

# Guidelines

## Continuing residence approval guidelines

February 2024

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# Part 1 Background

Section 10(1) of the *Child Protection (Working with Children) Act 2012* requires that an adult who resides on the property of an authorised carer without an exemption (adult household member) must hold or have a current application for a Working with Children Check clearance.

If a person who is or proposes to be an adult household member does not hold a Working with Children Check, they may apply to the Children's Guardian for a continuing residence approval (CRA) under s. 11D of the Act which, if granted, allows an adult household member to continue to live with the authorised carer.

As set out in s. 11D(1) of the Act, the Children's Guardian may grant a CRA if the following conditions are met:

- (a) the person is or was, immediately before turning 18 years of age, in the out-of-home care of the authorised carer, and
- (b) the Children's Guardian is satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated.

A CRA is often sought at short notice such as where an adult household member becomes a disqualified person.

If a person continues to live with the authorised carer without a clearance (or an exemption), this may result in criminal penalties for both the applicant and the designated agency that authorised the authorised carer.

# Part 2 Application

To facilitate the consideration of whether to grant a CRA, the Children's Guardian has developed an [Application Form](#).

Despite any emergency relocation arrangements that may need to be made for the applicant to ensure compliance with the Act, the Children's Guardian requires at least **40 working days** to consider and application and may require longer if further information is required.

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## Section 1 – Applicant Details

This section sets out information required about the applicant including information on eligibility. Where a designated agency makes an application on behalf of an applicant, an authority giving consent to do so is required.

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## Section 2 – Authorised carer(s) and residence details

This section sets out information about the authorised carer, details of children in the care and residence of the authorised carer including parental responsibility and details of the relevant designated agency.

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## Section 3 – Relevant information

**To understand the risk the applicant poses to the children in the care and residence of the authorised carer and whether it is mitigated, the Children's Guardian must be provided with all relevant information.**

This must include:

- identification and summary of risks the applicant poses to children in the care and residence of the authorised carer
- all relevant information and records about any criminal charges (including bail conditions), convictions, allegations of misconduct or any concerns raised in relation to the applicant that may indicate a risk to the safety of children

- other information about the applicant including current living arrangements, any support services engaged with and any special requirements
- background to the household including when the authorised carer became authorised, when any children came into the care and residence of the authorised carer, and the relationship between the authorised carer, the applicant, and the children
- information about the support services engaged with by the children and extracurricular activities
- the designated agency's understanding of the reason why the applicant does not hold a clearance and the reason why a CRA is being sought
- whether there are any feasible alternatives to a CRA and contingencies if the CRA is not granted, and
- period of time sought for a CRA (the Act provides the maximum period for a CRA is 5 years).

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## Section 4 – Expert assessments

**To understand the risk the applicant poses to the children in the care and residence of the authorised carer and whether it is mitigated, the Children's Guardian requires expert assessments on the applicant and members of the household.**

This must include:

- a clinical assessment by a qualified psychologist or psychiatrist of the risk, if any, the applicant poses to the safety of the children in the care or residence of the authorised carer and any risk mitigation recommendations
- a clinical assessment of the children in the care or residence that may include an assessment of their wellbeing, placement preferences, whether they have any concerns about their familial homes, and explore their feelings around feeling safe and supported, and
- an assessment of the views of the carers as to the psychological wellbeing of the household.

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## Section 5 – Risk mitigation

**To understand the risk the applicant poses to the children in the care and residence of the authorised carer and whether it is mitigated, the Children's Guardian requires a Safety Plan which addresses the identified risks posed by the applicant and how those risks are mitigated.**

This must include:

- identified risks to the safety of the children living in the household. If there are multiple children in the household, risks to each child individually should be identified.
- steps proposed to be taken to mitigate identified risks such as:
  - the applicant is not left alone with the children living in the household
  - the responsibilities of the designated agency through steps such as home visits, regular communication with the children about their safety and the household
  - specific limitations on the applicant that increase risk (if relevant) such as access to devices proximity to the children in the household, and
  - any expert intervention to ensure conduct that decreases risk.
- risks posed by the applicant and carers, identification of the responsibilities of all parties to the safety plan (including the applicant and the carers) and how compliance with the Safety Plan is monitored by the designated agency, and

- undertakings that any breaches of the Safety Plan are reported to the designated agency and the Children’s Guardian immediately.

The Children’s Guardian may also seek undertakings or impose further conditions to be satisfied that the risk is sufficiently mitigated.

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## Section 6 - Recommendation and endorsement

Endorsement of application by Office of the Senior Practitioner and District Director (if the designated agency is the Department of Communities and Justice) or head of designated agency.

# Part 3: Outcome

Once the application is received and considered, the Children's Guardian will provide a response in writing to the applicant and the designated agency informing whether a CRA is granted.

If the application is granted, the Children's Guardian requires the designated agency to inform the Children's Guardian of any further relevant information (see Part 2 Section 3) it becomes aware of or any change in circumstances. The Children's Guardian may further require that the designated agency provide scheduled updates.

Upon a grant of a CRA, the Children's Guardian will indicate a date of expiry, upon which a renewal is required if the holder of the CRA wishes to continue to reside in the premises of the authorised carer. The Children's Guardian generally requires at least **40 working days** to consider an application, so it is encouraged to be submitted with as much time as possible.

The Children's Guardian may cancel the CRA if he is no longer satisfied that any risks to the safety of children associated with the person residing at the property have been sufficiently mitigated, or if a change in circumstances occurs which no longer makes it appropriate to continue the approval.

# Part 4: Case studies

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## Case Study 1 – Considerations for prospective CRA application

Maria is a 21 year old person and until she turned 18 years old, was in out of home care (OOHC) in the care of her grandparents along with her cousins who are 10 and 12. When Maria turned 18 she became an Adult Household Member and was required by law to hold a Working With Children Check.

Recently, Maria had her WWCC cancelled meaning she could no longer lawfully live in the home. Unless there is another option, Maria must move out of the family home permanently or her cousins must be removed from her grandparents' care.

Maria must move out of the home temporarily whilst the application for a CRA is pending – which can take up to 40 days. Maria can apply for a Continuing Residence Approval (CRA) which, if granted, will allow her to continue to live in the family home. An application for a CRA is usually made by the designated agency with responsibility for children in OOHC that live in the placement. In this case, they are Maria's two cousins. To be granted a CRA, the designated agency, the carers and Maria must satisfy the Children's Guardian that any risks to the other children in the home have been sufficiently mitigated.

To allow the Children's Guardian to make a decision, there must be evidence to show any specific risks that are attached to the placement/home and how those risks have been and continue to be managed. This information or evidence should include **Relevant Information** which includes information about the history of the placement, information about the risk posed by Maria, and information about why a CRA is required (Part 2 Section 3).

It should also include **Expert Assessment(s)** that detail the risk posed by the Maria to her cousins, any recommendations that may mitigate risk, and an understanding of how Maria's cousins feel (Part 2 Section 4).

It should also include **Risk Mitigation** strategies including a Safety Plan that identifies the risks posed by Maria to her cousins and individualised solutions to mitigate that risk. It should require regular visits by caseworkers to speak with Maria's carers and cousins to seek their ongoing views about how the placement is progressing, and conditions such as any breaches of the Safety Plan being reported immediately, and that Maria is not to be left alone with her cousins (Part 2 Section 5).

The applicant should then be **Endorsed** (Part 2 Section 6) and submitted to the Children's Guardian for his review. If the Children's Guardian does not require any further information, a decision is usually made with 40 working days.

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## Case Study 2 – CRA approved where Children’s Guardian was satisfied that the risk was sufficiently mitigated

Adam is 17 years old and is current in OOHC with his aunty and his younger siblings. Adam has a juvenile history of serious sexual offences and in three months, he will turn 18. This means he will become an Adult Household Member and will need a Working With Children Check (WWCC) clearance to remain in the home.

The designated agency is concerned that Adam will not be granted a WWCC clearance. As the designated agency has some time, they considered the guidance available from the Children’s Guardian and obtained an expert report regarding the risk that Adam poses to his siblings, providing the expert with details of his juvenile history and matters relevant to risk. In combination with the expert report, the designated agency considered Adam’s past and current behaviour and identified the specific risks that Adam poses to his siblings.

A Safety Plan was drafted that understands these risks and puts in tailored, practical solutions that mitigate the risk he poses, with input and agreeance of Adam, his siblings and aunty. These included conditions such as frequent visitations by the designated agency to monitor risk, giving his siblings the opportunity to raise any concerns about their safety, and to discuss the progress of the placement with Adam’s aunty. The Safety Plan also included other conditions such as Adam not being left alone with his siblings, reporting of any of the breaches to the Children’s Guardian and a list of supports engaged in by Adam, his siblings and his aunty that mitigate the risk Adam posed.

After reviewing the material and making enquiries, the Children’s Guardian was of the view that the risk was sufficiently mitigated and approved the CRA. The Children’s Guardian required that a monthly update be provided to the Children’s Guardian with an update on the placement and immediately inform him of any change in circumstances.

### Office of the Children’s Guardian

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