



New South Wales

Children and Young Persons (Care and Protection) Amendment (Authorised Residential Care Workers) Regulation 2022

under the

Children and Young Persons (Care and Protection) Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

NATASHA MACLAREN-JONES, MLC
Minister for Families and Communities

Explanatory note

The object of this Regulation is to amend the *Children and Young Persons (Care and Protection) Regulation 2012* consequential on the commencement of the *Children's Guardian Regulation 2022* and the establishment of the residential care workers register.

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Children and Young Persons (Care and Protection) Act 1998

1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) Amendment (Authorised Residential Care Workers) Regulation 2022*.

2 Commencement

This Regulation commences on 18 July 2022.

Schedule 1 Amendment of Children and Young Persons (Care and Protection) Regulation 2012

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

residential care means statutory out-of-home care or supported out-of-home care that is provided—

- (a) under an arrangement by a designated agency, and
- (b) in a residential setting.

residential care worker means a person who provides residential care but does not include a volunteer.

residential setting has the same meaning as in the *Children's Guardian Regulation 2022*.

[2] Clause 31B, heading

Omit the heading. Insert instead—

31B Emergency authorisation of residential care worker

[3] Clause 31B(1A)

Insert after clause 31B(1)—

- (1A) The authorisation of a person under subclause (1) may be for a maximum of 72 hours.

[4] Clause 31B(3)(c)(i)

Omit “the functions”. Insert instead “the relevant functions”.

[5] Clause 31B(7)

Insert after clause 31B(6)—

- (7) A designated agency must not authorise a person under this clause more than once.

[6] Clauses 31C and 31D

Insert after clause 31B—

31C Authorisation of residential care workers—the Act, s 137

- (1) A designated agency may authorise a natural person as an authorised carer if—
 - (a) the person is a residential care worker, and
 - (b) the agency has conducted each check required for the person by the *Children's Guardian Regulation 2022*, Part 2, Division 2, and
 - (c) the agency has determined the person is capable and suitable to be an authorised carer, taking into account—
 - (i) the relevant functions of an authorised carer and any risk that the person would be unable to properly perform those functions, and
 - (ii) any relevant information available to the agency.
- (2) The functions of a designated agency under subclause (1)(b) and (c) are to be undertaken by the principal officer of the agency and may, with the approval of the Children's Guardian, be delegated to another person.

- (3) Failure to comply with subclause (2) does not affect the validity of an authorisation under this clause.

31D Authorisation of residential care workers under clauses 31B and 31C

A person authorised as an authorised carer under clause 31B or 31C is authorised to provide care only—

- (a) for a child or young person for whom care is being provided or supervised by the designated agency that authorised the person, and
(b) in a residential setting.

31E Authorisation of caseworkers

- (1) A caseworker is taken to be authorised under clause 31B.
(2) In this clause—
caseworker has the same meaning as in the *Children's Guardian Regulation 2022*.

31F Authorisation of interstate residential care workers—the Act, s 137

- (1) For the purpose of a designated agency making arrangements for the provision of residential care for a child or young person with an interstate agency, an interstate residential care worker is taken to be an authorised carer if the interstate agency satisfies the designated agency that all persons employed or engaged by the interstate agency to provide residential care to children and young people—
(a) have been assessed as capable and suitable to provide that care, and
(b) hold a current working with children check clearance or its equivalent in the relevant State, and
(c) have undergone a nationwide criminal record check and the outcome of the check was satisfactory.
- (2) An interstate residential care worker taken to be authorised under this clause is not taken to be authorised for the purpose of providing out-of-home care in New South Wales.
- (3) In this clause—
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.
interstate residential care worker means a person who is employed or engaged to provide residential care by an interstate agency.
State has the same meaning as in the Act, Chapter 14A.

[7] Clause 34 Conditions of authorisations

Omit clause 34(4).

[8] Clause 34(5)

Omit the subclause. Insert instead—

- (5) Subclauses (1) and (4A) do not apply to an authorised residential care worker.

[9] Clauses 38 and 39

Omit “An authorised carer”.

Insert instead “An authorised carer, other than an authorised residential care worker,”.

[10] Clause 40 Information to be provided to designated agency

Insert after clause 40(2)—

- (3) Subclauses (2)(e)(i) and (iii) and (f) do not apply to an authorised residential care worker.

[11] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule—

Part 2 Amendments consequential on making of Children and Young Persons (Care and Protection) Amendment (Authorised Residential Care Workers) Regulation 2022

13 Definitions

In this Part—

existing residential care worker means a person who, immediately before 18 July 2022, was a residential care worker.

relevant worker means a person who—

- (a) is a residential care worker for another designated agency, or
(b) was previously a residential care worker for another designated agency and for whom the other designated agency has recorded on the residential care workers register kept by the Children’s Guardian that it has relevant information about the person.

residential care provider check means the check conducted under the *Children’s Guardian Regulation 2022*, section 9(1)(d).

14 Authorisation of existing residential care workers

- (1) An existing residential care worker of a designated agency may temporarily exercise the functions of an authorised carer for the designated agency as if the worker were an authorised carer.
- (2) The functions may be exercised from—
- (a) 18 July 2022, or
(b) if the designated agency has not conducted checks under the *Children’s Guardian Regulation 2022*, section 9(1)(a) and (b) in relation to the worker before 18 July 2022—the day on which the last of the checks is conducted.
- (3) Subclause (1) continues to apply to the worker until the earlier of the following—
- (a) the designated agency—
- (i) authorises the worker as an authorised carer, or
(ii) decides the worker is not suitable to be an authorised carer,
(b) 14 January 2023.
- (4) As soon as practicable after 16 October 2022 the designated agency must—

- (a) decide if the worker is a relevant worker and, if so, conduct a residential care provider check of the worker, and
 - (b) decide whether or not the worker is suitable to be an authorised carer.
- (5) The designated agency is not required to conduct a residential care provider check of the worker with another designated agency if the designated agency has previously conducted the check with the other designated agency.
- (6) If the designated agency decides that the worker is suitable to be an authorised carer the agency may authorise the worker as an authorised carer.

15 Authorisation of residential care workers engaged in the transition period

- (1) This clause applies to a person who, between 18 July 2022 and 16 October 2022, is engaged by a designated agency to provide residential care.
- (2) The designated agency may authorise the person as an authorised carer in accordance with clause 31C without conducting a residential care provider check.
- (3) The designated agency must, as soon as practicable after 16 October 2022, decide if the person is a relevant worker and, if so, conduct a residential care provider check of the worker.
- (4) The designated agency is not required to conduct a residential care provider check of the worker with another designated agency if the designated agency has previously conducted the check with the other designated agency.
- (5) An authorisation under subclause (2) ceases to have effect if the designated agency undertakes a residential care provider check of the worker and decides the worker is not suitable to be an authorised carer.
- (6) To avoid doubt, a decision under subclause (5) is not a decision to suspend or cancel the authorisation of the worker and is not a decision that is reviewable under the Act, section 245(1)(a) or (a1).