

Residential Care Workers Register Guidance summary 5

Sourcing workers from a labour hire agency

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The Office of the Children's Guardian is an independent, statutory authority committed to delivering better outcomes for children and young people living in out-of-home care.

We accredit and monitor the performance of agencies that arrange statutory and supported out-of-home care and adoption services. We also register and monitor agencies that provide, arrange or supervise voluntary out-of-home care. We are a regulator – we are not a provider of care services.

We have established a Residential Care Workers Register to help agencies to decide the suitability of an individual to provide direct care to children and young people in residential care.

This guide should be read in conjunction with Guidance summary 1 – General overview. The summary details who is to be captured and the information to be entered onto the register.

About the Residential Care Workers Register

The Residential Care Workers Register provides a mechanism for agencies to exchange information relating to the safety, welfare or wellbeing of children and young people in residential settings. This will support agencies to decide on the suitability of a worker to provide care to children and young people in residential care. The register is a secure, restricted access database, which holds information about individuals who are being considered for employment and individuals who have been engaged as residential care workers.

The Office of the Children's Guardian (OCG) has established the Residential Care Workers Register under section 85(1)(b) of the *Children's Guardian Act 2019* (the Act). In addition to the provisions at Division 5 of Part 5 of the Act, the Children's Guardian Regulation 2022 provides the mandatory minimum requirements that designated agencies must comply with when considering residential care workers for employment and engaging residential care workers in employment.

What this means for those designated agencies who hire residential care workers through a recruitment agency

Residential care providers (a designated agency who arranges residential care) will generally conduct their own recruitment of residential care workers. In some circumstances, agencies may source workers from an external staffing or recruitment agency to fill shortages. The Children's Guardian Regulation 2022 refers to these as a *labour hire agency*¹. Designated agencies must ensure that if these workers meet the definition of a residential care worker, they are subject to the mandatory minimum probity checks, and entered onto the register, in the same way as workers who are recruited directly by the designated agency.

Where staff are sourced from a labour hire agency, residential care providers must have a written service agreement with that agency, in line with the guidelines prepared by the OCG. The aim of the written service agreement is to clearly outline each agency's responsibilities and ensure that designated agencies comply with their obligations around the recruitment of residential care workers sourced from a labour hire agency. Where this occurs and the labour hire agency undertakes part of the recruitment process, the designated agency must be satisfied with that process, including the completion of probity checks, as they are responsible for the decision about whether to engage an individual as a residential care worker.

A labour hire agency can support the individual to obtain a Working with Children Check and Nationwide Criminal Record Check. However, it is the responsibility of the designated agency, as a prescribed body under the *Children and Young Persons (Care and Protection) Act 1998*, to undertake an Other Agency Check² and Community Services Check (once this is phased in as a requirement). The designated agency has the overall responsibility to determine suitability.

¹ The Children's Guardian Regulation 2022 defines a labour hire agency as a *person who on a commercial basis provides services for finding work for individuals*. This encapsulates any agency who refers an individual to a residential care provider for consideration as a residential care worker.

² Referred to as a *residential care provider check* in the Children's Guardian Regulation 2022

Regardless of how the recruitment occurs, only a designated agency will have access to the Residential Register. It is the responsibility of the designated agency to enter the worker and probity check information onto the register and to make a decision about whether to engage them.

A designated agency has the same responsibilities and obligations for staff sourced from a labour hire agency as it does towards those recruited internally. The agency must supervise the care that the person provides and investigate any complaints or reportable allegations against the worker.

What does this mean for a labour hire agency referring staff to residential care providers?

Labour hire agencies do not have access to the register. The responsibility to enter individuals onto the register and manage this record belongs to the designated agency.

Sourcing workers from a labour hire agency can continue. With the commencement of the Children's Guardian Regulation 2022 and the Children and Young Persons (Care and Protection) Regulation 2022, there will now be consistent expectations around the recruitment of workers, regardless of where they are sourced. This includes the introduction of additional mandatory probity checks for all residential care workers, which must be undertaken by the designated agency (as mentioned above).

What to do when a worker is required in an emergency

Situations may arise where:

- there is an urgent need for staff to fill a shortage within a residential setting, or
- there are no suitable foster or residential care placements available for a child and the child is placed in some sort of temporary accommodation such as a hotel or serviced apartment, supported by a worker.

These sorts of placements are considered residential care, even if the placement is only for respite or overnight.

Designated agencies should plan for emergencies and have backup staff already entered onto the Residential Register and engaged as a residential care worker. This could mean shifting the way designated agencies currently work with labour hire agencies and actively planning with them around the recruitment and availability of staff, rather than making contact only in emergency situations.

There may be times when the planning is unsuccessful. Section 6 of the Children's Guardian Regulation 2022 provides for a short-term, one-off, exemption where a staff member or contractor is approved by the designated agency to care for a child in an emergency. The residential care can be provided for up to 72 hours only, without the worker having to be entered and engaged on the Residential Register. The worker can only be used in these types of scenarios once by any designated agency.

The exemption may be applied:

- in an emergency, where the designated agency does not have a residential care worker already entered onto the register and available to care for the child, and
- the worker is authorised under section 22 of the Children and Young Persons (Care and Protection) Regulation 2022, and
- the designated agency has not previously exempted the worker (an agency can only exempt a worker once), and
- the designated agency notifies the Children’s Guardian **within 72 hours of the authorisation** in line with Section 6(2) of the Children’s Guardian Regulation 2022³
- An agency may only apply the exemption once to any worker. Once applied, and after the 72 hours has been reached, the individual must be entered onto the register, have all the mandatory probity checking completed and be engaged as a residential care worker, before being permitted to work with a child in residential care again. If the worker has been sourced from a labour hire agency, the designated agency will need to talk to that agency about the requirements to be met before the worker can be called upon again. It is best practice to start this process of entry onto the register as soon as possible.

More information

Training is available on the administration of the Residential Care Workers Register. More information can also be found on our [website](#). If you have a question, please email residential-register@ocg.nsw.gov.au

For information about the other regulatory responsibilities of the Office of the Children’s Guardian, including the Working with Children Check, child safe organisations, statutory and voluntary out-of-home care, and adoption, please visit www.ocg.nsw.gov.au

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³ The notification should be made using the online form which is accessed via the OCG website