

Labour Hire Service Procedures

Engaging Labour Hire Agency Residential Care Staff in
Out-of-Home Care Services

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*Labour Hire Services Procedures – Engaging Labour Hire Agency
Residential Care Staff in Out-of-Home Care Services*

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Introduction

Children removed from the care of their parents because of abuse and neglect and placed in residential care are highly vulnerable. These children require safe, high quality care. Sound practices in recruitment, selection, engagement and supervision of temporary contract residential care staff (“Contract Workers”) are essential in ensuring safe, high quality care is provided by community service organisations (“CSOs”) that manage and conduct residential care services (“Residential Care Services”) for children and young people in Victoria who require protection and care.

These Labour Hire Service Procedures (“Procedures”) specify roles and responsibilities to be adopted by CSOs and the labour hire agencies (“Agencies”) they engage in order to implement relevant legislation, regulations, policies and practices in Victoria for the recruitment and selection of Contract Workers, their registration as carers and their engagement in Residential Care Services.

CSOs funded by the Department of Human Services (“Department”) to provide Residential Care Services are required to incorporate these Procedures into their commercial contract arrangements (“Commercial Contracts”) with each Agency that provides labour hire services to the CSO for the placement of Contract Workers.

The roles and responsibilities specified in these Procedures are the working arrangements that will be adopted by the CSO and the Agency for the employment or engagement and placement of Contract Workers by the Agency.

Background

Residential Care Services are conducted within the legislative framework of the *Children, Youth and Families Act 2005* (Vic) (“CYFA”) and associated regulations¹, standards prescribed for these services² and the policy requirements of the Department which are part of the service agreements between the Department and the CSOs delivering Residential Care Services³.

Contract Workers are selected and employed or engaged by the Agency. The selection of Contract Workers and their engagement in Residential Care Services must comply with the legislation, regulations, standards and policy requirements which have been established to protect children in the State of Victoria. These Procedures incorporate the relevant legislation, regulations, service standards and policy requirements and state the respective responsibilities of the CSO and the Agency in meeting those requirements.

¹ See Part 3.4 of the *Children, Youth and Families Act 2005* (Vic) and sections 10 and 11 of the *Children Youth and Families Regulations 2007* (Vic).

² Refer to the *Department of Human Services Standards* available in full at: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/department-of-human-services-standards>

³ See for example the Department’s *Police Records Check Policy* (Attachment 2), the Department’s *Guidelines for Responding to Quality of Care Concerns in Out-of-Home Care* (see footnote 5 below), the *Department of Human Services Incident Reporting Instruction* (see footnote 15 below) and the *Department’s policy for Responding to Allegations of Physical or Sexual Assault* (see footnote 16 below).

Purpose

The purpose of these Procedures is to formally document the roles, responsibilities and commitment of both the CSO and the Agency to ensure:

- Contract Workers employed or engaged by the Agency for placement in CSOs possess the appropriate and essential personal attributes, skills, knowledge, qualifications and experience to participate in Residential Care Services;
- the CSO and the Agency establish employment or engagement and supervision arrangements that are consistent with delivery of Residential Care Services which are in the best interests of the vulnerable children and young people subject to protective involvement of the Department; and
- the CSO and the Agency establish transparent and consistent business arrangements, consistent with legislation, regulations and policy for the protection of children, to deliver child-safe, efficient and effective Residential Care Services.

1. Roles and Responsibilities of the Agency

1.1. Contract Worker Recruitment Procedures

When recruiting any Contract Workers, the Agency must use recruitment procedures consistent with creating safe Residential Care Services including:

- using accurate position descriptions and duty statements which specify the attributes, experience, knowledge and qualifications a person must have to gain the position; and
- specifying in advertising and related documents, the requirement for a satisfactory Police Check and Working With Children Check.

1.2. Contract Worker Selection Criteria

Section 10 of the *Children, Youth and Families Regulations 2007 (Vic)* specifies matters to which an out-of-home care service (including a CSO providing Residential Care Services) must have regard before engaging or employing a person to act as a carer.

The Agency must make reasonable efforts to ensure that Contract Workers employed or engaged by the Agency possess tertiary qualifications recognised in the community services sector as appropriate to performing a direct care role in Residential Care Services. In appropriate circumstances, people who demonstrate competence and suitability in performing a direct care role but do not possess tertiary qualifications may be employed or engaged as Contract Workers.

Contract Workers placed with the CSO by the Agency must be:

- selected by the Agency on the basis of the criteria specified in the Department's *Checklist for Approving Residential Carers in Residential Care (Revised 2010)* (**Attachment 1**); and
- where possible, suitably trained and experienced, and have the required personal attributes to perform a direct care role in Residential Care Services. It is desirable that a Contract Worker has completed or is undertaking a relevant tertiary qualification, such as a Certificate IV in Child, Youth and Family Intervention (Residential and Out of Home Care). Relevant short courses – such as a recognised first aid course – should also be encouraged.

For the purposes of demonstrating to the Department the Agency's compliance with these selection criteria, the Agency must:

- retain, in a secure location, documentation verifying its compliance with these selection criteria for each Contract Worker who is available to provide Residential Care Services to a CSO;
- obtain each Contract Worker's fully informed prior written consent to providing that documentation to the Department; and
- provide that documentation to the Department on request by the CSO or the Department.

1.3. Interviews of Applicants

The Agency should include in its interview process for each Contract Worker at least two Agency employees (preferably at least one male and one female). One of the Agency employees conducting the interview must have significant experience in conducting interviews and substantial knowledge or experience in delivery of human services (preferably Residential Care Services).

The Agency must ensure that its interviewers assess the applicant's suitability against the criteria specified in Item 1.2 above, including the criteria specified in the Department's *Checklist for Approving Residential Carers in Residential Care (Revised 2010)* (Attachment 1).

1.4. Referee Checks

The Agency must ensure that the interview panel chairperson conducts referee checks on competitive Contract Worker applicants after interviews have been conducted.

Comments must be obtained from at least two referees who can provide information relevant to the work requirements of the position. Where it is not possible to obtain comments from referees that can provide information relevant to the work requirements of the position, the Agency must still obtain comments from two referees.

Where it is considered that further information is required regarding the suitability of an applicant, comments should be obtained from three referees.

The interview panel chairperson must speak directly with the referees and verify their identities.

The Agency must ask applicants to nominate as a referee the current or the most recent employment supervisor of the applicant.

Where an applicant does not nominate as a referee the current or most recent supervisor, the Agency must ask the applicant for permission to contact them. The Agency must not contact the applicant's current or most recent supervisor if the applicant does not provide permission or communicates to the Agency that doing so may compromise the applicant's current employment.

When the applicant has valid reasons for not nominating the current or most recent supervisor as a referee and the Agency finds the applicant otherwise suitable, the Agency must obtain from the applicant a signed written statement of those reasons, to be held on file by the Agency.

The Agency must ask all referees to provide comments on the suitability of the applicant to work directly with children, including the possibility of the applicant working alone with one or more children.

Where the referee is a current or former supervisor of the applicant, the Agency must also confirm the dates of the applicant's employment with the relevant employer(s) and comment on whether the referee would employ the person again.

1.5. Pre-employment Checks

The Agency must complete the following pre-employment check process before the Contract Worker commences providing Residential Care Services for the CSO:

1.5.1. obtain and make copies of the following documents relating to the Contract Worker:

- current Australian Drivers Licence (cite license number and expiry date);
- a current Working with Children Check (cite number and expiry date)⁴;
- a national Police Check (current within the past 12 months) compliant with the requirements of the Department's Police Records Check Policy (Attachment 2), including the Department's approval (cite date and name of the Department's officer) for employment or engagement of the Contract Worker where the Police Check reveals a disclosable record; and
- a current international Police Check where required under the Department's Police Records Check Policy (Attachment 2);

1.5.2. obtain from the Contract Worker a current signed original pre-existing injury or disease declaration in accordance with section 82(7) of the Accident Compensation Act 1985 (Vic), to be held on file by the Agency; and

1.5.3. having obtained from the Contract Worker a fully informed signed written declaration granting permission for such disclosure, provide to the Program Manager of the CSO:

- details of any quality of care concerns known to the Agency regarding the conduct of the Contract Worker⁵; and
- the following details of the Contract Worker as required to complete a Disqualified Carer Check and update the Department's register of out-of-home carers⁶:
 - name (including maiden names, aliases and any other names the Contract Worker has been known by);
 - date of birth;
 - current address;
 - whether the Contract Worker is of Aboriginal or Torres Strait Islander descent; and
 - gender.

The Agency will maintain securely stored records on these matters for each Contract Worker to be engaged to provide Residential Care Services for the CSO.

1.6. Notice for Engagement of Individual Contract Workers

Before the Agency first places a Contract Worker with the CSO, the Agency must provide to the CSO:

⁴ Refer to the *Working with Children Act 2005* (Vic).

⁵ The Department's "Guidelines for responding to quality of care concerns in out-of-home care" are available in full on the Department's website and may be amended from time to time. The December 2009 version is available at <http://www.cyf.vic.gov.au/placement-support/library/publications/home-based-handbook/guidelines-responding-quality-care-out-of-home-care-2010.pdf>.

⁶ See sections 78, 80, 108 and 120 of the *Children, Youth and Families Act 2005* (Vic) and section 11 of the *Children, Youth and Families Regulations 2007* (Vic).

- written advice confirming that the Contract Worker satisfies the standard selection requirements specified in these Procedures, in the form of the template *Labour Hire Agency Checklist – Placement of Contract Worker (Attachment 3)*; and
- a signed confidentiality and privacy undertaking of the Contract Worker, in favour of the CSO, in the form of the template *Confidentiality and Privacy Undertaking of Contract Worker (Attachment 4)*.

In the event that it is not possible to provide the written advice and undertaking referred to in this section 1.6 before placing a Contract Worker with the CSO, the Agency must ensure that it provides the written advice and undertaking to the CSO within seven days of placing the Contract Worker with the CSO. For the avoidance of doubt, the seven day period referred to in this paragraph refers only to delivery of the written advice and undertaking. The Agency must ensure that it does not place a Contract Worker with a CSO without first obtaining a signed undertaking from the Contract Worker in accordance with this section 1.6.

1.7. Confidentiality

In this section, “Confidential Information” means information regarding the CSO’s staff, residents, Residential Care Services, operations and policy which is received by the Agency in connection with the labour hire services provided by the Agency to the CSO, other than:

- information that is, or becomes part of the public domain other than by a breach of these Procedures by the Agency or a breach by the Contract Worker of the undertaking provided to the CSO under section 1.6 above;
- information lawfully obtained by the Agency from another person without any restriction as to use and disclosure; and
- information in the Agency’s possession prior to disclosure to the Agency or the Contract Worker by the CSO.

The Agency must keep confidential and not use, communicate, publish or release to any person Confidential Information of the CSO, except:

- for the purpose of the Contract Worker performing Residential Care Services for the CSO;
- for the purpose of the Agency providing labour Hire Services to the CSO;
- as directed or permitted in writing by the CSO; or
- as required by law, in which case the Agency must notify the CSO of that use, communication, publication or release of that information as soon as reasonably practicable after becoming aware that of the occurrence of, or obligation to perform, that act.

The Agency must also take reasonable steps to ensure that each Contract Worker acts consistently with the above obligations of the Agency in connection with that Contract Worker’s placement with the CSO.

1.8. Privacy

Without limiting section 1.7, to the extent that any information received by the Agency in connection with the labour hire services provided by the Agency to the CSO includes information about an individual or from which the identity of an individual is reasonably ascertainable (“personal information”), the Agency will comply with and is bound by the provisions of the *Privacy Act 1988* (Cth), the *Information Privacy Act 2000* (Vic) and *Health Records Act 2001* (Vic) (as each is

amended or replaced from time to time) and the privacy principles set out in those Acts, in the same way and to the same extent as the CSO would have been bound by them in respect of that act or practice had it been directly done or engaged in by the CSO.

The Agency acknowledges that its obligations under those Acts include, among others, the obligation not to use or disclose personal information of any person, without that person's consent, for any purpose other than the primary purpose for which the personal information was collected (subject to some exceptions as set out in those Acts).

1.9. Contract Worker Training

The Agency should support the initial and on-going professional development of its Contract Workers by encouraging and supporting them to participate in relevant training. A CSO may nominate a Contract Worker, who has been working regularly with the CSO (for example performing care work one to two days per week for the CSO over a six month period), to receive training through the Residential Care Learning and Development Strategy (RCLDS) delivered through the Centre for Excellence in Child and Family Welfare. Attendance of Contract Workers (nominated by CSOs) at RCLDS courses should not limit attendance of existing CSO workers.

While there is no fee required for attending RCLDS training courses, the CSO, Agency and Contract Worker may, if they choose to do so, agree to mutually satisfactory arrangements for meeting other costs which may be incurred through attendance of the Contract Worker at a course.

1.10. On call access of the Agency

The Agency must be available 24 hours a day, 7 days a week, on a telephone number notified to the CSO in writing from time to time, to be contacted by the CSO in the case of an emergency relating to any Contract Worker engaged by the CSO.

1.11. ABN

Prior to placing the first Contract Worker with a CSO, the Agency must ensure that it has provided its ABN to the CSO. In the event that the Agency changes its ABN, the Agency must notify the CSO within one day of the change.

1.12. Compliance with the Law

The Agency must perform and observe all obligations and requirements required of it by Law in relation to itself and its employees and contractors, including but not limited to paying all necessary wages, superannuation payments, taxes (including GST), duties and imposts, taking out and continuing all necessary insurances, including compliance with the *Accident Compensation Act 1985* (Vic) and the payment of any premium for a WorkSafe Injury Insurance policy required to be paid under that Act, and complying with all occupational health and safety requirements.

In this section 1.12, **Law** includes all Acts of the Parliaments of Australia and the states, and all regulations, by-laws, awards and orders made thereunder, and the lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to the Procedures and the provision of Residential Care Services.

1.13. Risk Management and Insurance

The Agency must effect and maintain adequate insurance cover for its operational risks including the following policies of insurance from the commencement of its Commercial Contract with the CSO:

- public liability insurance coverage for the entire duration of the Commercial Contract, with an insurer authorised under the *Insurance Act 1973* (Cth); and
- professional indemnity insurance coverage until the expiration of six years following the end of the Commercial Contract, with an insurer authorised under the *Insurance Act 1973* (Cth).

The Agency must ensure that it implements a risk management plan which includes strategies to mitigate the risk of liabilities arising from the abuse of children under care. The risk management plan should include a provision to verify whether coverage under the Agency's insurance policies provides sufficient scope to protect the Agency from such liability risks. The Agency may elect to engage the services of an insurance broker or agent to provide advice on the adequacy of its insurance policies to cover its operational risks.

Within three days of receiving a written request from the CSO, the Agency must provide certificates of currency, or such other documentary evidence to the satisfaction of the CSO with respect to the currency of any policies of insurance it effects and maintains in accordance with these Procedures.

1.14. Indemnity

The Agency must indemnify the CSO against all Liability the CSO may incur in respect of any Claim, including but not limited to Claims in respect of personal injury or the death of any person, loss of or damage to any property, and a contravention of applicable privacy legislation, arising in any manner out of a breach by the Agency of its obligations under its Commercial Contract with the CSO (which includes these Procedures) and by any negligent, reckless or unlawful act or omission of the Agency or by any person employed or engaged by the Agency, including its Contract Workers placed with a CSO.

The indemnities referred to in this section 1.14:

- must be continuing obligations, separate and independent from other obligations of the parties and survive termination of the Commercial Contract between the Agency and the CSO; and
- may be reduced to the extent that Liability is caused or contributed to by the negligent or unlawful act or omission of the CSO.

The exercise of the indemnities referred to in this section 1.14 must not be conditional upon any occurrence that has not been approved by the Department, and it must not be necessary for the CSO or Department or the State of Victoria, and their respective officers and employees, to incur expense or make payment before the enforcement of a right of indemnity granted by the Agency in favour of the CSO.

In this section 1.14:

- **Liability** includes all damages, costs, expenses or loss; and
- **Claim** includes all demands, rights, actions, suits or proceedings of any kind.

2. Roles and Responsibilities of the CSO

2.1. Safe and Stable Residential Care

The CSO is committed to providing high quality, safe and stable Residential Care Services for each child, consistent with the child's best interests.

2.2. Position description and Duty statement

To assist the Agency in placing suitable Contract Workers with the CSO, the CSO must submit to the Agency an accurate position description and duty statement for the role of a Contract Worker, specifying personal attributes, knowledge, experience and qualifications that a suitable applicant must possess. The CSO must provide the position description and the duty statement to the Agency as soon as reasonably practical after the adoption of these Procedures by the CSO and the Agency. The CSO may update those documents from time to time by written notice to the Agency.

2.3. Disqualified Carer Check

Before a CSO employs or engages a Contract Worker in Residential Care Services, the CSO is required under the CYFA to seek advice from the Department regarding whether that Contract Worker is disqualified under the CYFA from providing Residential Care Services ("Disqualified Carer Check"). The CSO is also permitted to request advice regarding whether the Contract Worker is under investigation by the Department or the police under Part 3.4 of the CYFA, which deals with out-of-home care services.

If the CSO is likely to require additional Contract Workers after hours, such as on a weekend or public holidays, the CSO may also complete pre-emptive Disqualified Carer Checks for people who may potentially be used as Contract Workers in the immediate future.⁷ If a CSO needs an urgent Disqualified Carer Check outside business hours, a Carer Registration Team Member can be contacted on 0400 841 242. On the next business day, it is the CSO's responsibility to access the Carer Register and enter the care details for a system generated Disqualified Carer Check.

To complete a Disqualified Carer Check, a CSO will submit the following information to the Department:

- name (including maiden names, aliases and any other names the person has been known by);
- date of birth;
- current address;
- whether the Contract Worker is of Aboriginal or Torres Strait Islander descent; and
- gender

On receiving from the CSO a request for Contract Workers or notification that Contract Workers are likely to be required by the CSO in the immediate future, the Agency must submit to the CSO, in any particular form required by the CSO and in a timely manner, the above details for any Contract Workers that are proposed or available for placement with the CSO.

Information regarding whether or not a Contract Worker is disqualified or under investigation is highly sensitive and subject to certain confidentiality and disclosure obligations under the CYFA and the *Information Privacy Act 2000* (Vic). Each party is responsible for ensuring that its own staff comply with those Acts. Some key obligations under those Acts which are relevant to the relationship between the CSO and the Agency are highlighted below.

⁷ See sections 120 and 127 of the *Children, Youth and Families Act 2005* (Vic).

- A person who is disqualified under the CYFA is prohibited from applying to the CSO (including by applying through the Agency) to be employed or engaged to provide Services.⁸
- A person who is aware of being under investigation under the CYFA is prohibited from applying to the CSO (including by applying through the Agency) to be employed or engaged to provide Services without disclosing the existence of the investigation.⁹
- Where the Agency is informed by a Contract Worker who is engaged or proposed to be engaged by the CSO that that the Contract Worker is disqualified or under investigation under the CYFA, the Agency may disclose that information to the CSO.¹⁰
- The CSO must not disclose to the Agency any information provided by the Department pursuant to a Disqualified Carer Check or a request for disclosure of any investigation, as to do so would be an offence under the CYFA.¹¹
- The Department is not permitted to disclose to the Agency that a Contract Worker is disqualified or under investigation under the CYFA.¹²

2.4. Carer Registration

The CYFA requires the Department to maintain a register of out-of-home carers (including Contract Workers), based on notifications provided by CSOs. The CSO is required to notify the Department:

- within 14 days of employing or engaging an out-of-home carer (after completing the Disqualified Carer Check); and
- within 14 days of an out-of-home carer ceasing to be employed or engaged by the CSO.¹³

If the CSO considers that it is likely to require the Contract Worker in the future and the Contract Worker is still available for placement, the CSO should not remove the Contract Worker from the Register even though they may not have worked for the CSO for some time.

If a Contract Worker no longer intends to work in residential care services or has left Agency, they must be removed from the Register.

The CSO's notice to the Department regarding the engagement of a Contract Worker will include the following details that the Department is required to include on its register of out-of-home carers:¹⁴

- name (including maiden names, aliases and any other names the Contract Worker has been known by);
- date of birth;
- current address;
- whether the Contract Worker is of Aboriginal or Torres Strait Islander descent;
- gender; and

⁸ Section 121 of the *Children, Youth and Families Act 2005* (Vic).

⁹ Section 122 of the *Children, Youth and Families Act 2005* (Vic).

¹⁰ See sections 121 and 122 of the *Children, Youth and Families Act 2005* (Vic) and information privacy principle 2.1(a) under the *Information Privacy Act 2000* (Vic).

¹¹ Section 127(5) of the *Children, Youth and Families Act 2005* (Vic).

¹² See section 129 of the *Children, Youth and Families Act 2005* (Vic).

¹³ See sections 78 and 79 of the *Children, Youth and Families Act 2005* (Vic).

¹⁴ See sections 78 and 80 of the *Children, Youth and Families Act 2005* (Vic) and section 11 of the *Children, Youth and Families Regulations 2007* (Vic).

- date of engagement by the CSO.

For the purposes of notifying the Department, the CSO will only consider a Contract Worker to have ceased employment or engagement by the CSO where the CSO is unlikely to re-engage that Contract Worker in the future.

2.5. Contract Worker Induction

Before a Contract Worker begins providing Residential Care Services for the CSO, the CSO's House Supervisor (or other senior representative) at the facility at which the Contract Worker will work ("House Supervisor") must provide the Contract Worker with a briefing regarding:

-Current and background information regarding residents and their care as necessary to ensure informed continuity of care for each resident and a safe working environment for the Contract Worker and all other CSO staff; and

-Core operating policies and procedures of the CSO and the particular facility, including:

- the CSO's fire safety arrangements (including fire and emergency procedures and door safety and security policy requirements prohibiting the dead-locking of doors on the path of the emergency exit from the facility);
- Departmental incident reporting policy and procedures (see the *Department of Human Services Incident reporting instruction*¹⁵); and
- the Department's policy and procedures on *Responding to Allegations of Physical or Sexual Assault*¹⁶.

The CSO will require new Contract Workers to sign a declaration stating that they have read and understand those policies and procedures.

2.6. Contract Worker Supervision

The House Supervisor will conduct regular personal supervision meetings with the Contract Workers to support them in effectively and safely performing their duties. Supervision arrangements will be established by a House Supervisor at the Contract Worker's initial induction meeting (or as soon as possible) and the frequency and duration of the meetings will be tailored to the needs and circumstances of the individual Contract Worker and the CSO, commensurate with the nature and frequency of the contract Worker's engagement.

The House Supervisor will ensure that the matters addressed during supervision meetings include the Contract Worker's performance and relevant operational issues of the CSO.

2.7. CSO Management of Contract Workers

To ensure the quality and effectiveness of the CSO's management of Contract Workers placed with it by the Agency, the CSO must ensure that managers of its Residential Care Services use

¹⁵ The *Department of Human Services Incident reporting instruction* is referred to and available in full in the Service Agreement Information Kit on the Department's website and may be amended from time to time. The December 2010 technical update is available at https://fac.dhs.vic.gov.au/publicfolder/publications/DHS/policies/department-of-human-services_incident-reporting-instruction-2010.pdf.

¹⁶ The Department's policy and procedures on *Responding to Allegations of Physical or Sexual Assault* are available in full on the Department's website and may be amended from time to time. The August 2005 version is available at <https://fac.dhs.vic.gov.au/publicfolder/publications/DHS/policies/responding-to-allegations-of-physical-or-sexual-assault.pdf>.

and complete the CSO Action Checklist – Management of Contract Worker (**Attachment 5**) in managing each Contract Worker under that manager’s supervision.

3. Roles and Responsibilities of the CSO and the Agency

3.1. Occupational Health and Safety

The CSO and the Agency are required under Victorian health and safety laws to ensure a safe working environment for workers under their management or control.¹⁷

3.2. Incident Reporting

The parties acknowledge that the CSO will act in accordance with the Department’s incident reporting policy requirements as specified in the *Department of Human Services Incident Reporting Instruction*¹⁸ and the policy and procedures for *Responding to Allegations of Physical or Sexual Assault*¹⁹.

The Agency must ensure that its staff (including management and Contract Workers) possess a good working knowledge of these Departmental policies and procedures.

3.3. Quality of Care Concerns and Investigations

The Department’s *Guidelines for responding to quality of care concerns in out-of-home care*²⁰ apply to CSOs providing out-of-home care (including Residential Care Services). The primary purpose of those guidelines is to describe the approach that the Department and CSOs will use when responding to quality of care concerns in out-of-home care. Those concerns can range from minor quality issues through to possible physical or sexual abuse. It is the Department’s expectation the CSO will report all quality of care concerns to ensure an appropriate response.

Before placing a Contract Worker with the CSO, the Agency must inform the CSO of any current quality of care matters and independent investigations of the Department and of any CSO which involve that Contract Worker.

The CSO may notify the Department or the Agency of quality of care concerns regarding Contract Workers.

The CSO and the Agency acknowledge that any investigations into the quality of Residential Care Services provided by Contract Workers whilst engaged by the CSO will be collaboratively investigated, with the CSO and the Department leading the investigation and including the Agency as required.

The Agency must co-operate with the CSO and the Department to ensure that quality of care concerns are addressed and investigations conducted within the policy requirements of the Department’s *Guidelines for responding to quality of care concerns in out-of-home care*²¹.

¹⁷See the *Occupational Health and Safety Act 2004 (Vic)* and the *Model Work Health and Safety Bill (Cth)*, Revised Draft 11/5/2010 (and any amendments).

¹⁸ See footnote 15 above.

¹⁹ See footnote 16 above.

²⁰ See footnote 5 above.

²¹ See footnote 20 above.

The Agency must also co-operate with any quality of care investigations of the CSO, in the interest of ensuring best practise Residential Care Services and the best interests of the children and young people in the CSO's care.

3.4. Monitoring and Reviewing these Procedures

The Agency and the CSO will collaboratively monitor and review the operation of these Procedures. This will be conducted on at least a quarterly basis.

The Agency and the CSO will maintain effective and open communication through the nominated client relations manager of the Agency and the nominated service manager of the CSO. Both parties commit to raising and resolving any matters of concern arising in the course of engaging Contract Workers that may adversely affect the quality of Residential Care Services provided to children and young people.

3.5. Complaints and Grievances

The CSO and the Agency must discuss concerns about the actions or decisions made by either party under these Procedures.

The CSO and the Agency must accept and investigate complaints in a timely manner through the nominated client relations manager of the Agency and the nominated service manager of the CSO.

Any concerns that are not resolved should be referred in writing by the complainant and as a matter of priority (and not more than seven days from the initial date of the complaint being raised) to senior management of the other party to these Procedures.

The senior management of the CSO and the Agency must use their best endeavours to resolve the matter within 14 days of the date of the complaint being raised.

If the parties cannot resolve the complaint within that period, either party may seek recourse to its termination rights (if any) and any other rights arising under or from the Commercial Contract between the parties.

3.6. Other additional procedures

The CSO and the Agency agree to the additional procedures described or annexed in Attachment 6 (if any) for the placement by the Agency of Contract Workers with the CSO for the provision of Residential Care Services.

To the extent of any inconsistency between the additional procedures described or annexed in Attachment 6 and the standard terms of these Procedures, the standard terms will prevail.

Attachment 1: Checklist for approving Out-of-Home carers in Residential Care Services (Revised 2010)

1. **The person's criminal records and criminal history (if any)**

Has a Police Check been conducted of the proposed carer in accordance with the Department's policy (including an international Police Check where required)?

Has a Working with Children Check been undertaken of all new residential carers as from 30 June 2007?
2. **The person's medical, including psychiatric health**

Does the proposed carer present as physically and mentally capable of caring for a child?

Is there a known history of care by the proposed carer that might suggest their physical or mental health is not sufficiently robust to care for a child?
3. **The person's skills, experience and qualifications**

Does the proposed carer have the appropriate skills, experience and qualifications to care for children in the out-of-home care sector?
4. **The person's capacity to provide stability for a child**

Does the person demonstrate the understanding, capacity, duty and commitment to provide children with a stable care environment?
5. **The person's capacity to promote and protect a child's safety, wellbeing and development**

Is the proposed carer capable of protecting a child from harmful situations?

Are they capable of providing the necessary care to ensure that the child's wellbeing and development are met (for example, can they appropriately feed and supervise the child)?

Are they likely to seek appropriate medical or educational attention or support where necessary?
6. **The person's capacity to provide appropriate support to the maintenance of a child's cultural identity and religious faith (if any)**

Does the person demonstrate an understanding of the importance of cultural identity and religious affiliation for children, and do they respect and cultivate these affiliations in a sensitive and appropriate way?
7. **The person's capacity to develop a positive relationship with a child**

Can the proposed carer work with children in a positive manner, and are they capable of developing positive relationships with children?
8. **The person's capacity to develop positive relationships and to work collaboratively with a child's family**

Does the proposed carer have the necessary communication skills to work with a child's family in a sensitive and respectful manner?

Do they demonstrate a capacity to be empathic and non-judgemental?

9. The person's capacity to develop positive relationships and to work collaboratively with service providers

Does the proposed carer have the necessary communication skills to work with child protection services, registered out-of-home care services and professional providers of services to children?

Does the proposed person have the necessary skills to communicate with various stakeholders and to work as a team player in the best interests of children?

10. The person's trustworthiness and reliability

Can the person be relied upon to exercise good judgment and always act in the best interests of the child when engaged with young people with or without direct supervision?

Do they have a sound understanding of what constitutes appropriate behaviour, and what would be regarded as misconduct when undertaking carer duties?

11. The person's general character

Did your conversations with the proposed carer's professional referees confirm that:

- the person is honest and fair?
- the person likes children and is able to engage and support children in an effective and age-appropriate manner?
- the person has the capacity to reflect on their performance and respond to supervision and suggestions for improvement?
- there are no reasons why the referee would not employ this person in the future?

Attachment 2: Police Records Check Policy including working with children check

Agencies must complete a pre-employment check process before a Contract Worker commences providing Residential Care Services for a CSO. A police records check and working with children check must be completed in accordance with the current requirements of the department specified at: <http://www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement/4.departmental-policies-procedures-and-initiatives/4.6-police-record-check-policy-including-working-with-children-check>

Attachment 3: Labour Hire Agency Checklist – Placement of Contract Worker

Labour Hire Agency _____

Contract Residential Care Worker _____

Recruitment and Selection of Contract Worker

<u>Item</u>	<input checked="" type="checkbox"/> (when completed)
<ul style="list-style-type: none"> The Labour Hire Agency (Agency) provided the person named above as the Contract Residential Care Worker (Contract Worker) with an accurate position description and duty statement which is consistent with the position description and duty statement provided by the Community Service Organisation (CSO). 	<input type="checkbox"/>
<ul style="list-style-type: none"> The Agency's process for selection of the Contract Worker complied in all respects with the Department's <i>Checklist for Approving Out-of-Home Carers in Residential Care Services</i> as updated or revised by the Department. 	<input type="checkbox"/>
<ul style="list-style-type: none"> At least two referee checks have been completed by the Chairperson of the Agency's selection panel. A minimum of three referee checks must be completed where it is considered necessary to ascertain the suitability of the applicant (per section 1.4). 	<input type="checkbox"/>
<ul style="list-style-type: none"> The most recent supervisor of the Contract Worker has confirmed the suitability of the person to work with children, including performing unsupervised work with children or The applicant has valid reasons for not nominating such a referee (which the Contract Worker has documented in a signed declaration) and in the Agency's opinion the applicant is otherwise suitable for the position. 	<input type="checkbox"/>

Contract Worker Pre-employment Checks

Item	<input checked="" type="checkbox"/> (when completed)
<ul style="list-style-type: none"> Adequate proof of identity has been copied and verified by the Agency. 	<input type="checkbox"/>
<ul style="list-style-type: none"> A current Working with Children Check (cite number and expiry date) has been completed. 	<input type="checkbox"/>
<ul style="list-style-type: none"> A national Police Check (current within the past 12 months) compliant with the requirements of the Department's Police Records Check Policy has been completed, including obtaining the Department's approval (cite date and name of 	<input type="checkbox"/>

the Department's officer) for employment or engagement of persons who have prior "disclosable offences".	
<ul style="list-style-type: none"> • A current international Police Check has been completed where required in accordance with the requirements of the Department's Police Records Check Policy. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Details have been provided to the Program Manager of the CSO, with the fully informed signed written consent of the Contract Worker, of any quality of care concerns known to the Agency regarding the conduct of the Contract Worker. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The carer has a current Australian Drivers Licence (cite license number and expiry date) or the CSO has advised the Agency that a driver's license is not required to fulfil all of the required duties of the position. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The Contract Worker has completed a current Pre Employment Injury Declaration, the original of which is held by the Agency. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The Agency has supplied to the CSO the following details, with the fully informed signed written consent of the Contract Worker, to permit the CSO to complete a Disqualified Carer Check and update the Department's Carer Register: <ul style="list-style-type: none"> - Name (including maiden names, aliases and any other names the person has been known by) - Date of Birth - Current Address - Whether the Contract Worker is of Aboriginal or Torres Strait Islander descent - Gender 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The Contract Worker has been provided with a copy of the Department's policy and procedures on Incident Reporting and on Responding to Allegations of Physical or Sexual Assault and signed a written statement to the Agency that the Contract Worker has read and understands the policy and procedures. 	<input type="checkbox"/>

Agency Procedures, Staff Support, Development and Management

<u>Item</u>	<input checked="" type="checkbox"/> (when completed)
<ul style="list-style-type: none"> • The Agency has securely stored records of the matters described in this checklist regarding the engagement of the Contract Worker to undertake direct care duties for the CSO. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The Agency will keep all matters regarding the CSO's staff, residents, service operations' and policy confidential in accordance with the requirements of the Department's <i>Labour Hire Service Procedures for Engaging Labour Hire Agency Residential Care Staff</i>, as adopted by the Agency and the CSO. 	<input type="checkbox"/>

<ul style="list-style-type: none"> The Agency supports the initial and on-going professional development of its staff by encouraging and supporting the participation of contract direct care workers in the range of residential care staff training and other relevant training delivered through the Centre for Excellence in Child and Family Welfare and other providers recognised by the Department (per section 1.9). 	<input type="checkbox"/>
<ul style="list-style-type: none"> The Agency will be available 24 hours a day, 7 days a week, on a telephone number notified to the CSO in writing from time to time, to be contacted by the CSO in the case of an emergency relating to any Contract Worker. 	<input type="checkbox"/>

Declaration

As the authorised senior manager of the Agency, I acknowledge that the Agency and the CSO have adopted DHS' *Labour Hire Service Procedures for Engaging Labour Hire Agency Residential Care Staff* and declare that the Agency has satisfied the requirements specified in that document for the placement of the Contract Worker within the CSO.

Name of senior manager _____

Position _____

Signature _____ **Date** _____

Attachment 4: Confidentiality and Privacy Undertaking of Contract Worker

[To be signed by a contract residential care worker placed by the Agency with a particular CSO for the first time]

This Deed is made on the _____ day of _____ 20_____

I, _____, am an employee, agent or contractor of _____ ("Agency").

I have been directed by the Agency to perform residential care services for children and young people in Victoria who require protection and care ("Services") for the following community service organisation:

_____ ("CSO").

I UNDERTAKE to the CSO as follows:

You will keep the CSO's information confidential.

I WILL NOT communicate, publish, release or retain copies of any information regarding the CSO's staff, residents, Services, operations or policy that I receive in connection with the provision of Services for the CSO, except:

- (a) as directed or permitted in writing by the CSO or the Agency;
- (b) as required by law; or
- (c) for the purpose of performing the Services.

You will respect privacy and only use personal information of CSO clients to provide the Services.

I WILL comply with and be bound by the provisions of the *Privacy Act 1988* (Cth), the *Information Privacy Act 2000* (Vic) and *Health Records Act 2001* (Vic) (as each is amended or replaced from time to time) and the privacy principles set out in those Acts, in the same way and to the same extent as the CSO is bound by them, in relation to any information that I receive in connection with the provision of Services for the CSO which includes information about an individual or from which the identity of an individual is reasonably ascertainable ("personal information"). I

ACKNOWLEDGE that my obligations under those Acts include, among others, the obligation not to use or disclose personal information of any person, without that persons consent, for any purpose other than the primary purpose for which the personal information was collected (subject to some exceptions as set out in those Acts).

The CSO may share your personal information with the Department and Agency.

I CONSENT to the CSO providing my personal information collected in connection with the Services to the Agency and the Department of Human Services for the purposes of evaluating my engagement by the CSO, confirming the CSO's compliance with legislation, regulations, industry standards and departmental policies relating to the Services and other purposes related to the Services.

I IRREVOCABLY AUTHORISE the CSO to enforce this undertaking and **I ACKNOWLEDGE** that the CSO is entitled (in addition to any entitlement to damages) to seek an injunction or other equitable relief for any actual or threatened breach by me of this Deed:

- (a) without the need for the CSO to prove any damage; and

(b) the CSO need not provide any security and/or undertaking in respect of any damages that I or anyone else might incur as a result of an injunction being granted.

EXECUTED AS A DEED on the date set out at the commencement of this Deed.

SIGNED, SEALED AND DELIVERED)

in the presence of:)

Signature of employee, agent or contractor

Name of witness (block letters)

Signature of witness

Attachment 5:CSO Action Checklist – Management of Contract Worker

Community Service Organisation (CSO) _____

Contract Residential Care Worker _____

CSO Pre Engagement Checks of Contract Worker:

Item	<input checked="" type="checkbox"/> (when completed)
<ul style="list-style-type: none"> The CSO has provided the Labour Hire Agency (Agency) with an accurate position description and duty statement specifying personal attributes, knowledge, experience and qualifications a suitable person must have to be engaged as a residential care worker with the CSO. 	<input type="checkbox"/>
<ul style="list-style-type: none"> The CSO has obtained a Disqualified Carer Check from the Department of Human Services (DHS) prior to the person named above as the Contract Residential Care Worker (Contract Worker) commencing work with the CSO. In doing so, the CSO submitted to DHS the following details of the Contract Worker: <ul style="list-style-type: none"> Name (including maiden names, aliases and any other names the person has been known by) Date of Birth Current Address 	<input type="checkbox"/>

CSO Management of Contract Worker:

Item	<input checked="" type="checkbox"/> (when completed)
<ul style="list-style-type: none"> The CSO has registered the carer on the Carer Register within 14 days of being engaged by the CSO. In doing so, the CSO submitted to DHS the following details of the Contract Worker: <ul style="list-style-type: none"> Name (including maiden names, aliases and any other names the person has been known by) Date of Birth Current Address Whether the Contract Worker is of Aboriginal or Torres Strait Islander descent 	<input type="checkbox"/>

<ul style="list-style-type: none"> - Gender - Date of engagement by the CSO 	
<ul style="list-style-type: none"> • The House Supervisor (or other senior representative of the CSO) has provided the Contract Worker with a briefing regarding current and background information (handover information) regarding residents and their care as necessary to provide informed continuity of care for each resident and a safe working environment for the Contract Worker and all other CSO staff. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The House Supervisor (or other senior representative the CSO) has provided the Contract Worker with a briefing regarding core agency and facility operating policies and procedures including the service's fire safety arrangements (Fire and Emergency Procedures, door safety and security policy requirements which prohibit the dead locking of doors on the path of exit from the facility), Departmental Incident Reporting policy and procedures and the Department's Policy and procedures on Responding to Allegations of Physical or Sexual Assault. The Contract Worker has signed a declaration stating that he or she has read and understands these policies and procedures. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The CSO has policies and practice requirements in place to keep all matters regarding its staff, residents, service operations' and policy confidential and ensure that any information will not be disclosed to any party unless authorised or required by law. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The House Supervisor of the CSO's facility at which the Contract Worker will work has arranged for the conduct of regular supervision meetings with the Contract Worker to support the effective and safe performance of the Contract Worker's duties. Supervision arrangements have been established at the initial induction meeting (or were completed as soon as possible) and the frequency and duration of the meetings are tailored to the needs and circumstances of the individual Contract Worker and CSO's operations. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The facility in which the Contract Worker will work is a safe working environment in accordance with occupational health and safety legislation. The CSO complies with occupational health and safety obligations and has an effective health and safety program which includes managing key sector risks such as manual handling, occupational assault and stress. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • The CSO has the necessary contact details for the Client Relations Manager of the Agency in order for the nominated service manager of the CSO to communicate to the Agency any matters pertinent to the management of the Contract Worker, including after hours contact of the Agency if circumstances require such contact. 	<input type="checkbox"/>

Declaration:

As the authorised senior manager of the CSO, I acknowledge that the Agency and the CSO have adopted DHS' Labour Hire Service Procedures for Engaging Labour Hire Agency Residential Care

Staff and declare that the CSO has satisfied the requirements specified in that document for the engagement of the Contract Worker within the CSO.

Name of Senior Manager _____

Position _____

Signature: _____ **Date** _____

Attachment 6: Additional procedures for placement of contract workers

(Attach any additional procedures agreed in accordance with section 3.5.)