

Continuing Residence Approval

Information for children turning 18 whilst in out-of-home care, authorised carers and designated agencies

Under NSW laws, all adult household members living with authorised foster carers must hold a Working With Children Check clearance (WWCC). This includes children who turn 18 whilst in care and want to continue to live with their authorised carer. The majority of these applicants will be granted a WWCC clearance but there are rare circumstances where the child who has become adult household member, cannot obtain a WWCC clearance. Legislative changes now mean that those refused a clearance may now be able to apply to the Children's Guardian for a Continuing Residence Approval.

The approval is limited to allowing the young person to remain in the home only and does not allow them to work in child-related employment. When a WWCC clearance is refused, an applicant, if eligible, may still seek a review of the decision to the NSW Civil and Administrative Review Tribunal. This does not impact an application for a Continuing Residence Approval as it is different to a WWCC. There is no appeal mechanism, either internal or external, for a decision to refuse a Continuing Residence Approval.

Who can apply?

A child who is or was in out-of-home care immediately before turning 18 years old and who cannot obtain a WWCC clearance may apply for a Continuing Residence Approval to remain in the home of the authorised carer. Consideration of WWCC requirements and the potential need for a Continuing Residence Approval should be included in the leaving care planning process. Applications for a Working With Children Check clearance can be lodged when the person turns 17 years and 9 months. These applicants will need to be identified so that their application can be expedited.

How to apply

The applicant, in consultation with the authorised carer and designated agency should lodge an application form as soon as possible after they become 17 years and 9 months. If there are other children in the placement, the young person cannot continue to reside in the home or on the property without a WWCC clearance (or valid application number not subject to an interim bar) or a Continuing Residence Approval. A letter with accompanying documentation will suffice until an application form is available.

Decision making criteria

The Children's Guardian must be satisfied that any risks to the safety of children associated with the person residing at the property have been and continue to be sufficiently mitigated. The Children's Guardian will require documented evidence and may include:

- An approved risk management plan drafted by the designated agency
- Periodic review of the risk management plan after a 12 month period

- Consent from the applicant and authorised carer to abide by the approved risk management plan
- Undertakings by the designated agency and authorised carer to immediately inform the Children's Guardian, in writing, of a breach of the approved risk management plan or if further serious risks have been identified.
- Undertakings by the designated agency and authorised carer to immediately inform the Children's Guardian, in writing of a change of circumstances whereby it is no longer appropriate to continue the approval

A risk management plan should include information surrounding the circumstances of concern, time since the incident(s), evidence of immediate action taken, long term remedial action such as counselling and therapy (including its impact, if any on the applicant's behaviour), risk mitigation measures implemented by the authorised carer and contingency measures should the behaviour re-occur. This may be evidenced by the agencies relevant policies that, for example, may govern responding to reportable conduct, case management monitoring and probity assessment procedures.

How long will the approval last?

The Children's Guardian may grant an approval for up to 5 years. She may also cancel it at any time if the Children's Guardian is no longer satisfied that risks to other children residing at the property have been mitigated or, a change of circumstances occurs making it no longer appropriate to continue the approval.

What constitutes a change of circumstances is context dependent but would include key events such as additional children coming into the placement, or the young person permanently leaving the placement and no longer requiring the approval.

How will I know if the approval has been granted?

The Children's Guardian will, in writing, notify the applicant and the appropriate designated agency of the decision to approve or refuse an application. The applicant may not appeal the decision.

If an incident occurs that raises concerns about the safety of children in the placement, the designated agency is obliged to inform the Children's Guardian immediately by sending an email to legal@kidsguardian.nsw.gov.au and the approval may be cancelled. All parties will be informed of the Children's Guardian's intention to cancel the approval.

In circumstances where the risks to the safety of children are immediate and serious, the Children's Guardian will serve a notice on the applicant to advise that the approval has been cancelled and the designated agency and authorised carer will be informed as soon as possible. On cancellation of the approval, the adult household member must leave the home within 48 hours of being notified if there are other children in the placement.

What happens when the approval expires?

Continuing Residency Approvals may be renewed. An application for renewal should be lodged at least 3 months before the approval expires and the same decision making criteria applies to renewals and new applications.

Periodic review of the approval

It is the responsibility of the designated agency in collaboration with the carer and applicant to ensure that the approved risk management plan continues to mitigate identified risk or if it requires updates or amendments. The designated agency must inform the Children's Guardian of any changes or amendments.

The designated agency must immediately, in writing, notify the Children's Guardian if the risk management plan is breached or the approval holder poses a risk to the safety of children in the home.

For more information, please visit www.kidsguardian.nsw.gov.au. If you have any questions, call (02) 8219 3600 or email kids@kidsguardian.nsw.gov.au