



Office of the
Children's Guardian

Statutory Procedures

Voluntary out-of-home care in NSW

Foreword

Voluntary out-of-home care providers play an important role in caring for some of our most vulnerable children and provide much needed respite and support for families caring for children with complex needs. Children with disability and complex care needs often require additional supports and rely on the commitment of safe, skilled and caring adults to meet their needs.

The NSW voluntary out-of-home care regulatory framework has been in place since 2011 and is the first of its kind in Australia. The purpose of the voluntary out-of-home care system is to safeguard the interests of children and to promote the participation of children and their families in decision-making.

The *Statutory Procedures for Voluntary Out-of-Home Care* were updated in 2017 and set out the requirements for organisations providing voluntary out-of-home care in NSW. The Procedures again have been updated to reflect changes in the disability sector with the implementation of the National Disability Insurance Scheme as well as enhanced protections for children, including the introduction of the Child Safe Standards in NSW.

The Office of the Children's Guardian also provides training and resources to help organisations develop their capacity to provide safe environments for children. Research tells us that the best way to protect children is to create an organisational culture that values and respects children and prioritises their safety and wellbeing. The updated Procedures include the Principles for Child Safe Organisations, which have been developed by the Office of the Children's Guardian in consultation with child related sectors. The Principles encourage organisations to think about the characteristics of child safe organisations and what it means to be child safe.

The NSW Government, the Office of the Children's Guardian and the voluntary out-of-home care sector are committed to promoting children's welfare and wellbeing and these Procedures will assist us in ensuring that our most vulnerable children receive quality services.

Janet Schorer PSM
Children's Guardian

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Introduction

The Voluntary Out-of-Home Care (VOOHC) legislation was a recommendation in *The Special Commission of Inquiry into Child Protection Services in New South Wales* to better safeguard the interests of children in VOOHC, many of whom have disabilities.

The purpose of the VOOHC legislation is to:

- improve the consistency and quality of intake, assessment, care planning and inter-agency coordination
- reduce the drift of children in VOOHC, without sufficient and coordinated planning
- enhance VOOHC agencies knowledge of a child's patterns of care

VOOHC is out-of-home care that is **arranged by a parent** of a child (i.e. a person who has parental responsibility for the child), or a person authorised by the parent to act on their behalf¹ **with an organisation**. VOOHC arrangements can take many forms, including out-of-home respite (e.g. host family or centre-based) or longer-term care arrangements.

A child (under the age of 18) is in VOOHC when:

- he or she stays at a place other than his/her usual home for one or more nights;
- he or she is in the care and control of a person other than his/her parent (i.e. the person with parental responsibility for the child); and
- his/her **parent** has entered into an arrangement with an **organisation** to provide or arrange that care (a voluntary arrangement).

Organisations that may provide or arrange VOOHC:

- a designated agency (accredited by the Children's Guardian to provide statutory out-of-home care) registered by the Children's Guardian to provide, arrange or supervise VOOHC; or
- a non-designated agency registered by the Children's Guardian to arrange or provide VOOHC.

Only a VOOHC agency (or an individual authorised by the agency) or the Children's Guardian may **arrange** with a parent of a child for the child to be placed in VOOHC.

The VOOHC Register is a secure on-line database that calculates a child's VOOHC placements across all agencies providing VOOHC into a summarised placement history. Each time an agency provides a VOOHC placement, it must enter the placement onto the VOOHC Register within 5 working days to ensure that each child's placement history is current.

The VOOHC Register records information about a child including their personal details, dates entering and exiting VOOHC, supervision or case plan requirements.

The regulatory role of the Children's Guardian includes:

- formulating and maintaining these Procedures to guide VOOHC agencies in the areas of intake, assessment, case planning and interagency coordination;
- administering the VOOHC Monitoring Framework involving an application for VOOHC registration and ongoing desktop and onsite monitoring.
- monitoring whether children in longer term VOOHC receive care that is appropriately supervised and planned.

¹ Section 76 of the *Children's Guardian Act 2019*.

1 Scope and purpose of these procedures

These Procedures apply to all organisations that arrange, provide or supervise voluntary out-of-home care (VOOHC) for children, where that care is provided or arranged in NSW, irrespective of whether the care is funded privately or by the NSW, Commonwealth or local government. (See section 2.1 for a definition of VOOHC.)

1.1 Purpose of these procedures

These Procedures address the key VOOHC provisions of the *Children's Guardian Act 2019* (the Act)², the Children and Young Persons (Care and Protection) Regulation 2012 (the Regulation)³ and Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

The Procedures also address the manner in which agencies that arrange and/or provide VOOHC ("VOOHC agencies")⁴ **must**:

- manage the intake and assessment of children⁵ entering VOOHC
- work cooperatively with parents (i.e. **those with parental responsibility for the child**)⁶ and other organisations in supporting the safety, welfare and wellbeing of children in VOOHC
- plan and review the care of children in VOOHC
- ensure that a designated agency⁷ registered with the Children's Guardian to provide supervision, or the NSW Children's Guardian (the Children's Guardian) provides or supervises the care of children who have been in VOOHC for more than a total of 90 days in a 12 month period
- ensure children in VOOHC for more than a total of 180 days in any 12 month period have a case plan that meets their needs approved by a designated agency
- manage a child leaving VOOHC
- coordinate decision-making and service delivery and share information with other organisations
- make child protection reports where a child is at risk of significant harm
- provide information relating to the safety, welfare and well-being of a particular child or class of children when directed by the Children's Guardian⁸.

By establishing a common intake and assessment, supervision, case planning and interagency coordination framework for VOOHC, these Procedures will:

- reduce the risk of children drifting in the VOOHC system without appropriate planning and care; and
- promote improved quality, consistency, efficiency and coordination in the delivery of VOOHC services.

These Procedures should be read in conjunction with the Voluntary Out-of-Home Care Monitoring Guide (the Guide) and the Voluntary Out-of-Home Care Register Manual (the Manual), available on the Children's Guardian's website at www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care.

² In particular, see sections 76-79.

³ In particular, see clauses 69-85 and 28 and Schedules 3 and 4.

⁴ Known as "relevant agencies" in the Act and Regulation.

⁵ Under the age of 18.

⁶ A "parent", for the purposes of the Act, is a person with parental responsibility for the child. This will usually be a biological parent but may be another person who has legal responsibility for the child.

⁷ An agency that may provide statutory (court-ordered) out-of-home care – all designated agencies have been accredited by the Children's Guardian or are participating in the Children's Guardian's Quality Improvement Program A list of designated agencies is at <https://www.kidsguardian.nsw.gov.au/statutory-out-of-home-care-and-adoption/designated-agencies>.

⁸ Section 180(1)(b) and section 180(2) of the Act.

The Guide explains:

- how the Children’s Guardian administers the VOOHC Monitoring Framework; and
- how each VOOHC agency must confirm its compliance with The Procedures to attain and maintain registration to provide or arrange VOOHC.

The Manual explains:

- how information about VOOHC agencies and children in VOOHC is entered onto the VOOHC Register; and
- how VOOHC agencies can access a child’s previous VOOHC placement and case plan history from the VOOHC Register.

1.2 Relationship with other laws, policies and procedures that apply to VOOHC agencies

The Procedures do not purport to be exhaustive of how VOOHC agencies are to support children and their families. The Procedures only deal with those matters addressed in the Act and Regulation.

VOOHC agencies are required to comply with other NSW or Commonwealth laws. The Children’s Guardian has attempted to ensure that the Procedures are consistent with other applicable legislation, such as the *Carers (Recognition) Act 2010*⁹, the *Disability Inclusion Act 2014*, the *Ombudsman Act 1974*, the *Community Services (Complaints, Review and Monitoring) Act 1993*, the *National Disability Insurance Scheme Act 2013*, the *National Disability Insurance Scheme (Incident Management and Reportable Incident) Rules 2018*, the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, and NSW and Commonwealth privacy legislation¹⁰.

If an agency has concerns about a conflict between these procedures and any law, they should contact the Children’s Guardian at voohc@kidsguardian.nsw.gov.au.

VOOHC agencies may also be required to comply with legislated reporting obligations, and policies and procedures set by government and statutory bodies that fund or oversight VOOHC services. These Procedures are designed to supplement, rather than replace, policies and procedures issued by funding bodies.

However, in the event of any conflict, these Procedures generally override other policies and procedures because they are authorised by law¹¹.

The Children’s Guardian will continue to work with funding bodies to ensure their policies and procedures are brought into alignment with VOOHC requirements.

1.3 Key definitions

A glossary of key definitions is provided in section 11 below.

1.4 How these procedures must be applied by VOOHC agencies

Each VOOHC agency must have policies, procedures and practices that support compliance with these Procedures; to the extent the agency has a role in VOOHC intake, assessment, supervision, case planning and/or interagency coordination.

⁹ *The Statement for Australia’s Carers* under the *Carer Recognition Act 2010* (Cth) was also considered.

¹⁰ See section 9.4 of the Procedures for information on relationship with privacy laws.

¹¹ Section 80 of the Act - compliance with these procedures is also a condition of accreditation or registration.

1.5 The VOOHC Monitoring Framework

The Children's Guardian is responsible for monitoring the responsibilities of VOOHC agencies under the Act and Regulation¹², including their responsibility for complying with these Procedures.

The Monitoring Framework includes an application for registration, analysis of VOOHC Register data, quarterly VOOHC Register Activity Reports, onsite monitoring assessments and continuous monitoring mechanisms.

Prospective VOOHC agencies must submit the **Application for VOOHC Registration** along with relevant policies and procedures against those parts of the Procedures that are applicable to the services it intends to provide or arrange, prior to the Children's Guardian granting registration.

VOOHC Register data is routinely analysed by the Children's Guardian to monitor VOOHC agency activity and to identify children approaching the 90-day supervision and 180-day case planning thresholds.

The VOOHC Register Activity Reports form a significant part of the VOOHC Monitoring Framework and draw on information that has been entered on to the VOOHC Register by all VOOHC agencies. The Children's Guardian generates quarterly VOOHC Register Activity Reports for each VOOHC agency to capture an agency's placement activity, trends and compliance with these procedures. VOOHC agencies should use the Activity Reports as an internal monitoring process, identifying areas requiring improvement.

Monitoring Assessments conducted of all VOOHC agencies draw on:

- the agency's undertakings agreed to by signing the Application for VOOHC Registration
- VOOHC Register Activity reports
- the VOOHC Monitoring Assessment reports
- current and approved supervision and case plan.

A Monitoring Assessment Report will be provided to agencies after each monitoring assessment to summarise the assessment and provide recommendations for improvement.

For further information relating to the Children's Guardian Monitoring Framework refer to the Children's Guardian *Voluntary Out-of-Home Care Monitoring Guide* (the Guide) located on the Children's Guardian website www.kidsguardian.nsw.gov.au

1.6 Action that may be taken if VOOHC agencies fail to comply with these procedures

It is a condition of an agency's registration¹³ that it complies with these Procedures.

If a VOOHC agency fails to comply with these Procedures, then the Children's Guardian may cancel its registration or impose a condition that it is *not* to arrange or provide VOOHC. In either case, it will be unlawful for the agency to continue to arrange or provide VOOHC. The Children's Guardian will notify other relevant registration or funding bodies of any such decision (where relevant)¹⁴.

Such decisions of the Children's Guardian may be reviewed by the NSW Civil and Administrative Tribunal¹⁵.

However, the Children's Guardian will only take such action in the most serious of circumstances or where an agency has failed to take reasonable action to address non-compliance that has been

¹² Sub-sections 128(1)(e)-(f) of the Act.

¹³ See section 2.2 of these Procedures for more information about registered agencies.

¹⁴ Section 134 and section 180 of the Act.

¹⁵ clause 7 of the Regulation.

drawn to their attention. The Children’s Guardian is committed to working in partnership with VOOHC agencies to identify areas for improvement and to continuously improve performance.

1.7 Practice guides

Practice guides have been included in Appendix B at the end of these Procedures to provide VOOHC agencies with practical direction. It should be noted that these practice guides should be used to complement VOOHC agencies’ current practices.

2 Key concepts in VOOHC legislation

2.1 Arrangements that are and are not VOOHC

According to the *Children and Young Persons (Care and Protection) Act 1998*, **out-of-home care** involves the residential care and control of a child, provided:

- at a place other than the child's usual home; and
- by a person other than the parent of the child¹⁶.

A child does not enter out-of-home care unless they spend at least one night away from their usual home and are cared for by a person other than their parent or relative.

VOOHC is out-of-home care that:

- is **arranged by a parent** of a child (i.e. a person who has parental responsibility for the child), or a person authorised by the parent to act on their behalf¹⁷
- is arranged **with an organisation**
- can take many forms, including out-of-home respite (i.e. host family or centre-based) or longer-term care arrangements.

VOOHC does not include:

- (a) **care provided by an individual in a private capacity** - i.e. the individual is not acting on behalf of, or pursuant to an arrangement with, a body or organisation¹⁸; **or**
- (b) **care provided outside NSW**¹⁹ (if there is an arrangement for a child to live in another state or territory, then the child is not in VOOHC - however, if a child in VOOHC enters another state or territory for an excursion or holiday (as part of their respite package), then they remain in VOOHC during that time); **or**
- (c) **statutory out-of-home care** (i.e. care provided under a court order)²⁰; **or**
- (d) **supported out-of-home care** (i.e. care provided, arranged or otherwise supported by NSW Department of Communities and Justice ("Communities and Justice") after Community Services has formed the opinion that the child is in need of care and protection) (such as those children cared for under temporary care orders)²¹; **or**
- (e) **care that is excluded from the definition of out-of-home care by the Children and Young Persons (Care and Protection) Act 1998 or the Regulation**²², such as:
 - i care given by a person in their capacity as an approved provider of education and care services (e.g. pre-school, long day care centre);
 - ii care provided to support a child or young person who is a carer, or the sibling of such a young carer who shares the placement (i.e. care provided under the *Young Carers Program* is not VOOHC);
 - iii boarding services provided by a school, training establishment, university, or affiliated body, to enable children to attend a school, training establishment or university;

¹⁶ Section 135 of the *Children and Young Persons (Care and Protection) Act 1998*.

¹⁷ Section 76 of the Act.

¹⁸ Section 76(1)(a) of the Act. Note that if a parent makes arrangements with an individual carer who is providing care under a program provided by a VOOHC agency, then their child will be in VOOHC. VOOHC agencies must require their carers to notify them of any such arrangements.

¹⁹ Section 76(1)(b) of the Act.

²⁰ A child or young person in statutory or supported care remains in that care if they enter respite.

²¹ Part 3 of Chapter 8 of the *Children and Young Persons (Care and Protection) Act 1998*

²² Section 135(3) of the *Children and Young Persons (Care and Protection) Act 1998* and clause 28 of the Regulation.

- iv a holiday camp, outdoor recreation centre or similar facility where children undertake or receive education, training or instruction in academic, religious, athletic or recreational pursuits – unless its primary purpose is to provide respite or address the challenging behaviour of a child.
- v health services provided by the public health system or care provided by a licensed private health facility;
- vi Supported Accommodation Assistance Program (SAAP) arrangements funded under the *Supported Accommodation Assistance Act 1994* (Cth);
- vii any place used for the detention of children pending criminal proceedings (including police custody), or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*; and
- viii adoption services under the *Adoption Act 2000*.

If a child who is in VOOHC enters any of the care arrangements referred to at (e) above, then they remain in VOOHC during the time spent in that alternative care²³.

2.2 Meaning of VOOHC agency

A VOOHC agency is either:

- a designated agency (an organisation accredited by the Children’s Guardian to provide statutory out-of-home care); or
- a non-designated agency (an organisation registered by the Children’s Guardian to arrange and/or provide VOOHC).

2.3 “Arranging”, “providing” and “supervising” VOOHC

Only a VOOHC agency or an individual authorised by the VOOHC agency or the Children’s Guardian may **arrange** with a parent of a child for the child to be placed in VOOHC²⁴.

Only a VOOHC agency, or an individual authorised by the agency or the Children’s Guardian may **provide** VOOHC²⁵ (e.g. a host-family carer).

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 \$22,000²⁶.

A VOOHC agency **provides** VOOHC where it is responsible for the care of a child, or where it arranges for an individual²⁷ (i.e. not an organisation such as a company or family partnership) to provide that care²⁸.

²³ Section 135(4) of the *Children and Young Persons (Care and Protection) Act 1998*.

²⁴ Section 79(2) of the Act.

²⁵ Section 79(1) of the Act. There is no particular process a VOOHC agency must follow in authorising a person to provide VOOHC on its behalf, unlike the formal process for authorising “authorised carers” to provide supported or statutory out-of-home care. Agencies must however conduct any background/police checks required under legislation or their funding agreements. Each agency should have clear internal policies on the classes of persons it authorises to provide VOOHC (e.g. particular classes of employee or contractor).

²⁶ See section 79 of the Act. If a non-VOOHC agency that is not a legal entity arranges or provides VOOHC, then individuals who have arranged or provided VOOHC on that agency’s behalf may be prosecuted.

²⁷ Note that an individual may have an Australian Business Number (ABN) – i.e. they are a sole trader. You can determine whether a particular ABN holder is an organisation or an individual by searching the ABN Lookup site at [www.abr.business.gov.au/\(e1vfydj1azx0gmz0ku14lu55\)/main.aspx](http://www.abr.business.gov.au/(e1vfydj1azx0gmz0ku14lu55)/main.aspx).

²⁸ clause 69 (2) of the Regulation.

A VOOHC agency **arranges** VOOHC where it arranges for another **organisation** to provide care for a child²⁹ - for example, where it:

- contracts/sub-contracts another organisation to provide VOOHC³⁰
- brokers another organisation to provide VOOHC - e.g. respite brokerage services and care coordination services³¹
- directly refers a child to another organisation
- simply funding a VOOHC placement or providing a parent with information on service providers or suggesting they contact a particular provider is not “arranging” VOOHC.

An agency that arranges VOOHC will often be responsible for a significant part of the intake and assessment process (see section 5).

Section 6 addresses the circumstances and manner in which VOOHC must be **supervised** by a designated agency or the Children’s Guardian.

²⁹ clause 69 (2) of the Regulation.

³⁰ A VOOHC agency may only arrange for another organisation to provide VOOHC if the organisation is an agency registered to provide VOOHC.

³¹ See footnote 30.

3 Principles to be applied by agencies in arranging, providing or supervising VOOHC

Agencies must have regard to the following inter-related principles when arranging, providing or supervising VOOHC. These principles have been developed with reference to:

- the objects and principles of the *Act*³² and the *Disability Inclusion Act 2014*;
- the requirements of the National Disability Insurance Scheme;
- the *NSW Carers Charter* and the *Statement for Australia's Carers*³³; and
- key NSW and Commonwealth service standards and policy documents.

3.1 A family-centred approach must be taken to VOOHC, but the safety, welfare and wellbeing of the child is paramount

The Procedures support a **family-centred approach** to VOOHC, which means VOOHC services must be responsive to the needs of the child and their parent(s) and family.

However, if the needs of a child and their parent(s) and family become incompatible, alternative arrangements must be made as **the safety, welfare and wellbeing of the child or young person is paramount**³⁴.

When considering the needs of the child and members of their family, regard should be given to their culture, age, disability, language, religion and sexuality, where relevant³⁵.

When considering the needs of the parent(s) of the child, public sector agencies and their contractors must have regard to the **NSW Carers Charter** at Appendix A.³⁶

3.2 Children and their parents must be able to make informed choices about services and participate in decision-making

Section 8(a) of the Act states:

“if a child is able to form views on a matter concerning the child’s safety, welfare and wellbeing –

- (i) the child must be given an opportunity to express the views freely, and*
- (ii) the views are able to be given due weight in accordance with the developmental capacity of the child and the circumstances”*

The NSW Carers Charter states:

“The views and needs of carers and the views, needs and best interests of the persons for whom they care must be taken into account in the assessment, planning, delivery and review of services provided to persons who are cared for.”

The principle of informed participation and choice, with children and their parent(s) being partners in VOOHC decision making, is integral to family centred VOOHC and is consistent with provisions of the Convention on the Rights of the Child and Convention on the Rights of People with Disabilities.

³² See sections 6-8 of the Act.

³³ The *NSW Carers Charter* is part of the *Carers (Recognition) Act 2010* (NSW) and the *Statement for Australia's Carers* is part of the *Carer Recognition Act 2010* (Cth).

³⁴ Section 7 of the Act.

³⁵ Section 8(b) of the Act.

³⁶ While the *Carers (Recognition) Act 2010* and *NSW Carers Charter* do not apply to all VOOHC agencies or all parents/carers of children in VOOHC, the principles in the Charter reflect quality practice in meeting the needs of parents of children in VOOHC.

Research findings demonstrate that children progress better when they are participants in, rather than passive recipients of, decisions about their lives³⁷. Families value being informed about the range of services available to them³⁸ and being offered emotional support and assistance to access those services³⁹.

Taking PARTicipation seriously, published by the NSW Advocate for Children and Young People is an excellent resource that VOOHC agencies should consider in planning and reviewing a child's care.

While the resource focuses on participation by children, many of its principles are also relevant to engaging parents in decision making.

The resource is available on the Advocate's website at:
<https://www.acyp.nsw.gov.au/participation-resources/taking-participation-seriously>

VOOHC agencies must enable children and their parent(s) to explore and identify the issues and services that are important to them. This supports children and their parent(s) to maintain a sense of control and autonomy, enhancing family bonds and resilience.

Participation is more than just giving children and their parent(s) a say – it is about listening to their views, taking them seriously and, where possible, following through on their ideas and suggestions.

Children may need preparation, support and encouragement to participate in decision-making in an age and developmentally appropriate manner.

Children may choose not to, or may be unable to, participate in the planning or review of their care. However, the parent(s) should always be active participants - if a parent chooses not to participate, this may be an indicator of a breakdown in the parent's relationship with their child (see section 7.6).

To facilitate effective participation, VOOHC agencies:

- must ensure that children (to the extent of their capacity) and their parent(s) are provided with information about services in a manner and language they can understand
- must facilitate opportunities for communication and, where the child has difficulties with spoken communication, may need to support the child's use of an alternative communication system
- must arrange meetings for intake and assessment and case planning and review at places and times that are convenient for children and their parent(s)
- must ensure that children and their parent(s) have a say in setting the agenda for case planning/review meetings, and who will attend those meetings.

Specific informed participation requirements for intake and assessment and case planning and review are addressed at sections 5 and 7.

Children (to the extent of their capacity) and their parent(s) must also be advised of how information about them may be provided to other agencies that have responsibilities relating to the safety, welfare and wellbeing of the child– see section 9.18.

³⁷ Bromfield, L.M., & Osborn, A. (2007). *Getting the big picture: A synopsis and critique of Australian Out-of-Home Care Research*. Issues, 26. Melbourne: National Child Protection Clearinghouse. Australian Institute of Family Studies. p.33-34

³⁸ Ageing, Disability and Home Care, Department of Human Services NSW (2010). *New directions for disability respite services in NSW*.

³⁹ NSW Carers (2007). *Respite Reconsidered: A discussion of key issues and future directions for carer respite*.

3.3 VOOHC agencies and funding bodies must work collaboratively in coordinating decision-making and service delivery for children

These Procedures support a **partnership approach** to VOOHC, under which VOOHC agencies coordinate decision-making and the delivery of services for children with other organisations that have responsibilities relating to the safety, welfare or wellbeing of those children.

The Children's Guardian, funding bodies and VOOHC agencies must also work in partnership to improve coordination of services.

A partnership approach is needed to ensure children and their parent(s) benefit from planned and coordinated services that place the child at the centre of collaborative decision-making.

A partnership approach can only be fostered if VOOHC agencies share information about a child's care and needs with other organisations and individuals involved in supporting the safety, welfare and wellbeing of the child.

VOOHC agencies are required to exchange information about children and their families in some circumstances under section 180 of the Act; Chapter 16A and section 248 of the *Children and Young Persons (Care and Protection) Act 1998*; and clause 20 of the Regulation. Information exchange to support coordinated decision-making and service delivery is addressed in detail in section 9 of these Procedures.

The VOOHC Register enables VOOHC agencies to access information about other agencies that have previously provided VOOHC or developed case plans for children in, or entering, their care. VOOHC agencies must contact those other agencies to obtain information relevant to the safety, welfare and well-being of children in, or entering, their care – see the Voluntary out-of-home care Register Manual.

3.4 VOOHC is a critical service for supporting the relationship between a child and their family

Many VOOHC placements are arranged to provide the parent(s) of a child with respite for short periods, with the intention being that the parent(s) will resume caring for the child.

Respite can be effectively used as a form of early intervention or regular family support and as a response to crises and unforeseen circumstances.

Research has shown that respite has several benefits. The most consistently reported finding is that respite has positive effects on family functioning, including parents and siblings being able to spend additional time with other family members, increased participation of family members in social activities and decreased family conflict. Family members benefit from stress-reduction and improved self-esteem, improving their resilience and ability to care and relate to the child on an ongoing basis. Children in respite benefit from improved ongoing family relationships and support, as well as the opportunity to enjoy experiences outside the home.

These procedures do not operate to discourage the use of out-of-home and other respite arrangements as a means of assisting children to remain with their families.

3.5 Children must not be placed in VOOHC if appropriate services can be provided to enable them to remain with their families

Families provide the best opportunities to assist children build a life within their local community.

The Act provides that one of the purposes of these Procedures is to ensure that children are not placed in VOOHC if adequate services can be provided to enable them to remain with their families⁴⁰.

Short-term occasional respite is recognised as a service that promotes children remaining with their families. These Procedures should not operate to limit the access of children to much needed VOOHC respite services.

However, VOOHC agencies in collaboration with funding bodies, should always consider whether other family supports or non-VOOHC respite arrangements, or a combination of VOOHC and other such supports, may be of greater benefit to children and their families than VOOHC alone. Agencies should be guided by any views of the child (to the extent of their capacity), their parent(s) and other agencies involved in providing support. Alternative support arrangements are further discussed at section 5.3.

3.6 VOOHC services must be age-appropriate

VOOHC agencies must consider the age of the child in determining whether VOOHC or another support should be provided, or whether a particular VOOHC placement is appropriate. For example, some carers are experienced in dealing with young children, while others may cater for teenagers.

When a child is placed in VOOHC, consideration must be given to placing them with compatible peers of similar age, developmental capacity and interests.

Host-family care should generally be the preferred option, particularly for younger children, as children benefit from individualised care within a family setting. Children under the age of 7 must not be placed in centre-based care unless they have complex health needs that require such care.

Children aged 16-17 may be placed with either children or adults in centre-based or residential care according to their individual needs. However, a risk assessment must be conducted in accordance with a formal risk management framework. It must include the development, documentation and implementation of appropriate risk management plans where necessary.

Children aged under 16 must only ever be placed in centre-based or residential care with adults in exceptional circumstances. For example, an adult may be placed in a centre that provides support to children under the age of 16 where:

- (a) the adult has very high medical support needs and/or such limited mobility so as to present no risk to others, their needs and circumstances indicate such a placement would be appropriate, and there are no other suitable options; and
- (b) the adult's individual circumstances, such as their physical size, would pose a potential risk to them if placed in an adult respite centre.

Any placement of adults and children under the age of 16 together must only occur following a risk assessment and should be regularly reviewed to determine the ongoing suitability of the arrangement. Such a placement must be approved by the VOOHC agency's chief executive or their senior delegate and must only occur with the consent of the child's parent or guardian.

⁴⁰ Section 80 of the Act – also one of the objects of the *Children and Young Persons (Care and Protection) Act 1998* is that appropriate assistance is rendered to parents and other persons responsible for children and young people in the performance of their child-rearing responsibilities, in order to promote a safe and nurturing environment (section 8(c)).

3.7 VOOHC agencies must support a child to maintain connections with their family and community

The role of VOOHC in maintaining family connections has been outlined above. Actively involving the parent(s) in the ongoing planning of their child's care will support children in VOOHC maintain connections with their family and reduce the risk of drift into the supported or statutory care systems.

VOOHC agencies must also support children who are in VOOHC for any length of time to maintain family and community connections. For example, they should facilitate a child:

- maintaining contact with family and friends
- continuing to attend any educational institution in which they are enrolled or, where that is not possible, accessing appropriate education
- maintaining links with any other mainstream or specialist services they receive (e.g. health or therapeutic services)
- accessing local community or cultural programs (e.g. social or sporting clubs).

3.8 VOOHC agencies must be respectful of any cultural needs of Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse (CALD) backgrounds

Developing an understanding of “family” and “community” in a cultural context is critical when working with children and parents from an Aboriginal and Torres Strait Islander or CALD background.

A person-centred approach to care will enable VOOHC agencies to identify and respond to a child's specific cultural needs.

VOOHC agencies must be sensitive to the needs of families from Aboriginal and Torres Strait Islander and CALD backgrounds, including respecting their customs and beliefs and preferred ways of communicating. CALD and Aboriginal and Torres Strait Islander issues should be considered in making arrangements for each VOOHC placement and care planning during the term of that placement.

Children and parents from CALD backgrounds may also need assistance to access interpreter services.

DCJ has developed an Aboriginal Outcomes Strategy 2017-2021 which outlines its approach to deliver quality outcomes for Aboriginal people, their families and communities. It provides a model of accountability for Aboriginal service delivery, participation in local decision making, and fostering genuine partnerships with Aboriginal people and communities.

Secretariat of National Aboriginal and Torres Strait Islander Child Care (SNAICC) has developed an Aboriginal and Torres Strait Islander Children's Cultural Needs Tool which is a resource that is developed to assist in meeting the needs of Aboriginal and Torres Strait Islander children around cultural connection and includes a cultural needs diagram. This is linked to the 'Early Years Learning Framework for Australia'⁴¹.

The VOOHC Register requires VOOHC agencies to record whether a child identifies as Aboriginal, Torres Strait Islander or both. VOOHC agencies must ensure they capture this information at intake. Refer to the Voluntary Out-Of-Home Care Register Manual for further information.

⁴¹ The Early Years Learning Framework is part of the Council of Australian Government's (COAG) reform agenda for early childhood education and care and is a key component of the Australian Government's National Quality Framework for early childhood education and care. The Early Years Learning Framework describes the principles, practice and outcomes essential to support and enhance young children's learning from birth to five years of age, as well as their transition to school.

3.9 Children and their parents must have access to fair and equitable procedures for dealing with complaints and disputes concerning VOOHC services

Quality VOOHC services can only be delivered where VOOHC agencies have systems in place to identify and respond to the concerns of children in VOOHC and their parents.

Robust complaints and dispute resolution systems are essential for effective care planning as VOOHC agencies and children and/or their parent(s) may sometimes disagree as to the services an agency provides or the decisions it makes. Failure to resolve complaints may lead to a breakdown in a family's relationship with an agency or carer or result in the parent(s) becoming disengaged from the care of their child, increasing the risk of drift into the supported or statutory care systems.

VOOHC agencies must have internal procedures, in line with applicable legislation and registration requirements, for dealing with complaints that are made by children in VOOHC or their parents. If a complaint involves a criminal offence or risk of significant harm to a child or a class of children, the agency should not proceed with any complaint resolution until it obtains clearance from the police or DCJ, so as not to interfere with their investigation.

VOOHC agencies must also ensure that children in VOOHC and their parents are made aware of how to make a complaint about a VOOHC agency's services or conduct and how the VOOHC agency responds to complaints. This information should be available in a manner and language they can understand. The information provided must address internal complaint handling arrangements and the rights of clients to refer complaints to an external body such as the NSW Ombudsman and/or the NDIS Quality and Safeguards Commission. The Children's Guardian is not a complaint handling body⁴².

The NSW Ombudsman can accept a complaint about your service if an interested party, including a child, has concerns about the conduct of your organisation. The NDIS Quality and Safeguards Commission also accepts complaints about services or supports funded by the NDIS. Complaints about community and disability services are positive and are an important way to improve service delivery and to resolve problems. Having clear and accessible complaint handling policies and procedures are a fundamental aspect of creating a complaint friendly environment.

The NDIS Quality and Safeguards Commission can also receive complaints about the handling of reportable incident matters, if the complainant believes the investigation was poorly handled or the outcome was unfair. The Office of the Children's Guardian receives complaints about the handling of reportable conduct matters. This can include complaints from the employee who is the subject of the allegation, the alleged victim, the alleged victim's family or other interested parties.

VOOHC agencies must keep records of complaints and their responses to them.

3.10 Behaviour support for children in voluntary out-of-home care

Behaviour support for children in VOOHC is subject to requirements and limitations in care and protection legislation⁴³. VOOHC agencies must ensure that carers and employees engaged by the agency to provide VOOHC comply with these requirements and limitations. NDIS registered agencies providing VOOHC must also comply with the NDIS Quality and Safeguarding Framework and the NSW Restrictive Practices Authorisation Policy (2018).

The Regulation (clause 86) requires that carers and employees use only behaviour support practices approved by their VOOHC agency. The Regulation also specifically prohibits carers and employees from using the following to correct or manage the behaviour of a child in VOOHC:

- any physical coercion or physical punishment (including corporal punishment)
- any punishment that takes the form of immobilisation, force-feeding or depriving of food

⁴² Section 129(b) of the Act.

⁴³ Clause 86 of the Regulation.

- any punishment that is intended to humiliate or frighten a child or young person.

The *Children and Young Persons (Care and Protection) Act 1998* permits a carer to physically restrain a child if the carer believes that restraint is necessary to prevent serious injury⁴⁴. *Physical restraint* is the intentional restriction of a child's movement or behaviour by the use of a device or physical force.

Limitations and protections that apply to the use of physical restraint by carers include:

- Physical restraint is permitted as a form of intervention only where children may seriously injure themselves or others if not restrained.
- Physical restraint may only be used on a temporary basis to prevent injury to the child or others.
- Carers may remove from the child any weapon, alcohol, illegal substance or other thing to prevent injury to any person.
- The restraint must be consistent with any behaviour support requirements of a care plan applying to the child. Where behaviour support requirements have not been set out, reasonable force may be used.
- A carer who uses physical restraint in accordance with the *Children and Young Persons (Care and Protection) Act 1998* and who is able to satisfy the Court that his or her actions were reasonable in all the circumstances is immune from any criminal or civil liability that arises as a consequence.

Appropriate support and counselling should be provided for children who have been physically restrained.

Where a carer finds that the approved behaviour support practices are inadequate to manage the behaviour of a child, the carer must notify their VOOHC agency as soon as possible. The VOOHC agency must then assess the situation, consult the parent of the child, and determine if the problem should be addressed:

- (a) by providing appropriate advice, support and training to the voluntary carer and appropriate support to the child
- (b) by changing the placement arrangements.

VOOHC agencies and carers should also note the following:

- A positive approach to behaviour support must be used.
- All behaviour support plans must be consented to by the parent or guardian and the VOOHC agency implementing the behaviour support plans.
- VOOHC agencies' behaviour support policies must make it clear that restrictive practices may only be used with authorisation and in circumstances where there is no less restrictive alternative, i.e. where there is a risk of serious injury to the child or others.
- The type of restrictive practice used must be the least restrictive and minimally intrusive.
- If the child in VOOHC is an NDIS participant, reporting of an incident where a restrictive practice is used without authorisation should follow the NDIS Quality and Safeguards Commission's requirements for critical incident/event reporting.
- When a crisis involving the same child recurs, use of the same crisis management techniques should be avoided. Crisis management cannot be used to justify continued use of intrusive practices. The recurrence of such crises indicates a need to consider an appropriate behaviour support plan.

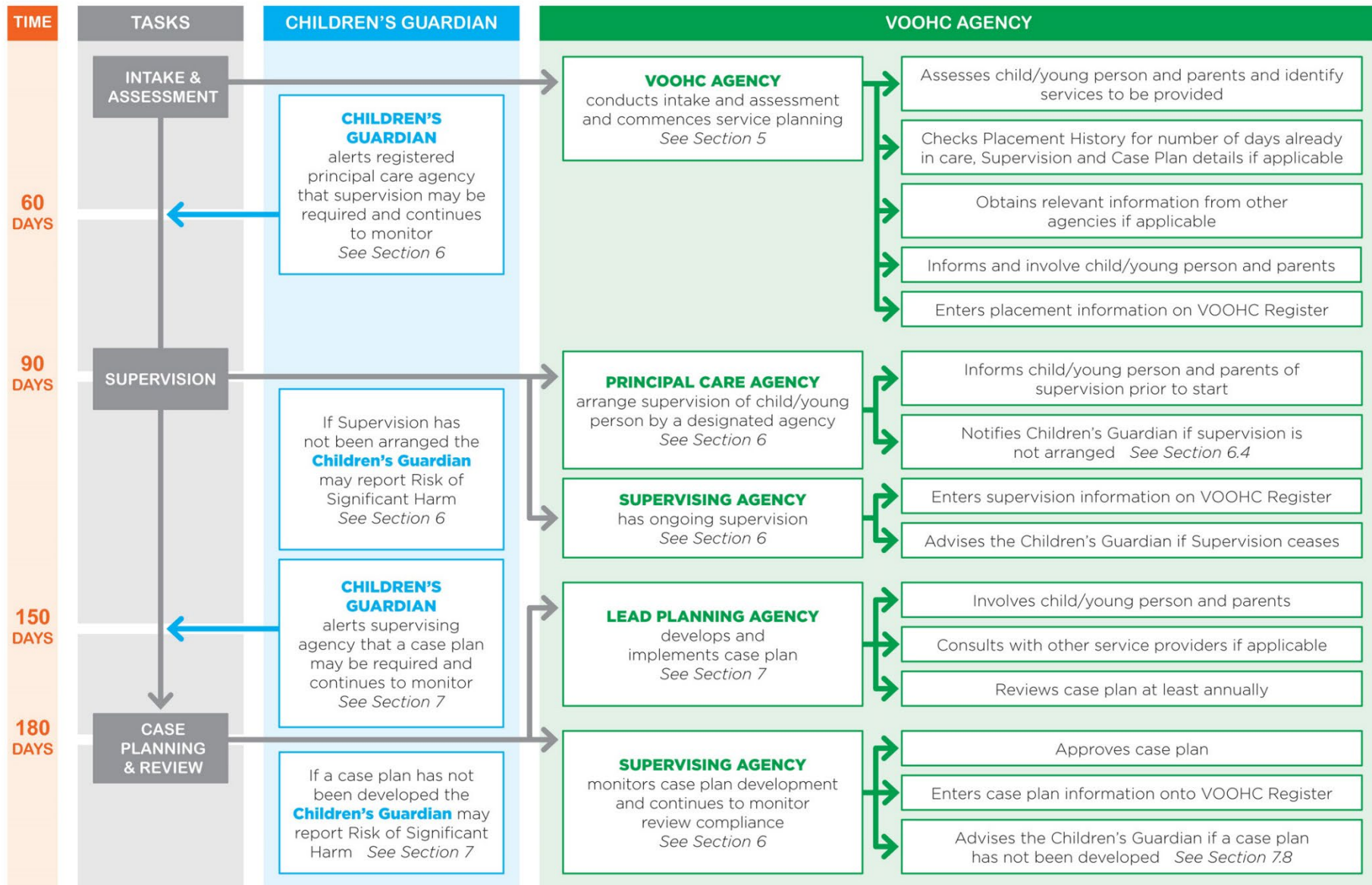
⁴⁴ Section 158 of the *Children and Young Persons (Care and Protection) Act 1998*.

Behaviour support for children with disability

In some circumstances, carers may be concerned that the behaviour of a child with disability may cause serious injury to the child, or to another person.

The NDIS Quality and Safeguards Commission sets the requirements for monitoring and reporting on the use of restrictive practices within NDIS funded supports and services. NDIS registered providers and behaviour support practitioners in NSW must comply with the requirements set out by the NDIS Quality and Safeguards Commission.

4 Summary of VOOHC Processes



5 Intake and assessment

VOOHC agencies must apply the principles at section 3 during intake and assessment.

5.1 Intake and assessment

Intake and assessment involves obtaining and analysing information about the child and their parent(s), and other family members where relevant, to understand their strengths and service needs, having regard to family relationships, social networks and other formal and informal supports. Several meetings and sources of information may be necessary to finalise the assessment.

VOOHC agencies must consider the following as part of intake and assessment:

- (a) the eligibility of a child and/or their parent(s)/family members⁴⁵ to access VOOHC and/or other services
- (b) the needs of the child and/or their parent(s)/family members, having regard to information necessary to provide for the immediate health and safety of the child
- (c) whether a child may pose a risk to the safety of others while in VOOHC - there must be a plan to manage safety risks associated with a child who has known challenging behaviour (including sexually aggressive behaviour) that may place other children or carers at risk of harm, before the child enters VOOHC⁴⁶
- (d) which available service or combination of services best meets the needs of the child and parent(s)/family members, with the best interests of the child as the paramount consideration

The Procedures **do not** address the criteria to be considered in determining eligibility for VOOHC services. Eligibility is determined by VOOHC agencies, in accordance with any conditions of funding or other registration.

5.2 Allocation of intake and assessment responsibilities between agencies that arrange and provide VOOHC

A VOOHC agency **must only provide** VOOHC if the assessment process confirms it, and any person it places the child with, is able to meet the needs of the child⁴⁷, having regard to the child's age, development and individual circumstances.

A VOOHC agency **must only arrange** for another agency to provide VOOHC if:

- (a) the other agency is registered to provide VOOHC⁴⁸; **and**
- (b) it is satisfied that the other agency can meet the needs of the child⁴⁹, having regard to the child's age, development and individual circumstances.

⁴⁵ VOOHC services are often characterised as services for parents or other carers.

⁴⁶ Refer to section 3.6 of these Procedures for age appropriate placement matching requirements.

⁴⁷ This is a condition of registration under clause 2 of Schedule 4 of the Regulation.

⁴⁸ All agencies that arrange VOOHC should build this requirement into their standard service/funding/brokerage agreements with agencies that they arrange to provide VOOHC.

⁴⁹ This is a condition of accreditation or registration under clause 3 of Schedule 3 or clause 2 of Schedule 4 of the Regulation.

The manner in which responsibility for assessment is divided between agencies that arrange and provide a particular VOOHC placement is a matter for those agencies. However, both the providing and arranging agency must have intake policies and procedures that meet the requirements of these Procedures.

Agencies that arrange VOOHC must assess whether a child and/or their parent(s)/family members are eligible for VOOHC services. They must also conduct a more detailed assessment and provide information about the child and their parent(s)/family to the VOOHC provider.

Sections 5.6 and 9 address the manner in which VOOHC agencies may share information relevant to the safety, welfare and wellbeing of children.

The VOOHC provider, depending on the information it receives, may then conduct its own further assessment.

The purpose of these Procedures is to ensure that the agency **providing** VOOHC, through a combination of its own assessment processes and those of any agency that has arranged the VOOHC, has obtained:

- (a) all necessary information to meet the immediate health and safety needs of the child at the point of intake
- (b) such other information as is necessary to meet the ongoing needs of the child and their parent(s)/family during the VOOHC placement (before intake where practicable, otherwise as soon as practicable after intake).

5.3 Types of services that may be considered during intake and assessment

VOOHC may be only one of a number of service options considered during intake and assessment. VOOHC is often delivered as part of a package of flexible supports for children and their parent(s)/families. Depending on the needs of the child and their parent(s)/families, other services that may be considered include:

- after-school or other day care
- extracurricular activities at school
- recreation services
- in-home care
- out-of-home respite attended by both the child and their parent(s)
- peer and informal support
- therapeutic or behavioural support
- provision of aids and equipment
- support services for the parent(s) and/or other family members
- case management services
- mainstream services for children and/or their parent(s)/families that are provided by other government or non-government organisations.

If a VOOHC agency is of the view that a child and their parent(s)/family would benefit most from specialist or mainstream services that it does not provide, then it must refer the matter to an agency that may be able to arrange those services, in line with any funding body or registration requirements about agency to agency referrals. It should only refer a child and/or their parent(s)/other relevant family members to another agency:

- (a) after making it clear information about the child's safety, welfare and wellbeing will be provided to the other agency; and

- (b) with the consent of the child (to the extent of their capacity) and the parent(s)/other relevant family members - consent must be documented.

5.4 Information to be obtained and considered during intake and assessment

The following steps of the intake and assessment process must be:

- completed by any VOOHC agency that both arranges and provides a VOOHC episode; or
- collectively completed by VOOHC agencies that separately arrange and provide a VOOHC episode, with the agency that provides the VOOHC responsible for ensuring it has all necessary information to meet the care needs of the child.

VOOHC agencies must, as part of intake:

- (a) obtain information about the child that needs to be recorded on the VOOHC Register – i.e. first name, middle names, surname, any previous names used, date of birth, place of birth, gender, whether the child is Aboriginal, Torres Strait Islander or both and whether the child has a disability (see *the Voluntary Out-of-Home Care Register Manual*)
- (b) access the Placement History on the VOOHC Register to view the child's VOOHC placement history, days spent in care in the last 12 months and any current supervising agency or case plan⁵⁰
- (c) obtain information (to the extent relevant) about:
 - i. the current formal and informal supports for the child and their parent(s)/family (if information is available)
 - ii. any health⁵¹, medication, disability, environmental, safety risk, emotional/behavioural, cognitive/developmental, mobility, nutrition or dietary issues relevant to the child's care – where possible the agency should obtain any management plans for these issues (e.g. Health Plan, Behaviour Support Plan, Epilepsy Plan, Asthma Plan, Allergy Plan⁵²)
 - iii. any special cultural, language or communication needs of the child
 - iv. the child's living and socialisation skills and any daily routine they may have (including eating, drinking, dressing, sleeping, bathing, toileting or menstruation)
 - v. the needs of the parent(s) – see Appendix A for an example of a framework for assessing the needs of the parent(s)
 - vi. the emergency contact details for the child's parent(s) and other relevant family members.

VOOHC agencies must also, as soon as is practicable in the assessment process (which may occur after intake for emergency placements):

- (a) contact any current supervising agency – to discuss supervision arrangements and determine whether the VOOHC arrangement is consistent with case planning for the child (see section 6)

⁵⁰ Supervising agencies and case plans are discussed in detail at sections 6 and 7 of these Procedures. Also see the *Voluntary Out-of-Home Care Register Manual* as to how to view "current" supervisory and case plan arrangements in the VOOHC Register's Placement History.

⁵¹ Information on family medical history may also be sought where it relates to the medical care of the child (e.g. a parent who has a genetic condition that may be inherited, or a member of the child's family has recently had an infectious disease) or to the parent's need for VOOHC support (e.g. the parent has a health condition that temporarily prevents them from caring for their child).

⁵² Management plans that address the particular care needs of the child, or risks associated with that care, are generally developed by a health professional or other specialist.

- (b) arrange supervision by a supervising agency if the VOOHC agency is/will be the principal care agency and supervision is/will be required (see section 6 for information on principal care agencies and supervising agencies)
- (c) obtain and consider, where relevant to the safety, welfare and wellbeing of the child during their time in care, information on:
 - i. the child's relationships with family members and others who are significant to them
 - ii. the child's interests, likes and dislikes
 - iii. any religious or spiritual observances of the child
 - iv. any educational or vocational arrangements for the child
 - v. the child's social and leisure activities
 - vi. appropriate transport arrangements for the child.

The information obtained through intake and assessment should be used to inform service and case planning (see section 7).

5.5 Involving children and their parents in intake and assessment

Although VOOHC agencies enter into VOOHC arrangements with the parent(s) of a child, they should respect and consider any views of the child during intake and assessment.

It may sometimes not be practicable to obtain those views when a child needs to access VOOHC in an emergency, in which case they should be sought as soon as possible after intake and considered during ongoing service and case planning.

VOOHC agencies **must**, as part of the intake and assessment process, inform children and their parent(s) in a manner and language they can understand about:

- (a) the full range of available services the agency is able to arrange or provide and any costs the parent(s) must meet to access those services
- (b) advocacy services that may be available to promote the best interests of the child or parent(s)
- (c) who will be responsible for providing the selected available services
- (d) the respective roles of the agency, any other service provider, the child and parent(s) in making decisions concerning the ongoing care and/or support of the child
- (e) the manner in which information relevant to the child's safety, welfare or wellbeing may be shared with other agencies – this is addressed in general terms in the *Voluntary Out-of-Home Care Information Brochure for Families* ("Families' Brochure"), available at www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care/fact-sheets (see section 9 for more detailed information).

VOOHC agencies must be aware of obligations under privacy legislation to notify children, to the extent of their capacity,⁵³ and their parent(s) that information relevant to the child's safety, welfare or wellbeing may be shared with other organisations. VOOHC agencies must build a requirement into their intake and assessment procedures for children, to the extent of their capacity, and their parent(s) to sign an acknowledgment. It should be noted that parents are not required to consent to information sharing between prescribed bodies, but it is important to talk to parents about the purposes of the VOOHC legislation and information sharing.

⁵³ There is no set age for informing children about information exchange. Generally, children over the age of 12 are considered capable of understanding aspects of their own privacy and information sharing issues, but some children over 12 with developmental delays may not. Some younger children may also have the capacity to understand privacy and information sharing issues.

After it has been determined that the child and their parent(s) would benefit from VOOHC services and a placement is available, the VOOHC agency must inform the child and their parent(s):

- (a) that information about the child will be entered onto the VOOHC Register – addressed in the Families' Brochure;
- (b) of their rights to access and correct information held by the agency or entered onto the VOOHC Register – addressed in the Families' Brochure; and
- (c) about internal and external systems for handling complaints about the agency's VOOHC services (will vary between VOOHC agencies).

VOOHC agencies must keep records as to the views of the child and their parent(s) and how those views were sought – see section 5.7 below.

VOOHC agencies should consider the NSW Advocate for Children and Young People resource 'Taking PARTicipation seriously' (available at <http://www.acyp.nsw.gov.au/participation-resources/taking-participation-seriously>) in involving children and their parent(s) in the intake and assessment process.

5.6 Obtaining information from other agencies during intake and assessment

It will often be useful for VOOHC agencies to obtain and consider information provided by other organisations or people who have previously been involved in supporting the safety, welfare and wellbeing of a child.

A VOOHC agency should contact any current supervising agency or agency that has recorded a case plan on the VOOHC Register for the child, as outlined at section 5.4 above.

Where a VOOHC agency will be caring for a child it should contact the VOOHC supervising agency (if there is one) or the Coordinator of any other VOOHC agency that has recently cared for the child to obtain information relevant to the child's particular care needs.

As a general rule, information from third parties can be obtained and provided **without the consent** of the child or their parent(s), irrespective of whether the VOOHC agency is funded privately or by Commonwealth, NSW or local government agencies. It is, however, good practice, where appropriate, to discuss and gain acknowledgement from parents that the VOOHC agency is seeking further information from other parties.

The circumstances in which VOOHC agencies can, and sometimes must, exchange information is addressed at section 9 and summarised in the *Families' Brochure*.

5.7 VOOHC Register and other record keeping requirements

A parent's request for VOOHC may be made orally, but the Regulation requires a VOOHC agency to confirm a VOOHC placement in writing to the parent(s) within 7 days of the placement being arranged⁵⁴.

VOOHC agencies must retain written or electronic records of:

- (a) each assessment and intake process, including how the views of the child and their parent(s) were sought and incorporated into that process
- (b) the services that they have agreed to provide to each child and their parent(s), including the anticipated times at which the services will be provided
- (c) the responsibilities of the various parties in making decisions concerning the ongoing care of the child.

⁵⁴ Clauses 2 and 1 of Schedules 3 and 4 of the Regulation.

The above information may be included in a standard form or plan developed by the VOOHC agency.

Copies of the records at (b) and (c) above must be provided to the parent(s) to confirm a common understanding of the services to be provided and to minimise the risk of future disputes about those services.

VOOHC agencies must attempt to obtain the signature of children (to the extent of their capacity) and their parent(s) as evidence of their consent to these arrangements, although it is acknowledged it may sometimes be impractical to obtain signatures for emergency VOOHC placements.

Agencies that provide VOOHC must also enter information about the placement of each child in VOOHC on the VOOHC Register within 5 working days⁵⁵ of the start of each placement episode. The *Voluntary Out-of-Home Care Register Manual*, available at www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care, addresses Register requirements in more detail.

VOOHC agencies may also be subject to record keeping requirements imposed by funding bodies and other agencies providing registration. Current practices as mandated under these agreements should therefore continue in conjunction with these Procedures.

6 Supervision of a child's VOOHC

This section of the Procedures is relevant to the VOOHC of children who have been in VOOHC for a total of more than 90 days in any 12-month period.

It should be read in conjunction with section 7 of the Procedures, which addresses planning for the children in VOOHC.

6.1 Supervision of VOOHC of more than a total of 90 days in a 12-month period

The VOOHC Register records the number of days a child is in VOOHC across all agencies within a 12-month period. Where a child receives care from a non-designated agency (or a mix of designated and non-designated agencies) and has been in VOOHC for 90 days or more, collaborative planning must occur.

A child **must not** remain in VOOHC for more than a total of 90 days in any 12-month period unless that care is **provided or supervised** by a designated agency or is supervised by the Children's Guardian⁵⁶.

A designated agency or the Children's Guardian is known as a **supervising agency** where it supervises a child's VOOHC. The supervising agency is responsible for supervising the VOOHC provided to the child by **all** VOOHC agencies until supervision ends in accordance with section 6.9 below.

The responsibilities of supervising agencies are further addressed at sections 6.4-6.9 below.

⁵⁵ A working day is any day other than a Saturday, Sunday or public holiday – see clause 69 of the Regulation.

⁵⁶ Section 77(1) of the Act.

6.2 Principal care agency responsible for arranging any supervision that is required

The **principal care agency** is the agency that currently provides the majority of the child's VOOHC and is responsible for arranging any supervision that is required. The principal care agency may change when a child's patterns of care change.

A VOOHC agency will generally know that it is the principal care agency for a child, having regard to the duration/frequency of care it provides and VOOHC Register Placement History information about any other VOOHC the child may have received. VOOHC Register Placement History information must be considered during intake and assessment.

A VOOHC agency may contact the Children's Guardian at voohc@kidsguardian.nsw.gov.au or (02) 8219 3798 for advice as to whether it is currently the principal care agency for a particular child.

The Children's Guardian may contact a VOOHC agency, advising it that it is the current principal care agency.

The principal care agency is responsible for arranging any supervision that is required and may replace a supervising agency with another supervising agency at any time.

If the principal care agency is a **registered non-designated agency**, then it *must* arrange supervision before a child has been in VOOHC for more than a total of 90 days in a 12-month period (if there is no current supervising agency).

If the principal care agency is a **registered designated agency**, then it is not required to arrange supervision for any VOOHC it provides. However, if the 90-day threshold has been met and the child also receives some VOOHC from another registered (non-designated) VOOHC agency, then the principal care agency must:

- supervise the VOOHC provided by any other agencies involved; or
- arrange for another designated agency to supervise **all** the VOOHC provided to the child (including any care the principal care agency provides).

6.3 How a principal care agency is to arrange supervision

The Children's Guardian will provide the VOOHC Coordinators of principal care agencies with email flags on their unsupervised VOOHC clients who have been in VOOHC for more than a total of **60** days in a 12-month period. The flags are sent at 60 days to enable agencies to start planning for supervision before the 90-day threshold is met.

A principal care agency must commence making arrangements for supervision as soon as possible after receiving such a flag⁵⁷, unless it knows that the child will be leaving care or patterns of care indicate that the child will not reach the 90-day threshold.

The supervising agency must review the VOOHC Register Placement History for currency of VOOHC agencies involved and include them in any supervision discussions and arrangements. The agencies involved may not be static particularly if the child receives care from multiple agencies or care arrangements change.

The principal care and supervising agency must review the VOOHC Register Placement History for details of any other VOOHC agency who is currently providing VOOHC placements to the child, to ensure that all agencies providing VOOHC are involved in the supervision arrangements.

A principal care agency may ask any designated agency authorised to supervise VOOHC to supervise a child's VOOHC.

⁵⁷ There is no requirement for the supervising agency to actually commence supervision before the 90 day threshold is reached.

The principal care agency will be provided with the details of all other current agencies involved at the time of the 60-day flag. The agencies involved may not be static during the 60-90-day flag period or after the supervision arrangement is in place. The principal care or the supervising designated agency must review the VOOHC Register Placement History to ensure all agencies providing VOOHC to the child are involved in the supervision arrangement.

The principal care (or supervising agency) must advise a child's parent(s) when supervision has been arranged and provide them with the name and contact details of the supervising agency.

VOOHC agencies must discuss the supervision arrangements with the child and their parents, including what parents should expect, the role of the supervising agency and the impact (if any) this will have on their child's care.

6.4 Supervising VOOHC where a child has a case manager

Supervision and case management **are not** the same thing.

Case management is the process of assessment, planning, implementation, monitoring and review. It is more intensive than supervision and requires regular interaction with children in VOOHC, their parents/families and other service providers.

An agency that has case management of a child is responsible for preparing and reviewing their case plan (i.e. it is the **lead planning agency**).

The lead planning agency is the agency identified to take on the lead responsibility for preparing and reviewing plans. It generally is the agency with case management where a case manager is involved. If there is no case manager, the relevant agencies involved in the child's care should discuss and agree on which agency will take on this role.

In some instances, another agency may have case management for a child. The initial 60-day flag will however be sent to the principal care agency not necessarily the agency with case management. The principal care agency must contact and discuss the supervision flag with the agency that holds case management.

When a **designated agency takes on the case management** of a child, it becomes the supervising agency for **all** VOOHC the child receives.

Where a **non-designated agency has case management** of a child who has been in VOOHC for more than 90 days in a 12-month period, its case plans and reviews for the child must be approved by a supervising agency.

6.5 Responsibilities of the supervising agency and lead planning agency

The supervising agency supervises all the VOOHC provided to the child, promotes collaboration and interagency coordination, and ensures that case planning occurs in line with the 180-day threshold.

Supervising agencies must conduct an initial supervision meeting between the principal care agency, the supervising agency and any other relevant VOOHC agencies involved to discuss supervision arrangements.

A supervision plan must be developed and include roles, responsibilities and review dates. The agency with case management may delegate specific tasks and oversee the arrangements, including identifying the lead planning agency.

The supervising agency should review current service plans that have been developed by VOOHC agencies providing care to the child and how the placements meet the needs of the child. The supervising designated agency should consider and continue to monitor the placement to ascertain if the child is likely to reach the 180-day case plan threshold and start a collaborative and formally

constituted case plan accordingly. Supervising agencies are responsible for arranging supervision meetings with the registered providing agencies on a regular basis (i.e. at least monthly).

The supervising agency will remain responsible for supervising the child's VOOHC until such time as it ends supervision in accordance with section 6.9 below.

The supervising agency's responsibility in relation to case planning is discussed in Section 7.

6.6 Supervising agency must lodge *Supervisor Notification*

A supervising agency must lodge a ***Supervisor Notification*** on the VOOHC Register (see the Voluntary Out-of-Home Care Register Manual) within 5 working days of commencing supervision⁵⁸. It is best practice to provide the principal care agency with a copy of the Supervision notification PDF as a receipt that supervision notification has been lodged.

Where a supervising agency is appointed as the child's case manager, the Supervisor Notification may be lodged well before the 90-day threshold is reached.

This notification need only be completed once for each child – it is not necessary for the supervising agency to lodge notifications every time the child enters a new placement, except where the principal care agency changes and the previous agency is no longer involved in the care of the child.

6.7 Registered VOOHC provider must notify the Children's Guardian where the supervision requirement is not met

If a **registered non-designated agency** provides VOOHC to a child who has been in VOOHC for **more than a total of 90 days** in a 12 month period and that care is not supervised by a supervising agency, then the non-designated agency **must notify the Children's Guardian** by emailing the details to voohc@kidsguardian.nsw.gov.au

The combination of VOOHC being provided by a non-designated agency and there being no supervision may occur after the 90-day threshold is reached. The obligation to notify the Children's Guardian that VOOHC is unsupervised may therefore arise at any time after the 90-day threshold is reached.

For example, a non-designated agency may start providing care to a child already over the 90-day threshold who was placed with a designated agency alone and therefore did not require supervision. This should be identified at intake where the non-designated agency must review the VOOHC Register Placement History. The non-designated agency should identify the requirement for supervision, identify a potential supervising agency and advise the Children's Guardian on the status of the supervision arrangements.

Some breaches of the supervision requirement may be unavoidable and technical in nature – i.e. where a child enters a non-designated agency's emergency care immediately before or after the 90-day threshold.

The Children's Guardian, upon being notified that supervision requirements have been breached, will contact the non-designated agency and the principal care agency, if different, and the child's parent(s) (where appropriate) to discuss the reasons for the breach and any action being taken to address it.

The Children's Guardian will then determine, in accordance with any guidelines issued by the Department of Communities and Justice, whether it will make a risk of significant harm report to Communities and Justice⁵⁹.

⁵⁸ Clause 76 of the Regulation.

⁵⁹ Section 78 of the Act.

The Children's Guardian will notify the registered non-designated agency and the principal care agency, if different, and the child's parent(s) of any report that it makes to Communities and Justice.

Further information on reporting children at risk of significant harm can be found in section 10.

6.8 Ending supervision of a child's VOOHC

A supervising agency will remain responsible for supervising all of a child's VOOHC until:

- a designated agency becomes the principal care agency for the child and assumes responsibility for supervising all the child's VOOHC
- the principal care agency arranges for another supervising agency to supervise the child's VOOHC
- the supervising agency otherwise ends the supervision⁶⁰ (it should give the principal care agency reasonable time to arrange alternative supervision).

It is the registered non-designated agency's responsibility to advise the supervising agency if it ceases to be the principal care agency for the child, or if the child's circumstances change and their placements no longer require supervision.

In addition, where a non-designated agency applies for and is granted provisional designated agency status, any placements delivered solely by that agency does not require supervision.

When any of the above occur, the outgoing supervising agency must:

- (a) notify the Children's Guardian at voohc@kidsguardian.nsw.gov.au detailing the change of supervision details within 5 working days of ending supervision; and
- (b) inform the principal care agency and any other agency that may be providing VOOHC to the child that its supervision of the child's VOOHC has ended.

Upon receiving the email, the Children's Guardian will amend the VOOHC Register to note that the agency is no longer supervising the child's VOOHC.

⁶⁰ A supervising agency may end a supervision arrangement at any time. It should always end a supervision arrangement when it becomes aware that a child has moved to live outside NSW. It may end a supervision arrangement when a child has no longer spent 90 or more days in a 12 month period in VOOHC.

7 Planning and reviewing VOOHC

VOOHC agencies must apply the principles at section 3 in planning and reviewing VOOHC and other supports provided to children and their parent(s)/families.

VOOHC agencies should also make use of the NSW Advocate for Children and Young People resource Taking PARTicipation Seriously, available at <http://www.acyp.nsw.gov.au/participation-resources/taking-participation-seriously>

7.1 Service planning

Service planning addresses the child's immediate day to day care needs in a placement with a VOOHC agency.

In certain circumstances VOOHC service planning may be confined to using information collected through the intake process to meet the child's immediate needs.

Where the child stays in care for longer, or receives regular short periods of care, service plans must address the child's ongoing day to day care needs, including their:

- day to day health, medical, mobility and behavioural needs
- communication and personal care needs
- likes and interests
- maintenance of relationships with family and significant others
- cultural and spiritual/religious needs
- participation in educational/vocational, social and leisure activities⁶¹.

7.2 Case planning

Case planning builds on existing service planning and provides an accurate and up-to-date record of the decisions, services, actions, roles, responsibilities and timeframes that are necessary to address the needs of a child in out-of-home care.

A **case plan** is a comprehensive and holistic written plan that addresses:

- the child's aspirations and ongoing physical, health, emotional and behavioural, family, social, recreational and leisure, educational and/or vocational, spiritual/religious and cultural needs
- the aspirations and needs of the child's parent(s) and, where relevant, other family members
- any risks associated with the child's care.

Case planning is not required for all children in VOOHC, as outlined at section 7.3 below.

Case planning must be informed by service planning, including any case plans that are in place to meet particular needs of the child or to manage particular risks associated with their care.

Case planning is a collaborative process that involves the participation of the child (to the extent of their capacity), their parent(s) and other relevant family members or people who are significant to the child, any carer, agencies that provide care or other support, and the supervising agency.

Effective case planning relies on interagency coordination, supported by information exchange about the child and their needs (see section 9).

⁶¹ Not all of these will be relevant where a child attends a holiday camp or similar service.

The case plan must have clear and achievable goals and identify tasks, responsibilities and timeframes to address those goals and when the plan will be reviewed. Where there are multiple agencies involved with a child, the case plan must recognise the responsibilities of all those agencies in a coordinated way.

Agencies should align their service planning with any case plan.

7.3 Preparation of the case plan

The Act provides that a child must not remain in VOOHC for **more than a total of 180 days in a 12-month period** unless the child has a case plan that meets their needs⁶².

While a case plan must be prepared or approved by a **designated or supervising agency or the Children's Guardian** within that 180-day period, it is good practice for the lead planning agency to commence case planning as soon as possible after the earlier of:

- the appointment of a case manager
- the child having been in VOOHC for more than a total of 90 days in a 12 month period.

The respective case planning responsibilities of lead planning agencies and supervising agencies are discussed below.

7.4 Supervising Agency and Lead Planning Agency role in case planning

The lead planning agency must identify a **case plan coordinator** to coordinate the preparation of the child's case plan. Where a child already has a supervision notification, details relating to lead planning agency roles should have ideally been identified at supervision stage. See section 6.5 and 6.6 of the Procedures for further details.

The case plan coordinator is responsible for:

- (a) gathering relevant documentation of previous assessments and service/management plans (including information gathered at intake) and, if required, arranging for further assessment of the child's needs;
- (b) communicating with the child and their parent(s) to ascertain their needs, views and wishes;
- (c) promoting the participation of the child, to the extent of their capacity, and their parent(s) in preparing the case plan - a child has the right to refuse to participate in case planning, but a parent's refusal to participate may indicate a breakdown in the parent/child care relationship (see section 7.6 below);
- (d) coordinating the involvement of other agencies and individuals that provide care or support to the child in developing the case plan;
- (e) convening case meetings⁶³ and distributing case meeting minutes to children (to the extent of their capacity), their parent(s) and other participants in developing the case plan;
- (f) documenting and distributing case plans and obtaining signatures or other records of agreement of all parties to the case plan; and
- (g) liaising with any supervising agency.

⁶² Section 77(2) of the Act.

⁶³ If a person cannot attend a case meeting, the case plan coordinator should attempt to involve them through teleconferencing or ascertain and report their views at the case meeting.

The case plan coordinator, in carrying out the above tasks, should have regard to **Taking PARTicipation seriously**, available at: <http://www.acyp.nsw.gov.au/participation-resources/taking-participation-seriously>.

The supervising agency must:

- (a) **approve any case plan** that is prepared for a child who has been in VOOHC for more than 90 days in a 12 month period – the supervising agency must ensure this is done **before the child has spent more than 180 days in VOOHC in a 12 month period**⁶⁴
- (b) **approve any case plan review** for such a child – the supervising agency must ensure the case plan is reviewed whenever the child’s ongoing care and support needs or arrangements change, and at least annually.

A supervising agency must **only approve a case plan or case plan review** after satisfying itself that the plan or review:

- (a) was prepared or conducted in accordance with the Act and these Procedures; and
- (b) appropriately meets the needs of the child.

A supervising agency must **attend case meetings** convened by the lead planning agency, which should also be attended by all relevant parties.

A supervising agency must ensure that case plans are prepared, and reviews are conducted to promote coordinated service delivery, but the **lead planning agency** is responsible for case planning and review work.

Where a child has a case manager, the agency that has case management is the lead planning agency.

Where a child does not have a case manager, the lead planning agency is:

- the principal care agency
- another agency that has agreed, with the designated supervising agency and the principal care agency’s consent, to prepare or review a case plan.

A supervising agency will only need to work on preparing or reviewing a case plan where it is concerned that the lead planning agency is unable to satisfactorily perform that work.

If a supervising agency has such concerns, then it must immediately raise them with the lead planning agency and principal care agency (if different). If the concerns are not resolved, the supervising agency should then raise them with the Children’s Guardian.

Where a case plan has not been prepared in line with the 180-day threshold, the supervising agency must **notify the Children’s Guardian** (see section 7.10 below).

A supervising agency may be contacted by a VOOHC agency that provides, or is considering providing, VOOHC for a child. In this situation, the supervising agency must:

- (a) discuss with the VOOHC agency whether the placement or proposed placement is consistent with current planning for the child (although whether a placement proceeds is ultimately a matter for the VOOHC agency and the child’s parent(s);
- (b) ask the lead planning agency to discuss with the VOOHC agency whether the child’s case plan needs to be amended to accommodate the placement.

⁶⁴ Section 77(2) of the Act.

7.5 Content of the case plan

All case plans for children who receive VOOHC must include the goals of:

- (a) the child living with their family to the greatest extent that is practical, having regard to the particular needs of the child and their parent(s)/family
- (b) the child maintaining contact with their parent(s) while in VOOHC
- (c) providing the child with stable and secure VOOHC - case plans should discourage rotation through multiple agencies, as this can be disruptive to a child.

The case plan must include:

- (a) information on the child's physical, health, nutrition/dietary, educational and/or vocational, emotional and behavioural, social, cultural, spiritual and recreational and leisure needs
- (b) information about the needs of the child's parent(s)/family and the child's relationship with family members and other people who are significant to them
- (c) information on the formal and informal supports for the child and their parent(s)/family currently receives as well as opportunities for additional services and supports
- (d) identified risks associated with the child's care and strategies for managing those risks
- (e) recognition of impending key transition stages in the child's life and the supports required to facilitate successful transition (e.g. transition to alternative VOOHC agency, secondary education, adulthood, or returning to live with their parent(s) after a significant period in VOOHC)
- (f) overall goals for the child and their parent(s) - including the goals listed earlier in this section
- (g) strategies, tasks and timeframes for addressing the goals and identified needs and risks in the plan, with the agency/person responsible for each strategy and task to be clearly identified
- (h) a record of the views expressed by the child and their parent(s) in preparing the plan (or a record of attempts to obtain such views)
- (i) a timeframe for review of the plan (must be no longer than 12 months).

7.6 Conflict between a parent and VOOHC agency, including the refusal of a parent to participate in planning

If there are disagreements or conflict between a VOOHC agency and a parent during planning, i.e. differing needs of the parent and the child, the VOOHC agency must attempt to resolve these differences through discussion and/or any formal dispute resolution procedures that are in place. The VOOHC agency must also provide the parent with information about the agency's and external complaint systems.

However, if the needs of a child and their parent(s) become incompatible, the safety, welfare and well-being of the child is paramount.

In some cases, a parent may refuse to participate in planning for their child's care. VOOHC agencies must attempt to ascertain the reason for this, as it may indicate a risk of the parent relinquishing care (see section 8.2).

A VOOHC agency must consider whether it is able to continue providing services in the child's best interests if the parent refuses to re-engage with planning for their child's care (see section 8.2 of the Procedures for more information).

7.7 Designated agency must lodge a Case Plan Notification

The **supervising agency** must lodge a **Case Plan Notification** on the VOOHC Register (see the Voluntary Out-of-Home Care Register Manual) within 5 working days of the case plan or review being finalised⁶⁵.

If a designated agency provides the VOOHC and there is no supervising agency involved, then the **designated agency that provides the VOOHC** must lodge the Case Plan Notification.

7.8 Case plan reviews

A **case plan review** considers the ongoing care and support needs of the child and their family and whether the existing case plan supports those needs. A review should result in the case plan being confirmed or amended.

The case plan coordinator must ensure the case plan is reviewed:

- (a) when the child's ongoing care and support needs or arrangements change – the review may be confined to addressing the change; and in any event
- (b) at least annually - the case plan coordinator should follow the steps for preparing a case plan outlined at section 7.3 above.

The supervising agency or designated agency responsible for lodging the case plan notification must have processes in place to identify any case plan reaching its annual review period. The supervising agency or principal care agency must have processes in place to identify these plans and coordinate case plan reviews before the annual date has expired.

Any reviewed case plan must be approved by the supervising agency. The supervising agency must enter a reviewed case plan notification onto the VOOHC Register within 5 working days of the previous case plan annual expiry date.

If a designated agency provides the VOOHC and there is no supervising agency involved, then the **designated agency that provides the VOOHC** must lodge the reviewed Case Plan Notification.

7.9 Keeping copies of case plans and case plan reviews

The Regulation requires a VOOHC agency to retain a copy of any case plan or case plan review that was prepared to meet the child's needs while in VOOHC provided or supervised by the agency.

Copies of case plans and case plan reviews must be retained until the child turns 18 (or longer, if required under any other law or funding arrangement)⁶⁶. The purpose of this is to facilitate the appropriate sharing of current and historical VOOHC case plan information (see section 9).

7.10 Designated agency must notify the Children's Guardian where a child who has been in VOOHC for more than 180 days in 12 months does not have a case plan

If a **supervising agency** supervises VOOHC for a child who has been in VOOHC **for more than a total of 180 days** in a 12 month period and the child does not have a case plan that meets their needs, then the supervising agency **must notify the Children's Guardian** as soon as is practicable after the case plan requirements have been breached⁶⁷.

⁶⁵ Clause 78 of the Regulation.

⁶⁶ Clause 79 of the Regulation.

⁶⁷ Clause 78 of the Regulation.

If a designated agency provides the VOOHC and there is no supervising agency involved, then the **designated agency that provides the VOOHC** must notify the Children's Guardian as above.

The Children's Guardian will assist supervising agencies to meet their case planning commitments by providing VOOHC Coordinators with weekly email flags on the children whose VOOHC they provide or supervise who have been in VOOHC for more than 150 days in a 12 month period and who do not have a case plan registered on the VOOHC Register.

The Children's Guardian, upon being notified that case plan requirements have been breached, will contact the designated or supervising agency and any lead planning agency, if different, and the child's parent(s) (where appropriate) to discuss the reasons for the breach and any action being taken to address it.

The Children's Guardian will then determine, in accordance with any guidelines issued by Communities and Justice, whether it will make a risk of significant harm report to the Department of Communities and Justice⁶⁸.

The Children's Guardian will notify the designated agency and the lead planning agency, if different, and the child's parent(s) of any report that it makes to the Department of Communities and Justice.

⁶⁸ Section 78 of the Act.

8 Leaving VOOHC

8.1 Children leaving VOOHC must be left in the custody of a parent or authorised person

VOOHC agencies may only release a child leaving VOOHC into the custody of a parent or a person authorised by a parent.

8.2 Parents relinquishing care at end of VOOHC placement

In some cases, the parents of a child may be unwilling to resume providing shelter, food and supervision for a child at the conclusion of a VOOHC placement.

In these cases, a VOOHC agency should either attempt to continue the placement for a short period or assist the parent(s) access an alternative emergency placement while the child's longer-term care arrangements are settled.

A VOOHC agency must urgently notify the Department of Communities and Justice office closest to where the family resides that the parent(s) is/are refusing to resume caring for the child.

The Department of Communities and Justice, in consultation with the child and their parent(s), will then consider whether there are appropriate additional or alternative services and supports that would prevent the parent(s) relinquishing care.

An agency providing VOOHC must make a report to the Child Protection Helpline (or the relevant Child Wellbeing Unit for government VOOHC agencies) if:

- (a) the parents are unwilling or unable to resume providing shelter, food and supervision for the child at the time a VOOHC placement ends and
- (b) the VOOHC agency and parents are unable to arrange alternative shelter, food and supervision for the child.

Section 10 addresses making child protection reports to the Child Protection Helpline or a Child Wellbeing Unit.

8.3 Entering end of placement information onto the VOOHC Register

An agency that provides VOOHC to a child must enter information about the end of the placement onto the VOOHC Register within 5 working days of the placement ending.

The Voluntary Out-of-Home Care Register Manual, available on the Children's Guardian's website at www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care, addresses VOOHC Register requirements in more detail.

8.4 Child enters Supported or Statutory Care

Where a child in VOOHC enters supported or statutory care whilst in a VOOHC placement (i.e. is placed into the care of the Secretary or Minister for Communities and Justice), the agency must exit the child from the VOOHC Register on the date the temporary or court order came into effect.

8.5 Children turning 18 years old

Where a child turns 18 years old, the child must be exited from the VOOHC Register on his/her 18th birthday. He or she may remain in the care of the agency, but for the purposes of the VOOHC Register, he/she is no longer in VOOHC.

Any current supervision or case plan notification should also be surrendered. The relevant agency must contact the Children’s Guardian to surrender any such notification.

9 Coordination of services and information exchange in a child wellbeing context

9.1 Scope of this section of the procedures

Interagency coordination between both government and non-government agencies is only possible where there are effective information exchange arrangements in place to support coordinated decision-making and service delivery.

VOOHC agencies must only collect, use and disclose **personal information** in accordance with these Procedures or any law that permits such collection, use or disclosure.

Personal information, for the purpose of these Procedures, is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

This section of the Procedures addresses:

- interagency coordination and the circumstances in which personal information can be requested, used and disclosed by VOOHC agencies
- safeguards to minimise the risk of inappropriate collection and disclosure of personal information
- restrictions on the disclosure of the identity of persons making child protection reports; and
- informing children and their parents of information exchange arrangements and their rights to access and correct information held by VOOHC agencies or the Children’s Guardian.

VOOHC agencies must apply this section of the Procedures when exchanging information with other bodies during VOOHC intake and assessment, supervision and planning and review (see sections 5-7).

The VOOHC Register has been designed to support coordination and information exchange between VOOHC agencies by providing them with information on other agencies that have previously provided VOOHC, or if a child’s placements are currently supervised or if a case plan has been developed. Agencies must review the VOOHC Register Placement History to gather such information.

9.2 VOOHC agencies must support coordinated decision-making and service delivery

Interagency coordination is necessary to support effective service delivery to children and their parents. It also helps minimise duplication of services and reduces the risk of agencies working at cross purposes.

Opportunities for interagency coordination must be considered during VOOHC intake and assessment, supervision and planning/review.

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (“Chapter 16A”) establishes the framework for interagency coordination and information exchange between VOOHC agencies and other **prescribed bodies** (defined below).

One of the principles of Chapter 16A is that prescribed bodies should work collaboratively in a way that respects their respective functions and expertise⁶⁹. Section 245E of the *Children and Young Persons (Care and Protection) Act* provides:

“Prescribed bodies are, in order to effectively meet their responsibilities in relation to the safety, welfare or well-being of children and young persons, required to take reasonable steps to co-ordinate decision-making and the delivery of services regarding children and young persons.”

The following are prescribed bodies under Chapter 16A:

- a designated agency
- a registered agency (non-designated agency)
- a NSW government department or public authority
- a government school or a registered non-government school or a TAFE
- a public health organisation or a private hospital
- an education and care service
- an accredited adoption service provider
- the NSW Police Force
- any other organisation that has direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children.

Obviously, many prescribed bodies will not have a role in respect to children in VOOHC. VOOHC agencies are only expected to interact with prescribed bodies that have a role in relation to the safety, welfare or well-being of children who are in, have been in, or are being assessed for VOOHC they arrange, provide or supervise.

9.3 Information exchange to be conducted by authorised staff

Given the sensitive nature of much of the information that will need to be exchanged to support the safety, welfare and wellbeing of children, each VOOHC agency must have internal procedures which specify which of its staff are authorised to provide and receive information in accordance with these Procedures.

9.4 Relationship between information exchange under the Act and Regulation and NSW and Commonwealth privacy laws

Chapter 16A establishes a scheme for information exchange between VOOHC agencies and other prescribed bodies, except for Communities and Justice. Information exchange with Communities and Justice is addressed at section 9.13 below.

Chapter 16A is informed by the following principles:

- agencies that have responsibilities for children or young people are able to provide and receive information that promotes the safety, welfare or wellbeing of children or young people;
- agencies are able to communicate with each other to facilitate the provision of services to children and young people and their families; and

⁶⁹ Section 245A(2)(b) of the *Children and Young Persons (Care and Protection) Act 1998*.

- the needs and interests of children and young people, and of their families, in receiving services relating to the care and protection of children or young people take precedence over the protection of confidentiality or of an individual's privacy.

Chapter 16A was introduced in response to the finding of the 2008 Special Commission of Inquiry into Child Protection Services in NSW that then-existing privacy laws were a major barrier to interagency work, as they resulted in reluctance to exchange information to support the best interests of children.

Chapter 16A permits, and sometimes requires, organisations to share information about children or young people, irrespective of their clients' consent. It takes precedence over the protection of confidentiality or an individual's privacy because the safety, welfare and wellbeing of children and young people is paramount.

Chapter 16A allows for information exchange, despite other laws that prohibit or restrict the collection and disclosure of personal information, such as the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Chapter 16A and the other provisions of the *Children and Young Persons (Care and Protection) Act 1998*, the *Children's Guardian Act 2019* and the Regulation addressing information exchange also apply to VOOHC agencies that receive Commonwealth funding and that are required to comply with the Commonwealth *Privacy Act 1988*. That Act recognises NSW laws may operate concurrently with it⁷⁰ and its National Privacy Principles allow the use and disclosure of personal information that is required or authorised under any law⁷¹.

9.5 Information that may be exchanged under Chapter 16A

Only information that is relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people) may be exchanged under Chapter 16A.

Relevant information may include information about:

- a child or young person's circumstances or history
- a parent or other family member
- a person who has a relationship with a child or young person
- an employee or carer
- an agency's dealings with a child or young person, including past support or service arrangements, and the outcomes of those dealings.

As noted in section 7.9, VOOHC agencies that provide or supervise a child's VOOHC must retain copies of any case plans and reviews at least until a child turns 18. The purpose of this is to facilitate the appropriate sharing of relevant current and historical VOOHC case plan information under Chapter 16A.

⁷⁰ Section 3 of the *Privacy Act 1988* (Cth).

⁷¹ See Australian Privacy Principle 6 at Schedule 31 to the *Privacy Act 1988* (Cth).

9.6 Permitted purposes of information exchange under Chapter 16A

Information may only be exchanged under Chapter 16A for the purpose of assisting the agency that receives the information to:

- make a decision or undertake an assessment or plan relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- initiate or conduct an investigation relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- provide a service relating to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- manage any risk to a child or young person (or a class of children and young people) that might arise in the agency's capacity as an employer or designated agency.

9.7 Oral and written information exchange under Chapter 16A and other provisions of the Act and Regulation

Information requests and responses under Chapter 16A and other provisions of the *Children and Young Persons (Care and Protection) Act 1998* or the Regulation can be in writing via letter or email. As outlined below, there are some template letters that may be used in exchanging information under Chapter 16A or with Communities and Justice.

Information may also be exchanged orally over the phone or in person. Where information is exchanged orally, each VOOHC agency must ensure a concise written record of the information exchange is recorded on file.

A common example of oral exchange of information would be at a case conference - the record of the case conference could form the record of the information exchange in this case.

If a VOOHC agency has any doubt about the identity of a person orally requesting information on behalf of a prescribed body, they should confirm the person's identity by contacting the agency before providing the information or ask that the request be put in writing.

9.8 Providing information under Chapter 16A

A VOOHC agency can provide information to another prescribed body under Chapter 16A where it reasonably believes the information would assist the prescribed body for one of the purposes referred to at section 9.6 above.

Information may be provided under Chapter 16A regardless of whether a prescribed body has requested that information⁷².

9.9 Requesting information under Chapter 16A

A VOOHC agency can only request information from another prescribed body under Chapter 16A for one of the purposes referred to at section 9.6 above.

When requesting information from another prescribed body, a VOOHC agency should:

- (a) **identify** the subject of the information request and, if it is not the child or young person, identify the subject's relationship to the child or young person;
- (b) **explain how** the information requested relates to the safety, welfare or wellbeing of the child or young person (or class of children or young people);

⁷² Section 245C(2) of the *Children and Young Persons (Care and Protection) Act 1998*.

- (c) **explain why** the information will assist the VOOHC agency to make a decision, assessment or plan, or to initiate or conduct an investigation, or to provide any service, or to manage any risk to the child or young person;
- (d) provide a sufficient level of **detail** to assist the prescribed body to understand the purpose of the request and to locate the relevant information in an efficient manner;
- (e) provide a **background** to the request/direction, including whether or not the VOOHC agency has informed the child, young person or parent(s) that the information has been sought and if not, why not;
- (f) indicate the **time period** for which the information is sought (e.g. for the last 6 months) and the type of information sought;
- (g) provide a **realistic timeframe** for the prescribed body to provide the information - negotiating a due date can ensure urgent matters are prioritised; and
- (h) preferably **contact** the prescribed body by phone before making the request to discuss the VOOHC agency's needs and to ensure the request is well targeted.

A useful checklist for requesting information under Chapter 16A and a template letter for such requests are available at: <https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/exchanging-information>

9.10 Agreeing to a request for information under Chapter 16A

A VOOHC agency or other prescribed body that receives a request for information under Chapter 16A **must provide the requested information** if:

- (a) it reasonably believes providing the information will assist the body making the request for one of the purposes referred to at section 9.6 above and
- (b) one of the exemptions at section 9.11 below does not apply.

A VOOHC agency or other prescribed body is only required to provide requested information that it holds – it is not obliged to collect information to respond to a request.

A template letter for agreeing to a request for information is available at: <https://www.facs.nsw.gov.au/download?file=336203>

9.11 Declining a request for information under Chapter 16A

A VOOHC agency or other prescribed body is not obliged to provide any information requested if it reasonably believes this would:⁷³

- endanger a person's life or physical safety
- contravene any legal professional or client legal privilege
- prejudice the investigation of any contravention or possible contravention of a law, a coronial inquest or inquiry, or care proceedings
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a breach or possible breach of a law
- not be in the public interest.

⁷³ Section 245D of the *Children and Young Persons (Care and Protection) Act*.

If a VOOHC agency or other prescribed body declines to provide information, it must notify the requesting agency in writing of its refusal and the reasons for it, with reference to the above exemptions.

A template letter for declining a request for information is available at:

<https://www.facs.nsw.gov.au/download?file=336204>

Where there is a dispute between agencies as to the release of information, there should be a joint review of the request and refusal to provide information, escalating to chief executive level if required. An independent body should be asked to mediate such a dispute if agreement cannot be reached.

9.12 Use and further disclosure of information obtained under Chapter 16A

Chapter 16A prohibits VOOHC agencies and other prescribed bodies from using or disclosing information received under Chapter 16A for any purpose that is not associated with the safety, welfare or wellbeing of the child or young person (or class of children and young people) to whom the information relates, unless such use or disclosure is otherwise required or permitted by any law (e.g. responding to a subpoena).

9.13 Exchanging information with Communities and Justice

VOOHC agency information exchange with Communities and Justice is governed by section 248 of the *Children and Young Persons (Care and Protection) Act 1998*.

Communities and Justice may direct a VOOHC agency to provide it with information relating to the safety, welfare and wellbeing of a child or young person (or class of children and young people).

Communities and Justice will provide information under section 248 to a VOOHC agency when:

- the agency needs assistance and/or advice to make decisions about future supports and service delivery arrangements for the child, young person and their family
- the agency has ongoing contact with the child or young person and their safety or wellbeing, and the service outcomes would be compromised without that information
- the agency is providing a service under a case plan together with Communities and Justice (this is more likely in a supported care setting)
- the agency discovers that allegations against an employee have been reported to Communities and Justice on a child protection matter, and details of that report need to be given to the Office of the Children's Guardian by the agency head
- the agency needs to determine (generally for the purposes of an investigation under Part 4 of the *Children's Guardian Act 2019*) whether a person might pose a threat to a child
- the police need to manage a child or young person for a short time until an appropriate person or agency can take responsibility for assisting them.

Communities and Justice will apply the objects and principles applicable to the exchange of information under Chapter 16A when responding to any VOOHC agency request for information under section 248.

Making a child protection report to Communities and Justice is addressed at section 10.

9.14 Exchanging information with the Children’s Guardian

As detailed earlier in these Procedures, VOOHC agencies must provide the Children’s Guardian with information about each VOOHC placement, supervision arrangement, case plan and case plan review – this is done by entering that information on to the VOOHC Register.

VOOHC agencies must also inform the Children’s Guardian when timeframes for supervision and case planning are not met.

Most other information exchange between VOOHC agencies and the Children’s Guardian will be conducted in accordance with Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

However, the Children’s Guardian may issue a VOOHC agency with a formal direction under section 180 of the *Children’s Guardian Act 2019* to provide the Guardian with information relating to the safety, welfare and wellbeing of a child (or a class of children).

The VOOHC agency must comply with such a direction as failure to do so is a criminal offence carrying a maximum penalty of \$1,100.

It is also a condition of a VOOHC agency’s registration that it permit the Children’s Guardian, or a person authorised by the Children’s Guardian, to enter and inspect its premises, to observe and converse with those present and to make such examination and inquiries as the Children’s Guardian sees fit⁷⁴. The Children’s Guardian is required to give reasonable notice that entry is required, unless this would frustrate the purpose of the visit.

The Children’s Guardian may issue directions under section 180 or enforce the condition relating to entry and inspection of premises to support its monitoring of VOOHC agency compliance with the Act and Regulation.

A VOOHC agency may have its accreditation or registration cancelled if it refuses to comply with such a direction or condition⁷⁵.

9.15 Protection for staff who disclose information in good faith

If a person acts in good faith when providing any information under Chapter 16A, he or she:

- is not liable to any civil or criminal action, or any disciplinary action, for providing the information and
- cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

Similar protections apply to people in disclosing information to Communities and Justice under the *Children and Young Persons (Care and Protection) Act 1998* or the Children’s Guardian under the *Children’s Guardian Act 2019*.

9.16 Other information collection and use permitted by clause 20 of the Regulation

VOOHC agencies must exchange information with prescribed bodies, Communities and Justice and the Children’s Guardian in accordance with the above provisions.

However, clause 20 of the Regulation permits VOOHC agencies to collect information from other persons in certain circumstances. It does not apply to VOOHC agency disclosure of information.

⁷⁴ Clauses 11 and 8 of Schedule 3 and 4 of the regulation

⁷⁵ Clauses 66 and 74 of the Regulation.

Clause 20 provides that a VOOHC agency is authorised to collect and use any information relevant to VOOHC that is provided, arranged or supervised by the agency and a person is authorised to provide such information to a VOOHC agency.

Clause 20 does not apply where a law prohibits a person providing information⁷⁶.

Clause 20 allows information disclosure to a VOOHC agency that is not covered by the above provisions of the *Children and Young Persons (Care and Protection) Act 1998* to be permitted under the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002* and the *Commonwealth Privacy Act 1988*, all of which allow the disclosure and use of information permitted under another Act or law.

It is a requirement of these Procedures that a VOOHC agency only collects and uses personal information under clause 20 where:

- the information relates to the safety, welfare or wellbeing of a child (or a class of children) and
- it is for a purpose permitted under section 9.6 above.

9.17 VOOHC agency must not provide information that identifies a person who has made a child protection report

The *Children and Young Persons (Care and Protection) Act 1998* protects the identity of anyone who makes a child protection report to the Child Protection Helpline or a Child Wellbeing Unit⁷⁷ (see section 10).

VOOHC agencies must not provide information that identifies a person who has made such a report or that allows their identity to be deduced unless:

- the person who made the report consents or
- leave is granted by the court or other body before which proceedings related to the report are conducted.

9.18 Informing children and their parents of information exchange arrangements

VOOHC agencies must advise children (to the extent of their capacity)⁷⁸ and their parent(s) early on in their contact with a VOOHC agency in a manner and language they can understand:

- (a) that information relevant to the child's safety, welfare or wellbeing may be shared between the VOOHC agency and other organisations or bodies;
- (b) that information about the child will be entered onto the VOOHC Register; and
- (c) of their rights to access and correct information held by the agency or entered onto the VOOHC Register (see sections 5.5 and 9.19).

While the consent of a child and their parent(s) is not necessary for the exchange of information under the Act, the Regulation and the *Children and Young Persons (Care and Protection) Act 1998*, VOOHC agencies must build a requirement into their intake and assessment procedures for

⁷⁶ Clause 20(5) of the Regulation.

⁷⁷ Section 29 of the *Children and Young Persons (Care and Protection) Act 1998*.

⁷⁸ Generally, children over the age of 12 are considered capable of understanding aspects of their own privacy and information sharing issues, but some children over 12 with developmental delays may not. Some younger children may also have the capacity to understand privacy and information sharing issues.

children, to the extent of their capacity,⁷⁹ and their parent(s) to sign an acknowledgment that information relevant to the child's safety, welfare or wellbeing may be shared with other organisations.

Keeping children and their parent(s) informed of specific incidents of information exchange helps to maximise their engagement in VOOHC service delivery and is part of best practice case management. Where practicable and appropriate, a child and their parent(s) should be informed when specific information about them is being disclosed to another agency.

It will not be appropriate to inform a child and their parent(s) if the agency believes this would jeopardise a child's safety, welfare or wellbeing or place any person at risk of harm.

It may not be practicable to notify a child and their parent(s) where the agency is:

- unable to contact them and the matter is urgent or
- disclosing information about past care arrangements and they have no current contact with the child and their parent(s).

9.19 Right of children and their parents to access and correct information held about them

NSW and Commonwealth privacy legislation both recognise that people have a general right to access and correct information that is held about them.

A VOOHC agency must allow a child or their parent(s), at their request, to access information the agency holds about them, unless the agency believes this would jeopardise a child's safety, welfare or wellbeing or place any person at risk of harm.

If a child or their parent satisfies the VOOHC agency that the information is inaccurate or not up to date, then the agency must correct or update the information.

Children and their parent(s) also have the right to ask the Children's Guardian to access information held about a child on the VOOHC Register and to correct that information⁸⁰.

9.20 Secure storage of personal information

Personal information about children and their parent(s) must be held in a secure manner (in paper form and/or electronically) and accessible only to those members of staff who need access to that information in order to do their jobs.

Relevant requirements for the secure storage of information under the *Privacy and Personal Information Protection Act 1998*, *Health Records and Information Protection Act 2002* and *Commonwealth Privacy Act 1988* will also apply.

⁷⁹ There is no set age for informing children about information exchange. Generally, children over the age of 12 are considered capable of understanding aspects of their own privacy and information sharing issues, but some children over 12 with developmental delays may not. Some younger children may also have the capacity to understand privacy and information sharing issues.

⁸⁰ Clauses 84 and 85 of the Regulation.

10 Child protection and child safety

10.1 Working With Children Check

A Working with Children Check (the Check) is a prerequisite for anyone in child related work in NSW. The Check includes a national police check and review of findings of misconduct involving children. The result is either a clearance or a bar.

If the outcome is a clearance, the Check is valid for five years and may be used for any child related work (paid or voluntary) in NSW. Cleared applicants will be subject to ongoing and relevant new records that could lead to a bar or the clearance being revoked.

Before engaging a new, paid, child related worker (or carer), an employer must ensure the individual has a clearance to work with children, or a completed Check application in progress.

The only accurate way to acutely determine a person's clearance is by verifying their Working with Children Check online; paper evidence of a clearance should not be accepted. All VOOHC agencies must register with the Children's Guardian as an agency for WWCC verification purposes and verify each WWCC prior to an employee/volunteer or board member commencing in a child-related role with the agency.

The Working with Children Check is not the only resource available to employers to provide better protection for children. Implementing child safe and child friendly policies and procedures is an essential part of creating a child safe organisation.

For more information on the Child Safe Standards and links to additional resources and training options, see Appendix C.

10.2 Mandatory reporting where a child is at risk of significant harm

Many staff or contractors of VOOHC agencies are **mandatory reporters** within the meaning of section 27 of the *Children and Young Persons (Care and Protection) Act 1998*.

Mandatory reporters include those with direct responsibility for delivering the following services wholly or partly to children as part of their paid work:

- Health care (e.g. registered medical practitioners, specialists, general practice nurses, midwives, occupational therapists, speech therapists, psychologists, dentists and other allied health professionals working in sole practice or in public or private health practices)
- Welfare (e.g. psychologists, social workers, caseworkers and youth workers)
- Education (e.g. teachers, counsellors, principals)
- Children's services (e.g. child care workers, family day carers and home-based carers)
- Residential services (e.g. refuge workers)
- Law enforcement (e.g. police).

Managers of mandatory reporters are also mandatory reporters under section 27 of the *Children and Young Persons (Care and Protection) Act 1998*, irrespective of whether or not they are paid.

Mandatory reporters in VOOHC agencies (except agencies that are part of NSW Health) must report to the **Child Protection Helpline (ph: 132 111)** where they have reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise during the course of, or from, their work.

Mandatory reporters are not legally required to report risk of significant harm to young people (i.e. those aged 16–17 years). However, they may make such a report

A child or young person is at risk of significant harm where:

- their parent/carer is not meeting their basic physical or psychological needs - this includes cases where care is relinquished without alternative care arrangements being in place (see section 8.2 of these Procedures)
- their parent/carer has not arranged necessary medical care
- they are at risk of physical or sexual abuse or ill-treatment
- the behaviour of their parent/carer towards them causes or risks them suffering psychological harm or
- there are incidents of domestic violence where the consequence is the child or young person is at risk of serious physical or psychological harm.

VOOHC agencies must make relevant staff, contractors and management aware of their mandatory reporting obligations.

The *Children and Young Persons (Care and Protection) Act 1998* protects the identity of anyone who makes a report to the Child Protection Helpline or a Child Wellbeing Unit, with a reporter's identity only able to be disclosed to a law enforcement agency in very limited circumstances. It also ensures that people who make reports to the Helpline or a Child Wellbeing Unit in good faith are protected from any criminal, civil or disciplinary action in connection with that disclosure⁸¹.

Detailed information on mandatory reporting requirements is available at <http://www.community.nsw.gov.au/preventing-child-abuse-and-neglect/resources-for-mandatory-reporters>

10.3 Child Protection Helpline reports – breach of VOOHC supervision or case plan requirements

VOOHC agencies must report breaches of VOOHC supervision requirements to the Children's Guardian, in accordance with section 6.8.

Designated and supervising agencies must report breaches of VOOHC case plan requirements to the Children's Guardian, in accordance with section 7.10.

VOOHC agencies should not report these breaches to the Child Protection Helpline.

The Children's Guardian, after assessing the breach in accordance with any guidelines issued by Communities and Justice, may report the breach to Communities and Justice.

If agencies are aware of another organisation providing VOOHC that is not registered, the agency must contact the Children's Guardian who will in turn contact the unregistered agency and discuss the matter.

⁸¹ Section 29 of the *Children and Young Persons (Care and Protection) Act 1998*.

10.4 Reportable conduct

All VOOHC providers are considered ‘relevant entities’ for the purposes of Part 4 of the Act.

Registered designated and non-designated VOOHC providers are ‘relevant entities’ under the definition of a ‘Schedule 1 entity’ in sections 12 and 13 of the Act. This definition includes

“Schedule 1.13 an agency providing substitute residential care for children”

Part 4 of the Act requires the Children’s Guardian to administer a scheme to monitor how certain organisations (‘relevant entities’) investigate and report on certain conduct (known as ‘reportable allegations’ and ‘reportable convictions’) made against their employees.

Reportable conduct is defined under section 20 of the Act as:

- (a) a sexual offence,
- (b) sexual misconduct
- (c) ill-treatment of a child,
- (d) neglect of a child,
- (e) an assault against a child,
- (f) an offence under section 43B or 316A of the *Crimes Act 1900*,
- (g) behaviour that causes significant emotional or psychological harm to a child.

‘Relevant entities’ must notify the Office of the Children’s Guardian of all reportable allegations and convictions that arise inside or outside the employee’s work.

10.5 What are the responsibilities of heads of entities?

The head of each relevant entity is required to set up systems within their organisation to ensure that they are advised of any reportable allegations or convictions against their employees, contractors or volunteers.

Once the head of a relevant entity has been advised of a reportable allegation or conviction against an employee, contractor or volunteer, they must notify the Office of the Children’s Guardian within 7 business days of becoming aware of the reportable allegation and/or conviction⁸².

In the notification, the entity must include:

- details of the reportable allegation or conviction considered to be a reportable conviction (including the name of the employee, date of birth and WWCC number; the name and contact details of the relevant entity and the head of the relevant entity)
- the nature of the entity’s initial risk assessment and risk management action
- whether the Commissioner of Police has been notified of the allegation (for reportable allegations)
- confirmation that a report has been made under section 24 of the *Children and Young Persons (Care and Protection) Act 1998* (if a report has been made)

⁸² Section 29(4) of the Act.

10.6 Disability Reportable Incidents

VOOHC providers that support children who are NDIS participants must also report allegations of reportable incidents to the NDIS Quality and Safeguards Commission.

For an incident to become a reportable incident it must satisfy the following two requirements:

- the incident must involve an act, event or omission defined in section 73Z(4) of the *National Disability Insurance Scheme Act 2013* and section 16 of the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.
- the incident must have occurred or is alleged to have occurred in connection with the provision of supports or services by a registered NDIS provider.

Registered NDIS providers must notify all reportable incident (including allegations) to the NDIS Quality and Safeguards Commission, even where the provider has acted and responded appropriately. A failure to comply with the requirement to notify, investigate and manage reportable incidents is a breach of a provider's conditions of NDIS registration and may lead to compliance and enforcement actions by the NDIS Commission.

Section 73Z(4) of the *National Disability Insurance Scheme Act 2013* defines a reportable incident as:

- (a) the death of a person with disability; or
- (b) serious injury of a person with disability; or
- (c) abuse or neglect of a person with disability; or
- (d) unlawful sexual or physical contact with, or assault of, a person with disability; or
- (e) sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or
- (f) the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

Unlike the reportable conduct scheme, reportable incidents include both employee to child and client (adult or child) to child matters.

10.7 Who is responsible for notifying the NDIS Quality and Safeguards Commission?

The key personnel or person specified in the incident management system of a registered NDIS provider is responsible for taking all reasonable steps to ensure that reportable incident that occur in connection with the provision of supports or services are notified to the NDIS Quality and Safeguards Commission.

Key personnel of a registered provider are:

- the people (or person) responsible for the executive decisions of the registered provider
- any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered provider
- the person who is responsible for reporting incidents that are reportable incidents to the NDIS Quality and Safeguards Commission within the designated timeframes set out by the NDIS Quality and Safeguards Commission

A provider's incident management system must set out the roles and responsibilities of person employed or otherwise engaged by the registered NDIS provider in identifying, managing and resolving incidents and in preventing incident from occurring.

More information about the NDIS Quality and Safeguards Commission's reportable incident requirements can be found at: <https://www.ndiscommission.gov.au/providers/incident-management-and-reportable-incidents>

11 Glossary of key terms

Term	Explanation
Act	The <i>Children's Guardian Act 2019</i> .
CALD	Culturally and Linguistically Diverse.
Case management	The process of assessment, planning, implementation, monitoring and review – case management is more intensive than supervision of VOOHC and requires regular interaction with children in VOOHC, their parent(s)/families and other service providers.
Case plan	A holistic written plan that builds on the existing service plan and addresses: the child's aspirations and ongoing physical, health, emotional and behavioural, family, social, recreational and leisure, educational and/or vocational, spiritual/religious and cultural needs; the aspirations and needs of the child's parent(s) and, where relevant, other family members; and any risks associated with the child's care.
Case plan coordinator	The person identified by the lead planning agency as responsible for coordinating the preparation and review of a child's case plan (the case manager where the child has a case manager).
Chapter 16A	Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .
Child	A person who is under the age of 18.
Children's Guardian	The New South Wales Children's Guardian.
Communities and Justice	The NSW Department of Communities and Justice
Designated Agency	An agency that may provide statutory and supported out-of-home care. A designated agency may also nominate to register to provide, arrange or supervise VOOHC.
Disability	A disability that results in a person being within the target group under section 24 of the <i>Disability Inclusion Act 2014</i> .
Lead planning agency	The agency with lead responsibility for preparing and reviewing case plans – if there is a case manager, the agency with case management – if there is no case manager, the principal care agency or another agency that has agreed, with the principal care agency's consent, to prepare or review a case plan.
Out-of-home care	Care and control of a child or young person at a place other than their usual home by a person other than their parent (subject to the exceptions at section 2.1 of these Procedures).

Parent	A person with parental responsibility for the child (not necessarily the biological parent).
Prescribed body	An organisation or body that is subject to the interagency coordination and information exchange provisions of Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> - all VOOHC agencies are prescribed bodies.
Principal care agency	The agency that currently provides most of a child's VOOHC. The Children's Guardian can advise which VOOHC agency is the principal care agency for a particular child
Regulation	The Children and Young Persons (Care and Protection) Regulation 2012
Relative	A parent, step-parent, grandparent, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew - whether related by blood, marriage or adoption.
Registered agency (non-designated)	An organisation registered by the Children's Guardian to provide and/or arrange VOOHC.
Service planning	Planning by a VOOHC agency to address the child's immediate and/or ongoing day to day care needs in a VOOHC placement with the agency.
Statutory out-of-home care	Court-ordered out-of-home care (a child in statutory out-of-home care cannot be in VOOHC).
Supervising agency	A designated agency, or the Children's Guardian, responsible for supervising a child's VOOHC.
Supported out-of-home care	Care provided, arranged or otherwise supported by Communities and Justice after Communities and Justice has formed the opinion that the child is in need of care and protection (a child in supported out-of-home care cannot be in VOOHC).
VOOHC	Voluntary out-of-home care for children.
VOOHC agency	An organisation that provides or arranges VOOHC, in accordance with an arrangement between itself and the parent(s) of a child.
VOOHC Coordinator	The person nominated by the VOOHC agency as its principal point of contact for persons wishing to enquire about the agency's VOOHC placements.
VOOHC Register	The Voluntary Out-of-Home Care Register, administered by the Children's Guardian, which contains details about a child's VOOHC placements, supervision and case plans/reviews.
Working day	A day other than a Saturday, Sunday or public holiday.

12 Appendix A: NSW carers charter

- (a) The valuable social and economic contribution that carers make to the community and the persons for whom they care should be recognised and supported.
- (b) Carers' health and wellbeing are to be given due consideration.
- (c) The views and needs of carers and the views, needs and best interests of the persons for whom they care must be taken into account in the assessment, planning, delivery and review of services provided to persons who are cared for.
- (d) Carers should be referred to, and made aware of, appropriate services to assist carers in their caring role. Such referrals should be made after an assessment of the needs of carers or as part of the assessment or provision of services to the person being cared for.
- (e) The relationship between carers and the persons for whom they care should be respected.
- (f) Carers are to be acknowledged and recognised as having their own individual needs within and beyond their caring role. This acknowledgement and recognition is to take into consideration Aboriginal or Torres Strait Islander culture, age, disability, religion, socio-economic status, cultural differences, gender identification and place of residence.
- (g) Children and young people who are carers have the same rights as all children and young people.
- (h) Children and young people who are carers face additional difficulties and burdens and should be supported in overcoming these difficulties and burdens.
- (i) Carers should have the same rights, choices and opportunities as other Australians.
- (j) Carers' choices in their caring role should be supported and recognised, including the recognition of carers in the assessment, planning, delivery and review of services that impact on carers and their role as carers.
- (k) The additional difficulties faced by remote and rurally based carers caused by isolation should be recognised and acknowledged.
- (l) Support for carers should be timely, responsive, appropriate and accessible.
- (m) Carers' unique knowledge and experience should be acknowledged and recognised.

13 Appendix B: VOOHC practice guides 1–8

13.1 Practice guide 1: Determining exemptions to VOOHC

Step 1: Referral received

Step 2: Agency to determine and record source of referral i.e. is it from a parent via an agency requesting respite, or is it from an NDIS provider or bail assistance program

Step 3: Agency to identify who the primary care giver is, who has authority to provide consent – name, what is the relationship

Step 4: If child is in VOOHC, agency to follow VOOHC intake processes and VOOHC Register requirements

Step 5: If child is not determined to be in VOOHC (VOOHC agency to review VOOHC exemptions (page 10 – 11 of The Procedures), agency does not record details on VOOHC Register

Step 6: If child is in statutory or supported out-of-home care, and is placed with a non-designated VOOHC agency, the agency must contact the Children’s Guardian and advise name, DOB of child, frequency of care (i.e. one weekend a month, 3 months or long term), referring agency and contact person from the referring agency

13.2 Practice guide 2: Principles snapshot

- **Safety** – family centred approach to be taken but safety, welfare and wellbeing of child is paramount
- **Participation** – child and parent(s) to make informed choices about services and participate in decision making (integral to family centred approach)
- **Collaboration** – coordination/service delivery (partnership approach between VOOHC agencies and funding bodies, placing child at the centre of collaborative decision making)
- **Respite/short term accommodation** – critical for supporting relationship between child and parent(s) in early intervention, and any unforeseen circumstances
- **Appropriate services** – child should not to be placed in VOOHC if appropriate services can be provided to enable them to remain with their families - family supports, non-VOOHC respite arrangements to be considered in addition to VOOHC, or combination
- **Age appropriate care** – children under 7 years old must not be placed in centre based care unless they have complex health care needs. Children aged 16-17 years old can be placed with adults if risk assessment completed and their parent(s)/guardian are advised. Children under 16 years old must only be placed with adults in exceptional circumstances i.e. high health needs
- **Connections** – Maintain connections with family, significant others and community, actively involving parents in planning their child's care and support
- **Culturally considered/appropriate placements** – VOOHC agencies to be respectful of cultural needs of Aboriginal and Torres Strait Islander people and people from culturally and linguistic diverse backgrounds, person-centred approach
- **Complaints handling** – Equitable and fair processes for dealing with complaints and disputes – ensuring children and parent(s) are made aware of how to make complaints – information should be available in manner/language that is able to be clearly understood – VOOHC agency to keep records of complaints and their responses to them
- **Behaviour support policies** – VOOHC agencies must have clear policies in relation to behaviour support practices to be used by carers and staff. Policies should also outline what constitutes a prohibited practice and limitations relating to the use of any restrictive practices.

13.3 Practice guide 3: Intake and assessment process snapshot

- Referral received from parent or other brokerage agency
- Care status and court orders determined (including family court orders, AVO's)
- Information gathered for VOOHC Register entry
- Placement history search
- Intake assessment information gathered to include:
 - formal, informal supports
 - needs of parents, family relationships, consider views of the child, family
 - health, medical, behaviour, disability
 - cultural (including diet, religious observances)
 - language/communications needs of the child and family
 - education, vocation arrangements
 - social/leisure activities, living skills, daily routine
 - likes, dislikes, interests of the child
 - transport requirements
 - emergency contact details
 - contact any current supervising agency involved
 - discuss supervision requirements with supervising agency if your agency is principal care agency and child requires supervision
- Advise parent(s) of VOOHC legislation (e.g. VOOHC Register), families brochure
- Advise parents of agency's complaints system and rights to access information on their child

Summary of intake process for VOOHC Arrangers to consider

- Only broker to registered VOOHC agencies (check Children's Guardian website)
- Assess eligibility in accordance to agency's processes/requirements
- Conduct needs assessment
- Identify potential VOOHC provider (check Children's Guardian website for designated or non-designated agencies)
- Provide any assessment information gathered to identified VOOHC provider

Summary of intake process for VOOHC Providers to consider

- Review information from VOOHC arranging agency or conduct own assessment if parent contacts agency directly
- Conduct further assessment to ensure provider has all necessary information to meet immediate needs of child at intake
- Gather any other necessary information to meet ongoing needs of child
- Discuss VOOHC Register requirements with parents

Useful tips

- Incorporate Principles (section 3 of the Procedures) into assessment;
- Care status – do not enter child's details if in statutory or supported care
- Gather all necessary information to meet immediate health and safety needs of the child
- Gather all other necessary information (dependant on length of stay)
- Talk to parent(s) regarding VOOHC Register, agency's legal obligations and the parents' rights to access information about their child
- Keep written records of views of the parent(s)
- Talk to other relevant agencies (supervising agency, previous principal care agency as relevant)
- Enter placement within 5 working days of the placement commencement date on to the VOOHC Register

13.4 Practice guide 4: Supervision process snapshot

- Child enters VOOHC
- Child reaches 60 days with a non-designated agency or mix of non-designated and designated agencies

Children's Guardian role at flag stage

- Children's Guardian runs weekly reports identifying children at 60 days and over in VOOHC over a 12 month period without a recorded supervision notification
- Children's Guardian determines principal care agency (agency providing most amount of care at 60 day flag)
- Children's Guardian sends flags to principal care agency where a child is between 60 - 90 days

Role of principal care agency

- Receives flag from Children's Guardian
- Reviews Placement History to identify any other agencies, monitor length of time child is in VOOHC
- If principal care agency is a registered (non-designated) agency, it must identify a suitable designated supervising agency to arrange supervision (see the Children's Guardian website for a list of designated agencies that are approved to supervise VOOHC)
- If principal care agency is designated, the Children's Guardian provides it with a list of all other VOOHC agencies providing VOOHC to the child at flag stage, designated agency to contact all other VOOHC agencies identified and discuss supervision arrangements (list of registered agencies details on Children's Guardian website)
- Principal care agency (either designated or non-designated) to contact parents of child and discuss supervision arrangements

Role of supervising agency

- Receives flag from OCG (if principal care agency) or a request from registered (non-designated) agency
- Check Placement History for child's number of days in care and determine if other agencies involved
- Monitors number of days in care
- Organises initial supervision meeting/discussion with all VOOHC agencies involved
- Enters Supervision notification on VOOHC Register by the 90 day timeframe

- Sends all VOOHC agencies involved a copy of the PDF receipt to acknowledge supervision arrangement
- Monitors movements in care i.e. days in care or if another agency becomes involved, or if another agency becomes the principal care agency
- Monitors child's thresholds of care with a view to case planning

Hints

- Supervision meeting – good practice for all agencies to meet to discuss supervision arrangements including
 - ✓ roles and responsibilities of agencies involved (who does what and when)
 - ✓ case management impacts (if any)
 - ✓ lead planning agency requirements
 - ✓ the supervision plan
 - ✓ review dates of supervision
 - ✓ contact with all agencies involved
 - ✓ check Placement History
- Supervision plan records
 - ✓ the discussion between all agencies involved
 - ✓ roles and responsibilities
 - ✓ plan derived from the meeting
 - ✓ starting point for case planning if child reaches or is likely to reach 180 days
- Interagency collaboration – key to providing consistent care to child across all agencies

13.5 Practice guide 5: Case planning snapshot

- Child enters VOOHC
- Before the child reaches 90 days with a registered non-designated agency, follow supervision process detailed at section 6 of these Procedures
- Monitor whether a child is approaching 180 days
- Children's Guardian sends flag to principal care agency at 150 days
- Principal care agency (if a registered non-designated agency) checks placement history, contacts supervising agency to discuss case planning requirements/process and includes details of other relevant VOOHC agencies
- Principal care agency (if designated) checks placement history and contacts all other relevant VOOHC agencies involved to discuss process (if no other VOOHC agency involved – designated agency conducts its own case planning process)
- All agencies involved with the care of the child meet to discuss case planning process – determining lead planning agency, roles, responsibilities, timeframe for case planning, involvement of relevant agencies and family
- Case plan meeting held and includes relevant agencies and parents/families/child where applicable
- Supervising agency reviews and approves case plan if completed by registered (non-designated) agency
- Supervising agency enters case plan notification by 180 days, sends PDF notification to all relevant agencies involved, monitors currency of case plan and thresholds of care
- Registered/Designated and supervising agency to monitor currency of case plan
- Registered (non-designated) agency to advise supervising agency of any changes to child care patterns or principal care agency
- At 12 month period, review of case plan to be held, reviewed case plan to be entered onto the VOOHC Register by supervising agency if child is still in high thresholds of care requiring case planning
- Supervising agency to advise the Children's Guardian to end date previous recorded Case Plan notifications on VOOHC Register.

13.6 Practice guide 6: Leaving care snapshot

VOOHC agencies to ensure it has processes in place to guide staff on:

- releasing children at the conclusion of a VOOHC placement to parent(s) or authorised persons only
- matters relating to relinquishment of care, including reporting requirements to Communities and Justice
- recording at which points a child leaves VOOHC i.e. at 18th birthday or when a child enters statutory or supported care

13.7 Practice guide 7: Exchange of information snapshot

- Exchange of Information relevant to safety, welfare and wellbeing of child is permitted
- Exchange of information with other bodies during VOOHC should occur (but not limited) at Intake and assessment, Supervision, Planning and Reviewing
- Agency policies to be reviewed to permit exchange of information
- Agency's exchange of information policy to include:
 - information requests and responses under Chapter 16A to be in writing
 - VOOHC agencies should have concise written records of information exchange on file (**Hint:** follow up oral conversation with written email)
 - confirm person's identity prior to exchanging information and ensure request is to be put in writing
 - approval process for any exchange of information is in place (i.e. delegated sign off by authorised person prior to exchanging information)
 - clear processes re: accepting and declining requests for information in accordance with Chapter 16A
 - review process if refusal of the request is disputed
 - clear processes in place regarding exchange of information with Communities and Justice under section 248 of the *Children and Young Persons (Care and Protection) Act 1998*.
 - clear processes in place regarding exchange of information with the Office of the Children's Guardian under section 180 of the *Children's Guardian Act 2019*
 - informing parent(s) and children (if applicable) of information exchange arrangements including sharing information between VOOHC agencies, information being entered onto the VOOHC register, rights to access and correct information held by the agency or what has been entered onto the VOOHC Register
 - providing and discussing Voluntary Out-of-Home Care Information Brochure for Families with parents/families
 - parent(s)/children sign acknowledgement that information may be shared with other agencies and entered onto the VOOHC Register
 - informing parents of specific incidents of exchange of information where appropriate
 - allowing parent(s) and children access to information that the agency holds about them unless it jeopardises safety, welfare and wellbeing of the child and provides the opportunity for this information to be corrected
 - secure storage of information, accessible only to relevant staff (including hard copies and electronic files)

13.8 Practice guide 8: Risk of significant harm snapshot

- Agencies must ensure it follows Mandatory Reporting Guidelines including:
 - child protection guidelines including mandatory reporting and what constitutes risk and ensuring staff and carers have Working With Children Checks
 - Awareness of which agency to report risk – i.e. Helpline or Child Wellbeing Units
- Agencies must have policy, processes and practices to ensure it identifies and reports all reportable allegations and reportable convictions to the Office of the Children’s Guardian
- Breaches of VOOHC Supervision and Case planning requirements:
 - Agencies to report breaches of supervision and case planning to the Children’s Guardian
 - Children’s Guardian to determine if reportable to Communities and Justice
- Other breaches of VOOHC:
 - Agencies arrange with only registered VOOHC agencies (Check Children’s Guardian website)
 - Agencies contact Children’s Guardian if aware of non-registered agency providing VOOHC

14 Appendix C: Child Safe Standards

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended 10 Child Safe Standards which provides a framework for making organisations safer for children. Based on extensive research and consultation, the Standards provide tangible guidance for organisations to create cultures, adopt strategies and act to put the interests of children first, to keep them safe from harm.

The Child Safe Standards encompass existing child safety requirements for organisations such as the Working With Children Check and the reportable conduct scheme to support child safety.

The Child Safe Standards are:

1. Child safety is embedded in organisational leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld, and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the organisation is child safe

The Office of the Children's Guardian have produced a [guide to the Child Safe Standards](#) to support organisations working with children to create, maintain and improve their child safe practices.

You can find more information about training and resources for child safe organisations on the Office of the Children's Guardian website at <https://www.kidsguardian.nsw.gov.au/>.

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Office of the
Children's Guardian

Address Locked Bag 5100, Strawberry Hills NSW 2012

Phone (02) 8219 3600

Email voohc@kidsguardian.nsw.gov.au

Website www.kidsguardian.nsw.gov.au