



Office of the
Children's Guardian

Guidelines for the emergency authorisation of staff and contractors

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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 or adoption agencies.

1. Purpose of these guidelines

The Children and Young Persons (Care and Protection) Regulation 2012 (the Regulation) allows for a designated agency to authorise an employee to provide emergency care to children and young people in statutory out-of-home care.¹ This includes direct employees of a designated agency or contractors employed by external agencies such as non-designated agencies, agencies providing non-placement support services, temporary or casual staff employed by staffing agencies.

When there are no suitable foster or residential care placements available for a child or young person who is in need of immediate care, agencies may authorise a person from an external agency to provide emergency care to the child or young person, usually in a motel or other non-home based care arrangement. Designated agencies must still meet relevant legislative requirements and ensure that the people they engage through external agencies to work with and care for children and young people, are safe and suitable.

These guidelines have been developed to assist agencies to meet their obligations when authorising staff employed by external agencies, to provide emergency care.

2. Principles underpinning these guidelines

Children and young people in out-of-home care often have complex needs and behaviours and may have experienced trauma, abuse and disrupted attachments. A stable and nurturing care environment with consistent and skilled carer-givers is crucial for these children and young people to build trusting relationships.

The use of temporary employees from external agencies to care for and work with children and young people in statutory out-of-home care is not ideal, as it does not support children and young people to develop secure attachments with their caregivers within a stable care environment. Wherever possible, children and young people should be cared for by people who are directly employed or authorised by the designated agency.

When the emergency authorisation of temporary employees from an external agency is unavoidable, the designated agency has the same responsibilities and obligations it has towards its own direct employees and authorised emergency carers.

This means that designated agencies must only authorise staff from an external agency to provide emergency care if they are satisfied that the person is safe and suitable to work with children and young people with complex needs. The designated agency must also supervise the care that the person provides and investigate any complaints or allegations of reportable conduct.

¹ Clause 31B of the Children and Young Persons (Care and Protection) Regulation 2012

Please note that in circumstances where a designated agency arranges for a non-designated agency to provide both staff and accommodation, the designated agency still has responsibility for authorising staff to provide care and must supervise the placement to ensure it is safe and meets the needs of the child or young person.

3. Authorisation and assessment of suitability

Clause 31B of the Regulation requires that checks are completed prior to authorising any individual as an emergency carer. When authorising a designated agency's own direct employee or a staff member from an external agency to provide emergency care, a Principal Officer (or other delegated person) must:

- verify online the person's Working With Children Check
- be satisfied that the person has an up-to-date national criminal record check
- be satisfied that the person has been subject to an appropriate recruitment and selection process, such as interviews and referee checks (for employees of external agencies, the Principal Officer may make these enquiries each time they authorise a person to provide emergency care, or incorporate these requirements in its service agreement with the external agency)
- be satisfied that the person is suitable to be authorised as an emergency carer
- be satisfied that the person is able to carry out the functions of an emergency carer and
- provide the person with a letter of authorisation as an emergency carer²

4. Accommodation provided by external agencies

In circumstances where the external agency is also providing the accommodation for a child or young person in non-home-based emergency care, the designated agency must ensure that the care environment is suitable and safe.

When assessing the safety and suitability of accommodation provided by external agencies, designated agencies should check who will have access to the accommodation while the child or young person is staying there. Other employees of the external agency who have not been authorised by the Principal Officer should not enter the accommodation while the child or young person is staying there.

If the child or young person will be sharing the accommodation with other children or young people, the designated agency must also consider how risks will be communicated, assessed and managed.

Under these Guidelines, children and young people in statutory out-of-home care may not be placed with adult clients, and may not be placed in the private homes of care staff from an external agency.

² Clause 35 of the Children and Young Persons (Care and Protection) Regulation 2012

5. Service agreements with external agencies

Designated agencies that authorise temporary staff from an external agency to provide emergency care must have a written service agreement or contract in place with the external agency.

The agreements must, at minimum, cover:

- screening and probity checks that will be conducted for staff from the external agency, including how information about concerns arising as a result of screening and checks will be assessed and shared
- if a reportable allegation is made against staff from the external agency, how information will be shared and who will be responsible for ensuring this information is shared
- how the designated agency and the external agency will coordinate risk management responses and investigations, including investigations into reportable allegations under Part 4 of the *Children's Guardian Act 2019*.
- a requirement that staff from the external agency, authorised by the designated agency to provide emergency care, have appropriate experience in caring for vulnerable children and young people.
- a requirement that staff from the external agency agree to comply with the designated agency's code of conduct
- a requirement that staff from the external agency have a demonstrated understanding of their child protection obligations and responsibilities and
- how information provided to staff from the external agency about children and young people will be kept confidential
- if the external agency is also providing the accommodation, the designated agency must be assured of the safety and suitability of the care environment. This includes agreement between the designated agency and the organisation providing the accommodation about:
 - who will be permitted to enter the accommodation while the child or young person is placed there (care workers, other staff, etc)
 - whether any other children and young people may be placed in the accommodation, and how potential risks will be communicated, assessed and managed
 - ensuring that the child or young person will not be sharing the accommodation with an adult client
 - ensuring that the accommodation is safe, clean and in good repair.

Agreements should also cover:

- the designated agency's requirements regarding the minimum qualifications, training or experience held by staff from the external agency, including training and experience in managing challenging behaviours
- whether staff from the external agency will be required or invited to attend induction or other training provided by the designated agency
- what information will be provided to staff from the external agency about their roles and responsibilities when working for the designated agency, including information about the needs of the individual children and young people to whom they will be providing care.

6. 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 a person they employ (i.e. the agency's own direct employees) or engage (including staff engaged through an external agency) to provide services to children and young people.

If a reportable allegation is made about staff from an external agency, who is authorised by a designated agency to provide emergency care, that designated agency is responsible for investigating the allegations and reporting the outcomes to the Office of the Children's Guardian.

7. Care arrangements that are not non-home-based emergency care

Some care arrangements provided by agencies accredited to provide residential care, do not need to be notified to the Children's Guardian.

Designated agencies accredited to provide residential care who are caring for children and young people who are not in their preferred placement (e.g. foster care or intensive therapeutic care), are not considered non-home-based emergency care placements when all the following circumstances apply:

1. The designated agency caring for the child or young person is accredited to provide residential care
2. The residential care provider is caring for the child or young person in a stable home-like environment which they have some control over
3. The care team consist mostly of staff directly employed by the agency accredited to provide residential care.

Circumstances in which residential care providers must notify the Children's Guardian include:

1. Where the agency is caring for the child or young person in short-term accommodation such as a hotel, motel, caravan park or serviced apartment that is rented on a short-term basis)
2. Where the agency authorises staff under clause 31B to provide emergency care to the child or young person (including engaging temporary staff from external agencies)
3. The residential care provider subcontracts to another designated agency that is not accredited to provide residential care services to care for the child or young person (i.e. it is accredited by the Office of the Children's Guardian to provide foster care services only)
4. Subcontracting to a non-designated agency to care for the child or young person (i.e. is not a designated agency accredited to provide foster care or residential care services).

8. Notifying the Office of the Children's Guardian

A designated agency is required to notify the Office of the Children's Guardian when it places a child or young person in a care arrangement that is not statutory foster care or residential care. This includes care arrangements in motels, caravan parks, serviced apartments – (if the serviced apartment is rented on a temporary basis and is not stable and home-like), accommodation provided by a non-designated agency, or other, similar short-term care arrangements.

There are three stages of notification:

1. The initial notification must be made **within 24 hours of the placement commencing**.
2. Agencies must develop a plan to transition the child or young person from the emergency care arrangement to a more suitable care arrangement, such as accredited foster care, residential care or Intensive Therapeutic Care, restoration to a child or young person's family, etc. The plan must be submitted to the Office of the Children's Guardian **within 7 days of the non-home-based emergency care placement commencing**.

Updated information regarding changes in placement details or changes to plans for transition to more suitable care can be provided by email to

oohcnotifications@kidsguardian.nsw.gov.au

3. Agencies are required to notify the Office of the Children's Guardian when the placement of a child or young person in non-home based emergency care ends. This notification must be submitted to the Office of the Children's Guardian **within 7 days of the date the placement ceased**.

[Notification forms are available from the Office of the Children's Guardian's website.](#)

9. Monitoring compliance with these guidelines

The Office of the Children's Guardian will monitor designated agencies' compliance with these guidelines. The implementation of each plan to transition the child or young person from the emergency care arrangement to a more suitable care arrangement will also be monitored.

Staff from the Office of the Children's Guardian may contact your agency to seek further information about the circumstances of children and young people placed in non-home-based emergency care or about the staff and contractors engaged and authorised to provide care to these children and young people.

10. More information

For more information about these guidelines or other accreditation requirements for designated agencies providing statutory out-of-home care, please email the Office of the Children's Guardian's Accreditation and Monitoring Team at accreditation@kidsguardian.nsw.gov.au or telephone (02) 8219 3796.

Information about the Office of the Children's Guardian's other regulatory responsibilities, including the Working With Children Check, Child Safe Organisations, registration and monitoring of voluntary out-of-home care and accreditation and monitoring of adoption services, is available at www.kidsguardian.nsw.gov.au

See also: *Child Protection (Working with Children) Act 2012*
Child Protection (Working with Children) Regulation 2013
Children's Guardian Act 2019

11. Summary of requirements

What is non-home-based emergency care?

Non-home-based emergency care is when a child or young person in statutory out-of-home care, is placed in emergency care arrangements (other than foster care, intensive therapeutic care or residential care), such as in a motel, caravan park, serviced apartment, temporary accommodation owned or controlled by a non-designated agency, or other similar short-term, non-home-based emergency care arrangements.

Note: Serviced apartments are not considered non-home-based emergency care where they are home-like (e.g. full kitchen, living areas, bedrooms), the care is provided by the accredited residential care service provider's staff, and is secured for a length of time that would create a stable care environment for the child or young person.

'Temporary accommodation' refers to accommodation that is not ongoing, that can be ceased at short notice or is sought for short term. This includes week-to-week leases and holiday-type accommodation.

When do the guidelines apply?

These guidelines apply when a designated agency arranges emergency care for a child or young person in statutory out-of-home care, in a motel or other forms of non-home-based care arrangements, and the care is provided by:

- a direct employee of the designated agency
- a contractor, temporary or casual employee from an external agency. This includes staff or contractors employed by external agencies such as non-designated agencies, agencies providing non-placement support services or casual staff employed by staffing agencies.

Frequently asked questions

Q. If an accredited residential care provider provides care to a child or young person in an emergency situation, in the agency's own accommodation supervised by the agency's own staff, is this non-home-based emergency care?

A. No

In circumstances where an accredited residential care provider cares for a child or young person in accommodation that it has some control over and the child or young person is supervised by staff employed by the residential care provider, this does not need to be notified.

Q. If an agency that is accredited to provide both foster care and residential care places a child in its residential care program in an emergency situation, does this need to be notified?

A. No

If the agency is accredited to provide residential care and places the child in its own accommodation and care is provided by the agency's staff, this is not considered to be non-home-based emergency care.

Q. If an accredited residential care provider cares for a child in its own accommodation but authorises external agency staff to provide emergency care, is this non-home-based emergency care?

A. Yes

When an agency authorises employees from an external agency to provide emergency care under cl31 B of the Regulation, this must be notified to the Children's Guardian, regardless of the type of accommodation the child is placed in.

Q. If an accredited residential care provider cares for a child or young person in a motel or caravan, using the agency's own staff, is this considered non-home-based emergency care?

A. Yes

When a child or young person is cared-for in temporary accommodation where the agency has little control over the care environment or where the accommodation may be terminated at short notice, this is considered non-home-based emergency care, regardless of whether care is provided by an accredited residential care provider.

What do I need to do?

- Wherever possible, children and young people should be cared for by people who are directly employed or authorised by the designated agency.
- When the use of staff (directly employed by the designated agency or from an external agency) to care for children and young people in non-home-based emergency care is unavoidable, each staff member must be authorised by the Principal Officer to provide that care.
- Principal Officers must only authorise a person from an external agency to provide emergency care if they are satisfied that the person is safe and suitable to work with children and young people and is able to carry out the functions of an authorised carer and a written agreement or contract is in place between the designated agency and the external agency.
- The designated agency must meet relevant legislative requirements and ensure that the people they engage through external agencies to work with and care for children and young people and the care environments in which children and young people are placed are safe and suitable.
- The designated agency has the same responsibilities and obligations towards temporary staff from external agencies as it does towards its direct employees and authorised emergency carers.
- The designated agency must **supervise** the care that the person provides and **investigate** any complaints or allegations of reportable conduct.
- The Principal Officer must notify the Office of the Children's Guardian of the emergency placement in a non-home-based care arrangement in three stages: initial notification within 24 hours of commencement; provide a transition plan within 7 days of commencement; and final notification at the end of placement.

See timeframes and links to Notification forms on **pages 6 & 8**.

The Principal Officer must ensure that:

1. a. each person from an external agency authorised to provide non-home-based emergency care has a current **Working With Children Check clearance, and**
 - b. this clearance is **verified online** through the designated agency's Working With Children Check portal.
 2. **national criminal record checks** are completed when screening staff, including contractors/temporary staff from external agencies providing care to a child or young person in motels or similar, non-home-based emergency care arrangements.
 3. when authorising contractors, temporary, or casual staff from an external agency, including where the external agency provides accommodation for the child or young person, a written **service agreement³ or contract** with the external agency is in place.
 4. when authorising contractors, temporary or casual staff from an external agency, the external agency has assessed the **suitability and skills** of staff through an appropriate recruitment and selection process, including national criminal record checks, interviews and referee checks.
 - a. these recruitment and selection processes are assured **each time the Principal Officer authorises** a person to provide emergency care **or**
 - b. the written **service agreement or contract** with the external agency stipulates these requirements
 5. the designated agency provides each person authorised to provide emergency care, a letter of authorisation as an emergency carer.⁴
 6. when a child or young person is placed in non-home based emergency care, the Office of the Children's Guardian is notified within 24 hours of placement, using the notification form [here](#) * - this should be endorsed by the Principal Officer and sent to oohcnotifications@kidsguardian.nsw.gov.au
 7. the Office of the Children's Guardian is notified of the plan for the child or young person's transition to more suitable arrangements within 7 days of the non-home based emergency care placement commencing, using the [notification form available on our website](#) and sent to oohcnotifications@kidsguardian.nsw.gov.au.
- Updated information regarding changes in placement details or changes to plans for transition to more suitable care can be provided by email to oohcnotifications@kidsguardian.nsw.gov.au
8. when each placement in a non-home based emergency care **ceases**, the Office of the Children's Guardian is notified within 7 days of the placement ceasing, using the notification form and sent to oohcnotifications@kidsguardian.nsw.gov.au

³ Service agreement in accordance with the *Guidelines for the emergency authorisation of staff and contractors*, see pages 4 & 5.

⁴ Clause 35 of the Children and Young Persons (Care and Protection) Regulation 2012