



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.

In circumstances where 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. In these circumstances, 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 ensure that they 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 care-givers 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

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

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.

Please note that while a designated agency may authorise employees from non-designated agencies in an emergency, designated agencies are *not* permitted to place a child or young person in the care of an agency which is not accredited to provide statutory out-of-home care, in such circumstances.

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. 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 a 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
- in the event that 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 3A of the *Ombudsman Act 1974*

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

- 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

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 of other training provided by the designated agency and
- 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.

5. Reportable allegations

Designated agencies are subject to the reportable conduct scheme under Part 3A of the *Ombudsman Act 1974*. These agencies are required to notify the NSW Ombudsman of any reportable allegation which arises against a person they employ (ie 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 regarding 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 Ombudsman.

6. Relevant misconduct reports

A designated agency providing statutory out-of-home care services is required to report online to the Working With Children Check system whenever it makes a finding that a person in a child-related role with their agency, *including a person engaged through an external agency*, committed:

- serious physical assault of a child (under 18 years) or
- sexual misconduct against, with or in the presence of a child (under 18 years).

The designated agency must report relevant misconduct findings regardless of whether or not the external agency has also reported the finding.

7. 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 or other, similar short-term care arrangements.

Notification forms are available from the Office of the Children’s Guardian’s website <https://www.kidsguardian.nsw.gov.au/statutory-out-of-home-care-and-adoption/notifications-to-the-childrens-guardian>

There are three stages of notification:

1. The initial notification must be made **within 24 hours of the placement commencing**. The notification form is available [here](#).
2. Agencies must develop a plan to transition the child or young person from the emergency care arrangement to a permanent care arrangement. The plan must be submitted to the Office of the Children’s Guardian **within 7 days of the placement date**. The plan to transition notification form is available [here](#).

Updated information regarding changes in placement details or changes to plans for transition to permanent 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**. The ceased placement notification form is available [here](#).

8. 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 permanent 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.

9. 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
Ombudsman Act 1974

10. 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 motels, caravan parks, serviced apartments or other similar short-term, non-home based emergency care arrangements.

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, or
- a contractor/temporary/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.

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.
- 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 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; 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/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. a written **service agreement**³ or **contract** with the external agency stipulates these requirements
4. the designated agency provides each person authorised to provide emergency care, a letter of authorisation as an emergency carer.⁴
5. 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
6. the Office of the Children's Guardian is notified of the plan for the child or young person's transition to permanent care arrangements within 7 days of the placement commencing, using the notification form [here](#) * and sent to oohcnotifications@kidsguardian.nsw.gov.au
- updated information regarding changes in placement details or changes to plans for transition to permanent care can be provided by email to oohcnotifications@kidsguardian.nsw.gov.au
7. 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 [here](#) * and sent to oohcnotifications@kidsguardian.nsw.gov.au

* Notification forms are also available at <https://www.kidsguardian.nsw.gov.au/statutory-out-of-home-care-and-adoption/notifications-to-the-childrens-guardian>

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