency has obtained from the person the information the agency reasonably required to assess the person’s capability and suitability to be an authorised carer, and
  - (c) the agency has taken into account—
    - (i) the relevant functions of an authorised carer and the risk the person would be unable to properly perform the functions, and
    - (ii) relevant information available to the agency.
- (4) For the purpose of assessing the person’s suitability, the designated agency may make inquiries about the person the agency considers appropriate, including—
- (a) a nationwide criminal record check, and
  - (b) another relevant probity check relating to the previous employment or other activities of the person.
- (5) The principal officer of a designated agency must carry out the functions of the agency under this section, unless the Children’s Guardian approves the carrying out of the functions by another person.
- (6) Failure to comply with subsection (5) does not affect the validity of an authorisation under this section.
- (7) A designated agency must not authorise a person under this section more than once.

### **23 Authorisation of residential care workers—the Act, s 137**

- (1) A designated agency may authorise a natural person as an authorised carer if—

- (a) the person is a residential care worker, and
  - (b) the agency has conducted each check required for the person by the *Children's Guardian Regulation 2022*, Part 2, Division 2, and
  - (c) the agency has determined the person is capable and suitable to be an authorised carer taking into account—
    - (i) the relevant functions of an authorised carer and a risk the person would be unable to properly perform the functions, and
    - (ii) relevant information available to the agency.
- (2) The functions of a designated agency under subsection (1)(b) and (c) must be undertaken by the principal officer of the agency and may, with the approval of the Children's Guardian, be delegated to another person.
- (3) Failure to comply with subsection (2) does not affect the validity of an authorisation under this section.

#### **24 Authorisation of residential care workers under sections 22 and 23**

A person authorised as an authorised carer under section 22 or 23 is authorised to provide care only—

- (a) for a child or young person for whom care is being provided or supervised by the designated agency that authorised the person, and
- (b) in a residential setting within the meaning of the *Children's Guardian Regulation 2022*.

#### **25 Authorisation of caseworkers**

- (1) A caseworker is taken to be authorised under section 22.
- (2) In this section—

**caseworker** has the same meaning as in the *Children's Guardian Regulation 2022*.

#### **26 Authorisation of interstate residential care workers—the Act, s 137**

- (1) For the purpose of a designated agency making arrangements for a child or young person to be provided with residential care by an interstate agency, an interstate residential care worker is taken to be an authorised carer if the interstate agency satisfies the designated agency that all persons employed or engaged by the interstate agency to provide residential care to children and young people—
  - (a) have been assessed as capable and suitable to provide the care, and
  - (b) hold a current WWCCC or its equivalent in the relevant State, and

(c) have undergone a nationwide criminal record check and the outcome of the check was satisfactory.

(2) An interstate residential care worker taken to be authorised under this section is not taken to be authorised for the purpose of providing out-of-home care in New South Wales.

(3) In this section—

***interstate agency*** means—

(a) the child welfare agency of another State, or

(b) a service provider funded by or contracted by the child welfare agency of another State to provide residential care to children and young people.

***interstate residential care worker*** means a person who is employed or engaged to provide residential care by an interstate agency.

***State*** has the same meaning as in the Act, Chapter 14A.

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

(1) The Department, in its capacity as a designated agency, may authorise a person as an authorised carer to provide special out-of-home care if the person is—

(a) an employee of a special care provider whose duties include providing, or supervising the provision of, care to children or young persons, or

(b) a contractor, or

(c) an employee of a contractor whose duties as an employee include providing care to children or young persons.

(2) The Department must not authorise a person under subsection (1) unless the relevant special care provider has—

(a) informed the Department the special care provider is satisfied the person has complied with the requirements of the [Child Protection \(Working with Children\) Act 2012](#) for the child-related work as an authorised carer, and

(b) done anything else required under that Act in relation to the authorisation, whether before or after the commencement of this section.

(3) The Department must not place a child or young person in the out-of-home care of a person authorised under subsection (1) unless the Department has—

(a) determined the child or young person requires special out-of-home care that will be effectively provided by the placement, and

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

(4) In this section—

**contractor** means a natural person engaged by a special care provider under a contract to provide services including providing, or supervising the provision of, care to children or young persons.

**impairment** includes, but is not limited to—

- (a) an intellectual impairment,
- (b) a psychiatric impairment,
- (c) a sensory impairment,
- (d) a physical impairment.

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

**special out-of-home care** for a child or young person means out-of-home care provided for a child or young person who has 1 or more impairments that—

- (a) is permanent or likely to be permanent, and
- (b) results in significantly reduced capacity in one or more major life activities, including the following—
  - (i) communication,
  - (ii) learning,
  - (iii) mobility,
  - (iv) decision-making,
  - (v) self-care.

**28 Authorised carer authorised by designated agency to give respite to usual authorised carer**

- (1) A designated agency may authorise a person as an authorised carer who can provide respite for other authorised carers if the person is—
  - (a) an employee of a respite care provider whose duties include providing, or supervising the provision of, care to children or young persons, or
  - (b) a contractor, or
  - (c) an employee of a contractor whose duties as an employee include providing care

to children or young persons.

- (2) A designated agency must not authorise a person under subsection (1) unless the relevant respite care provider has—
  - (a) informed the agency the respite care provider is satisfied the person has complied with the requirements of the *Child Protection (Working with Children) Act 2012* for child-related work as an authorised carer, and
  - (b) done anything else required under that Act in relation to the authorisation, whether before or after the commencement of this section.
- (3) The principal officer of a designated agency must carry out the functions of the agency under this section, unless the Children’s Guardian approves the carrying out of the functions by another person.
- (4) Failure to comply with subsection (3) does not affect the validity of an authorisation under this section.
- (5) A designated agency must not place a child or young person in the out-of-home care of a person authorised under subsection (1) unless the agency has given the Children’s Guardian written notice of the name, and the street and postal address of the principal place of business of the respite care provider.
- (6) A designated agency must notify the Children’s Guardian in writing if a child or young person is placed in the out-of-home care of a person authorised by the agency under subsection (1) for a period or periods amounting to more than 90 days in a 12 month period.
- (7) In this section—

**contractor** means a natural person engaged by a respite care provider under a contract to provide services including providing, or supervising the provision of, care to children or young persons.

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

## Subdivision 4 Conditions of authorisation

### Note—

The Act, section 248C imposes a condition that an authorised carer must comply with the code of conduct approved by the Minister.

## 29 Training

- (1) It is a condition of an authorisation that an authorised carer must not provide out-of-home care to a child or young person unless the carer has completed a course of

training on the provision of care for a child or young person.

(2) Subsection (1) does not apply to—

- (a) out-of-home care provided to a child or young person who is a relative or kin of the carer or who is known to the carer, or
- (b) an authorised residential care worker.

### **30 Designated agency may impose conditions**

(1) A designated agency may, by written notice—

- (a) impose reasonable conditions on the authorisation of an authorised carer, including a condition that the authorised carer may provide out-of-home care only to specified children or young persons or to a specified class of children or young persons, and
- (b) vary or revoke a condition imposed under this subsection.

(2) Action under subsection (1) takes effect when the notice is given to the authorised carer.

(3) This section does not apply to an authorised residential care worker.

### **31 Personal responsibility of authorised carer**

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

### **32 Notice of change of address**

(1) An authorised carer must, before changing residential address, give written notice of the change to an officer or employee of the designated agency.

(2) This section does not apply to an authorised residential care worker.

### **33 Information to be provided to designated agency**

(1) An authorised carer who is responsible for a child or young person in out-of-home care must give the designated agency information concerning the care of the child or young person the agency may reasonably require from time to time.

(2) An authorised carer who is responsible for a child or young person in out-of-home care must immediately notify the designated agency if 1 or more of the following occurs—

- (a) the child or young person leaves the care of the authorised carer,
- (b) the child or young person will be, or has been—
  - (i) expelled or suspended from school, or

- (ii) absent from the care of the authorised carer for a period of 24 hours or more without the permission of the authorised carer, or
  - (iii) absent from New South Wales for any period, whether or not while in the care of the authorised carer, without the permission of the Minister,
  - (c) the child or young person is charged with a criminal offence for which a penalty of imprisonment for 12 months or more may be imposed,
  - (d) the child or young person suffers a serious accident, injury or illness,
  - (e) the child or young person dies,
  - (f) the authorised carer—
    - (i) becomes a parent to another child or young person, or
    - (ii) is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
    - (iii) becomes aware a member of the carer’s household has been charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed,
  - (g) a child, young person or other person joins the authorised carer’s household.
- (3) Subsection (2)(f)(i) and (iii) and (g) do not apply to an authorised residential care worker.

### **34 Medical examination**

- (1) A designated agency may require a person to undergo an examination by a medical practitioner if—
  - (a) the agency is assessing whether an authorised carer’s household is a healthy environment for the care of children or young persons, and
  - (b) the person is the authorised carer or a person who resides at the authorised carer’s home.
- (2) The requirement must be given to the authorised carer by written notice.
- (3) A designated agency may require a person to undergo an examination only—
  - (a) on the written advice of a medical practitioner, and
  - (b) if satisfied the examination is reasonably necessary.
- (4) The authorised carer must—



- (a) undergo the requested examination, or ensure the person to whom the notice relates undergoes the examination, and
- (b) ensure a report from the examination is given, within a reasonable time after the examination is conducted, to the designated agency and to another supervising person who requests a copy of the report.

(5) In this section—

***supervising person*** means—

- (a) the Secretary or the Secretary's delegate, or
- (b) an officer or employee of the designated agency with supervisory responsibility for a child or young person in the care of an authorised carer.

## **Subdivision 5 Cancellation, suspension and surrender of authorisation**

### **35 Cancellation or suspension of authorisation by designated agency**

A designated agency may, by written notice, cancel or suspend the authorisation of an authorised carer if, in the agency's opinion, the authorised carer—

- (a) is no longer a suitable person to be an authorised carer, or
- (b) has failed to—
  - (i) comply with a condition of the authorisation, or
  - (ii) comply with a condition or requirement imposed on the authorised carer by the Act or this Regulation, or
  - (iii) comply with a written direction to the authorised carer given by the designated agency or the Children's Guardian under the Act, section 157(3), or
  - (iv) uphold the Charter of Rights prepared by the Minister under the Act, section 162.

**Note—**

Under the Act, section 245(1)(a) and (a1) a decision to suspend or cancel the authorisation of an authorised carer is administratively reviewable by NCAT.

### **36 Automatic cancellation—making of guardianship order**

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

**Note—**

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

order.

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

**37 Automatic cancellation—working with children requirements no longer met**

- (1) The authorisation of a person as an authorised carer is automatically cancelled if the person—
- (a) no longer has—
    - (i) a WWCCC, or
    - (ii) a WWCCC application, or
  - (b) is subject to an interim bar.
- (2) The cancellation of the authorisation takes effect—
- (a) when the person is notified—
    - (i) the person’s WWCCC has been cancelled, or
    - (ii) the person’s current WWCCC application has been terminated or refused, or
    - (iii) the person is subject to an interim bar, or
  - (b) if the WWCCC is cancelled under the *Child Protection (Working with Children) Act 2012*, section 24—when the person notifies the Children’s Guardian the person wishes to surrender the person’s WWCCC, or
  - (c) if the WWCCC ceases to have effect because 5 years have passed since it was granted and the holder of the WWCCC has not applied for a new WWCCC—on the day the WWCCC ceases to have effect.
- (3) The designated agency supervising the out-of-home care of a child or young person in the care of a person whose authorisation is cancelled under this section must, within 48 hours of becoming aware of the cancellation, ensure the child or young person no longer resides with the person.
- (4) The designated agency that authorised a person may revive the person’s authorisation within 2 years after it is cancelled under this section, if the person—
- (a) has—
    - (i) a WWCCC, or
    - (ii) a WWCCC application, and

(b) is not subject to an interim bar.

(5) Subsection (3) does not apply if—

- (a) an authorisation cancelled under subsection (1) is revived under subsection (4) before the child or young person is removed from the person's residence, and
- (b) it is less than 48 hours since the authorisation was cancelled.

### **38 Automatic cancellation—cessation of employment or contract**

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

### **39 Presumption authorisation will be cancelled**

- (1) For the purposes of the Act, section 137(2)(e)(ii) the occurrence of the following events raises a presumption the authorisation of a person as an authorised carer will be cancelled—
  - (a) if the authorisation relates to the out-of-home care of a particular child or young person—the person has not provided out-of-home care to the child or young person for 3 months or more,
  - (b) in all other cases—the person has not provided out-of-home care to a child or young person under the authorisation for 2 years or more.
- (2) Cancellation of an authorisation under subsection (1) must not occur if—
  - (a) an investigation into whether the person's authorisation should be cancelled is underway, or
  - (b) the person has applied for an internal review of a decision to cancel the person's authorisation and the review is underway, or
  - (c) the person has applied for the review of a reviewable decision and NCAT has not given a decision, or

**Note—**

see the Act, section 245 for decisions administratively reviewable by NCAT.

- (d) the agency is satisfied the authorisation should not be cancelled in the particular case.

### **40 Automatic suspension of authorisation**

- (1) The designated agency supervising the out-of-home care of a child or young person in the care of an authorised carer must, when becoming aware that an unsuitable co-resident resides on the same property as the authorised carer—

- (a) notify the authorised carer that the co-resident is unsuitable, and
  - (b) within 48 hours, remove the child or young person from the care of the authorised carer.
- (2) The authorisation of a person as an authorised carer is automatically suspended when the notification is given.
- (3) The suspension ceases to have effect when the unsuitable co-resident ceases to reside on the same property as the authorised carer.
- (4) The designated agency is not required to remove the child or young person from the care of the authorised carer if—
- (a) the suspension ceases to have effect before the child or young person is removed from the care of the authorised carer, and
  - (b) it is less than 48 hours since the agency became aware of the unsuitable co-resident residing on the same property as the authorised carer.
- (5) In this section—

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

**unsuitable co-resident** means a co-resident who, despite requiring a WWCCC or a WWCCC application to reside on the same property as the authorised carer—

- (a) does not have 1 of the following—
  - (i) a WWCCC,
  - (ii) a WWCCC application,
  - (iii) a continuing residence approval, or
- (b) is subject to an interim bar.

#### **41 Surrender of authorisation**

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

### **Subdivision 6 Miscellaneous**

#### **42 Assessment of persons residing on same property as carer**

- (1) It is a condition of an authorised carer's authorisation that all co-residents of the authorised carer must undergo a uniform suitability assessment.

- (2) A designated agency must, as soon as practicable after becoming aware a person is a co-resident of an authorised carer who has been authorised under section 18 or 19, obtain or conduct a uniform suitability assessment of the person.

**Note—**

A designated agency also has obligations under the [Child Protection \(Working with Children\) Act 2012](#) concerning persons residing on the same property as authorised carers.

- (3) This section does not apply to a co-resident who is a young person in out-of-home care.

#### **43 Authorisation by designated agency to be in writing**

A designated agency that authorises a person as an authorised carer under this Division must give the person a written copy of the authorisation setting out conditions imposed by the agency.

### **Division 3 Authorisation other than by designated agency**

#### **44 Other authorisation**

- (1) For the purposes of the Act, section 137(1)(c), the following persons are authorised as authorised carers—
- (a) a person who provides residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency, and who provides care and control under—
    - (i) a care plan developed by the Secretary, or
    - (ii) an alternative parenting plan approved or registered by the Children’s Court under the Act, Chapter 7, Part 1,
  - (b) a person providing residential care and control of a child or young person whose placement arrangements are not subject to supervision by a designated agency under an order of the Supreme Court or the Federal Circuit and Family Court of Australia.
- (2) A person referred to in subsection (1) is only authorised as an authorised carer for the child or young person, and the person ceases to be an authorised carer when the person ceases to have care responsibility for the child or young person.

#### **45 Transferred authorisation**

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

## **Division 4 Behaviour management—the Act, s 137(2)(g)**

### **46 Children and young persons supervised by a designated agency**

- (1) An authorised carer, in supporting a child or young person in out-of-home care to change the child's or young person's behaviour must not use a behaviour management practice unless the behaviour management practice is approved by the designated agency responsible for supervising the placement of the child or young person.
- (2) A designated agency must not approve a behaviour management practice that includes the following—
  - (a) physical coercion or physical punishment,
  - (b) punishment taking the form of immobilisation, force-feeding or depriving a child or young person of food,
  - (c) punishment intended to humiliate or frighten a child or young person.
- (3) An authorised carer who finds the approved behaviour management practices are not sufficiently effective to support behaviour change for a child or young person must notify the designated agency as soon as practicable.
- (4) On receiving a notification the designated agency, after assessing the situation, must determine if the behaviour should be addressed by one or more of the following—
  - (a) providing appropriate advice, support and training to the authorised carer and appropriate support to the child or young person,
  - (b) adjusting the approved behaviour management practices for the child or young person,
  - (c) preparing a behaviour support plan for the child or young person.
- (5) If the designated agency concludes action under subsection (4) has been, or will be, ineffective to support behaviour change for the child or young person the agency may change the placement arrangements.

### **47 Children and young persons not supervised by a designated agency**

- (1) This section applies only to a person authorised as an authorised carer under section 44(1)(a).
- (2) An authorised carer, in supporting behaviour change for a child or young person in out-of-home care, must not use a behaviour management practice unless the behaviour management practice is approved by the Secretary.
- (3) The Secretary must not approve a behaviour management practice that includes the

following—

- (a) physical coercion or physical punishment,
- (b) punishment taking the form of immobilisation, force-feeding or depriving a child or young person of food,
- (c) punishment intended to humiliate or frighten a child or young person.

## Part 7 Medical examination and treatment

### 48 Notice of medical examination

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

**Note—**

The *Interpretation Act 1987*, section 80(1) provides where a form is prescribed by, or approved under, an Act, strict compliance with the form is not necessary but substantial compliance is sufficient.

### 49 Administration of psychotropic drugs to child in statutory out-of-home care—the Act, s 264(1A)(g)

- (1) An authorised carer for a child in statutory out-of-home care must immediately notify the designated agency with supervisory responsibility for the placement of the child if a medical practitioner prescribes administration of a psychotropic drug to the child.
- (2) On receiving the notification, the principal officer of the designated agency must prepare, or cause to be prepared and approve, a behaviour support plan for the child taking into account administration of the drug.
- (3) This section applies to the administration of a psychotropic drug that is also a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* even if the drug is administered in accordance with an exemption referred to in the Act, section 175(4A).

**Note—**

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

- (4) In this section—

**psychotropic drug** means prescribed medication that can affect, by acting on the central nervous system, cognition, perception, thinking, mood, behaviour or level of arousal.

## Part 8 Miscellaneous

### 50 Savings and transitional provisions

- (1) An act, matter or thing that, immediately before the repeal of the previous Regulation, had effect under the previous Regulation continues to have effect under this Regulation.
- (2) The Act, section 149A, as in force immediately before its repeal by the amending Act, and the previous Regulation, clauses 10 and 11, as in force before their repeal by the amending Regulation, continue to apply to an order referred to in the Act, Schedule 3, clause 34 despite the repeal of that section and those clauses.
- (3) In this section—

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

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

**previous Regulation** means the *Children and Young Persons (Care and Protection) Regulation 2012*.

**Note—**

The *Interpretation Act 1987*, section 30 provides that the repeal of a statutory rule does not affect the operation of savings or transitional provisions contained in the statutory rule. For repealed savings and transitional provisions that may have ongoing operation, see the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 88.

## Schedule 1 Notice of medical examination

section 48

### Notice of medical examination

To:.....

[insert name of person having care of the child or young person]

You must immediately take .....

[insert name or description of the child or young person]

for a medical examination by .....

[insert name or description of medical practitioner]

at .....

[insert name and address of hospital or place]

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

This notice is issued by ..... [insert name and position description of person issuing the notice]

Date .....

[insert the date on which this notice is issued]



## Schedule 2 Uniform suitability assessment requirements

sections 13, 18, 20 and 42

### 1 Definitions

In this Schedule—

**assessable person** means each of the following—

- (a) a person who has applied to be an authorised carer,
- (b) a prospective guardian,
- (c) a co-resident.

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

### 2 Assessment body must obtain information

An assessment body must obtain the following about an assessable person—

- (a) proof of the person's identity, using documents of a type approved by the Children's Guardian,
- (b) if the assessable person is being assessed by the assessment body as to the person's suitability to be a guardian or an authorised carer—
  - (i) at least 2 references addressing the assessable person's suitability to care for a child, and
  - (ii) a statement, in the form approved by the Secretary, made by the assessable person about the person's physical and mental health, and
  - (iii) a medical report, in the form approved by the Secretary, about the person's physical and mental health.

### 3 Assessment body must conduct checks

- (1) An assessment body must conduct the following checks of an assessable person—
  - (a) a nationwide criminal record check,
  - (b) a community services check,
  - (c) if the assessment body reasonably believes a designated agency, other than the Department, has material knowledge about the assessable person—a check with the agency as to a person's suitability to care for a child or young person or to reside on the same property as an authorised carer,

- (d) if the assessment body reasonably believes an accredited adoption service provider has material knowledge about the assessable person—a check with the provider as to the person’s suitability to adopt a child or young person,
  - (e) if the assessable person is being assessed by the assessment body as to the person’s suitability to be a guardian or an authorised carer—an inspection of the assessable person’s home to determine whether it will provide a safe and secure environment for a child or young person in out-of-home care or subject to a guardianship order who may reside in the home.
- (2) A designated agency has material knowledge about an assessable person for the purposes of this section if the designated agency has—
- (a) authorised the person as an authorised carer, or
  - (b) received an application from the person to be authorised as an authorised carer, or
  - (c) assessed the person’s suitability for a guardianship order, or
  - (d) known the person to reside on the same property as a person who—
    - (i) is an authorised carer, or
    - (ii) submitted an application to be authorised as an authorised carer, or
    - (iii) was assessed for a guardianship order.
- (3) An accredited adoption service provider has material knowledge about an assessable person for the purposes of this section if the accredited adoption service provider—
- (a) has received, from the assessable person—
    - (i) an expression of interest in adopting a child or young person, or
    - (ii) an application to adopt a child or young person, or
  - (b) has known the assessable person to reside on the same property as a person who has submitted—
    - (i) an expression of interest in adopting a child or young person, or
    - (ii) an application to adopt a child or young person.

#### **4 Circumstances when assessment body not required to obtain information or conduct checks**

- (1) An assessment body is not required to comply with sections 2 and 3 for an assessable person if the information was obtained, or the check was conducted, by the assessment body—

- (a) if the person is an authorised carer—in assessing the person as suitable to be authorised as an authorised carer, or
  - (b) if the person is a current applicant for a guardianship order—in preparing a suitability statement under this Regulation, section 13 for the person, or
  - (c) if the person is a prospective adoptive parent—in assessing the person as suitable to adopt a child under the *Adoption Act 2000*.
- (2) A statement under section 2(b)(ii) is not required when assessing the suitability of a person to be the guardian of a child or young person if the person is the authorised carer of the child or young person.

(3) In this section—

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

## 5 Exemptions for assessable residents

- (1) An assessment body is not required to obtain information about or conduct a check of an assessable resident if the information or check has already been obtained or conducted by the assessment body in determining the assessable resident was suitable to reside on the same property as an authorised carer, a guardian or an adoptive parent.
- (2) A nationwide criminal record check of an assessable resident who resides on the same property as a person who has applied for a guardianship order or to be authorised as an authorised carer—
- (a) must not be obtained or conducted if the assessable person is less than 14 years of age, and
  - (b) is not required if the assessable person is less than 16 years of age.
- (3) A community services check of an assessable resident who resides on the same property as a person who has applied for a guardianship order or to be authorised as an authorised carer must not be obtained or conducted if the assessable person is less than 16 years of age.
- (4) A community services check or nationwide criminal record check is not required for the following persons—
- (a) a person who—
    - (i) has become an assessable resident because the person turned 18 years of age while residing on the same property as an authorised carer, and

(ii) has resided on the same property as the authorised carer for at least 2 years immediately before the person turned 18 years of age,

(b) a person who—

(i) has become an assessable resident because the person turned 16 years of age while residing on the same property as an authorised carer, and

(ii) was residing on the same property as the authorised carer when the authorised carer was authorised.

(5) In this section—

***assessable resident*** means a person who—

(a) is an assessable person because the person is a co-resident, and

(b) is not an authorised carer, a carer applicant, a guardian or a prospective guardian.

#### **6 Special exemption if adoption suitability check conducted**

An assessment body is not required to obtain information about, or conduct a check of, an assessable person if—

(a) the information was obtained or the check was conducted by an adoption service provider, and

(b) the information or result of the check was provided to the assessment body.

#### **7 Assessment body may obtain other information**

The assessment body may obtain additional information about, or conduct additional checks of, an assessable person including a check about the person's employment or other activities.

#### **8 Termination of assessment of unsuitable person**

If the assessment body forms an opinion an assessable person is an unsuitable person, it is not required to continue to obtain information about or conduct a further check of the assessable person.

### **Schedule 3 Care plans**

section 10

#### **1 Mandatory content**

(1) In addition to the matters specified in the Act, section 78(2) a care plan must include the following—

(a) the date the plan is made,

- (b) the method used to obtain the views of—
  - (i) the parents of the child or young person, and
  - (ii) the child or young person,
- (c) whether the persons who gave a view under (b) were spoken to separately or together,
- (d) for the agency or body with overall responsibility for coordinating the plan and the delivery of services to the child or young person and the child or young person's family—
  - (i) the name of the agency or body and the relationship the agency or body has to the child or young person, and
  - (ii) the responsibilities of the agency or body under the plan, and
  - (iii) the initial date on which the agency or body must assess the progress of the plan and the frequency of subsequent assessments,
- (e) for each other person, agency or body participating in the plan—
  - (i) the name of the person, agency or body and the relationship the person, agency or body has to the child or young person, and
  - (ii) the responsibilities of the person, agency or body under the plan and the approximate period during which the responsibilities are to be carried out,
- (f) the resources required to provide the services that need to be provided to the child or young person and the availability of the resources,
- (g) the plans or arrangements to meet the education and training needs of the child or young person,
- (h) whether the contact arrangements for the child or young person may require an application for a contact order under the Act, section 86,
- (i) the indicators to be used to assess the success of the plan,
- (j) if restoration of the child or young person is to be considered at a later time—
  - (i) the goals to be achieved by the parents to facilitate restoration, having regard to the child or young person's age and developmental needs, and
  - (ii) the approximate period during which the goals are to be achieved.

**Note—**

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

- (a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of a period for which the child or young person is removed from the care of the child or young person's parents,
- (b) the kind of placement proposed to be sought for the child or young person, including—
  - (i) how it relates in general terms to permanency planning for the child or young person, and
  - (ii) the interim arrangements proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,
- (c) the arrangements for contact between the child or young person and the child or young person's parents, relatives, friends and other persons connected with the child or young person,
- (d) the agency designated to supervise the placement in out-of-home care,
- (e) the services that need to be provided to the child or young person.

(2) The care plan—

- (a) must be signed by each person, agency or body who has agreed to participate in the plan, and
- (b) may be signed by the child or young person.

**Note—**

Under the Act, section 10 the Secretary is responsible for providing a child or young person with information, assistance and opportunities to enable the child or young person to participate in decisions, including the development and review of care plans, having a significant impact on the child or young person's life.

**2 Matters to be included where relevant**

- (1) A care plan must contain the following information relevant to the circumstances of the child or young person—
  - (a) the family structure and significant family and other relationships of the child or young person,
  - (b) the relationship between the child or young person and the child or young person's parents,
  - (c) the history, development and experience of the child or young person,
  - (d) the cultural and linguistic background and religion of the child or young person,
  - (e) whether the child or young person is of Aboriginal or Torres Strait Islander descent and, if so, the communities the child or young person identifies with,
  - (f) the principal language spoken in the family home of the child or young person,
  - (g) issues of social, cultural, educational or economic significance in relation to the child or young person or the child or young person's family,

- (h) the nature of the relationships between members of the child's or young person's family and the capacity of the parents to adapt or deal with circumstances affecting the family,
  - (i) a disability of the child or young person,
  - (j) the views of the following about the services that need to be provided to the child or young person and the child or young person's family—
    - (i) if practicable—the child or young person,
    - (ii) the parents of the child or young person,
    - (iii) the Secretary,
  - (k) if for paragraph (j)(i) the views of the child or young person were not obtained—the reasons the views of the child or young person were not obtained,
  - (l) if for paragraph (j)(ii) the views of the parents of the child or young person could not be obtained—the reasons the views of the parents of the child or young person could not be obtained,
  - (m) other matters the Secretary considers appropriate.
- (2) The care plan must be accompanied by a copy of a relevant report on the health, educational or social well-being of the child or young person that, in the opinion of the Secretary, should be considered by the Children's Court.
- (3) The care plan must refer to the views of a person who has expressed disagreement with a provision of the plan.

## **Schedule 4 Alternative parenting plans**

section 11

### **1 Form**

An alternative parenting plan must be in a form acceptable to the Children's Court.

### **2 Mandatory content**

An alternative parenting plan must include the following—

- (a) the date the plan is made,
- (b) the name of each party to the plan, and the relationship each party has to the child or young person,
- (c) the method used to obtain the views of—
  - (i) the parents of the child or young person, and

(ii) the child or young person,

(d) whether the persons who gave a view under (c) were spoken to separately or together.

### **3 Other matters**

(1) An alternative parenting plan must set out the way in which the needs of the child or young person are proposed to be met including, where appropriate, proposals concerning the following—

(a) allocation of parental responsibility or specific aspects of parental responsibility,

(b) residential arrangements,

(c) supervision,

(d) contact arrangements with the parents, relatives or other persons of significance to the child or young person, and whether the contact arrangements may require an application for a contact order under the Act, section 86,

(e) education and training,

(f) medical care,

(g) the provision of services.

(2) An alternative parenting plan must specify the role and responsibilities of each party to the plan, and the approximate period during which the responsibilities are to be carried out.

(3) An alternative parenting plan—

(a) must be signed by each person, agency or body who has agreed to participate in the plan, and

(b) may be signed by the child or young person.

#### **Note—**

Under the Act, section 10 the Secretary is responsible for providing a child or young person with information, assistance and opportunities to enable the child or young person to participate in decisions, including the development and review of care plans, having a significant impact on the child or young person's life.

### **4 Matters to be included where relevant**

(1) An alternative parenting plan formulated by the Secretary or a support service organisation must contain information about the following matters when relevant to the circumstances of the child or young person—

(a) the matters referred to in Schedule 3, sections 1(1)(f) and 2(1)(a)-(i), (j)(i) and (ii),



(k) and (l),

- (b) if the Secretary or a support service organisation is a party to the proceedings—the views of the Secretary or organisation about the services that need to be provided to the child or young person and the child or young person’s family,
- (c) other matters the Secretary or the support service organisation considers appropriate.

(2) The alternative parenting plan must be accompanied by a copy of a relevant report on the physical, psychological, psychiatric or social well-being of the child or young person that, in the opinion of the person formulating the plan, should be considered by the Children’s Court.

(3) The alternative parenting plan must refer to the views of a person who has expressed disagreement with a provision of the plan.

(4) In this section—

**support service organisation** means a person, an agency or an organisation providing counselling, therapy, conflict resolution or other support services to the child or young person, or the child or young person’s family.

## Schedule 5 Prescribed bodies

section 5

### 1 Prescribed bodies for the Act, s 248(6)

For the Act, section 248(6) the following bodies are prescribed—

- (a) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*,
- (b) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (c) a registered community housing provider within the meaning of Part 3 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
- (d) a designated agency,
- (e) an entity providing specialised substitute residential care within the meaning of the *Children’s Guardian Act 2019*,
- (f) an accredited adoption service provider,
- (g) the Australian Federal Police,

- (h) the Commonwealth Department of Health and Aged Care, or a successor of the Department,
- (i) the Commonwealth Department of Home Affairs, or a successor of the Department,
- (j) the Commonwealth Department of Social Services, or a successor of the Department,
- (k) Services Australia, or a successor of Services Australia,
- (l) the National Disability Insurance Agency established under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (m) the NDIS Quality and Safeguards Commission established under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (n) the National Indigenous Australians Agency, or a successor of the Agency,
- (o) the Federal Circuit and Family Court of Australia,
- (p) another organisation the duties of which include direct responsibility for, or direct supervision of, the provision of the following, either wholly or partly, to children—
  - (i) children’s services,
  - (ii) disability services
  - (iii) education,
  - (iv) health care,
  - (v) law enforcement,
  - (vi) residential services,
  - (vii) welfare services.

## **2 Prescribed bodies for the Act, s 245B(1)**

- (1) For the Act, section 245B(1), definition of **prescribed body**, paragraph (b) the following classes of persons are prescribed—
  - (a) nurses,
  - (b) medical practitioners,
  - (c) midwives,
  - (d) occupational therapists,
  - (e) psychologists,

- (f) speech pathologists eligible for membership of Speech Pathology Australia.

**Note—**

For the meaning of references in this section to health practitioners see the *Interpretation Act 1987*, section 21D and the *Health Practitioner Regulation National Law (NSW)*.

- (2) For the Act, section 245B(1), definition of **prescribed body** paragraph (c), the following bodies are prescribed—
- (a) the Australian Capital Territory Community Services Directorate, or a successor of the Directorate,
  - (b) the Northern Territory Department of Territory Families, Housing and Communities, or a successor of the Department,
  - (c) the Queensland Department of Children, Youth Justice and Multicultural Affairs, or a successor of the Department,
  - (d) the South Australian Department for Child Protection, or a successor of the Department,
  - (e) the Department of Communities Tasmania, or a successor of the Department,
  - (f) the Victorian Department of Families, Fairness and Housing, or a successor of the Department,
  - (g) the Western Australian Department of Communities, or a successor of the Department.