



New South Wales

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

under the

Children and Young Persons (Care and Protection) Act 1998

His 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 object of this Regulation is to make various amendments to the *Children and Young Persons (Care and Protection) Regulation 2012* that are consequential on the *Child Protection Legislation Amendment Act 2014 (the amending Act)* and certain other amendments.

The Regulation:

- (a) specifies further factors relating to guardianship orders indicating a significant change in the circumstances of a child or young person for the purposes of seeking the leave of the Children's Court to the making of an application to rescind or vary a care order, and
- (b) repeals or amends certain definitions and provisions relating to orders for sole parental responsibility, alternative dispute resolution and special medical treatment that are unnecessary or require updating as a consequence of the amendments made by the amending Act, and
- (c) provides for the automatic cancellation of the authorisation of a person as the authorised carer of a child or young person if a guardianship order is made allocating all aspects of parental responsibility for the child or young person to that person, and
- (d) provides for certain orders allocating sole parental responsibility continuing to have effect after the repeal of section 149A of the *Children and Young Persons (Care and Protection) Act 1998* by the amending Act to be able to be varied or rescinded in the same way that they could be varied or rescinded before that repeal, and
- (e) updates provisions that contain references to the Director-General (the references are required by an administrative arrangements order under the *Constitution Act 1901*) to be construed as references to the Secretary.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 137 (2) and 175, clause 1 of Schedule 3 and section 264 (the general regulation-making power).

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

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Children and Young Persons (Care and Protection) Act 1998

1 Name of Regulation

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

[1] Clause 4 Meaning of “related” and “relative”

Omit the clause.

[2] Clause 5 Rescission and variation of care orders—“significant change”

Insert after clause 5 (b):

- (c) an application for a guardianship order has been made with respect to the child or young person,
- (d) in the case of a guardianship order—the guardian is unable or unwilling to meet the guardian’s responsibilities with respect to the child or young person.

[3] Clause 9 Form of child’s or young person’s consent to order awarding sole parental responsibility to child’s or young person’s authorised carer

Omit the clause.

[4] Clause 10 Form of principal officer’s consent to variation or rescission of order for sole parental responsibility

Omit the clause.

[5] Clause 11 Principal officer’s report as to placement of child or young person subject to order for sole parental responsibility

Omit the clause.

[6] Clause 19 Protection of information disclosed in alternative dispute resolution

Omit the clause.

[7] Part 4A

Insert after clause 23:

Part 4A Guardianship orders

23A Financial assistance to guardians

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

[8] Clause 25 Special medical treatment

Omit the clause.

[9] Clause 26

Omit the clause. Insert instead:

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

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

- (2) On receiving notification under subclause (1), the principal officer of the designated agency must prepare, or cause to be prepared and approve, a behaviour support plan for the child that takes into account administration of the drug.
- (3) This clause applies in relation to the administration of a psychotropic drug that is also a drug of addiction even if the drug is administered in accordance with an exemption referred to in section 175 (4A) of the Act.
Note. For example, methylphenidate (also known as Ritalin) is a psychotropic drug and is also a drug of addiction referred to in paragraph (c1) of the definition of **special medical treatment** in section 175 (5). Methylphenidate is also the subject of an exemption under section 175 (4A).
- (4) In this clause:
drug of addiction means a drug of a kind referred to in paragraph (c1) of the definition of **special medical treatment** in section 175 (5).

[10] Clause 31 Authorisation by a designated agency as an authorised carer—emergency authorisation

Omit clause 31 (10).

[11] Clause 42A

Insert after clause 42:

42A Cancellation of authorisation on making of a guardianship order

- (1) On the making of a guardianship order making an authorised carer the guardian of a child or young person named in the order, the authorisation of the authorised carer is taken to be automatically cancelled to the extent only that it relates to the child or young person.
Note. This subclause does not affect an authorisation as an authorised carer so far as it relates specifically or generally to children or young persons other than the child or young person who is the subject of the guardianship order.
- (2) The reference to the making of a guardianship order in subclause (1) extends to an order taken to be a guardianship order under clause 35 of Schedule 3 to the Act on the commencement of section 79A of the Act.

[12] Clause 88 Savings and transitional provisions

Insert at the end of the clause:

- (2) Section 149A of the Act (as in force immediately before its repeal by the amending Act) and clauses 10 and 11 of this Regulation (as in force before their repeal by the amending Regulation) continue to apply to and in respect of an order referred to in clause 34 of Schedule 3 to the Act despite the repeal of that section and those clauses.
- (3) Subclause (2) has effect on and from 29 October 2014 (the day on which the amending Act commences).
- (4) In this clause:
amending Act means the *Child Protection Legislation Amendment Act 2014*.
amending Regulation means the *Children and Young Persons (Care and Protection) Further Amendment Regulation 2014*.

[13] The whole Regulation

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s” respectively.