

Guidelines for the engagement and authorisation of staff and contractors in an emergency, or when sourced from a labour hire agency

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The NSW Children's Guardian accredits agencies for the provision of services for children and young people in statutory out-of-home care and adoption. Agencies that are accredited by the Children's Guardian are referred to as designated agencies. The *Children's Guardian Act 2019* refers to a designated agency that arranges residential care as a *residential care provider*.

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Purpose of these guidelines

The Office of the Children’s Guardian (OCG) has established the Residential Care Workers Register (Residential Register) under section 85(1)(b) of the *Children’s Guardian Act 2019*. The legislation supporting the establishment of the register and the requirements for designated agencies more broadly, can be found at Part 5 Division 5 of the *Children’s Guardian Act 2019* and the *Children’s Guardian Regulation 2022*.

The Residential Register is an information exchange tool. It gives agencies basic information about individuals who are seeking to work, or are currently working in, residential care. By using this tool, agencies are supported to request, and obtain, information relating to the safety, welfare or wellbeing of children and young people in residential care and use that information to guide their assessment of an individual’s suitability to be employed to provide care to children and young people in residential care.

Designated agencies must ensure that children in statutory and supported out-of-home care are cared for by suitable individuals. For children placed in residential care, the care must only be provided by a *residential care worker*¹. A residential care worker must be entered onto the Residential Register and engaged by a designated agency before they can work in residential care.

In addition to this, section 136 of the *Children and Young Persons (Care and Protection) Act 1998* specifies that only an authorised carer may provide out-of-home care. The Department of Communities and Justice (DCJ) have introduced section 23 into the *Children and Young Persons (Care and Protection) Regulation 2022* (the Care Regulation), in relation to the authorisation of residential care workers. For those workers providing residential care, including in an emergency or at short notice, designated agencies must authorise the worker as an authorised carer. This refers only to those providing direct care to children and young people (e.g., youth workers), rather than every individual who meets the definition of a residential care worker and is entered onto the Residential Register. The probity requirements under section 23 align with those required for entry onto the Residential Register, therefore reducing duplication for the sector.

¹ A residential care worker is defined in the *Children’s Guardian Act 2019* and *Children’s Guardian Regulation 2022*

The purpose of these guidelines is to assist agencies to meet their obligations where residential care workers are required to provide care to a child in a residential setting in an emergency or at short notice, or at any time where a worker is sourced from an external labour hire agency.

This includes supporting designated agencies to be prepared for situations where:

- children must be accommodated in an alternative placement, including in a hotel, in an emergency or at short notice,
- a residential care worker is required to fill a staff shortage within the agency as part of an emergency, at short notice or as a result of ongoing resourcing issues.

A residential setting² includes traditional residential care homes, as well as hotels or other temporary type accommodation. This includes any situation where a child in statutory or supported out-of-home care (including those who are normally placed in foster or relative/kinship care), is placed in a residential setting.

The Residential Register may require agencies to change some of their practices, particularly regarding the way they engage staff in emergency situations or source them from an external labour hire agency. This will include the need to make contingency plans to manage day-to-day staffing shortages and resourcing issues. These guidelines aim to support agencies in meeting their obligations as part of their existing accreditation.

Being prepared for emergency situations

There are various scenarios where a residential care worker may be required in an emergency (and therefore at very short notice), to provide care to a child in a residential setting. These could include:

1. A residential care worker calls in sick for their scheduled shift.
2. During a shift, a residential care worker must leave prior to completing the shift due to illness or emergency.
3. During a shift, a child is accompanied to an unplanned appointment by a residential care worker e.g., medical appointment and an additional worker is required to complete the shift.
4. A child's placement (either residential or foster care) has broken down and there are no other alternatives but to place the child in a hotel or similar overnight or longer. A residential care worker is required to supervise this placement (likely to be multiple workers over a number of shifts).

Designated agencies should have contingency plans in place for any unplanned events that may occur. Planning is dependent upon each agency's circumstances, but could include one or more of the following:

1. Having existing staff within the residential care pool of workers who can be called upon.
2. Having a pool of casual workers recruited by the agency to call upon. This could include recruiting mutual care staff with other designated agencies. The aim here is to ease the burden of the HR processes slightly. However, it should be noted that each designated agency which seeks to engage a worker must undertake probity checks themselves.
3. Being aware of other existing employees such as caseworkers who are willing, and able, to step into the role of a residential care worker where needed. These individuals must be deemed suitable to provide direct care and be entered and engaged on the Residential Register in preparation, with all relevant probity checks having been completed.
4. Having a pre-existing arrangement with labour hire agencies or other external providers that have identified suitable workers. The designated agency works together with the labour hire

² Defined in the Children's Guardian Regulation 2022

agency, guided by the Service Agreement developed between the two agencies, to confirm suitability, complete all required probity checks and enter the individual onto the Residential Register. When needed, the designated agency can call the labour hire agency and source one of the pre-approved workers.

Sourcing staff from an external provider

In some circumstances, agencies may source staff from an external recruitment or labour hire agency. This may be the result of an emergency and the need for additional staff for a specific situation, or it may be a targeted response or a way of managing ongoing resourcing or staff shortages within the agency. Residential care workers who are sourced from an external labour hire agency must be entered onto the Residential Register by the designated agency sourcing the worker, in the same way as workers recruited directly by the designated agency.

The Residential Register requires minimum checking for all workers before being engaged to work in residential care. This applies to all workers, including those being sourced from a labour hire agency. Active planning around the recruitment and availability of staff is therefore essential. For more information about the mandatory checks for residential care workers, refer to *Guidance summary 3_Mandatory probity checks*.

External labour hire agencies do not have access to the Residential Register. Although these agencies will be able to support an individual to obtain a Working with Children Check and National Criminal Record Check, 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 the Other Agency Check³. Designated agencies will also be required to undertake a Community Services Check, once this requirement is phased in.

The designated agency that engages a worker is responsible for determining the suitability of the individual to be engaged to work in a residential setting, and for entering the residential care worker onto the Residential Register.

The designated agency has the same responsibilities and obligations towards all employees, including contractors sourced from a labour hire agency, whether engaged for one shift or in an ongoing capacity.

The designated agency must supervise the care that the worker provides and investigate any complaints or reportable allegations against them. These roles and responsibilities should be clearly set out in the Service Agreement between the designated agency and the labour hire agency.

Reportable allegations

Designated agencies are subject to the reportable conduct scheme under Part 4 of the *Children's Guardian Act 2019*. These agencies are required to notify the Office of the Children's Guardian of any reportable allegation which arises against an employee. An employee is any person the designated agency engages as a worker, including an individual sourced from a labour hire agency.

If a reportable allegation is made about an individual engaged as a residential care worker, even if sourced from a labour hire agency, the obligations of the designated agency under the reportable conduct scheme apply.

³ The Children's Guardian Regulation 2022 refers to this as a residential care provider check. The Residential Register uses the term Other Agency Check as agreed during consultation with the statutory OOH sector.

Service agreements with external agencies

Where staff are sourced from an external recruitment or labour hire agency to be in the role of a residential care worker, designated agencies must have a written service agreement with that external agency. This is in line with these guidelines and as prescribed in the Notice of Conditions of Accreditation as a Designated Agency. The requirement is not limited to emergency situations only, it applies to any situation, including as a result of ongoing staff shortages, where workers are sourced from an external labour hire agency. The agreement must ensure the responsibilities of each party are clear and the legislative requirements for the recruitment and engagement of a residential care worker are met.

Where a 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 to engage a residential care worker.

There are minimum requirements to be included within the Service Agreement, to ensure the legislative obligations for designated agencies are met. Compliance Area 6 in the Residential Register Compliance Diagnostic Tool prescribes these requirements, with section 6.3 referring to the requirement to map out the relevant clauses of the service agreement, upon submission to the OCG.

Please refer to the [Service Agreement guide](#) which details the requirements in detail. This should be used to support your agency in developing or reviewing the agreement. The Office of the Children's Guardian will monitor the use of workers from a labour hire agency and will review the service agreements developed with the external agencies. The Service Agreement is required to be submitted to the OCG, on request, as part of demonstrating compliance with your agency's ongoing accreditation.

Engaging workers in an emergency

Even with the best contingency plans there may still be situations where a residential care worker who has not yet been recorded on the Register, needs to be engaged in an emergency. Where the designated agency does not have anyone suitable to call upon, they may apply a short term, one-off exemption, which allows a worker to be engaged to provide residential care for up to 72 hours without having to be entered onto the Residential Register.

This exemption only applies in genuine, unforeseen emergencies. The exemption is not to be used to address ongoing staffing shortages.

Workers can only be engaged under this exemption once and the OCG must be notified. If the worker is to continue to work in residential care, they must be entered onto the Residential Register.

The exemption may only be applied where all of the circumstances below are met:

- there are no residential care workers already authorised and entered onto the Residential Register by the designated agency, who are available to care for the child, and
- in an emergency, where the worker will provide direct care and will be authorised under section 22 of the Care Regulation, and
- where the exemption has not previously been applied to this individual by the designated agency, and
- the care is provided by this individual only throughout the 72 hours of their authorisation, and

- the designated agency notifies the Children’s Guardian within 72 hours of the authorisation.

An agency may only apply the exemption **once** to any individual. A worker approved in these scenarios may be sourced:

- internally from existing staff at the designated agency, who are not already engaged as a residential care worker e.g., a caseworker in the foster care program, or
- an individual sourced from an external labour hire agency.

The designated agency has the same responsibilities and obligations towards contract workers as it does for any other employee and must therefore be satisfied with the suitability of the contractor to fill the role of a residential care worker, even for a short period.

Designated agencies should consider if they are likely to engage the worker again in the future. If the agency wishes to engage the same individual as a residential care worker again, they must be entered onto the Residential Register and recorded as engaged by the designated agency, after having had all of the mandatory probity checks completed. Upon completion of the entry, this will allow the worker to be called upon again in the future.

The Office of the Children’s Guardian will monitor designated agency use of external labour hire staff, including via audits of the Residential Register and monitoring compliance with the Children’s Guardian Regulation 2022, including by assessing whether designated agencies are using the 72-hour emergency exemption in appropriate circumstances.

Staff from the Office of the Children’s Guardian may contact your agency to seek further information about how you are planning for emergencies, the use of the exemption and the individuals your agency has engaged as residential care workers.

What does authorisation under section 22 require?

Where the emergency exemption is applied, the worker must be authorised under section 22 of the Care Regulation. This allows a designated agency, in an emergency, to authorise an employee or contractor, to care for children and young people in statutory out-of-home care for a maximum of 72 hours.

To authorise an individual under section 22 of the Care Regulation, the designated agency must:

- be satisfied that the individual is capable and suitable to perform the role of a residential care worker, taking into consideration the functions to be performed in this role,
- ensure they hold a working with children check clearance, or current application for a working with children check clearance,
- ensure the individual has an up-to-date national criminal record check and be satisfied that the outcome means that the person is suitable for the role,
- ensure any other probity checks are undertaken and are returned with a satisfactory outcome.
- provide the person with a letter advising of their authorisation under section 22, including the conditions of this authorisation⁴

More information

⁴ As required under section 43 of the Children and Young Persons (Care and Protection) Regulation 2022

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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Summary of requirements

Designated agencies are to actively plan so they are prepared with suitably checked staff who are available to be called upon as part of an emergency, at short notice or as a result of ongoing resourcing issues, to provide care to children in a residential setting. This might be in either of the situations below:



Where a child is placed in a hotel overnight or longer.



Where a worker is needed to step into the care role within a home managed by the agency.

If all plans are exhausted and the agency has been unable to source a suitably checked residential care worker, the agency may apply a one-off, short-term exemption, only where the agency has not applied the exemption to the worker previously.



Once the exemption has been applied, the designated agency should make a determination about whether this individual is likely to be sourced again. If so, the agency must enter the worker onto the Residential Register and complete all the required