



New South Wales

Children's Guardian Regulation 2022

under the

Childrens Guardian Act 2019

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children's Guardian Act 2019*.

NATASHA MACLAREN-JONES, MLC
Minister for Families and Communities

Explanatory note

The objects of this Regulation are as follows—

- (a) to provide for the Children's Guardian to keep a register of residential care workers (the *register*),
- (b) to require residential care providers to—
 - (i) record information on the register about applicants applying for positions as residential care workers, and
 - (ii) conduct certain checks about the applicants, and
 - (iii) update the register to record reportable allegations about residential care workers,
- (c) to extend the requirement for residential care providers to record information on the register to include information about—
 - (i) existing workers, and
 - (ii) existing applicants,
- (d) to prescribe the persons who may deal with information for keeping the register,
- (e) to prescribe certain persons as the head of a relevant entity for the reportable conduct scheme administered by the Children's Guardian.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children's Guardian Regulation 2022*.

2 Commencement

- (1) Subject to subsection (2), this Regulation commences on the day on which it is published on the NSW legislation website.
- (2) Part 2 and Schedule 1 commence on 18 July 2022.

3 Definitions

The Dictionary in Schedule 2 defines certain terms used in this Regulation.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Residential care workers

- (1) This Regulation applies only to a residential care worker whose work with a residential care provider involves 1 or more of the following in a residential setting—
 - (a) providing statutory out-of-home care or supported out-of-home care,
 - (b) providing security services,
 - (c) spending 60% or more of the time the worker works for the provider—
 - (i) developing or implementing case management plans for children in statutory out-of-home care or supported out-of-home care, or
 - (ii) providing administrative support.
- (2) To avoid doubt, this Regulation does not apply to a person who—
 - (a) is authorised or provisionally authorised as an authorised carer under the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 30 or 31, and
 - (b) only provides statutory out-of-home care or supported out-of-home care in a private capacity.

Part 2 Residential care workers register

Division 1 Preliminary

5 Dealing with information for purposes of keeping register

For the Act, section 85(1A), the following persons are prescribed—

- (a) a residential care provider,
- (b) the Children's Guardian,
- (c) the Secretary.

6 Emergency authorisations not subject to Division 2

- (1) A residential care provider is not required to comply with Division 2 in relation to a residential care worker who provides statutory out-of-home care or supported out-of-home care under an emergency authorisation given under the *Children and Young Persons (Care and Protection) Regulation 2012*, clause 31B.
- (2) The residential care provider must instead, within 72 hours after giving the emergency authorisation, notify the Children's Guardian of the authorisation and give the Children's Guardian the following information—
 - (a) the worker's full name, any former name and any known aliases,
 - (b) the worker's date of birth,
 - (c) if the worker holds a working with children check clearance—
 - (i) the working with children number for the clearance, and
 - (ii) the date on which the clearance ceases to have effect,
 - (d) if the worker has a current application for a working with children check clearance that has not been finally determined, withdrawn or terminated—the application number.

7 Secretary not subject to Division 2 for certain workers

The Secretary is not required to comply with Division 2 for a caseworker.

Division 2 Worker checks and recording on register

8 Residential care provider check

A residential care provider that is required to undertake a check of a relevant individual with another residential care provider under this Division must—

- (a) request information about the relevant individual from the other residential care provider using the form approved by the Children's Guardian, and
- (b) consider the information received in response to the request.

9 Residential care provider must conduct certain checks—the Act, s 85(2)(d)

- (1) A residential care provider must, before undertaking a referee check for an applicant, undertake each of the following—
 - (a) a check to verify the applicant's relevant details,
 - (b) a nationwide criminal record check for the applicant,
 - (c) a check of the register to determine if the applicant is a relevant individual for another residential care provider,

- (d) if the register indicates the applicant is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider.
- (2) A residential care provider is not required to undertake—
 - (a) a check of a relevant individual with another residential care provider if—
 - (i) the provider undertook the check with the other provider in the previous 12 months, and
 - (ii) the result was satisfactory, or
 - (b) a nationwide criminal record check if—
 - (i) the check has been undertaken by the residential care provider in the previous 12 months, and
 - (ii) the result was satisfactory.
- (3) A residential care provider is not required to undertake a check required by subsection (1) if—
 - (a) the provider is satisfied that the applicant is not suitable to be a residential care worker, or
 - (b) the applicant withdraws the application.

10 Information to be recorded on register—the Act, s 85(2)(a)

- (1) A residential care provider that proposes to conduct a referee check of the applicant must, before conducting the check, record the following information about the applicant on the register—
 - (a) the applicant's full name, any former name and any known aliases,
 - (b) the applicant's date of birth,
 - (c) if the applicant holds a working with children check clearance—
 - (i) the working with children number for the clearance, and
 - (ii) the date on which the clearance ceases to have effect,
 - (d) if the applicant has a current application for a working with children check clearance that has not been finally determined, withdrawn or terminated—the application number,
 - (e) for a check under section 9(1)(b) or (d)—
 - (i) the date the check was completed, and
 - (ii) the outcome of the check,
 - (f) whether the applicant was referred to the provider by a labour hire agency.
- (2) As soon as practicable after making a decision about whether or not to offer an applicant employment as a residential care worker, the residential care provider must record the following information on the register—
 - (a) the decision,
 - (b) if the decision is to not offer the applicant the position—the date the decision was made.
- (3) A residential care provider must, as soon as practicable after employing an applicant as a residential care worker, record on the register the date the applicant commences employment.
- (4) A residential care provider may, with a person's consent, record the following information on the register—
 - (a) the person's gender,

- (b) whether the person identifies as an Aboriginal person or a Torres Strait Islander person.

11 Residential care worker recommencing work within 12 months

- (1) This section applies to a person to whom a residential care provider intends to offer employment as a residential care worker within 12 months of the person having ceased to work as a residential care worker with the provider.
- (2) Before offering employment to the person, the residential care provider—
 - (a) must undertake a check to verify the person's relevant details, and
 - (b) may undertake 1 or more of the following—
 - (i) a nationwide criminal record check,
 - (ii) a check of the register to determine if the applicant is a relevant individual for another residential care provider,
 - (iii) if the register indicates that the person is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider.
- (3) A residential care provider that employs a person as a residential care worker after undertaking a check under this section must, as soon as practicable after employing the person, record the following information on the register—
 - (a) the type and date of each check undertaken under subsection (2),
 - (b) the date the person commenced employment.

12 Recording allegations on register—the Act, s 85(2)(a)

- (1) The head of a relevant entity that is a residential care provider must, within 7 business days after becoming aware of a reportable allegation about a residential care worker employed by the entity, record the following information on the register—
 - (a) that the allegation has been made,
 - (b) the date the head became aware of the allegation.
- (2) The head of a relevant entity that is a residential care provider must, within 14 business days after completing, or becoming aware of the completion of, an investigation into a reportable allegation about a residential care worker employed by the entity, record the following information on the register—
 - (a) the outcome of the investigation, and
 - (b) the date the investigation was completed.

13 Updating information on register—the Act, s 85(2)(b) and (c)

- (1) An employing residential care provider must, as far and as soon as is practicable, update information on the register about a person if the provider becomes aware that the information is incomplete or incorrect.
- (2) An employing residential care provider that updates information on the register under this section must, as soon as is practicable after updating the register, notify the person to whom the information relates that the provider has done so.
- (3) An employing residential care provider that receives a request from a person to update the person's information on the register must, if the residential care provider decides the information is not incomplete or incorrect, give the person written notice of the reasons for the decision.
- (4) If the employing residential care provider is incapable of updating information on the register as required by this section, the Children's Guardian may—

- (a) update the information on the register on the provider's behalf, and
 - (b) notify both the person to whom the information relates and the residential care provider that it has done so.
- (5) This section applies in addition to the *Privacy and Personal Information Protection Act 1998*, section 15.
- (6) In this section—
employing residential care provider has the same meaning as in the Act, section 87.

14 Residential care provider must update register in certain circumstances—the Act, s 85(2)(c)

- (1) A residential care provider must, within 14 business days after a person ceasing to work as a residential care worker with the provider, update the register to record the date the person ceased work.
- (2) If the provider has relevant information to disclose about a residential care worker, the provider must, within 14 business days after the person ceases to work as a residential care worker, update the register to indicate that it has relevant information to disclose.

Part 3 Miscellaneous

15 Head of relevant entity

For the Act, section 17(1)(b), the following persons are prescribed as the head of a relevant entity—

- (a) for an adult who, under the *Child Protection (Working with Children) Act 2012*, section 10, is required to hold a working with children check clearance because the adult resides on the same property as an authorised carer for 3 weeks or more—the head of the relevant entity that authorised the authorised carer with whom the adult resides,
- (b) for the Cancer Institute (NSW) constituted by the *Cancer Institute (NSW) Act 2003*—the Secretary of the Ministry of Health,
- (c) for the NSW Health Service, as referred to in the *Health Services Act 1997*, section 115—the Secretary of the Ministry of Health.

Schedule 1 Savings and transitional provisions

Part 1 Preliminary

1 Definitions

In this Schedule—

commencement day means the day on which this Schedule commences.

existing worker, of a residential care provider, means a person other than a caseworker, who, immediately after the commencement of this Regulation, section 4—

- (a) works for the residential care provider, and
- (b) is a residential care worker to whom this Regulation applies.

Part 2 Residential care workers register

2 Existing applications

This Regulation, Part 2, Division 2 extends to an application for employment as a residential care worker to which this Regulation applies, that was made, but not finally dealt with, before the commencement day.

3 Existing workers

- (1) Within 90 days after the commencement day a residential care provider must, for an existing worker of the residential care provider—
 - (a) conduct a check to verify the worker's relevant details, and
 - (b) record the following information about the worker on the register—
 - (i) the information specified in this Regulation, section 10(1)(a)–(d),
 - (ii) the information specified in this Regulation, section 10(4), if the worker consents to the information being recorded on the register,
 - (iii) the date a nationwide criminal record check was conducted and the outcome of the check,
 - (iv) the date the worker commenced work with the provider.
- (2) As soon as practicable after the commencement day, and within 180 days after the commencement day, a residential care provider must, for an existing worker, undertake—
 - (a) a check of the register to determine if the worker is a relevant individual for another residential care provider, and
 - (b) if the register indicates the worker is a relevant individual for another residential care provider—a check of the relevant individual with the other residential care provider in accordance with this Regulation, Part 2, Division 2.
- (3) As soon as practicable after conducting a check under subsection (2), the residential care provider that conducted the check must record the following information on the register—
 - (a) the date the check was conducted,
 - (b) the outcome of the check.

Part 3 Investigations

4 Reportable allegations—current investigations

- (1) This Regulation, section 12 extends to a reportable allegation made before the commencement day if the investigation of the allegation is not complete on the commencement day.
- (2) The requirement in section 12(1) for the residential care provider to record on the register information about a reportable allegation within 7 business days of becoming aware of the allegation is to be taken as a requirement to record the information within 7 business days of the commencement day.

Schedule 2 Dictionary

section 3

applicant means an applicant for employment as a residential care worker.

caseworker means a person who—

- (a) is employed by, or in, the Department to develop or implement case management plans for children, and
- (b) provides statutory out-of-home care or supported out-of-home care only—
 - (i) outside the person's primary duties, and
 - (ii) at a place where accommodation is provided on a temporary basis.

commencement day, for Schedule 1—see section 1.

existing worker, for Schedule 1—see section 1.

labour hire agency means a person who on a commercial basis provides services for finding work for individuals.

register means the residential care workers register that may be kept by the Children's Guardian under the Act, section 85(1)(b).

relevant details has the same meaning as in the *Child Protection (Working with Children) Act 2012*, section 9A(2).

relevant individual, for a residential care provider, means a person who is 1 or both of following—

- (a) a person who currently works for the residential care provider as a residential care worker,
- (b) a person who has previously worked for the residential care provider as a residential care worker and about whom the provider has recorded on the register that there is relevant information to disclose.

relevant information, about an applicant or residential care worker, means information relating to the safety, welfare or wellbeing of children.

residential setting means—

- (a) a home, managed by a designated agency, or
- (b) a place where accommodation is provided on a temporary basis.

the Act means the *Children's Guardian Act 2019*.

working with children number has the same meaning as in the *Child Protection (Working with Children) Act 2012*.