

Children and Young Persons (Care and Protection) Regulation 2022 – overview of main changes

Key changes

The Children and Young Persons (Care and Protection) Regulation 2022 (**2022 Regulation**) commenced on 1 September 2022.

It replaces the previous 2012 Regulation, which was automatically repealed under the *Subordinate Legislation Act 1989* on the same date. The 2022 Regulation supports provisions of the *Children and Young Persons (Care and Protection) Act 1998* (**Care Act**) to ensure it achieves its objectives effectively and efficiently.

The 2022 Regulation substantially remakes the previous regulation with some amendments to ensure it reflects current legislative obligations, standards and operational practices.

The 2022 Regulation includes five key changes.

1. New prescribed bodies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*

The following bodies have been prescribed for the purposes of information exchange under section 248 and Chapter 16A of the Care Act (**Schedule 5, section 1**):

- Australian Federal Police
- Commonwealth Department of Health and Aged Care
- Commonwealth Department of Social Services

- National Disability Insurance Agency (NDIA)
- NDIS Quality and Safeguards Commission, and
- disability services providers.

Chapter 16A of the Care Act provides the legislative basis for 'prescribed bodies' to share information relating to the safety, welfare or wellbeing of a child or young person. This change will enable information sharing between these new bodies and other prescribed government and non-government organisations and will therefore enhance the ability to provide services to children and young people in a collaborative and coordinated way.

It is important to note that prescribing these Commonwealth bodies does not impose a requirement on them, nor does it authorise them to share information under section 248 or Chapter 16A of the Care Act. This is a matter determined by legislation governing their jurisdiction, which would also need to allow the disclosure of information.

However, it does enable a NSW prescribed body to lawfully share relevant information about the safety, welfare or wellbeing of a child or young person with these Commonwealth bodies, provided it is within the terms of Chapter 16A.

Chapter 16A allows prescribed bodies to share information where it will assist another prescribed body to:

Children and Young Persons (Care and Protection) Regulation 2022 – overview of main amendments

- make any decision, assessment or plan, or initiate or conduct any investigation, or provide any service relating to the safety, welfare or wellbeing of a child or young person or class of children or young persons, or
- manage any risk to a child or young person, or class of children or young persons that might arise in the body’s capacity as an employer or designated agency.

The previous 2012 Regulation already permitted information to be shared with other Commonwealth bodies, including the Commonwealth Department of Home Affairs and the Federal Circuit and Family Court of Australia.

2. Carers must notify their designated agency if a child or young person in their care is charged with a criminal offence

An authorised carer must notify their designated agency when a child or young person in their care is charged with a criminal offence which carries a penalty of imprisonment of 12 months or more.

This is to ensure appropriate assistance and support can be provided to the child or young person, and safety and risk assessments can be conducted for the child or young person and any other child or young person in the household. (Section 33)

3. Limiting the application of the presumption that a carer’s authorisation will be automatically cancelled

There is a presumption in the Regulation that a carer’s authorisation is automatically

cancelled if they have not provided out-of-home care to a particular child or young person under the authorisation for three months or more, or to any child or young person for two years or more. However, the 2022 Regulation provides that this presumption does *not* apply if:

an investigation is underway into whether the person’s authorisation should be cancelled

an internal review of a decision to cancel the person’s authorisation has been commenced and is underway

the person has applied to the NSW Civil and Administrative Tribunal (NCAT) for a review of a reviewable decision and NCAT has not yet given a decision, or

as per the 2012 Regulation, the agency is satisfied the authorisation should not be cancelled in the particular case.

(Section 39)

4. Supporting behaviour change

Before considering changing placement arrangements for a child or young person who has challenging behaviour, a designated agency must consider other ways to support behaviour change for the child or young person.

In particular, the agency must consider if supporting behaviour change can be met by:

Children and Young Persons (Care and Protection) Regulation 2022 – overview of main amendments

- providing advice, support and training to the authorised carer and support to the child or young person
- adjusting the approved behaviour management practices for the child or young person, or
- preparing a behaviour support plan for the child or young person.
(Section 46)

5. Authorisation of residential care workers

Residential care workers must be authorised as authorised carers and their details must be entered onto the Residential Care Workers Register (**the Register**) administered by the Office of the Children’s Guardian. The Register commenced on 18 July 2022. More information about the Register is available [here](#).

To support the operation of the Register, new provisions in the 2022 Regulation provide for the authorisation of residential care workers.

The process of authorisation for residential care workers depends on the type of residential care being provided – emergency, non-emergency or interstate care.

Emergency care: Residential care workers may be authorised by a designated agency to provide residential care to a child or young person in an emergency, once only, for up to 72 hours. A designated agency must not authorise a residential care worker in an emergency unless satisfied that they have complied with the requirements

of the *Child Protection (Working with Children) Act 2012*. (Section 22)

Non-emergency care: Designated agencies may authorise a residential care worker as an authorised carer if the designated agency is satisfied that the person is capable and suitable to be authorised, having regard to the same probity checks required to comply with the Register requirements under the Children’s Guardian Regulation 2022.
(Section 23)

A person authorised under sections 22 or 23 of the 2022 Regulation is only authorised to provide care to children and young people who are case-managed by the designated agency that authorised the person, in a residential setting (not in a private capacity). (Section 24)

Interstate residential care: In some cases, NSW designated agencies may need to arrange for the residential care of a child or young person with an interstate agency. In such cases, a residential care worker employed or engaged to provide residential care by the interstate agency will be taken to be authorised as an authorised carer if the following requirements are met:

The interstate agency must satisfy the NSW designated agency that the

Children and Young Persons (Care and Protection) Regulation 2022 – overview of main amendments

residential care worker has been assessed as capable and suitable to provide residential care.

The interstate residential care worker must hold a current working with children check clearance, or its equivalent in the relevant State or Territory, and have a satisfactory national criminal record check.
(Section 26)

More information

For more information contact:
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Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

Old Regulation 2012		New Regulation 2022		
Clause	Title	Section ¹	Title ²	Details of amendments ³
Part 1 – Preliminary				
1	Name of Regulation	1	Name of Regulation	The date of the Regulation is now 2022.
2	Commencement	2	Commencement	The commencement date is 1 September 2022.
3	Definitions	3	Interpretation	<p>The following terms have been removed from the Regulation as they relate to sections of the Regulation that have been transferred to the Children’s Guardian Regulation: ‘<i>accreditation criteria</i>’, ‘<i>Carers Register</i>’, ‘<i>departmental designated agency</i>’, ‘<i>full accreditation</i>’, ‘<i>provisional accreditation</i>’, ‘<i>registered agency</i>’, ‘<i>reportable allegation</i>’, ‘<i>voluntary carer</i>’, ‘<i>working day</i>’ (in relation to the Children’s Guardian), ‘<i>working with children clearance information</i>’. Old clause 3(2)(b) has also been removed for this reason.</p> <p>The definition of ‘<i>accredited adoption service provider</i>’ has been updated to have the same meaning as in the <i>Children’s Guardian Act 2019 (Children’s Guardian Act)</i>. The following terms have also been removed from this section:</p> <ul style="list-style-type: none"> • ‘<i>code of conduct for authorised carers</i>’: this term is defined in section 248C of the <i>Children and Young Persons (Care and Protection) Act 1998 (the Act)</i>. • ‘<i>designated agency check</i>’: this term is defined in Schedule 2, section 3(1)(c). • ‘<i>prospective adoptive parent</i>’: this term is defined in Schedule 2, section 1. • ‘<i>prospective guardian</i>’: this term is defined in section 79A of the Act. <p>The following new terms have been created:</p> <ul style="list-style-type: none"> • ‘<i>assessable person</i>’. The definition of this term is contained in Schedule 2,

¹ Parliamentary Counsel’s Office now refers to provisions within a regulation as ‘sections’, not ‘clauses’.

² Changes to headings of sections are reflected in this column. Headings now refer to relevant regulation-making powers for clarity.

³ Only substantial amendments are noted. Minor editorial changes or simple renumbering are not noted.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

				<p>section 1. This term has been created to simplify existing references to 'assessable person' in the old Regulation and is explained further below in Schedule 2.</p> <ul style="list-style-type: none"> • 'assessment body': This term has been created to simplify existing references to 'assessment body'. Although there is no definition in the old Regulation, the meaning of this term was contained in old clauses 23C(6), 30(6), 31(5) and 31A(2). The new definition mostly reflects the meaning in those clauses of the old Regulation. The old definition in clause 23C(6) has been amended to simplify the meaning of 'assessment body' in relation to guardianship orders. • 'co-resident': This term has been created to simplify existing references to people who reside on the same property as certain people for more than 21 days, in clauses 23C(5), 30(6), 31(5) and 31A(2) of the old Regulation. This term is also relevant to the uniform suitability assessment requirements set out in Schedule 2, which apply to co-residents. • 'private health facility': This term is defined and described in old clauses 19(3) and 28(1)(c). A minor change has also been made to the wording of the definition, to confirm that this term means a licensed private health facility under the <i>Private Health Facilities Act 2007</i>. • 'provisional authorisation': The definition for this term refers to new section 19, where its meaning is provided (see old clause 31). • 'residential care': This new term relates to authorisation of residential care workers (see new sections 23 and 24 below) and has the same meaning as in the Children's Guardian Act. • 'uniform suitability assessment': The definition of this term refers to Schedule 2, where the uniform suitability assessments are set out. <p>The following terms have been abbreviated:</p> <ul style="list-style-type: none"> • 'working with children check clearance' to 'WWCCC'. • 'current working with children application' to 'WWCCC application': A minor change has been made to the wording of this definition, but not to the substantive meaning. A current application within the meaning of the <i>Child Protection (Working with Children) Act 2012</i> (the old definition) means an application that has not been finally determined or withdrawn or terminated (the new definition).
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Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

Part 2 – General				
4	(Repealed)	-	-	This clause has been removed as it has already been repealed.
5	Rescission and variation of care orders—“significant change”	4	Rescission and variation of care orders—the Act, s 264(1A)(d)	<p>This section has been amended to better reflect the regulation-making power in section 264(1A)(d) of the Act and section 82 of the Act.</p> <p>Section 82 of the Act has been amended several times in recent years. In 2018, it was amended to enable the Children's Court to relist a matter and conduct a review of progress in implementing the care plan for a child or young person, after considering a report provided to it under section 82. This amendment removed an obligation on the Children's Court to invite the parties to make an application for the rescission or variation of the original care order under section 90. The changes to subsection (b) align with the current wording of section 82 of the Act.</p>
6	Delegation of functions of Children's Guardian	-	-	This clause has been removed as it relates to the Children's Guardian.
7	Administrative review of decisions of Children's Guardian	-	-	This clause has been removed as it relates to the Children's Guardian.
8	Prescribed bodies	5	Prescribed bodies	<p>The list of '<i>prescribed bodies</i>' for the purposes of sections 248(6) and 245B(1) of the Act have moved to a new Schedule 5.</p> <p>Minor changes have been made to section 5, including:</p> <ul style="list-style-type: none"> • The paragraph references in section 5(1) and (2) have been updated to refer to the correct paragraphs of section 248(6) and 245B(1) of the Act respectively. This reflects recent amendments to the Act which clarified that the regulations may prescribe both bodies and persons for the purposes of sections 248 and 245B of the Act. • A new note has been added under section 5(1) for explanatory purposes.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

9	(Renumbered cl 23B)	-	-	This clause has been removed as it has already been renumbered.
9A-11	(Repealed)	-	-	These clauses have been removed as they have already been repealed.
12	When acts of Children’s Guardian take effect	-	-	This clause has been removed as it relates to the Children’s Guardian.
Part 3 – Records, reporting and information				
Division 1 – Records				
13	Form of records	-	-	A new Division 1 has been created in Part 3, concerning records. This section has been removed as it is not legally necessary. For example, under the <i>Electronic Transactions Act 2000</i> requirements imposed under NSW law, such as to produce a document or record information, can generally be met in electronic form.
14	Access to records relating to Aboriginals and Torres Strait Islanders	6	Access to records relating to Aboriginal persons and Torres Strait Islanders—the Act, s 14(5)	A minor change has been made to remove the word ‘documentary’ in old clause 14(2)(c) in regard to proof of identity, in the new section 6(2)(c). Old clause 14(5)(b) has been separated into two provisions for clarity (see new section 6(5)(b) and (6)).
Division 2 – Reporting				
15	Application of mandatory reporting requirements	7	Application of mandatory reporting requirements—the Act, s 264(1A)(b)	A new Division 2 has been created in Part 3, concerning reporting.
16	Extension of alternative reporting arrangements to	8	Extension of alternative reporting arrangements—the	Old clauses 16-19 have been combined into one section to simplify and streamline these provisions. A new term ‘ <i>relevant service provider</i> ’ has been created as a result, which is defined to mean the persons to which alternative reporting arrangements under section

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

	employees and contractors of relevant Aboriginal organisations		Act, s 27A(10)	27A of the Act are extended under old clauses 16-19.
17	Extension of alternative reporting arrangements to employees or contractors of affiliated health organisations			New section 8(4)(d) refers to a ' <i>medical practitioner</i> ' to clarify that all registered medical practitioners, not only general practitioners (see old clause 18(3)), are covered by the NSW Health alternative mandatory reporting mechanism. This is consistent with old clause 18(1). ' <i>General practice nurse</i> ' is no longer a defined term, as in old clause 18(3), but the same meaning is provided in new section 8(2)(e). The definition of ' <i>private health facility</i> ' in old clause 19(3) has moved to new section 3 of the Regulation, as it also appears in new section 15(1)(e).
18	Extension of alternative reporting arrangements to registered medical practitioners and general practice nurses			
19	Extension of alternative reporting arrangements to employees or contractors of private health facilities			
20	Provision and collection of information	-	-	This clause has been removed as it relates to the Children's Guardian.
21	Senior officers of other Australian law	9	Senior officers of Australian law	These provisions have been updated in their description of rank as required.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

	enforcement agencies		enforcement agencies—the Act, s 29(6)	
Part 4 – Care plans and alternative parenting plans				
22	Care plans	10	Care plans — the Act, s 78(6)	Most of old clause 22 of the Regulation, specifically the information that a care plan must include, has been relocated to a new Schedule 3 (see below).
23	Alternative parenting plans	11	Alternative parenting plans — the Act, s 264(1A)(e)	Most of old clause 23 of the Regulation, specifically the requirements that an alternative parenting plan submitted to the Children’s Court must comply with, has been relocated to a new Schedule 4 (see below).
Part 5 – Guardianship orders⁴				
23B	Form of child’s or young person’s consent to guardianship order	12	Form of child’s or young person’s consent to guardianship order—the Act, s 79A(3)	Old clause 23B(2)(a) has been split into two provisions for clarity (see new section 12(2)(a) and (b)).
23C	Suitability statements relating to prospective guardians	13	Assessment of prospective guardians—the Act s 79B	<p>The assessment body’s duties to (i) provide information about the role of a guardian and (ii) conduct a review of the placement have been drawn from old clause 23C(2)(c) and (4) and placed together in new section 13(1).</p> <p>A direct obligation has been placed on the prospective guardian to give the assessment body information it reasonably requires to assess suitability in new section 13(2), as drawn from the inferred obligation in old clause 23C(3).</p> <p>What a suitability assessment covers is now found in new section 13(3), rather than old clause 23C(2)(a),(b). New section 13(4) has been inserted to clarify that an assessment body must give the applicant for the guardianship order a suitability statement, before the</p>

⁴ This Part has been renumbered from Part 4A to Part 5.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

				<p>applicant presents that statement to the Children’s Court.</p> <p>The reference to section 11A of the Children’s Guardian Act in the note under old clause 23C(2)(a) has been inserted into new section 13(3)(a) for clarity. In new section 13(3)(b)(ii), the new term ‘<i>co-resident</i>’ has replaced ‘persons that reside on the same property as the prospective guardian’ in old clause 23C(2)(b).</p> <p>Old clause 23C(5) and (6) have been removed as they have been incorporated into the definitions of the new terms ‘<i>assessable person</i>’, ‘<i>assessment body</i>’ and ‘<i>co-resident</i>’ (see new section 3 above).</p> <p>The requirement of an applicant for a guardianship order to present the suitability statement to the Children’s Court has been relocated from old clause 23C(1) to new section 13(5).</p>
23A	Financial assistance to guardians	14	Financial assistance to guardians—the Act, s 79C(5)	<p>New section 14 has been amended to better reflect the regulation-making power in section 79C(5) of the Act.</p> <p>A structural change has been made to move this section to the end of Part 5, to follow the order of the related sections of the Act.</p>
23D-E	(Repealed)	-	-	These clauses have been removed as they have already been repealed.
Part 6 – Out-of-home care⁵				
Division 1 – General				
28	Arrangements and services that are not out-of-home care	15	Arrangements and services that are not out-of-home care—the Act, s 135(3)	<p>New section 15(1)(b) has been added to exclude specialised substitute residential care (as defined under the <i>Children’s Guardian Act 2019</i>) from being out-of-home care.</p> <p>Updates have also been made to:</p> <ul style="list-style-type: none"> clause 28(1)(b) of the old Regulation which is now reflected in new section

⁵ The order of the Parts concerning ‘Out-of-home care’ and ‘Medical examination and treatment’ have been swapped to follow the order of the Act.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

				<p>15(1)(g).</p> <ul style="list-style-type: none"> clause 28(1)(h) of the old Regulation which referred to supported accommodation assistance program services funded under the Supported Accommodation Assistance Act 1994 (Cth). New section 15(1)(j) has been updated to reflect that this funding arrangement no longer exists and has been replaced by specialist homelessness services funded by the Department of Communities and Justice (DCJ) under new funding arrangements. The new Regulation continues to exclude such services from ‘<i>out-of-home care</i>’ under the Act. <p>A structural change has been made to swap the order of the sections of Part 6, Division 1 of the new Regulation, to follow the order of the related sections of the Act.</p>
27	Application for review of temporary care arrangement	16	Application for review of temporary care arrangement—the Act, s 152(6)	
Division 2 – Authorisations by designated agencies—the Act, s 137(2)				
Subdivision 1 – Authorisation				
29	Definitions	-	-	<p>Defining ‘<i>authorised carer</i>’ and ‘<i>designated agency</i>’ formally in this subdivision is not necessary and so the definitions in clause 29 have been removed.</p> <p>Definition of ‘<i>supervising person</i>’ has moved to new section 34(4).</p>
30	Authorisation of individual caring in private capacity	17	Application to be an authorised carer in a private capacity	<p>Old clause 30 has been divided into two new sections 17 and 18 based on process – first, the application and second, the decision on the application. New section 18(3)(d) now includes section 248C of the Act giving the Minister power to approve the code of conduct for authorised carers for clarity.</p> <p>Old clause 30(6) has been removed as it has been incorporated into the definitions of the new terms ‘<i>assessable person</i>’, ‘<i>assessment body</i>’ and ‘<i>co-resident</i>’ (see new section 3 above).</p>

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

		18	Determination of application	
Subdivision 2 – Provisional authorisation				
31	Provisional authorisation	19	Provisional authorisation	Old clause 31 has been divided into three new sections 19, 20 and 21 based on the process for provisional authorisation. New section 19 covers old clause 31(1) and (6)(b). Old clause 31(6)(a) has been removed as it repeats old clause 31(1).
		20	Assessment of capability and suitability to be provisionally authorised	New section 20 covers old clause 31(2),(3),(4),(9) and (10). Old clause 31(5) has been removed as it has been incorporated into the definitions of the new terms ‘ <i>assessable person</i> ’, ‘ <i>assessment body</i> ’ and ‘ <i>co-resident</i> ’ (see new section 3 above).
		21	Administration of provisional authorisation	New section 21 covers old clause 31(7),(8),(11),(12),(13),(14) and (15).
Subdivision 3 –Other authorisations				
31B	Emergency authorisation of staff and contractors	22	Emergency authorisation of residential care worker	Old clause 31B sets out the circumstances in which a designated agency may authorise persons as authorised carers in emergencies. New section 22 specifies that a person may only be authorised once under this section, for a maximum of 72 hours, with the authorisation taking effect when the child or young person is placed with the person.
-	-	23	Authorisation of residential care workers—the Act, s 137	New section 23 provides that a designated agency may authorise a person as a residential care worker if the person provides statutory or supported out-of-home care in a residential setting as part of their professional work or paid employment. To authorise the person, the agency must have conducted checks required by the <i>Children’s Guardian</i>

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

				<i>Regulation</i> , Part 2, Division 2; and determined the person is capable and suitable to be an authorised carer.
-	-	24	Authorisation of residential care workers under sections 22 and 23	For clarity, new section 24 provides that a person authorised under section 22 or 23 is only authorised to provide care for a child or young person for whom care is being provided or supervised by the designated agency that authorised the person; and in a 'residential setting' as defined in the Children's Guardian Regulation 2022.
-	-	25	Authorisation of caseworkers	New section 25 provides that Department of Communities and Justice caseworkers are taken to be authorised under section 22. This enables the Department to use a caseworker, in an emergency, to provide residential care, once only, for up to 72 hours.
-	-	26	Authorisation of interstate residential care workers—the Act, s 137	New section 26 provides that interstate residential care workers are taken to be authorised as authorised carers under the Care Act if: <ul style="list-style-type: none"> • they are employed or engaged to provide residential care by the child welfare agency of another state or a service provider funded or contracted by that agency to provide residential care, and • the agency or service provider that employs or engages them satisfies the NSW designated agency that all its workers have been assessed as capable and suitable to provide care; hold a current working with children check clearance or its equivalent in the relevant state or territory; and have undergone a nationwide criminal record check and the outcome of the check was satisfactory.
32	Other carers authorised by Department to enable special care	27	Other carers authorised by Department to enable special care	Old clause 32(1)-(2) definitions have been relocated to new section 27(4) and the rest of the section renumbered. The note under old clause 32(3)(b) has been removed because it is unnecessary, as special out-of-home care is not provided in authorised carers' private homes.
33	Authorised carers authorised by designated agency to give respite to	28	Authorised carer authorised by designated agency to give respite to usual	Old clause 33(1)-(2) definitions have been relocated to new section 28(7) and the rest of the section renumbered. The note under old clause 33(3)(b) has been removed because it is unnecessary, as special out-of-home care is not provided in authorised carers' private homes.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

	usual authorised carers		authorised carer	
Subdivision 4 – Conditions of authorisation				
34	Conditions of authorisations	29	Training	<p>Old clause 34(4A) is now section 29(1) and (2)(a).</p> <p>New section 29(2)(b) provides this section does not apply to authorised residential care workers. This is a consequential change arising from amendments relating to the authorisation of residential care workers.</p>
		30	Designated agency may impose conditions	<p>Old clauses 34(1) and (2) are now section 30(1)(a) and (b). Old clause 34(3) is now section 30(2).</p> <p>Old clause 34(4) has been removed because of a recent amendment to the Care Act which replicates this provision (see section 248C of the Act). However, a note under the new Subdivision 4 heading reminds readers that section 248C of the Act imposes a condition that authorised carers must comply with the code of conduct approved by the Minister</p> <p>New section 30(3) provides this section does not apply to authorised residential care workers. This is a consequential change arising from amendments relating to the authorisation of residential care workers.</p>
36	Personal responsibility of authorised carers	31	Personal responsibility of authorised carer	
37	Inspection of home or premises	-	-	Old clause 37 has been removed as it does not add anything to sections 137B, 241 and 242 of the Act.
39	Notice of change of address	32	Notice of change of address	New section 32(2) provides that this section does not apply to authorised residential care workers. This is a consequential change arising from amendments relating to the authorisation of residential care workers.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

40	Information to be provided to designated agency	33	Information to be provided to designated agency	<p>New section 33(2)((b)(ii) and (iii) clarify whose permission is required for the relevant absence. For section 33(2)(b)(ii), it is an absence within NSW for 24 hours or more without the <i>authorised carer's</i> consent. For section 33(2)(b)(iii), it is an absence from NSW without the <i>Minister's</i> consent.</p> <p>Section 33(2)(c) has been added to provide that an authorised carer must notify the designated agency if a child or young person in out-of-home care is charged with a criminal offence punishable by 12 months' imprisonment or more.</p> <p>New section 33(3) provides that sub-sections (2)(f)(i) and (iii) and (2)(g) do not apply to an authorised residential care worker.</p>
38	Medical examination	34	Medical examination	The definition of ' <i>supervising person</i> ' has moved from old clause 29 to new section 34(5).
Subdivision 5 – Cancellation, suspension and surrender of authorisation				
42	Cancellation or suspension of authorisations by designated agencies	35	Cancellation or suspension of authorisation by designated agency	The words 'any obligation or restriction' in old clause 42(c) have been replaced with 'a condition or requirement' in new section 35(b)(ii).
42A	Cancellation of authorisation on making of a guardianship order	36	Automatic cancellation—making of guardianship order	
42B	Automatic cancellation—working with children requirements no longer met	37	Automatic cancellation—working with children requirements no longer met	' <i>Working with children check clearance</i> ' is defined in new section 3 as ' <i>WWCCC</i> '. ' <i>Current working with children application</i> ' is defined in new section 3 as ' <i>WWCCC application</i> '.
42C	Automatic cancellation—	38	Automatic cancellation—	

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

	cessation of employment or contract		cessation of employment or contract	
42CA	Presumption that authorisation will be cancelled	39	Presumption that authorisation will be cancelled	<p>New section 39 has been amended to provide that the presumption that an authorised carer's authorisation is automatically cancelled if they have not provided out-of-home care to a particular child or young person for three months or more, or to any child or young person for two years or more, does not apply if:</p> <ul style="list-style-type: none"> • an investigation is underway into whether the person's authorisation should be cancelled, or • the person has applied for an internal review of a decision to cancel their authorisation and that review is underway, or • the person has applied for a review of a reviewable decision and NCAT has not given a decision. See new section 39(2)(a),(b) and (c).
42D	Automatic suspension of authorisation	40	Automatic suspension of authorisation	<p>Old clause 42D(1) definition of '<i>inappropriate resident</i>' has been relocated to the end of new section 40(5) and renamed '<i>unsuitable co-resident</i>'. The new term '<i>co-resident</i>' has replaced 'a person who resides on the same property as an authorised carer' in the new definition of '<i>unsuitable co-resident</i>'.</p> <p>'<i>Working with children check clearance</i>' is defined in new section 3 as '<i>WWCCC</i>'. '<i>Current working with children application</i>' is defined in new section 3 as '<i>WWCCC application</i>'. A 'continuing residence approval' is defined in new section 40(5) as having the same meaning as in the <i>Child Protection (Working with Children) Act 2012</i>.</p>
41A	Surrender of authorisation	41	Surrender of authorisation	
Subdivision 6 – Miscellaneous				
31A	Assessment of persons residing on same property as	42	Assessment of persons residing on same property as	New section 42(1) has been added to clarify that this section is within the regulation-making power under section 137(2)(c) of the Act.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

	carer		carer	<p>In new section 42(2), the words ‘a person is a co-resident of an authorised carer’ have replaced ‘a person...has resided or will reside for more than 21 days on the same property as an authorised carer’ in old clause 31A(1), as the new term ‘<i>co-resident</i>’ encompasses this description.</p> <p>The exception of a ‘young person in out-of-home care’ in the brackets in clause 31A(1) has relocated to new section 42(3). Note that the exclusion of a child in out-of-home care in old clause 31A(1) is not required in new section 42(3) as ‘a child in out-of-home care’ is already excluded from the new term ‘co-resident’.</p> <p>Old clause 31A(2) has been removed as it has been incorporated into the definitions of the new terms ‘<i>assessable person</i>’, ‘<i>assessment body</i>’ and ‘<i>co-resident</i>’ (see new section 3 above).</p>
35	Authorisations by designated agencies to be in writing	43	Authorisation by designated agency to be in writing	
Division 3 – Authorisation other than by designated agency				
43	Other authorisations	44	Other authorisation	References to the ‘Family Court of Australia’ and the ‘Federal Circuit Court of Australia’ have been updated to the ‘Federal Circuit and Family Court of Australia’ in new section 44(1)(b).
43A	Transferred authorisations	45	Transferred authorisation	
Division 4 – Behaviour management—the Act, s 137(2)(g)				
41	Management of behaviour of children and young persons	46	Children and young persons supervised by a designated agency	<p>Old clause 41(1) and (1)(b) are now combined in new section 46(1).</p> <p>Old clause 41(1)(a) is now new section 46(2).</p> <p>Old clause 41(2) is now new section 46(3).</p> <p>Old clause 41(3) and (3)(a) are relocated to new section 46(4).</p>

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

				<p>Language has been updated in new section 46. For example, ‘correcting and managing’ behaviour is now ‘supporting...change’ to behaviour in section 46(1),(3),(5). In section 46(4), ‘problem’ is now ‘behaviour’ and ‘behaviour management plan’ is now a ‘behaviour support plan’. However, ‘behaviour management practices’ could not be updated as the term is used in section 137(2)(g) of the Act which provides the regulatory power.</p> <p>Two new ways to address behavior management have been included in new section 46(4) which are not in old clause 41(3). These are new section 46(4)(b) ‘adjusting the approved behaviour management practices for the child or young person’ and new section 46(4)(c) ‘preparing a behaviour support plan for the child or young person’. This section has also been amended to require designated agencies to consider the alternative options in section 46(4) before considering changing placement arrangements (see new section 46(5)).</p>
44	Management of behaviour of children and young persons	47	Children and young persons not supervised by a designated agency	<p>Section 47(3) is new and imports for clarity old clause 41(1)(a) into new section 47, that is, that behaviour management practices approved by the Secretary must not include three types of punishment.</p> <p>Language has also been updated as in new section 46.</p>
Part 7 – Medical examination and treatment⁶				
24	Notice of medical examination	48	Notice of medical examination	
25	(Repealed)	-	-	This clause has been removed as it has already been repealed.
26	Administration of psychotropic drug to child in statutory out-of-home care	49	Administration of psychotropic drugs to child in statutory out-of-home care—the	<p>For clarity:</p> <ul style="list-style-type: none"> • A definition of the term ‘<i>psychotropic drug</i>’ has been inserted in new section 49(4), as it appeared in old clause 26 without being defined. • The definition of the term ‘<i>drug of addiction</i>’ in old clause 26(4) has been removed

⁶ The order of the Parts concerning ‘Out-of-home care’ and ‘Medical examination and treatment’ have been swapped to follow the order of the Act.

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

			Act, s 264(1A)(g)	from new section 49(4) as the meaning is provided in new section 49(3). The meaning now refers directly to the <i>Poisons and Therapeutic Goods Act 1966</i> which defines this term.
Part 8 – Miscellaneous				
88	Savings and transitional provisions	50	Savings and transitional provisions	Old clause 88(3A) has been removed as it relates to the Children’s Guardian.
Schedule 1 – Notice of medical examination				
Form 1	Notice of medical examination	-	Notice of medical examination	New form includes the space to insert the date at the end, for clarity.
Schedule 2 – Uniform suitability assessment requirements				
				Note that while drafting changes have been made to Schedule 2 to make it simpler and clearer (outlined below), no substantive changes have been made to the uniform suitability assessment requirements.
1	Definitions	1	Definitions	<p>The following terms have been removed from this section, as the meanings are now provided in the substantive provisions:</p> <ul style="list-style-type: none"> • ‘<i>accredited adoption service provider check</i>’ (new Schedule 2, section 3(1)(d)). • ‘<i>approved identity information</i>’ (new Schedule 2, section 2(a)). The requirement that this information be published in the Gazette has been removed to allow greater flexibility to change the identity requirements. • ‘<i>designated agency check</i>’ (new Schedule 2, section 3(1)(c)). <p>A new term ‘<i>assessable person</i>’ has been added. This term has been created to simplify existing references to ‘assessable person’. Although there is no definition in the old Regulation, the meaning of this term is provided in old clauses 23C(5), 30(6), 31(5) and 31A(2). The new definition reflects the meaning in those clauses of the old Regulation.</p>

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

2	Assessment body must obtain information or conduct checks	2	Assessment body must obtain information	<p>To simplify old Schedule 2, clause 2, this provision has been split into several provisions (new Schedule 2, sections 2-4).</p> <p>Old Schedule 2, clause 2(1)(a), (f)(i)-(ii) have been transferred to new Schedule 2, section 2.</p> <p>The requirements in old Schedule 2, clause 2(1)(f)(ii), regarding an assessable person's statement about their physical and mental health and a medical report, have been split into two provisions for clarity (see new Schedule 2, section 2(b)(ii) and (iii)).</p>
		3	Assessment body must conduct checks	<p>The following parts of old Schedule 2, clause 2 have been transferred to new Schedule 2, section 3:</p> <ul style="list-style-type: none"> • Old clause 2(1)(b)-(e), (f)(iii) • Old clause 2(4) • Old clause 2(5). <p>The following changes have also been made:</p> <ul style="list-style-type: none"> • The 'check' component of the requirement in old Schedule 2, clause 2(1)(f)(ii), which refers to a health check, being a check of the statement made by the assessable person, has been removed from the Regulation. It is unnecessary and does not add to the requirement for an assessment body to obtain from certain assessable persons statements about their physical and mental health. • Old Schedule 2, clause 2(4)(c) has been split into two provisions for clarity (see new Schedule 2, section 3(3)(b)(i) and (ii)). • Old Schedule 2, clause 2(5)(d) has been split into three provisions for clarity (see new Schedule 2, section 3(2)(d)(i), (ii) and (iii)).
		4	Circumstances when assessment body not required to obtain information or conduct	<p>Old Schedule 2, clauses 2(2)-(3) have been transferred to new Schedule 2, section 4.</p> <p>The term '<i>prospective adoptive parent</i>' in old Schedule 2, clause 2(2)(c) is now defined in new Schedule 2, section 4(3). This relocated term is defined, as it was in clause 3 of the old Regulation, to mean 'a person who has submitted an application under the <i>Adoption</i></p>

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

			checks	<i>Act 2000</i> 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'..
3	Exemptions for assessable residents	5	Exemptions for assessable residents	<p>The following changes have been made to the definition of 'assessable resident' in new Schedule 2, section 5(5) (see old Schedule 2, clause 3(1)):</p> <ul style="list-style-type: none"> • In paragraph (a), the words 'because the person resides on the same property as another person' have been replaced with 'because the person is a co-resident', as the new term 'co-resident' encompasses this description. • In paragraph (b), children in out-of-home care have been removed from the list of persons who are not assessable residents, as they are already excluded from the definition of the new term 'co-resident' (see new section 3). <p>Old Schedule 2, clause 3(5)(a) and (b) have been split further into sub-provisions for clarity in new Schedule 2, section 5(4)(a) and (b).</p>
4	Special exemption if adoption suitability check conducted	6	Special exemption if adoption suitability check conducted	Old Schedule 2, clause 4 has been split into sub-provisions for clarity in new Schedule 2, section 6.
5	Assessment body may obtain other information	7	Assessment body may obtain other information	
6	Assessment body can cease assessment of unsuitable person	8	Termination of assessment of unsuitable person	The words 'or any person who resides on the same property as the assessable person' in old Schedule 2, clause 6 have been removed, as such a person (now called a 'co-resident') is an assessable person.
Schedule 3 – Care plans				
22	Care plans	1	Mandatory content	Most of clause 22 of the old Regulation, specifically the information that a care plan must include, has been relocated to a new Schedule 3 and restructured. The content of old clause 22 has been split into two provisions (see new Schedule 3, sections 1 and 2).

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

			<p>In addition, the following changes have been made:</p> <ul style="list-style-type: none"> • Old clause 22(1)(a) of the Regulation has been removed because of a recent amendment to the Act which replicates this provision (see section 78(5) of the Act). • Old clause 22(1)(b)(iii) has been split into two provisions for clarity (see new Schedule 3, section 1(1)(b) and (c)). • Old clause 22(3)(h) has been converted (see new Schedule 3, section 1(1)(j)). • The word 'role' in old clause 22(3)(d) has been removed from new Schedule 3, section 1(1)(d)(ii) and (e)(ii) for simplicity. Also, the expression 'and the approximate period of time during which those responsibilities are to be carried out' is transferred to new Schedule 3, section 1(1)(e)(ii) (re: other person, agencies or bodies participating in the care plan) but is not included in new Schedule 3, section 1(1)(d)(ii) (re: agency or body with overall responsibility for coordinating the care plan). • Old clause 22(6) has been split into two sub-provisions for clarity (see new Schedule 3, section 1(2)(a) and (b)).
	2	Matters to be included where relevant	<p>In addition to the structural reorganisation, the following changes have been made:</p> <ul style="list-style-type: none"> • The words 'ethnic background and religion' in old clause 22(2)(d) have been updated to 'cultural and and linguistic background and religion' in new Schedule 3, section 2(1)(d). • Old clause 22(2)(i),(j) and (k) have been converted into a list in new Schedule 3, section 2(1)(j). • Old clause 22(2)(l) has been split into two sub-provisions for clarity (see new Schedule 3, section 2(1)(k) and (l)). • A care plan must now also contain information relevant to the disability of the child and young person in new Schedule 3, section 2(1)(i).
<p>Schedule 4 – Alternative parenting plans</p>			

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

23	Alternative parenting plans	1	Form	<p>Most of old clause 23 of the Regulation, specifically the requirements that an alternative parenting plan submitted to the Children’s Court must comply with, has been relocated to a new Schedule 4 and restructured.</p> <p>The content of old clause 23 has been split into several provisions (see new Schedule 4, sections 1-4).</p>
		2	Mandatory content	In addition to the structural reorganisation, old clause 23(1)(b)(iii) has been split into two provisions for clarity (see new Schedule 4, section 2(c) and (d)).
		3	Other matters required	In addition to the structural reorganisation, old clause 23(6) has been split into two provisions for clarity (see new Schedule 4, section 3(3)(a) and (b)).
		4	Matters to be included where relevant	An alternative parenting plan must now also contain information relevant to the disability of the child and young person in new Schedule 4, section 4(1)(a).
Schedule 5 – Prescribed bodies				
8	Prescribed bodies	1	Prescribed bodies for section 248(6) of the Act	<p>The list of ‘<i>prescribed bodies</i>’ for the purposes of section 248(6) of the Act (in old clause 8(1) of the Regulation) has moved to a new Schedule 5, section 1.</p> <p>Updates and structural changes have been made:</p> <ul style="list-style-type: none"> • ‘Registered agency’ in old clause 8(1)(d) has been removed and replaced with ‘an entity providing specialised substitute residential care within the meaning of the <i>Children’s Guardian Act 2019</i>’ (see new Schedule 5, section 1(e)). Voluntary out-of-home care under the Children’s Guardian Act is recast as specialised substitute residential care from 1 September 2022 (see the <i>Children’s Guardian Amendment Act 2022</i>). • References to Commonwealth bodies have been updated. • The words ‘or a successor of’ have been added after the names of Commonwealth bodies, where not already present, to ensure that the relevant body will continue to be prescribed if any name changes, mergers or divisions occur. • Old clause 8(1)(j) has been split into several provisions for clarity (see new Schedule

Comparison table of provisions of Children and Young Persons (Care and Protection) Regulation 2022 and 2012 Regulation

			<p>5, section 1(p)(i)-(vii)).</p> <p>Several new bodies have been prescribed for the purposes of paragraph (g) of section 248(6) of the Act, and therefore also Chapter 16A of the Act:</p> <ul style="list-style-type: none"> • Australian Federal Police • Commonwealth Department of Health and Aged Care • Commonwealth Department of Social Services • National Disability Insurance Agency • NDIS Quality and Safeguards Commission • Disability service providers.
	2	Prescribed bodies for section 245B(1) of the Act	<p>The list of '<i>prescribed bodies</i>' for the purposes of section 245B(1) of the Act (in old clause 8(2) of the Regulation) has moved to a new Schedule 5, section 2.</p> <p>The list of '<i>prescribed bodies</i>' has been separated into lists for the purposes of paragraphs (b) and (c) of section 245B(1) of the Act (see new Schedule 5, section 2(1) and (2)). Recent amendments to the Act clarified that the regulations may prescribe both bodies and persons for the purposes of section 245B(1) of the Act. The prescribed bodies have been classified accordingly.</p> <p>The descriptors 'enrolled' and 'registered' in relation to nurses have been removed as they are unnecessary (see section 21D of the <i>Interpretation Act 1987</i>).</p> <p>References to State and Territory bodies have been updated.</p>