



Office of the  
Children's Guardian

# Child Safe and Voluntary Out-of-Home Care Consultation Paper

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## Introduction

The Office of the Children's Guardian (OCG) administers a regulatory framework that registers and monitors organisations providing Voluntary Out-of-Home Care (VOOHC). The purpose of the regulatory framework is to safeguard the interests of children and their families in such arrangements, improve the consistency and quality of intake, assessment, supervision, care planning and inter-agency coordination, and reduce drift in care.

Over the years there have been significant policy and regulatory changes impacting the VOOHC sector. The commencement of the National Disability Insurance Scheme (NDIS) and the establishment of the NDIS Quality and Safeguards Commission in 2018 resulted in significant changes in how the VOOHC sector operates and how organisations are regulated.

The Children's Guardian Amendment (Child Safe Scheme) Bill 2021 amends the *Children's Guardian Act 2019* (CG Act) to embed the Child Safe Standards as the primary framework that guides child safe practice in organisations in New South Wales. This provides us with an opportunity to consider streamlining and strengthening the existing regulatory framework for organisations providing VOOHC.

The objective of this consultation paper is to explore with the VOOHC sector and other key stakeholders:

- the future operation of VOOHC in the context of the Child Safe Scheme
- options to streamline regulation and revisit the need for the current VOOHC Register and registration process
- identify high risk areas that may require more prescriptive requirements under the Child Safe Scheme in the VOOHC context.

This is within the broader context of the work of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission), which is considering how safeguarding can be improved in disability services,<sup>i</sup> and the recommendations of Royal Commission into Institutional Responses to Child Sexual Abuse (Child Abuse Royal Commission).

## Make a submission

Comment is sought on the proposals set out in this paper. Respondents are invited to provide feedback on any or all the proposals set out below. Feedback or submissions can be sent via email to [voohc@ocg.nsw.gov.au](mailto:voohc@ocg.nsw.gov.au)

Please provide any feedback by **21 January 2022**.

# Overview of Voluntary Out of Home Care in NSW

The CG Act defines VOOHC broadly as an arrangement between a parent and an organisation for a child to receive overnight care outside the family home in NSW.<sup>ii</sup> This overnight care can be on a short to long-term basis. It can take place in a variety of settings including camps, home-based environments, in motels and Airbnb.

VOOHC providers play an important role in caring for some of our most vulnerable children and provide much needed respite and support for families. Children with disability often require additional supports and rely on the commitment of skilled adults to meet their needs. Regulation is needed to ensure providers deliver high quality care to a vulnerable cohort of children, with a particular focus on involving parents and children in planning and service delivery.

As at the end of June 2021, the total number of VOOHC agencies was 117 consisting of 93 registered agencies and 24 designated agencies. In 2019/20, 1,234 children, 85% of whom recorded with a disability (n=1,040), accessed a total of 7,241 VOOHC placements. **Appendix A** provides more data on the nature of VOOHC providers.

## Current regulatory framework

In NSW, VOOHC is governed by two key pieces of legislation, the:

- *Children's Guardian Act 2019* (CG Act), and
- Children and Young Persons (Care and Protection) Regulation 2012 (Care Regulation).

Detail on the operation of this legislation and some forthcoming changes is at **Appendix B**.

## Registration required to provide services

The Children's Guardian is empowered to register organisations that provide or arrange VOOHC, and to monitor the carrying out of the organisations' responsibilities under the CG Act, and the regulations.<sup>iii</sup>

A person must not provide VOOHC for a child unless the person is a relevant agency or is an individual who is authorised by a relevant agency registered with the OCG to provide VOOHC. Relevant agency means an agency registered by the OCG to provide VOOHC (registered agency) or an out of home care or adoption services provider accredited by the OCG (designated agency).<sup>iv</sup>

## Statutory Procedures

The [Statutory Procedures for Voluntary Out-of-Home Care](#) (Statutory Procedures) set out the requirements for organisations providing voluntary out-of-home care in NSW. The Children's Guardian is responsible for monitoring the responsibilities of VOOHC agencies under the CG Act and Care Regulation, including their responsibility for complying with the Statutory Procedures.

## VOOHC Register

The OCG also administers a secure online VOOHC Register.<sup>v</sup> Data is routinely analysed by the Children's Guardian to monitor relevant agencies activity and to identify children approaching the 90-day supervision and 180-day case planning thresholds.

Supervision by a designated agency is required when a child or young person is provided care for 90 days (in a 12-month period) by a registered agency. The OCG also monitors the number of children and young people who are in care for over 180 days (in a 12-month period) as from this point onwards, the child requires a case plan.<sup>vi</sup> The role of the case plan is to ensure service

provision addresses the wellbeing and safety of children and young people, including for example, the educational, social, religious, cultural, health or other needs.

## Other relevant regulatory frameworks

### Child Safe Standards and reportable conduct

The new Part 3A of the CG Act (Child Safe Scheme) requires certain child-related organisations to implement the Child Safe Standards recommended by the Child Abuse Royal Commission to reduce the likelihood of harm and improve responses when it does occur.

Child-related organisations subject to the Child Safe Scheme are required to implement the [Child Safe Standards](#) through their systems, policies, and processes. The Child Safe Standards provide a framework for making organisations safer for children. They support organisations to create cultures, adopt strategies and act to put the interests of children first, to keep them safe from harm.

Child safe organisations subject to the scheme are entities listed in [Schedule 1 of the CG Act](#) (except out-of-home care and adoption service providers); local councils; religious organisations providing services to children or in which adults have contact with children; and sport and recreation organisations providing services to children (where workers are required to hold a Working With Children Check).

Registered agencies providing VOOHC fall under the Child Safe Scheme as they meet the definition of substitute residential care. Substitute residential care means care involving the provision of accommodation together with food, care and other support, which occurs:<sup>vii</sup>

- in the State of NSW for more than 2 nights, and
- is of a type ordinarily provided to children in a home environment, provided by persons other than the child's parents or relatives.

Agencies providing substitute residential care also fall within scope of the Reportable Conduct Scheme (Part 4 of the CG Act). Employers subject to the Reportable Conduct Scheme must notify the OCG of an allegation of reportable conduct, including sexual misconduct or physical abuse. Organisations may be monitored by the OCG when they notify and investigate certain allegations about how an employee, volunteer or contractor has acted towards a child.

### NDIS and NDIS Quality and Safeguards Commission

The NDIS Commission is responsible for regulating the National Disability Insurance Scheme (NDIS) market and most VOOHC agencies are registered with the NDIS Quality and Safeguards Commission (NDIS Commission). Registered NDIS providers, including those that provide services to children, are assessed against the NDIS Practice Standards and Code of Conduct. The NDIS Commission monitors the use of restrictive practices and responds to complaints and allegations of abuse and neglect of NDIS participants.

NDIS providers that are registered with the NDIS Commission must, as a condition of registration, have an incident management system to record and manage incidents that occur in connection with providing supports and services to people with disability.

Registered NDIS providers must also notify the NDIS Commission of all reportable incidents (including alleged reportable incidents) that occur in connection with the NDIS supports they deliver. This includes death, serious injury, abuse or neglect, sexual or physical assault, sexual misconduct and unauthorised use of restrictive practices.

The Statutory Procedures were updated in 2017 to reflect changes in the disability sector with the implementation of the National Disability Insurance Scheme (NDIS). The Statutory Procedures were updated again in 2020 following the commencement of the CG Act.

## Context for change

### Intersection with other sectors and regulation

The VOOHC regulatory framework was purposefully light touch to minimise government intervention in these arrangements made by parents. The framework was designed based on the former Department of Family and Community Services having direct oversight of these VOOHC arrangements through its case management, clinical services and contractual control of service providers.

However, currently, VOOHC agencies registered with the OCG fall under the Child Safe Scheme, the Reportable Conduct Scheme, and most are also registered with the NDIS Commission.

Regulatory theory, supported by studies of regulation in other fields, suggests that a strong, centralised form of direct regulation and program delivery is required in situations such as institutional contexts, particularly where there is the presence of high risk, multiple industries, and the need for highly specialised subject matter and skills.<sup>viii</sup> This suggests having multiple players in the regulatory space may be counter to the objective of efficient regulation, creating fragmentation and confusion for agencies.

The purpose and objective of any regulatory oversight of the VOOHC sector should be the safety, welfare and wellbeing of children, including protecting children from abuse.<sup>ix</sup> This is consistent with the OCG's vision to make organisations safer for children. The OCG is committed to reviewing whether the current regulatory scheme is fit for purpose and if not, what changes should be implemented.

### Introduction of the National Disability Insurance Scheme

The introduction of the NDIS brought about significant change in the disability service sector. This resulted in a shift to a competitive, market-based model, an increase in volume and complexity of requirements on agencies supporting NDIS participants, and the introduction of new roles and service models in the sector.

Further, the step down of disability services in NSW resulted in a significant reduction of direct oversight of the safety and wellbeing of children and young people in VOOHC arrangements.

The VOOHC regulatory framework and the NDIS Practice Standards and Code of Conduct have some overlapping areas, such as registration requirement, areas of complaint handling, regulation of restrictive practices, and behaviour support. The sector, even experienced providers, experienced considerable difficulty in understanding and complying with emerging requirements.

However, there remain some gaps in terms of child safe practice, including in relation to children's participation and empowerment, child safe education and training and safe physical and online environments.

### Disability Royal Commission

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) is also underway in response to community concern about

widespread reports of violence, abuse, neglect, abuse and exploitation of people with disability, including children with disability, first nations children with disability, and those in the out-of-home care system. The Disability Royal Commission is considering how safeguarding, and quality can be improved in disability services.

The Final Report of the Disability Royal Commission is still some time away (29 September 2023). However, findings and outcomes of the Disability Royal Commission are expected to provide further insight and guidance on how regulatory oversight and practice could be improved to prevent the abuse of children with disability in disability services.

## Proposal – Child Safe Scheme

With the above context in mind, the introduction of [Child Safe Standards](#) via the Child Safe Scheme in the CG Act provides an opportunity to address gaps, streamline and strengthen the existing the regulatory framework for organisations providing VOOHC. The risk profile of VOOHC justifies ongoing regulatory action, but the approach would be different under the Child Safe Scheme.

This section outlines the proposal to regulate VOOHC under the Child Safe Scheme. We welcome your views and feedback to either the specific questions (see below) or the proposal generally.

### [Refocus regulation of VOOHC to align with Child Safe Scheme](#)

As noted above, all VOOHC agencies currently registered with the OCG will also fall under requirements in Part 3A of the CG Act because they meet the definition of substitute residential care, as defined above. It is proposed that these agencies be transitioned to the new Child Safe Scheme to reduce duplication and re-focus regulation on the safety and wellbeing of children in respite and long-term care.

### [Capability building and support](#)

As recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse, the regulatory approach that the OCG proposes focuses on building the capability of organisations to be child safe to reduce the likelihood of abuse and improve responses when it does occur. The approach to implementing the Child Safe Scheme will encourage continuous improvement over time, not immediate leaps in progress. This sustained approach will mean that changes are implemented that are meaningful and within the capability of the agency while at the same time addressing any immediate risks to the safety of children and young people.

By being part of the Child Safe Scheme and using the Child Safe Standards to guide child safe practice, VOOHC agencies would benefit from existing free training and supports offered by the OCG to improve the safety of children in organisations. These include:

- Guide to the Child Safe Standards
- Resources to developing child safe codes of conduct, and other template resources
- Empowerment and participation resources
- E-Learning, webinars and face-to-face training.

The OCG is also developing a self-assessment tool to enable organisations to identify their strengths and areas for improvement and identify specific actions that they can take to create a

child safe organisation. Additional resources and personnel will be dedicated to support the VOOHC sector.

### Monitoring and enforcement

Agencies delivering VOOHC services would come within the ambit of the monitoring and enforcement framework under Part 3A and Part 9A of the CG Act. The OCG may monitor the operation of a child safe organisation to ensure the organisation is implementing the Child Safe Standards. The purpose of such monitoring is to support the agency taking a strengths-based approach to educate and build capability on child safe practice.

The OCG may also investigate how an organisation is implementing the Child Safe Standards if there are concerns that children may be at risk.

Enforcement is made up of two key divisions that provide for two different means of enforcement action. Division 1 relates to compliance notices and Division 2 relates to enforceable undertakings. A compliance notice is a formal notice given to a child safe organisation of its failure to implement the Child Safe Standards. Enforceable undertakings are an alternative enforcement measure to the issue of a compliance notice, that might be used where an organisation is willing to rectify systemic issues in the organisation's approach to child safety, and there is agreement by the head of the child safe organisation about specific action that needs to be taken to address risks to child safety.

Overall, while the shift of approach will result in some change for the sector, monitoring, and enforcement of the CSS under Part 3A and 9A of the CG Act provide agencies with an opportunity to realign with their approach with best practice research on what makes organisations safer for children and centralised supports, while streamlining regulation.

### Remove registration and register requirements

#### Registration

As noted above, a VOOHC agency is either:

- a designated agency, or
- a registered agency.

Other persons or organisations that arrange or provide VOOHC, or who hold themselves out as willing to do so, commit an offence carrying a maximum penalty of \$22,000.

Designated agencies are currently regulated under the [Permanent Standards for Out-of-Home Care](#), which are currently being reviewed. The OCG is consulting on whether the practice requirements for designated agencies should reflect the Child Safe Standards set out in the CG Act to facilitate consistency and reduce duplication.

In the current VOOHC context, the benefit of a registration requirement is that the OCG has insight into which agencies (other than designated agencies) are providing these types of services. Additionally, there is a consequence for providing VOOHC services without registration. The process of registration also enables the OCG to determine whether an agency is implementing the requirements set out in the Statutory Procedures, and the extent to which they should be monitored.

However, the majority of VOOHC placements are provided to children with disability under the NDIS. Many registered agencies are also registered NDIS providers. VOOHC or overnight care provided to children outside the usual home is not a support type that requires NDIS registration. This means there are organisations chosen by parents to provide overnight care that are not



registered with the NDIS Commission. Some of these providers may also not be aware of the requirement to register with the OCG under the CG Act.

The OCG therefore proposes to remove the VOOHC registration requirement to reduce registration requirements on providers. Providers could provide services to children without being registered with the OCG. However, agencies falling in scope of the Child Safe Scheme would be contacted on a targeted basis by the OCG to complete a self-assessment and be subject to monitoring, and possible investigations and enforcement.

Removing the registration requirement would mean that the OCG's regulatory effort would focus on ongoing monitoring to improve practice, as opposed to a point in time assessment of policies and procedures via the registration process. This would build on existing practice but streamline the initial process. The OCG would utilise internal information holdings to identify existing and emerging providers.

#### VOOHC Register

The VOOHC Register was established to identify the movements of children who access multiple respite services. In 2013/14, 285 children accessed multiple agencies in the 12-month period. The VOOHC Register data indicates that there has been a significant reduction in this trend. In 2020/21, only 86 children accessed VOOHC from more than one agency.

The Register is used to identify children who may be in care for extended periods of time, and if so, there are additional requirements for VOOHC agencies, as noted above. However, currently, DCJ also receives alerts from the Coordinator of Support or the National Disability Insurance Agency (NDIA) when a child is at risk of increasing their number of days in VOOHC. These alerts occur independent of the VOOHC Register.

The OCG is therefore proposing to remove the requirement for the Children's Guardian to keep a register for children in VOOHC. This is because relevant information about a child's time in VOOHC can be gathered by other means and is no longer required.

There also may be other ways, with less administrative impact on providers, to require or encourage the completion of a case plan, which is required when a child or young person is in VOOHC for more than 180 days. This may include requiring a case plan through additional monitoring (noting having a case plan would be a way to implement the Child Safe Standards), funding agreements or contracts, or encouraging their completion through other means.

#### Regulation via the Child Safe Standards

Many VOOHC agencies are already required to be compliant with the NDIS Practice Standards and Code of Conduct meaning that there are potentially duplicative requirements on many agencies who are currently required to meet the Statutory Procedures.

The OCG proposes removing the Statutory Procedures and instead utilise monitoring, investigation, and enforcement mechanisms under the Child Safe Scheme (see above) to facilitate implementation of the Child Safe Standards.

This would mean the OCG would monitor an organisation's child safe practice as relevant to VOOHC against the Child Safe Standards. This would provide flexibility to organisations to implement the Standards in ways that are meaningful and achievable to them. This is because the Standards are principle-based and flexible, as opposed to prescriptive.

As noted above, specific resources on what VOOHC agencies can do to implement the Child Safe Standards would be provided to give providers the skills and knowledge to be child safe. Capability

building and support could focus on key areas of risk that need to be managed in the context of VOOHC services to keep children safe. This could include, for example:

- online and physical safety, including the use of CCTV
- involvement of parents and carers
- intake and assessment
- placement matching principles focus on child safety
- child safe education and training.

Organisations would be monitored by the OCG to determine how they are child safe, as explained above. However, their practice would be monitored against the Child Safe Standards under requirements in Part 3A of the CG Act, as opposed to the detailed Statutory Procedures. This would reduce duplication with other prescriptive regulatory requirements agencies are subject to and focus OCG’s regulatory effort on strength-based capability building.

Compliance action could still escalate if an organisation is not implementing the Standards or is unwilling to comply. Enforcement action, where there are risks to children, may result in a fine to encourage behaviour change.

### Implementation

In practice the proposed approach would enable the OCG to take a more flexible, strengths-based approach focussing on capability building but escalating to more focused regulatory action if an organisation is unwilling to implement the Child Safe Standards.

The OCG would be able to provide for briefer, but more regular monitoring of agencies’ practices, for the purpose of providing feedback regarding areas of strength and areas for improvement. The information gathered from the self-assessment tool and monitoring visits would inform the Children’s Guardian’s decision about whether further regulatory action is needed to improve practice, including enforcement.

Additionally, many parents and carers who place their children in VOOHC require respite to support their caring role. The Child Safe Scheme would enable parents and carers to identify, and be part of, an organisation’s child safe approach. This means parents and carers will be encouraged to actively ensure that any agency caring for their child/ren are child safe. This would act as a driver to encourage agencies to be responsive to these expectations.

Parent and community involvement is particularly important because NDIS providers work in a market environment. This means if the market is better educated about what to expect and demand, quality will inevitably rise as those agencies that fail to meet the standards are not selected by parents.

### Advantages and challenges with the proposed approach

Advantages	Challenges
<p>Detangle from the OOHC concept for VOOHC and align with substitute residential care under Child Safe Standards and Reportable Conduct will simplify the definition.</p>	<p>No registration or register requirements may mean decreased opportunities to engage with sector.</p> <p>Changing quality assurance from the registration process to one that relies on capability building,</p>

<p>Reduce potentially duplicative registration and subject matter requirements.</p> <p>Sharpens focus of child safety and increased information sharing with NDIS.</p> <p>Having additional resources and monitoring recognises this cohort of organisations as higher risk because of the increased vulnerability of children in their care.</p> <p>Engagement with the sector becomes principles and values driven and reinforces a consistent approach to child safety.</p> <p>Investment in oversight and capability building can focus on ongoing monitoring and lifting quality over time as opposed to front end registration processes.</p>	<p>self-assessment and ongoing monitoring will remove the 'gatekeeper' role the OCG plays may result in a false sense of security for parents and carers.</p> <p>Changing focus of regulation of this high-risk cohort may be confusing and will require significant engagement with the sector to communicate change.</p> <p>Increased risk of children drifting into care not being identified without VOOHC register reporting.</p>
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## Questions

This consultation process provides the sector with the opportunity to support or address any possible concerns with the proposed approach. Questions to guide feedback are below, however, general feedback is also welcome.

### Questions

- What are your views on the proposed streamlining of the regulation of VOOHC agencies by regulating under the Child Safe Scheme instead of the current VOOHC framework?
- Do you have any arrangements that are currently covered under the definition of VOOHC that will no longer be covered under the current definition of 'substitute residential care'?
- What support does the sector need to implement the Child Safe Standards? What are some of the challenges?
- Are mandatory prescriptive requirements needed for the VOOHC sector?
- If your agency provides other child-related services in addition to VOOHC, such as statutory out-of-home care, health, education, do you anticipate any opportunities and/or challenges with the proposed approach to regulating current VOOHC agencies under the Child Safe Scheme?
- What are your views on the removal of the VOOHC Register, the 90-day supervision, and 180-day case planning requirements?
- Do you have any concerns, or are there any unidentified risks, in relation to the proposed approach?

## Appendix A – VOOHC data

Table 1 – VOOHC agencies data 2019-20

<b>OCG Registration type</b>	98 (80%) registered agencies 23 (18%) designated agencies <sup>x</sup> 1 registered to arrange VOOHC only
<b>Service setting</b>	107 (88%) agencies registered to provide centre-based/residential placements 37 (30%) provide host family placements 16 (13%) provides respite camps
<b>Overlap with other sectors</b>	93 (76%) provide VOOHC with NDIS funding 36 (26%) agencies overlap with other sectors (religious, homelessness, education, justice, health, local government or DV)
<b>Service type</b>	42 (34%) agencies are registered to provide long term care 15 (12%) agencies providing to children with complex behaviour support needs
<b>Size of service provision</b>	Small – 91 (75%) agencies with less than 10 children Medium – 17 (14%) agencies providing to 10 – 30 children Large – 14 (11%) agencies providing to over 30 children

## Appendix B – CG Act and Care Regulation

Part 5 of the CG Act provides the content for OOHC matters regulated by the Children's Guardian. Part 5, Division 2 specifically relates to voluntary out-of-home care. Section 85(1)(c) provides that the Children's Guardian may keep a register for organisations that provide or arrange voluntary out-of-home care.

Part 6, Division 5 of the Care Regulation provides the regulatory content for voluntary out-of-home care. This includes provisions relating to the registration of organisations, the provision of information relating to children or young people in VOOHC, and requirements around the VOOHC register. Clause 82 in the Care Regulation provides that the Children's Guardian must cause a register to be established and maintained. This register is in respect of children or young people whose voluntary out-of-home care is provided by a relevant agency.

Conditions of registration for registered agencies are contained in Schedule 4 of the Care Regulation.

Under changes made to the CG Act in 2020,<sup>xi</sup> commencing on 1 September 2022, the following provisions currently set out in the Care Regulation relating to VOOHC will be set out in the CG Act:

- A registered agency's registration is subject to the conditions prescribed in the regulations for registered agencies.
- The Children's Guardian may impose a condition on the registration of a registered agency and may vary or revoke those conditions.
- The Children's Guardian may cancel a registered agency's registration on certain grounds.
- The Minister may, on the recommendation of the Children's Guardian, approve criteria for use in deciding whether to grant an application for registration as a registered agency.

All of the regulations relating to voluntary out-of-home care in the Care Regulation will be transferred into the Children's Guardian Regulation by 1 September 2022.

## Endnotes

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<sup>i</sup> See consultation paper, *Safeguarding and quality*.

<sup>ii</sup> Section 76, *Children's Guardian Act 2019*

<sup>iii</sup> Section 128(1)(f), *Children's Guardian Act 2019*.

<sup>iv</sup> Section 79 of the *Children's Guardian Act 2019*

<sup>v</sup> Clause 74 of the Children and Young Persons (Care and Protection) Regulation 2012

<sup>vi</sup> Section 77 *Children's Guardian Act*.

<sup>vii</sup> See Schedule 1 *Children's Guardian Act 2019*.

<sup>viii</sup> Mathews, B. (2017). Oversight and regulatory mechanisms aimed at protecting children from sexual abuse: Understanding current evidence of efficacy. Royal Commission into Institutional Responses to Child Sexual Abuse: Sydney.

<sup>ix</sup> Section 7 *Children's Guardian Act 2019*.

<sup>x</sup> Section 72, *Children's Guardian Act 2019* defines designated agency as a government sector agency or part of a government sector agency, an organisation or part of an organisation that are accredited as a designated agency to provide or arrange out-of-home care and the accreditation is in force.

<sup>xi</sup> <https://www.parliament.nsw.gov.au/bill/files/3785/Passed%20by%20both%20Houses.pdf>.