



New South Wales

Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008

under the

Children and Young Persons (Care and Protection) Act 1998

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

LINDA BURNEY, M.P.,
Minister for Community Services

Explanatory note

The object of this Regulation is to amend the *Children and Young Persons (Care and Protection) Regulation 2000* to make further provision for the functions of the Children's Guardian, in particular in respect of the regulation of out-of-home care, under the *Children and Young Persons (Care and Protection) Act 1998*.

The amendments make further provision in relation to the following:

- (a) the review of decisions of the Children's Guardian by the Administrative Decisions Tribunal,
- (b) when acts of the Children's Guardian take effect,
- (c) the collection of information by the Children's Guardian,
- (d) the assessment and authorisation of authorised carers (including authorised carers for children or young persons with special out-of-home care needs and to provide respite relief for other authorised carers),
- (e) the taking over by an organisation of the application of another organisation for accreditation as a designated agency,
- (f) the process of accreditation,
- (g) approval of accreditation criteria,
- (h) the determination of an application for accreditation,
- (i) the transfer of accreditation,
- (j) the administration of an accreditation,

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- (k) sanctions the Children's Guardian may take against a designated agency,
- (l) conditions of accreditation (including the imposition of a condition regarding the entry of premises of a designated agency).

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 137, 139 and 264 (the general regulation-making power).

Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008

under the

Children and Young Persons (Care and Protection) Act 1998

1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 5 January 2009.
- (2) Schedule 1 [17], to the extent it inserts clause 38C into the *Children and Young Persons (Care and Protection) Regulation 2000*, commences on 31 October 2008.

3 Amendment of Children and Young Persons (Care and Protection) Regulation 2000

The *Children and Young Persons (Care and Protection) Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

accreditation criteria means standards and other criteria approved under clause 36 (1).

departmental designated agency means a designated agency that is a department of the Public Service.

full accreditation—see clause 36A (3) (a).

private organisation means an organisation that is not a department of the Public Service.

provisional accreditation—see clause 36A (3) (b).

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

[2] Clause 3 (2)

Insert at the end of the clause:

(2) In this Regulation, a reference to:

- (a) an organisation includes a reference to a designated agency, and
- (b) an organisation that has applied for accreditation as a designated agency includes a designated agency that has applied for renewal of accreditation as a designated agency.

[3] Clause 6B Review of decisions of Children’s Guardian by Administrative Decisions Tribunal

Omit clause 6B (a)–(c). Insert instead:

- (a) to impose or not to impose a condition on:
 - (i) the process of accreditation as a designated agency, or
 - (ii) the accreditation of a designated agency, or
- (b) to vary or revoke any such condition, or
- (c) to shorten the accreditation period, or suspend or cancel the accreditation, of a designated agency.

[4] Clause 7D

Insert after clause 7C:

7D When acts of Children's Guardian take effect

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

[5] Clause 11A

Insert after clause 11:

11A Provision and collection of information

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

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[6] Clauses 20–20B

Omit clause 20. Insert instead:

20 Authorisation by a designated agency as an authorised carer

- (1) A designated agency may authorise an individual belonging to any of the following classes of individuals as an authorised carer (other than an authorised carer referred to in clause 20A (2) or 20B (2)):
 - (a) an employee of the agency whose duties as an employee include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons,
 - (b) an individual engaged by the agency under a contractual arrangement (other than as an employee) to provide services that include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons,
 - (c) an employee of an individual referred to in paragraph (b) whose duties as an employee include providing care for children or young persons,
 - (d) an individual who cares for children or young persons in his or her private capacity.
- (2) A designated agency must not authorise an individual under subclause (1) unless the agency has determined that the individual is suitable to be an authorised carer.
- (3) A designated agency must not determine that an individual is suitable to be an authorised carer under subclause (2) unless:
 - (a) the individual has furnished to the agency such information as the agency may reasonably require in order to assess the individual's suitability to be an authorised carer, and
 - (b) the individual has successfully completed such course of training as the agency may reasonably require in order to ensure that the individual is capable of exercising the functions of an authorised carer, and
 - (c) the agency has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998* and

has done anything else it is required to do under that Act in relation to the authorisation before employing (within the meaning of Part 7 of that Act) the individual to perform the duties of an authorised carer, and

- (d) having regard to the functions imposed on an authorised carer by or under the Act, any information possessed by the agency and all the circumstances of the case, the agency has estimated:
- (i) the risk, if any, to any child or young person in authorising the individual as an authorised carer, including any risk arising from the particular place at which the authorised carer will be providing out-of-home care, and
 - (ii) the risk, if any, that the individual may be unable to properly perform the functions of an authorised carer.

Note. Part 7 of the *Commission for Children and Young People Act 1998* provides that it is the duty of an employer to carry out background checking before employing a person in primary child-related employment. Primary child-related employment includes paid child-related employment and child-related employment involving the fostering of children.

Part 7 of that Act also prohibits an employer from employing a person in child-related employment without first requiring the person to disclose whether or not the person is a prohibited person. That Act also prohibits a prohibited person from applying for, undertaking or remaining in child-related employment. Section 33PA of that Act excludes the employment of certain relatives from that prohibition on employment.

- (4) For the purpose of determining whether an individual is suitable to be an authorised carer under subclause (2), the designated agency may make such inquiries as to the individual, and as to each individual who is aged 14 years or above in the household of the individual, as the agency considers appropriate, including:
- (a) subject to the *Criminal Records Act 1991*—a check for any criminal record of the individual (whether or not within New South Wales), and
 - (b) any other relevant probity check relating to the previous employment or other activities of the individual.
- (5) The principal officer of a designated agency is to carry out the functions of the agency under subclause (1), unless the Children's Guardian approves the carrying out of those functions by another individual.

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- (6) Failure to comply with subclause (5) does not affect the validity of the authorisation of any authorised carer under this Regulation, whether the authorisation occurred before or after the commencement of this subclause.

20A Authorised carers authorised by the Department to enable special care

- (1) In this clause:
special care provider means an organisation that the Department has determined is suitable to provide special out-of-home care for children or young persons.
- (2) The Department, in its capacity as a designated agency, may authorise an individual belonging to any of the following classes of individuals as an authorised carer who can provide special out-of-home care:
- (a) an employee of a special care provider whose duties as an employee include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons,
 - (b) an individual engaged by a special care provider under a contractual arrangement (other than as an employee) to provide services that include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons.
- (3) The Department must not authorise an individual under subclause (2) unless the relevant special care provider has:
- (a) informed the Department that the special care provider has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998*, and
 - (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.
- (4) The Department must not place a child or young person in the out-of-home care of an individual authorised under subclause (2) unless the Department has:

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- (a) determined that the child or young person has special needs for out-of-home care that can be best met by such a placement, and
 - (b) consulted the Children's Guardian about the placement.

20B Authorised carers authorised by designated agency to give respite to usual authorised carers

- (1) In this clause:
respite care provider means an organisation providing temporary respite relief for authorised carers.
- (2) A designated agency may authorise an individual belonging to any of the following classes of individuals as an authorised carer who can provide respite for other authorised carers:
 - (a) an employee of a respite care provider whose duties as an employee include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons,
 - (b) an individual engaged by a respite care provider under a contractual arrangement (other than as an employee) to provide services that include:
 - (i) providing care for children or young persons, or
 - (ii) supervising the provision of care for children or young persons.
- (3) The designated agency must not authorise an individual under subclause (2) unless the relevant respite care provider has:
 - (a) informed the agency that the respite care provider has carried out any background checking of the individual required for the purposes of Part 7 of the *Commission for Children and Young People Act 1998*, and
 - (b) done anything else it is required to do under that Act in relation to the authorisation, whether before or after the commencement of this clause.
- (4) The principal officer of a designated agency is to carry out the functions of the agency under subclause (2), unless the Children's Guardian approves the carrying out of those functions by another individual.
- (5) Failure to comply with subclause (4) does not affect the validity of any authorisation of an authorised carer under this clause.

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- (6) A designated agency must not place a child or young person in the out-of-home care of an individual authorised under subclause (2) unless the agency has given the Children’s Guardian notice in writing of the name, and the street and postal address of the principal place of business, of the respite care provider.
- (7) A designated agency must notify the Children’s Guardian in writing if any child or young person is placed in the out-of-home care of any individual or individuals authorised by the agency under this clause for a period or periods amounting to more than 90 days in any 12 month period.

[7] Clause 22 Authorisations by designated agencies to be in writing

Omit clause 22 (1). Insert instead:

- (1) A designated agency that authorises a person as an authorised carer under clause 20, 20A or 20B must cause the person to be given a copy of the authorisation in writing.

[8] Clause 34 Code of Conduct for Residential Units—designated agencies

Insert “, or accreditation period shortened,” after “suspended” in the note to the clause.

[9] Part 6, Division 4

Insert after the heading to Division 4 of Part 6:

Subdivision 1 Accreditation

[10] Clause 35 Application for accreditation

Omit clause 35 (1). Insert instead:

- (1) An organisation or a department of the Public Service (an *applicant*) may apply in writing to the Children’s Guardian for:
 - (a) accreditation as a designated agency, or
 - (b) the renewal of accreditation as a designated agency.

[11] Clause 35 (2)

Omit paragraph (c). Insert instead:

- (c) if the applicant is a private organisation—to specify the name of the individual proposed to be the applicant’s principal officer on accreditation, and

[12] Clause 35 (3)

Omit “the Guardian”. Insert instead “the Children’s Guardian”.

[13] Clause 35 (3A) and (4)

Omit the subclauses. Insert instead:

- (4) Any information that is required under subclause (3) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.

[14] Clauses 35A and 35B

Insert after clause 35:

35A Taking over an application for accreditation

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

Note. In addition to the conditions set out in Schedule 4, the process of accreditation of an organisation that takes over an application under this clause may also be subject to conditions imposed under clause 39 (3).

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

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35B Deferral of determination of application to renew accreditation

- (1) If a designated agency has applied for the renewal of an accreditation, the Children's Guardian may, by notice in writing to the agency, defer determining the application.
- (2) The deferral has effect until a notice given under clause 36B in respect of the application takes effect.
- (3) The deferral does not affect any requirement made under clause 35 (3) to furnish information in respect of the application, whether the requirement was imposed before or during the deferral.
- (4) If the Children's Guardian defers determining the application for 6 months or more from the date the deferral took effect, the Children's Guardian must inform the Minister in writing of the deferral.

Note. The accreditation period of a designated agency whose application for renewal of accreditation has been deferred is extended under clause 38A until the application is determined.

[15] Clauses 36–36F

Omit clause 36. Insert instead:

36 Accreditation criteria

- (1) On the recommendation of the Children's Guardian, the Minister may, from time to time, approve standards and other criteria for use in determining:
 - (a) whether to grant an application for accreditation as a designated agency, and
 - (b) what accreditation period will be granted.
- (2) Without limiting subclause (1), criteria may be approved under that subclause in respect of a class or classes of applicants.
- (3) Without limiting subclause (1), the following matters are to be addressed by criteria approved under that subclause:
 - (a) the assessment procedures (including probity testing) for determining whether a person is suitable to be an authorised carer,
 - (b) the training provided to authorised carers,
 - (c) the supervision provided to authorised carers,
 - (d) what provision is made for the involvement of children and young persons in the making of decisions that affect them,

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- (e) what provision is made for the involvement of the persons who have parental responsibility for children or young persons immediately before the children or young persons enter into out-of-home care in the making of decisions that affect those children or young persons,
 - (f) what provision is made for the involvement of authorised carers in the making of decisions concerning the child or young person in their care.
- (4) The Children's Guardian must make criteria approved under subclause (1) available for public inspection.
 - (5) Failure to comply with subclause (4) does not affect the validity of any decision of the Children's Guardian to accredit or not accredit an applicant.

36A Determination of application for accreditation

- (1) The Children's Guardian may grant accreditation as a designated agency to an applicant if, in the opinion of the Children's Guardian, the applicant wholly or substantially satisfies the accreditation criteria referred to in clause 36.
- (2) The Children's Guardian may come to the opinion that an applicant satisfies a particular accreditation criterion if a body, recognised by the Children's Guardian for the purposes of this subclause, has determined that the applicant meets a standard or other criterion recognised by the Children's Guardian for the purposes of this subclause in respect of the accreditation criterion.
- (3) The Children's Guardian may grant the following accreditation:
 - (a) if the applicant has made arrangements for the provision of out-of-home care in accordance with the Act and the regulations at any time during the period commencing 12 months before the application was made and ending when the application is determined—*full accreditation*,
 - (b) in any other case—*provisional accreditation*.

36B Accreditation notice

- (1) As soon as reasonably practicable after determining an application for accreditation, the Children's Guardian must inform the applicant of the following by notice in writing:
 - (a) the decision,
 - (b) when the decision takes effect,

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- (c) if accreditation is granted—whether full or provisional accreditation is granted,
 - (d) the reasons for the decision,
 - (e) how the applicant may apply for a review of the decision.
- (2) If an applicant is granted accreditation but did not wholly satisfy the accreditation criteria, the notice must also specify the accreditation criteria that were not wholly satisfied and the reasons for the Children’s Guardian’s opinion that the criteria were not wholly satisfied.

36C Children’s Guardian may set aside decision not to accredit

- (1) If the Children’s Guardian is satisfied that an application for accreditation as a designated agency should not have been refused, the Children’s Guardian may withdraw the refusal under clause 36B and issue a notice granting accreditation.
- (2) The notice may provide that accreditation is taken to have had effect on and from the date the previous decision not to accredit took effect, or such later date as may be specified in the notice.

36D Requirements where only provisional accreditation granted

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

36E Progression from provisional accreditation to full accreditation

- (1) A notice given under clause 36D (1) is taken to be an application under clause 35 for full accreditation.
- (2) The Children’s Guardian may, by notice in writing, waive any requirement imposed by or under clause 35 in respect of such an application if the Children’s Guardian is satisfied that the requirement was met by the designated agency in the course of being granted provisional accreditation.
- (3) Without limiting clause 35 (3), the Children’s Guardian may require the applicant to furnish to the Children’s Guardian such information as to the applicant’s practice and other matters as the Children’s Guardian may reasonably require in order to assess the applicant’s suitability to be granted full accreditation.

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

Note. Clause 38 provides for the accreditation period for provisional accreditation to be 3 years.

36F Accreditation criteria must be wholly satisfied

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

[16] Part 6, Division 4, Subdivision 2

Omit clause 37. Insert instead:

Subdivision 2 Transfer of accreditation

37 Application of Subdivision

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

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37A Application for transfer of accreditation

- (1) An application for approval to transfer accreditation from a designated agency (*the transferor*) to another organisation (*the transferee*) that is not a designated agency may be made by a transferor to the Children's Guardian in the form approved by the Children's Guardian.
- (2) The Children's Guardian may require a transferor or transferee to furnish to the Children's Guardian such further information as the Children's Guardian may reasonably require in order to determine the application.
- (3) Any information that is required under subclause (2) must be furnished to the Children's Guardian on or before the reasonable date specified by the Children's Guardian by notice in writing.
- (4) Unless prohibited by or under any Act, the Children's Guardian may disclose any information about the transferor to the transferee.

37B Transfer of accreditation

- (1) The Children's Guardian may, by notice in writing, approve or refuse the application to transfer accreditation.
- (2) The Children's Guardian must not approve the application unless:
 - (a) the transferor and the transferee are not in contravention of any guidelines issued by the Children's Guardian under clause 37D (1) that apply in respect of the application, and
 - (b) the transferor is not in contravention of any condition of its accreditation, and
 - (c) the transferor and the transferee are not in contravention of any condition on the process of accreditation under this clause, and
 - (d) the Children's Guardian is of the opinion that the transfer will promote the best interests of children and young persons in out-of-home care.
- (3) The Children's Guardian is to consult with the Department and the Ombudsman before determining the application.
- (4) If the transferor is funded by the Department of Ageing, Disability and Home Care in respect of the arrangements the transferor makes for the provision of out-of-home care, the Children's Guardian is to consult with that Department before determining the application.

37C When transfer takes effect

- (1) A transfer of accreditation approved under clause 37B takes effect on the later of the following days:
 - (a) when the transferee accepts the transfer by notice in writing given to the Children's Guardian,
 - (b) on the date specified in the Children's Guardian's approval.
- (2) If the transferor ceases to exist before the transfer takes effect, the transfer is taken to have had effect when the transferor ceased to exist.
- (3) When a transfer takes effect, the transferor ceases to be accredited as a designated agency and the transferee is accredited as a designated agency, the transferee's accreditation being taken to be the accreditation granted to the transferor.

37D Transfer guidelines

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

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37E Consequences of transfer of accreditation

- (1) This clause applies to an accreditation that has been transferred under clause 37B.
- (2) Any authorised carer authorised by the transferor whose authorisation was in force immediately before the transfer took effect is taken to have been authorised by the transferee.
- (3) The accreditation period that applied to the transferor applies to the transferee and is taken to have started on the date the transferor was accredited.
- (4) Any condition on the transferor's accreditation that was in force immediately before the transfer took effect applies to the transferee's accreditation, subject to any variation or revocation of conditions by the Children's Guardian pursuant to this Regulation.
- (5) For the purposes of clause 40 and Schedule 4, the transferee is taken to have satisfied the accreditation criteria the transferor satisfied to be accredited.

[17] Part 6, Division 4, Subdivision 3

Omit clause 38. Insert instead:

Subdivision 3 Accreditation administration

38 Form and accreditation period

- (1) An accreditation is to be in such form as the Children's Guardian may approve.
- (2) The Children's Guardian may grant an accreditation period of 1, 3 or 5 years to a designated agency being granted full accreditation if the agency did not hold provisional accreditation immediately before being granted full accreditation.
- (3) The Children's Guardian may grant an accreditation period of 1 or 3 years to a designated agency being granted full accreditation if the agency held provisional accreditation immediately before being granted full accreditation.
- (4) The Children's Guardian may grant an accreditation period of 3 years to a designated agency being granted provisional accreditation.
- (5) The date the accreditation period of a designated agency ends is not extended by a suspension of accreditation under clause 40.

38A Accreditation extended on deferral until application to renew determined

- (1) This clause applies to a designated agency that has made an application to renew its accreditation if the determination of the application is deferred under clause 35B.
- (2) The accreditation period is extended until the notice given under clause 36B in respect of the application takes effect.

38B Accreditation extended until decision not to re-accredit takes effect

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

38C Accreditation extended to accommodate changes

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

[18] Clause 39 Conditions on accreditation and process of accreditation

Omit clause 39 (2)–(4). Insert instead:

- (2) The Children's Guardian may impose such other reasonable conditions as the Children's Guardian sees fit on an accreditation, and may vary or revoke such conditions, by notice in writing given to the designated agency.
- (3) The Children's Guardian may impose such reasonable conditions as the Children's Guardian sees fit on the process of accreditation (including accreditation by way of a transfer under clause 37B), and may vary or revoke such conditions, by notice in writing given to the applicant.
- (4) If an accreditation is transferred, a copy of the notice given under subclause (3) is to be given to the transferee.
- (5) If the Children's Guardian is satisfied a condition should be imposed under subclause (2) on a departmental designated agency, the Children's Guardian must first report to the Minister on the need to impose the condition.

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

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

[19] Clauses 40–40B

Omit clause 40. Insert instead:

40 Accreditation—shortening, suspension and cancellation

- (1) The Children’s Guardian may, by notice in writing given to a designated agency:
- (a) shorten the accreditation period of the agency to a date specified in the notice, or
 - (b) suspend the accreditation of the agency for the period specified in the notice or until a specified matter has been completed, or
 - (c) cancel the accreditation of the agency from the date specified in the notice.
- (2) The Children’s Guardian may give a notice under subclause (1) to a designated agency if the Children’s Guardian is satisfied of any of the following:
- (a) that the agency made a statement or furnished information in connection with the administration of the Act that the agency knew to be false or misleading in a material particular,
 - (b) that the principal officer of the agency made a statement or furnished information in connection with the administration of the Act that the principal officer knew to be false or misleading in a material particular,
 - (c) that the agency failed to comply with any condition of accreditation imposed on the agency’s accreditation,
 - (d) that the agency failed to comply with any obligation or restriction imposed on the agency by or under the Act,
 - (e) that the principal officer of the agency failed to comply with any obligation or restriction imposed on the principal officer by or under the Act,
 - (f) that the agency failed, while the agency had been accredited less than 12 months, to substantially satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation,

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- (g) that the agency failed, at any time after the agency had been accredited for at least 12 months, to satisfy the accreditation criteria that applied to the agency in respect of its application for accreditation.
- (3) In the case of a departmental designated agency, the Children's Guardian must report to the Minister before issuing a notice under subclause (1).
- (4) If the Children's Guardian is satisfied that a notice under subclause (1) should not have been given to a designated agency, the Children's Guardian may, by notice in writing given to the agency, withdraw the notice and reinstate the accreditation, or, in the case of a shortening of an accreditation period, reinstate the accreditation period of the designated agency, and the accreditation is taken to have continued in existence as if the notice under subclause (1) had not been given.

40A Designated agencies with suspended accreditations

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

40B Designated agencies with shortened accreditation periods

- (1) The Children's Guardian may, by notice in writing given to a designated agency, reduce the period by which the agency's accreditation period has been shortened under clause 40.
- (2) For the removal of doubt, the shortening of an accreditation period under clause 40 does not prevent the accreditation period from being extended under clause 38A, 38B, 38C or 38D.

[20] Schedule 4 Conditions of accreditation of designated agency

Insert after the heading to the Schedule:

Part 1 General conditions of accreditation

2008 No 472

Children and Young Persons (Care and Protection) Amendment
(Out-of-Home Care) Regulation 2008

Schedule 1 Amendments

[21] Schedule 4, clauses 6–11

Omit clause 6. Insert instead:

6 Notification of failure to satisfy accreditation criteria

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

7 Notification of failure to comply with accreditation conditions

A designated agency that is unable to comply with a condition of accreditation imposed under clause 39 must advise the Children’s Guardian of the fact as soon as practicable after the agency becomes aware of it.

8 Notification of contact details

- (1) A designated agency must give the Children’s Guardian, by notice in writing, the following information:
 - (a) the street and postal address of the agency’s principal place of business,
 - (b) the agency’s general telephone number,
 - (c) the agency’s general email address (if any),unless the agency has already provided the information by way of its application for accreditation or for any other reason.
- (2) The designated agency must notify a change of any of the information referred to in subclause (1) no later than one business day after the change occurs.

9 Entry to premises

- (1) For the purposes of the exercise of the functions the Children’s Guardian has to accredit designated agencies and to monitor their responsibilities under the Act, this Regulation and the *Children and Young Persons (Savings and Transitional) Regulation 2000*, a designated agency must, at any reasonable hour, permit the Children’s Guardian, or a person authorised in writing by the Children’s Guardian for the purposes of this clause, to:
 - (a) enter premises owned or occupied by the agency, and
 - (b) inspect the premises, and

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

2008 No 472

Children and Young Persons (Care and Protection) Amendment
(Out-of-Home Care) Regulation 2008

Schedule 1 Amendments

Part 2 Conditions imposed in particular circumstances

10 Application successor must operate in manner proposed in application

A designated agency accredited by way of an application taken over pursuant to clause 35A must not contravene an undertaking given by the agency under clause 35A (3) (b).

11 Transferee must adopt policies, procedures and practice of transferor

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

BY AUTHORITY
