



New South Wales

Children and Young Persons (Care and Protection) Amendment Regulation 2014

under the

Children and Young Persons (Care and Protection) Act 1998

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

GABRIELLE UPTON, MP
Minister for Family and Community Services

Explanatory note

The objects of this Regulation are as follows:

- (a) to prescribe the form and manner of the consent to be given by a child or young person who is 12 or more years of age to the making of a guardianship order under section 79A of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) to make provision with respect to assessment of the suitability of persons to make applications to be allocated all aspects of parental responsibility under a guardianship order under section 79A of that Act.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 79A (3) (d), 79B (1) (c) and 264 (the general regulation-making power).

Children and Young Persons (Care and Protection) Amendment Regulation 2014

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 Regulation 2014*.

2 Commencement

This Regulation commences on 29 October 2014 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Children and Young Persons (Care and Protection) Regulation 2012

Clauses 9 and 9A

Omit clause 9. Insert instead:

9 Form of child's or young person's consent to guardianship order

- (1) A consent referred to in section 79A (3) (d) of the Act:
 - (a) must be in writing, and
 - (b) must be signed by the child or young person concerned in the presence of a witness, and
 - (c) must bear a statement from the witness that, at least 14 days before the consent was signed, the witness explained the nature and effect of the guardianship order to the child or young person and informed the child or young person in a language and manner that the child or young person could understand:
 - (i) that, if the order is made, all aspects of parental responsibility for the child or young person will be allocated under the order to a specified person (or jointly to more than one specified person), and
 - (ii) that any such order may be varied or rescinded under section 90 of the Act, and
 - (iii) that the child or young person is entitled to obtain independent legal advice before signing the consent.
- (2) The witness referred to in subclause (1) (b) is to be:
 - (a) the principal officer of the designated agency responsible for supervising the placement of the child or young person or an employee of that agency who has been directly involved in the supervision of the child or young person's placement, or
 - (b) an Australian legal practitioner.

9A Assessment of certain prospective applicants for guardianship orders

- (1) For the purposes of section 79B (1) (c) of the Act, the Director-General or designated agency in relation to a child or young person is to assess whether a prospective guardian of a child or young person is a suitable person to be allocated all aspects of parental responsibility in accordance with this clause.
- (2) The Director-General or a designated agency must not assess a prospective guardian to be a suitable person unless:
 - (a) the prospective guardian has furnished to the Director-General or the agency such information as the Director-General or designated agency may reasonably require in order to assess his or her suitability, and
 - (b) the prospective guardian has successfully completed such course of training as the Director-General or designated agency may reasonably require in order to ensure that the person is capable of exercising the functions of a guardian, and

- (c) the Director-General or designated agency is satisfied that the prospective guardian has complied with the requirements of section 11A of the *Child Protection (Working with Children) Act 2012*, and

Note. Section 11A (1) (b) of the *Child Protection (Working with Children) Act 2012* requires each adult person who is residing in the home of a prospective guardian during the period beginning when an application for a guardianship order is made and ending when the application is finally dealt with to apply for a working with children check clearance of the volunteer class except in certain circumstances.
- (d) having regard to the functions imposed on a guardian by or under the Act, any information held by the Director-General or the designated agency and all the circumstances of the case, the Director-General or designated agency has estimated:
 - (i) the risk, if any, to the child or young person of assessing the prospective guardian to be a suitable person, and
 - (ii) the risk, if any, that the prospective guardian may be unable to properly perform the functions of a guardian.
- (3) For the purpose of assessing whether the prospective guardian is a suitable person under this clause, the Director-General or designated agency may make such inquiries as to the prospective guardian, and as to each person who is aged 14 years or above in the household of the prospective guardian, as the Director-General or agency considers appropriate, including:
 - (a) subject to the *Criminal Records Act 1991*—a check for any criminal record of the prospective guardian or person (whether or not within New South Wales), and
 - (b) any other relevant probity check relating to the previous employment or other activities of the prospective guardian or person.