

Residential Care Workers Register

Interstate placements and registration requirements

Residential Register and interstate placements

Purpose

This table aims to assist designated agencies¹ in meeting their obligations in relation to the entry of workers onto the Residential Care Workers Register (Residential Register), where they are providing direct care to a child or young person under the parental responsibility of the NSW Minister for Families and Communities; Minister for Disability Services, and the child is placed interstate².

For a worker to come within the Residential Register requirements of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*, two elements need to be met:

1. the designated agency is arranging the provision of residential care to the child, and
2. the worker *works for* the designated agency arranging the provision of residential care to the child.

The table below outlines a number of common scenarios and whether the two elements above have been satisfied.

Additional obligations

Additional obligations may also apply to a designated agency, even where a child is placed outside of NSW. The designated agency is responsible for ensuring that these are met, if applicable. This includes considering:

- whether the worker is engaged in child-related work in NSW. If so, they must hold a Working with Children Check clearance, or a current application by the worker to the Children's Guardian for a clearance of a class applicable to that work³.
 - any obligations under the Reportable Conduct Scheme⁴. This includes that an employee of a designated agency is an employee of a relevant entity, even if the reportable allegation occurs outside of NSW⁵.
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¹ Please note that 'designated agency' means an agency currently accredited to provide or arrange out-of-home care (see section 72 of the *Children's Guardian Act 2019*).

² Please note that if a child will be residing long term in another state, their care orders should be formally transferred from NSW to the jurisdiction of the other state. Interstate transfers are facilitated by DCJ's Interstate Liaison Office. Further information for designated agencies about arrangements for children travelling or moving to another state can be found [here](#). The contact details for DCJ Interstate Liaison are by email at interstate.liaison@facns.nsw.gov.au or telephone 02 9716 3077.

³ Refer to the *Child Protection (Working with Children) Act 2012* for further information

⁴ Refer to Part 4 of the *Children's Guardian Act 2019*

⁵ Section 3(c)(i) of the *Children's Guardian Act 2019*

Authorisation of residential care workers

The *Children and Young Persons (Care and Protection) Act 1998*, sections 136 and 154, provide that statutory out-of-home care and supported out-of-home care (respectively) may be provided **only by an authorised carer**. This means that for any child in statutory or supported out-of-home care who is placed in residential care, the residential care workers providing the direct care must be authorised. This is regardless of the state within which they reside.

The Children and Young Persons (Care and Protection) Regulation 2022 includes a number of categories of authorisation for those considered residential care workers. The relevant designated agency needs to determine which of the various sections (briefly described below) may be used to authorise a worker. Designated agencies should familiarise themselves with the detailed requirements of each to ensure compliance with their obligations:

- Section 22 – only relevant where a worker is authorised in an emergency. The individual can only be authorised once by a designated agency and the authorisation is only for a period of 72 hours.
- Section 23 – relevant to the general authorisation of residential care workers by a designated agency.
- Section 26 – relevant to the authorisation of residential care workers who work for an *interstate agency*⁶. This applies to those situations in which a child is placed in residential care interstate, under the care of an *interstate agency*.
- Section 27 – relevant to the authorisation of a person who works for a special care provider. These workers are not currently captured under the definition of a residential care worker.
- Section 28 – relevant to the authorisation of a person who works for a respite care provider. These workers are not currently captured under the definition of a residential care worker.

⁶ The Children and Young Persons (Care and Protection) Regulation 2022, section 26(3) states that an *interstate agency* means (a) the child welfare agency of another State, or (b) a service provider that is funded by or contracted by the child welfare agency of another state to provide residential care to children and young people.

Placement scenarios and register requirements

Placement scenario	Entry onto Residential Care Workers Register
<p>1 A designated agency arranges care for a child who normally resides in NSW, in a non-home-based setting such as a hotel or similar, outside of NSW, where a worker provides care for:</p> <ol style="list-style-type: none">1. the purpose of respite or in an emergency situation until an alternative placement is secured.2. other reasons such as a means of facilitating birth family contact or attendance at an appointment. <p>In this scenario, the designated agency arranges the provision of care and the worker providing the care works for the designated agency (as an employee or contractor).</p>	<p>Yes</p> <p>If the designated agency arranges the provision of care, and the worker works for the designated agency when providing care in a non-home-based setting, the designated agency must ensure the worker is recorded on the Residential Register before the worker provides care to a child.</p> <p>In this scenario, while the care is provided by a worker in accommodation outside of NSW, the worker works for a residential care provider (a designated agency arranging the provision of residential care) and is therefore a 'residential care worker' within the meaning of the <i>Children's Guardian Act 2019</i> and <i>Children's Guardian Regulation 2022</i>.</p> <p>No</p> <p>If the worker:</p> <ul style="list-style-type: none">• works for an <i>interstate agency</i> or• if the worker is authorised under section 22 of the Care Regulation
<p>2 A child under NSW orders normally resides interstate and the placement has broken down. Placement with an <i>interstate agency</i> cannot be arranged so the designated agency makes arrangements for the child to be accommodated in another temporary setting and sources staff from a local provider.</p> <p>This could include staff from a labour hire agency, or sourcing staff from an <i>interstate agency</i>.</p>	<p>Yes</p> <p>If the worker works for the designated agency as a contractor, the designated agency must ensure the worker is recorded on the Residential Care Workers Register before providing care to a child.</p> <p>No</p> <p>If the designated agency makes arrangements for the provision of residential care, but the care is provided by workers who <i>work for the interstate agency</i>, then the workers are not residential care workers within the meaning of the <i>Children's Guardian Act 2019</i> and <i>Children's Guardian Regulation 2022</i>.</p>
<p>3 A child normally resides in NSW but is placed interstate by the designated agency, in a</p>	<p>No</p>

home managed by the interstate branch of the designated agency with care provided by workers who work for the interstate branch of the designated agency.

The designated agency makes arrangements for the provision of residential care, but the care is provided and supervised by workers who *work for* the interstate branch of the designated agency.

In this scenario, the workers providing the care work for the interstate branch of the designated agency, not the NSW designated agency. Therefore, while the designated agency may arrange the provision of residential care, the worker works for the *interstate agency* and is **not** a residential care worker within the meaning of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*.

4 A child normally resides in NSW but has a placement arranged by the designated agency in a residential home interstate operated by a non-designated agency. The *interstate agency* is funded in that jurisdiction to provide residential care.

No

The designated agency makes arrangements for the provision of residential care, but the care is provided by workers who *work for* the *interstate agency*.

In this scenario, while the placement is arranged and supervised by the designated agency, the workers providing care work for the *interstate agency* are **not** residential care workers within the meaning of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*.

5 A child under NSW orders normally resides interstate and the placement has broken down. Local child protection authorities in that state assist the NSW designated agency to make emergency arrangements for the child's care. The child is placed in a residential setting with an *interstate agency* with workers who work for the *interstate agency*.

No

Although the NSW designated agency works with interstate authorities to secure a placement, the workers work for the *interstate agency* providing the placement.

In this scenario, while the placement is arranged by the designated agency, the workers providing care in the interstate residential setting work for the *interstate agency* and are **not** residential care workers within the meaning of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*.

6 Child has self-placed in a residential setting interstate without the approval of the NSW designated agency, and the NSW designated agency is working to move the child to a more appropriate placement.

No

Where the child has self-placed in a residential setting interstate, then the staff caring for the child do not work for the designated agency.

In this scenario, the placement has not been arranged by the designated agency and the workers providing care in the interstate residential setting do not work for the designated agency. The workers are **not** residential care workers within the meaning of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*.

7 A child or young person is placed by a designated agency or self-places in a non-designated homelessness service/ refuge.

No

Such placement arrangements, as with hospitals, juvenile justice centres, boarding schools etc, are not OOHC and agencies do not require accreditation (S135(3)(c) of the Care Act and section 15(1)(j) of the Care Regulation.)

Homelessness services/ refuges, like hospitals or juvenile justice centres, are not OOHC services and are therefore exempt from requiring accreditation to accommodate children under S135(3)(c) of the Care Act and section 15(1)(j) of the Care Regulation.

In this scenario, while a designated agency may assist with the placement:

- the accommodation is not a residential setting under the Children's Guardian Regulation 2022
- the workers do not work with a designated agency that is arranging the provision of residential care.

The workers are **not** residential care workers within the meaning of the *Children's Guardian Act 2019* and *Children's Guardian Regulation 2022*.

**Disclaimer - please note that the information provided in this document does not constitute legal advice and should not be used as such. Formal legal advice should be sought in particular matters.*