

# Residential Care Workers Register Guidance summary 6

Information for labour hire agencies

July 2022

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.

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## About the Residential Care Workers Register

The Residential Care Workers Register provides a mechanism for designated agencies<sup>1</sup> to exchange information related to the safety, welfare and wellbeing of children and young people in residential settings. This will help agencies to decide the suitability of an individual 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.

All residential care workers must be entered onto the register by the employing designated agency before they can work in a residential setting. Staffing and recruitment agencies<sup>2</sup> do not have access to the register. The responsibility to enter individuals onto the register and to manage these records rests with the designated agency.

With the commencement of the Children's Guardian Regulation 2022 and Children and Young Persons (Care and Protection) Regulation 2022, there will now be consistent expectations around the probity requirements for workers, regardless of how 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.

For more detailed information about the Residential Register, who is to be captured and the information to be entered, please refer to *Guidance summary 1 – General overview*, available on the OCG website.

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## Engaging workers from a labour hire agency

Designated agencies can continue to source workers from external providers such as a labour hire agency. However, to work in a residential setting a worker must be entered onto the register and have all probity checks completed prior to being engaged.

It is the responsibility of the designated agency to decide on an individual's suitability to work with children in out-of-home care, including when they are sourced from a labour hire agency.

The common scenarios where a designated agency may request a worker from a labour hire agency include:

- a worker is needed to fill a shift in a residential home due to staff shortages or illness
- a worker is needed to supervise a child in some sort of temporary accommodation such as a hotel or serviced apartment,
- a worker is needed to supervise a child in a hotel or similar, as part of facilitating birth family contact or attendance at an appointment.

The Office of the Children's Guardian continues to require designated agencies who source workers from labour hire agencies to enter into a written service agreement with those agencies. This applies to any situation in which a worker is sourced, not only in an emergency. The service agreement should set out each agency's responsibilities to ensure the legal requirements for the engagement of residential care workers are met.

Where a labour hire agency supports the designated agency in undertaking the recruitment process, the designated agency will need to be satisfied with that process, including the completion of probity

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<sup>1</sup> A designated agency is an agency accredited by the Children's Guardian to arrange statutory out-of-home care in NSW.

<sup>2</sup> 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.

checks. A labour hire agency can support an individual to obtain a Working with Children Check and Nationwide Criminal Record Check. However, it is the responsibility of a designated agency<sup>3</sup> to undertake an Other Agency Check<sup>4</sup> and Community Services Check (once phased in as a requirement).

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

Designated agencies should plan for scenarios where they will need to source additional staff from a third party due to a worker shortage, including in an emergency. This means that the agency should have staff already entered onto the Residential Register, so they can be rostered on, or called upon, at short notice.

Designated agencies should make plans with labour hire agencies to ensure staff are available in these situations. This could include planning around how the recruitment and availability of suitable staff should occur, while meeting legislative requirements.

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## 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 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 calling upon them only in emergency situations.

There may be times when this 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 register. The worker can only be used in these types of scenarios once by any designated agency.

The exemption may be applied by the designated agency:

- 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 2022
- 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

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<sup>3</sup> As a prescribed body under the *Children and Young Persons (Care and Protection) Act 1998*

<sup>4</sup> Referred to as a *residential care provider check* in the *Children's Guardian Regulation 2022*

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.

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## What does this mean for a labour hire agency?

Each designated agency may only apply the exemption once to any individual. Once applied, the individual is not permitted to work in a residential setting again until all the probity requirements have been completed and they have been entered onto the Residential Register.

Where a worker is sourced from a labour hire agency and the exemption is applied, the designated agency and the labour hire agency should discuss with the individual the likelihood of being called upon again in the future. The designated agency should arrange to enter the worker onto the register as soon as possible to allow the worker to provide residential care in the future.

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## 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](mailto: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](http://www.ocg.nsw.gov.au)

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