

Consultation summary

Review of the Children's Guardian's accreditation and
monitoring functions

April 2022

www.ocg.nsw.gov.au



Executive Summary

In November 2021 the Office of the Children’s Guardian released a discussion paper on the review of the Children’s Guardian’s accreditation and monitoring functions which are currently set out in the Children and Young Persons (Care and Protection) Regulation 2012 (‘Care and Protection Regulation’), the Adoption Regulation 2015 (‘the Adoption Regulation’), the *Children’s Guardian Act 2019* and the NSW Child Safe Standards for Permanent Care (‘the permanent care standards’).

This is the first comprehensive, stand-alone review of the legislative provisions underpinning the accreditation system since the scheme commenced in 2003.

The consultation paper set out proposed amendments to the existing legislation to clarify and strengthen the Children’s Guardian’s functions. The paper also sought feedback on potential policy responses to operational and policy issues impacting the sector. Finally, the paper sought sector feedback on options for bringing designated agencies and adoption service providers into the new Child Safe Scheme.

We received 15 written submissions, from designated agencies, adoption service providers and peak bodies. Some submissions addressed all proposals in the consultation paper, while other submissions focused on key proposals of particular interest to the agency. Submissions were comprehensive and constructive, and we thank the following organisations for taking time to provide feedback on the discussion paper:

- AbSec (consolidated summary of member agency views)
- Advocate for Children and Young People
- Allambi Care Limited
- Armajun Health Service Aboriginal Corporation
- Association of Children’s Welfare Agencies (consolidated summary of member agency views)
- Barnardos Australia
- CatholicCare Social Services Hunter-Manning
- Children in Care Collective
- Department of Communities and Justice
- Legal Aid NSW
- Life Without Barriers
- Next Step
- Riverina Medical and Dental Aboriginal Corporation
- Settlement Services International Limited
- South Coast Medical Service Aboriginal Corporation
- The Disability Trust

Purpose of this report

This report summarises feedback provided in submissions to the discussion paper. This report also provides further context to some of the proposals set out in the discussion paper.

The Office of the Children’s Guardian is considering all feedback received on the proposals and options for future legislative and policy reform.

1. Feedback on proposed legislative amendments

The discussion paper set out proposed amendments to the legislative provisions underpinning the accreditation scheme. These proposed amendments included:

- clarifying the types of organisations that are eligible to apply for accreditation as a designated agency or adoption service provider and the information required in support of an application,
- clarifying the process for the assessment and determination of applications for accreditation,
- clarifying the grounds on which an agency's accreditation may be shortened or cancelled and removing provisions to suspend accreditation, and
- clarifying the Children's Guardian's investigation and monitoring functions.

1.1 Agencies that may apply for accreditation as a designated agency

The Office of the Children's Guardian sought the sector's views on a proposal to limit accreditation as a designated agency to government sector agencies and charitable and not-for-profit providers.

In NSW, for-profit providers currently comprise a very small part of the statutory out-of-home care system and designated agencies are required to meet the permanent care standards regardless of for-profit status.

This proposal was included in the consultation paper as it was one of the recommendations of the Family is Culture Report. While it has been our experience that most agencies seeking accreditation to provide statutory out-of-home care are government sector agencies or not-for-profit providers, given the concerns raised in the Family is Culture Report, it was important to seek the sector's views.

Submissions indicate that there are mixed views about the proposal and that options to strengthen existing requirements for for-profit providers should also be considered.

Some agencies agreed with the concerns raised in the Family is Culture Report about the potential for a conflict of interest between financial motives and outcomes for children and young people. Some submissions were of the view that there are sufficient high-quality not-for-profit providers already in the statutory out-of-home care system and that for-profit providers may create more competition for workers in an already small workforce, particularly in residential care.

Other submissions argued that the requirement that all providers must meet the same standards of care regardless of their for-profit status addresses some of the concerns raised in the Family is Culture Report and that on balance, it is preferable to have more placement options for children and young people.

Despite agencies having different views regarding whether it is appropriate for statutory out-of-home care to be provided by for-profit providers, there was broad agreement that for-profit providers applying for accreditation must be able to demonstrate that decisions about resource allocation are informed by the needs of children and young people in their care and that they comply with requirements of other oversight bodies such as ASIC.

1.2 Agencies that may apply for accreditation as an adoption service provider

We proposed to maintain the existing arrangements for the accreditation of adoption service providers. Currently, the *Adoption Act 2000* provides that adoption services may only be provided by the Secretary of the Department of Communities and Justice (DCJ) or charitable or not-for-profit

organisation that has been accredited by the Children’s Guardian. The Children’s Guardian also monitors DCJ’s provision of adoption services.

A small number of submissions addressed this proposal and one agency indicated it does not support the current provisions in the *Adoption Act 2000* that do not require DCJ to be accredited to provide adoption services.

1.3 Application requirements and information to be included with applications for accreditation

We proposed that applications for accreditation should be made in a form approved by the Children’s Guardian. This means that there is a consistent process for any agency making an application for accreditation. Application forms and documents would continue to be made publicly available on our website and all agencies applying for accreditation would need to complete and provide all relevant forms and documents. This is the current arrangement and we propose to retain this requirement.

The types of information agencies applying for accreditation would be required to provide include:

- contact details for the agency
- the name and contact details for the principal officer
- information about the agency’s governing body and corporate structure
- the types of services the agency wishes to deliver, the agency’s target client group and locations in which the agency intends to operate
- information about any funding agreements (where relevant).

Agencies are also currently required to provide a behaviour support policy setting out the behaviour management strategies that staff and carers may use in disciplining children and young people and managing behaviour. This requirement has been in place since the accreditation scheme commenced in 2003.

We proposed that requiring a behaviour support policy with an application for accreditation is no longer necessary as the standards address behaviour support practices and the Care and Protection Regulation sets out agencies’ responsibilities and obligations in relation to behaviour support and the administration of psychotropic medication.

Some submissions expressed concern about removing this as an application requirement.

There were mixed views about removing the requirement to provide a behaviour support policy statement at the point of application. Those agencies that did not agree with the proposal submitted that this is a critical and high-risk area of practice and that an agency should have a clear policy regarding its approaches to behaviour support before making an application for accreditation. One submission argued that agencies applying for accreditation should specifically address how the joint protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system will be implemented.

Those agencies that supported the proposal to remove this requirement noted that the standards already require an agency to have behaviour support policies to guide its practice and requiring agencies that are applying to renew accreditation to provide behaviour support policy statements is a duplication of work.

Some agencies submitted that behaviour support policies could be a requirement for *new* providers applying for accreditation. Those agencies that are already providing services to children and young people and are applying to *renew* accreditation could demonstrate its behaviour support approaches in practice, during the accreditation renewal assessment.

Some submissions also noted that the language in the Care Regulation regarding 'behaviour management policies' needs to be updated to reflect contemporary practice and terminology.

1.3.1 A new requirement to support an application for accreditation

We sought the sector's views on a proposal to require an agency applying for accreditation to submit a policy statement detailing how it will meet the needs of Aboriginal and Torres Strait Islander children and young people and implement the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles.

This is just a first step in improving the capacity of the sector to meet the needs of Aboriginal children and young people and must be part of a broader strategy to support new Aboriginal Community Controlled Organisations coming into the statutory out-of-home care sector. We understand that capacity-building work will be required to support the out-of-home care sector to implement the Aboriginal Case Management Policy in a meaningful way.

There was strong support for this proposal and all submissions that specifically responded to this proposal indicated support.

However, many submissions articulated that this needs to be in addition to a sector-wide strategy to support Aboriginal Community Controlled Organisations coming into the statutory out-of-home care sector and a planned approach to transitioning Aboriginal children and young people to Aboriginal agencies.

Some submissions articulated structural challenges to properly implementing the placement principles, particularly:

- the need for greater investment in family preservation work,
- a planned approach to supporting the transition of Aboriginal children and young people to Aboriginal agencies and
- the need for a new, coordinated and proactive approach to identifying and supporting potential Aboriginal carers.

Some submissions also addressed the need for capacity building in the non-Aboriginal sector, including the need for more resources to undertake meaningful and quality casework with Aboriginal children and their families. Some submissions highlighted the need for better family finding work to be undertaken when Aboriginal children and their families first come into contact with the child protection system. Some agencies noted that family finding work needs to be ongoing (rather than a point-in-time "task") as agencies build a better understanding of who is in the child's family and community network, and that family finding work needs to continue when a child comes in to longer-term out-of-home care placements.

Some submissions also acknowledged that Aboriginal community organisations are often called on to provide advice and support to non-Aboriginal agencies working with Aboriginal children and families and that this comes at a cost to those organisations.

It is clear from the submissions that there is broad agreement that an organisation seeking accreditation to provide statutory out-of-home care must first reflect on its capacity to meet the needs of Aboriginal children and young people. However, it is also clear that this is just a first step and should be supported by a comprehensive capacity building strategy.

1.4 Taking over an application for accreditation

We proposed to remove provisions that allow for an agency to take over an application as a designated agency or adoption service provider made by another agency. This provision has been rarely used and serves little practical purpose in the contemporary accreditation system.

A small number of submissions specifically addressed this issue and there was no opposition to the proposal.

1.5 Experience and qualifications of principal officers and structure of governing bodies

We sought sector feedback on whether there should be stronger requirements regarding the skills and experience of individuals appointed to the principal officer role and whether there should be minimum requirements regarding the structure of governing bodies.

Some submissions sought clarification regarding the reason for these proposals and what problem the proposals are attempting to address.

The role of the governing body and principal officer is important in all organisations but particularly so where an agency is providing statutory out-of-home care or adoption for the first time. The purpose of the proposal was to require that agencies ensure they have access to a governing body and a principal officer who understands the agency's statutory obligations before making an application for accreditation.

Currently, we consider the effectiveness of an agency's governance arrangements, including the role of the principal officer, with particular reference to standards 22 (governance) and 23 (strategic planning). The standards require that agencies have appropriate governance structures in place but do not prescribe the skills and experience a principal officer should possess, nor do the standards set minimum requirements regarding the composition and structure of governing bodies.

The issue of whether these requirements are sufficient have been raised with us in recent years.

It has been our experience that where agencies struggle to maintain compliance with the standards this is often - in part - a result of a disengaged or inexperienced governing body or where key decision makers have limited experience or knowledge of child protection and out-of-home care service delivery.

Given the opportunity provided by this review to strengthen application requirements, we sought the sector's views regarding whether current requirements regarding principal officers and governing bodies are sufficient or whether the regulations should prescribe minimum requirements. We proposed that governing bodies should comprise at least four members who are independent of the organisation (that is, not an employee, a volunteer or a carer engaged by the agency). We also sought the sector's views regarding skills and experience relevant to the principal officer role and whether these should be mandatory requirements.

While there was consensus that the role of governing bodies and principal officers are critical, there were a range of views regarding whether prescribing minimum requirements in legislation would be helpful.

Agencies submitted that it would be difficult to prescribe the types of skills and experience a principal officer should possess because many organisations provide a range of services in addition to statutory out-of-home care or adoption services. Some agencies indicated that principal officers should have relevant child and family experience while other agencies suggested that the principal officer does not require direct experience of service delivery if they have access to that expertise within the organisation.

Several submissions raised concerns that prescribing skills and experience may unintentionally

exclude people who have strong leadership skills but do not have formal qualifications, or do not have experience working in child protection or out-of-home care.

Similarly, many submissions agreed that skilled and knowledgeable governing bodies are important, however prescribing minimum requirements regarding the structure of a governing body could inadvertently exclude agencies that may rely on external expertise to support the governing authority, rather than directly appointing members with relevant experience.

It is clear from the submissions that principal officers and members of governing bodies do require particular skills and experience to effectively lead an organisation. However, it is equally clear that prescribing these skills and experience in legislation could have unintended consequences. It appears from sector feedback that the requirements as they are currently set out in standards 22 and 23 provide sufficient flexibility for agencies to determine the skills and experience that are most relevant for the principal officer position and to appoint governing bodies according to the needs of the agency.

1.6 Accreditation of new providers

We proposed that the Children's Guardian should have discretion to prioritise applications for accreditation from new providers according to sector needs. We proposed that it would publish guidelines regarding how applications are prioritised. This would require ongoing consultation with DCJ regarding gaps in the service system.

While most submissions supported the proposal, some agencies raised concerns regarding whether the proposal is in response to workload and resourcing issues within our organisation. This is not the case. The purpose of the proposal is to allow the Children's Guardian to prioritise assessment of applications from new providers where the provider may meet a gap in the service system. Where a new provider is eligible for accreditation and applies, its application would still be assessed, but not necessarily on a first-in-first-served basis.

For example, we may assess an application for accreditation from a new Aboriginal agency ahead of a new provider seeking accreditation to deliver services in an area where there is already a sufficient number of providers.

The proposal would only impact on potential new providers. Existing providers in the system applying to renew accreditation would continue to be assessed according to the agency's accreditation periods.

Sector feedback indicated support for the proposal, on the condition that the Office of the Children's Guardian makes the basis for determining which applications should be prioritised publicly available.

1.7 Agencies with shortened or cancelled accreditation

There are currently no provisions to preclude an agency that has had its accreditation shortened or cancelled from immediately re-applying for accreditation.

An agency's accreditation may be shortened or cancelled in circumstances including:

- the agency or principal officer made a statement or provided information that it knew to be false or misleading,
- the agency failed to comply with a condition on its accreditation,
- the agency or principal officer failed to comply with obligations or restrictions imposed by the *Children and Young Persons (Care and Protection) Act 1998* or the *Adoption Act 2000* in the case of an adoption service provider, or

- the agency failed to wholly or substantially satisfy the accreditation criteria.

Shortening or cancelling an agency's accreditation is rare and is an appropriate response where the safety and wellbeing of children and young people is compromised and where less intrusive regulatory responses are inadequate.

The effect of a decision to shorten or cancel an agency's accreditation means that children and young people, their families and their carers (where relevant) must transfer to another accredited provider. It is a significant decision that impacts on all people involved with an agency and it is a decision that is not taken lightly.

We proposed that where an agency's accreditation has been shortened or cancelled, the agency may not reapply for accreditation for two years, including where the agency restructures itself as a new entity.

We proposed the two-year exclusion period because where there are critical systems failures in an organisation or where there is ongoing non-compliance that is resistant to less intrusive regulatory responses, an agency must undertake a comprehensive review of the causes of non-compliance and have time to implement change and demonstrate that improved systems are properly embedded.

Most submissions specifically addressed this proposal.

There was broad agreement that there should be an exclusion period for an agency that has had its accreditation shortened or cancelled, however there were different views regarding how long an agency should be precluded from making a new application for accreditation.

Most submissions agreed with the two-year exclusion period. A small number of submissions argued the exclusion period should be between 3 and 5 years. Some submissions suggested it could be punitive to exclude an agency for two years and should be determined on a case-by-case basis, depending on the severity of issues leading to the cancellation of accreditation.

1.8 Provisionally accredited agencies progressing to full accreditation

Provisionally accredited agencies are accredited on the basis of policies and procedures and when the agency first begins providing services, it must notify the Children's Guardian. A direct evidence program is developed with the agency and our assessors visit the agency every 3 to 4 months to assess the agency's practice against the standards. The evidence gathered during the direct evidence program informs the Children's Guardian's decision whether to grant the agency full accreditation.

It has been our experience that a new provider with provisional accreditation may not receive placements for several months following accreditation. This means that the agency may be in the position of having to apply to renew its accreditation while also transitioning new placements and continuing to establish its services.

We proposed a policy change to provide that a provisionally accredited agency's accreditation start date will align with the date on which it first begins providing services.

Approximately half of the submissions responded to this proposal and there was broad support for policy change.

We also proposed that the Children's Guardian have discretion to extend an agency's provisional accreditation so the agency can continue in a direct evidence program. The direct evidence program is an important mechanism to support new providers and provide regular feedback regarding progress towards meeting the standards in practice.

It has been our experience that some smaller, community based provisionally accredited agencies grow their services slowly. Allowing an organisation to grow at a steady pace can improve the

likelihood of maintaining compliance with the standards over the long-term and providing time to bed-down systems to support good practice.

There were mixed views regarding the proposal in respect of all agencies however there was some support for this proposal as a mechanism to support Aboriginal Community Controlled Organisations entering the system.

Some submissions raised concerns that the proposal may allow for a poorly performing agency to continue to provide services without consequence. Some submissions argued that the proposal should only apply to Aboriginal Community Controlled Organisations, as part of a sector-wide strategy to support the growth of Aboriginal designated agencies.

We also proposed that it should be a prerequisite for an application to renew accreditation that an agency has provided services to children and young people in the preceding 12 months.

Half of the submissions specifically addressed this issue, and most submissions supported the proposal.

A small number of submissions argued that this could be unfair, as funding and referral decisions are often outside an agency's control.

1.9 Accreditation criteria

We proposed to retain the existing provisions that allow for the Minister to approve standards and other criteria for the accreditation of designated agencies and adoption service providers.

It is our practice to review standards and other criteria in consultation with the sector every five years. The planned review of the standards for 2021 was postponed due to the challenges of the pandemic but further consultation on the current standards will take place throughout 2022.

We also proposed to amend current provisions to make it clearer that standards and accreditation criteria must address practices that promote the safety, welfare and wellbeing of children and young people.

Almost all submissions supported this proposal. Some submissions also suggested that standards and accreditation criteria should also include references to the best interests of children and young people.

1.10 Transferring accreditation

The Care and Protection Regulation currently allows the Children's Guardian to approve the transfer of an organisation's accreditation to another organisation if it can satisfy the Children's Guardian that it is in the best interests of children and young people.

Where accreditation is transferred, the accreditation expiry date and the conditions on the agency's accreditation also transfer to the new entity.

We have received a small number of applications to transfer accreditation between organisations since the accreditation scheme commenced, and transfer of accreditation has only been approved in circumstances where:

- a designated agency or adoption service provider operates within a broader umbrella organisation and is restructuring its services to establish the out-of-home care program or adoption program as a new entity or locating the program in a different part of the umbrella organisation,
- one accredited agency merges with another accredited agency to create a new agency,

- an agency changes its corporate structure.

We proposed that transfer of accreditation provisions should be retained in the limited circumstances outlined above.

Some submissions expressed concern that these provisions could provide a ‘back door’ to accreditation, however most submissions noted there are limited circumstances in which it would be appropriate for accreditation to be transferred.

Those submissions that supported the proposal noted that it should only be used in very limited circumstances where an agency is restructuring its services or to provide for mergers with already-accredited organisations.

1.11 Periods of accreditation

Currently, the Children’s Guardian may accredit an agency for a period of 1, 3 or 5 years depending on the circumstances of the agency and whether it is a provisionally accredited agency, or an agency applying to renew its accreditation.

We propose to remove provisions to accredit an agency for one year as it is impractical and is a provision that has rarely been used.

We also propose to retain provisions that allow for an agency that is accredited to provide both statutory out-of-home care and adoption services to align accreditation periods so that an agency only needs to go through one renewal process.

A small number of submissions responded to this proposal and there was broad support for these proposals.

1.12 Deferral of a decision to renew accreditation

This provision is most commonly used where an agency has applied to renew its accreditation but has been unable to demonstrate that it meets all of the standards.

In these circumstances the Children’s Guardian may defer making a decision on the application to renew accreditation and in current practice, the Children’s Guardian imposes conditions on the agency’s accreditation requiring it to correct non-compliance and requires the governing body to explain its views regarding the causes of non-compliance.

Examples of conditions that the Children’s Guardian’s typically imposes on an agency with a deferred decision include:

- preventing the agency from accepting new placements,
- requiring the agency to transfer case management responsibility of some or all children and young people to the relevant DCJ district,
- requiring the agency to appoint or cooperate with an external person/s with relevant expertise to oversee some or all of the agency’s service delivery,
- requiring an agency to provide training to its staff in a particular area of practice.

It is also our practice to require the agency to develop an action plan setting out how it will correct non-compliance and we monitor the implementation of the plan.

When a decision on an agency’s application has been deferred, the Children’s Guardian may still, at any time, refuse the application or shorten or cancel the agency’s accreditation.

There are currently no limits to the length of time that a decision may be deferred, however the Children's Guardian must notify the Minister if an application has been deferred for more than 6 months.

We proposed to amend these provisions to provide that a decision may be deferred for a maximum of 2 years and also provide greater clarity that the agency must cooperate with any additional obligations imposed on the agency while the decision is deferred.

It has been our experience that where an agency requires external assistance to address governance and practice issues and with additional oversight to monitor the safety and wellbeing of children and young people, most agencies are able to properly implement sustainable new systems and improve practices within 2 years.

Most submissions addressed this proposal.

There were a range of views regarding how long an application should be deferred. Some submissions argued that an application should be deferred for no longer than 12 months and other submissions suggested that there should be no set timeframes and decisions should continue to be made on a case-by-case basis.

There was broad agreement with the proposal to clarify that there should be appropriate obligations and requirements on an agency where its application is deferred, and some submissions specifically suggested that this should always include a condition that the agency must not accept further placements until concerns have been addressed.

1.13 Extending accreditation to accommodate changes

We propose to retain provisions that allow for an agency's accreditation to be extended to accommodate changes in the out-of-home care and adoption system. These provisions have been used where new standards and accreditation criteria have been introduced, or when a new sector-wide commissioning process is underway. These provisions have also been used during the covid-19 pandemic.

Approximately half of the submissions specifically addressed this proposal, and all of these indicated support for retaining these provisions.

1.14 Conditions on accreditation and the process of accreditation

General conditions of accreditation are currently set out in Schedule 3 to the Care and Protection Regulation and Schedule 1 to the Adoption Regulation. In addition, the Children's Guardian may impose other conditions on an agency's accreditation specific to the agency.

We propose to include a general condition of accreditation to clarify that children and young people in statutory out-of-home care may only be cared for in private homes, where the carer has been provisionally or fully authorised and entered onto the Carers Register.

This means, for example, that a worker authorised to provide emergency care or special care cannot care for the child in the worker's own home. These types of care most commonly occur in residential care settings and when a person is authorised under these provisions, they are not required to undergo the same suitability checks as authorised carers, such as the home safety check or probity checks of other adult household members.

Most submissions responded to this proposal and indicated support. A small number of submissions argued that in an emergency situation, where the

staff member is known to the child or young person, they should be able to provide care in their own home.

Some submissions noted that flexibility is required in limited circumstances such as during the covid-19 pandemic. For example, in the context of the pandemic, we have advised agencies they may provisionally authorise staff to provide care in private homes, subject to safety and suitability checks.

1.15 Shortening, suspending or cancelling accreditation

Currently, the Children’s Guardian may shorten, suspend or cancel an agency’s accreditation in a number of circumstances including where:

- the agency or principal officer has knowingly provided false or misleading information,
- an agency has failed to comply with the standards or conditions on its accreditation or
- an agency or principal officer has failed to comply with obligations under the *Children and Young Persons (Care and Protection) Act 1998* in the case of a designated agency, or the *Adoption Act 2000* in the case of an adoption provider.

Shortening, suspending or cancelling accreditation is used where other less intrusive regulatory responses are inadequate and where there are serious and persistent concerns about an agency’s services.

We propose to retain the provisions to shorten or cancel an agency’s accreditation but remove the provision to suspend an agency’s accreditation. This is because suspending accreditation is impractical in the context of the contemporary out-of-home care and adoption system and unnecessarily disruptive to children and young people, their carers and families.

Approximately one third of submissions addressed this proposal, and of these, all indicated support.

1.16 Clarifying the Children’s Guardian’s functions

We propose to clarify that some of the activities the Children’s Guardian currently undertakes are investigative in nature.

Most submissions supported the proposal but requested further detail regarding what ‘investigations’ mean in relation to designated agencies and adoption service providers.

The Children’s Guardian’s key regulatory functions in respect of designated agencies and adoption service providers are to:

1. monitor their provision of services, and
2. make decisions regarding the accreditation of agencies, including whether an agency should or should not be accredited, the period of accreditation and whether any conditions should be placed on an agency’s accreditation

When making any decision about an agency’s accreditation – whether to accredit an agency or not, the period of accreditation, any conditions on accreditation or whether to shorten or cancel accreditation – the Children’s Guardian must first determine compliance with the standards before deciding on the most appropriate response.

We currently refer to these activities as ‘assessing’ compliance with the standards.

However, in contemporary regulatory language these activities are more commonly referred to as investigations. The Children’s Guardian has similar functions in relation to children’s employment and reportable conduct and refers to these activities as ‘investigations’ of compliance rather than ‘assessments’ of compliance.

This proposal does not grant the Children’s Guardian any new or different powers in relation to designated agencies or adoption service providers or provide new or different decisions that can be made about an agency’s accreditation.

It provides greater clarity regarding when the Children’s Guardian is *monitoring* an agency’s service delivery against the standards in order to provide feedback and when the Children’s Guardian is *investigating* compliance with the standards in order to make a decision about an agency’s accreditation.

1.17 The monitoring and assessment framework

We regularly receive feedback from agencies regarding their experiences of our accreditation and monitoring processes. Agencies have articulated that it is important that there is an independent and critical review of agencies’ practices, but accreditation renewal processes are overwhelming and resource intensive. Agencies also report that they are often required to provide the same or similar information to us, the DCJ, or other oversight bodies for different purposes.

Feedback from agencies, including in responses to the consultation paper, indicate that our accreditation processes have become more focused on compliance with the standards – that is, focusing on activities agencies undertake – rather than on outcomes for children and young people and continuous improvement.

In response to this feedback we have commenced an internal review of our accreditation and monitoring processes.

The consultation paper sought the sector’s initial views on a new approach to monitoring and accreditation, with a view to refocusing monitoring activities on providing feedback on areas of strength and areas for improvement and more streamlined accreditation renewal assessments.

Under the proposed model, we would undertake a series of monitoring visits to agencies, approximately every 18 months and review particular areas of practice at each visit. This allows us to build a picture of an agency’s compliance with the standards, over time. Where monitoring visits indicate there are no concerns with an agency’s practice, the agency would go through a brief renewal assessment, rather than a full assessment against all standards.

We also sought the sector’s views on how we could use information agencies are already required to provide to other oversight bodies to reduce duplication.

Almost all submissions provided feedback on the Office of the Children’s Guardian monitoring and accreditation framework and called for further consultation and discussion as we continue to review its processes.

While feedback on the initial proposal indicates broad support for the concept of different accreditation renewal processes that are informed by agency performance, submissions raised the following issues for further consideration and consultation:

- how the model will be implemented to ensure that monitoring visits do not become ‘mini renewal assessments’ but do genuinely focus on continuous improvement,
- how the model will focus on continuous improvement, noting that agencies should already have their own quality assurance processes. Some submissions suggested that our role should be to test the efficacy of agencies’ quality assurance systems,
- how core practice areas for review at each visit are decided. Some submissions noted that focusing on some areas suggest other areas of practice are less important, and

- how our decision-making processes will be made publicly available to ensure transparency.

In light of this feedback and some of the reservations expressed in the submissions, we are undertaking further work to refine the model and will consult further with the sector later in 2022.

2. Feedback on policy and operational issues affecting the sector

The Office of the Children’s Guardian receives regular feedback from agencies regarding policy and operational issues impacting the sector. In recent years, the use of Alternative Care Arrangements (ACAs) for children and young people, who for a variety of reasons, cannot be immediately placed in the permanency support program (PSP) or intensive therapeutic care (ITC) has been consistently raised as an issue of concern for the sector.

There are complex factors driving the use of ACAs and we acknowledge that systemic responses are required. We proposed two potential policy responses that, while not providing a solution to the systemic issues, may go some way to addressing concerns regarding the use of ACAs.

2.1 Accrediting ‘models’ of statutory out-of-home care

We currently accredit agencies to provide home-based care (foster care, relative and kinship care), adoption, residential care or a combination of the three.

In recent years we have had a number of applications from foster care providers to add residential care to their accreditation in order to provide ‘hybrid’ models of care to children and young people in foster care but who, from time-to-time, require more intensive support from workers in more of a residential-care type environment. By having accreditation to provide both types of care, these agencies are able to adapt their care models to the needs of children and young people in their care without needing to place the child or young person in an ACA or with a residential care provider.

We have worked with foster care providers seeking to provide these more flexible models of care on a case-by-case basis regarding accreditation requirements and adding service types. However, it is timely to seek the sector’s views on whether further consideration should be given to changing the way statutory out-of-home care is accredited by moving to accredit models of care, rather than accrediting agencies to provide foster care or residential care.

The purpose of this proposal was to seek the sector’s initial views if this is an option worth further consideration.

Most submissions responded to this proposal. There were mixed views on the benefits of the proposal, and several concerns were raised.

Some submissions noted the intent of the proposal to provide greater flexibility for agencies to adapt care models as needed and that this would be particularly beneficial in regional and rural areas. It may also allow agencies to better respond in emergency situations rather than relying on ACAs.

However, most submissions raised concerns regarding the proposal noting that there are inherent differences between foster care and residential care with different risks and challenges. Most submissions argued that it is important that the distinction between the two broad care types is retained in accreditation decisions, to ensure that an agency can safely deliver services in different care environments.

While most submissions noted that further discussion may be warranted, there were significant reservations about the proposal and limited support for change.

2.2 Creating a new class of accreditation for emergency care providers

Another potential policy response to the use of non-designated agencies to supervise ACAs is to create a new class of accreditation to provide emergency care. Some stakeholders have raised concerns with us regarding the use of non-designated agency staff to supervise children and young people in ACAs.

Currently, the Care and Protection Regulation provides for classes of accreditation and we sought sector feedback on whether consideration should be given to creating a class of accreditation for agencies to provide short-term emergency care arrangements.

In putting this proposal, we acknowledge that it does not, on its own, address broader systemic issues and careful thought is required regarding the potential to undermine the primary intent of the out-of-home care and adoption system to provide permanency for children and young people.

We also recognise that while the proposal seeks to improve oversight of these arrangements, there are potential unintended consequences, particularly that short-term, ad hoc, emergency care arrangements could become an entrenched part of the out-of-home care system.

We sought the sector's views regarding whether there are any potential benefits and if the option is worth further consideration and consultation.

Most submissions addressed the proposal. There were mixed views on the benefits of the proposal and some submissions raised significant reservations regarding potential unintended consequences.

While most submissions noted that extending regulatory oversight to non-designated agencies supervising ACAs could provide a measure of protection for children and young people, they noted that equally, the proposal could "legitimise" the use of ACAs and risk children and young people drifting in care with providers that are not equipped to provide long-term care.

Some submissions noted that there could be significant operational challenges with the proposal, particularly regarding negotiating case management responsibility and decision making.

While some submissions were of the view that further discussion is warranted, the feedback, on balance, indicated significant reservations regarding the proposal.

3. Intersection with the Child Safe Scheme

The Child Safe Scheme commenced in NSW in February 2022 and requires some child-related organisations to implement the 10 Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. The Standards are the result of extensive research and consultation undertaken by the Royal Commission on the characteristics and qualities that make child safe organisations.

Organisations that are required to implement the Child Safe Standards include organisations that are in the scope of the reportable conduct scheme, **excluding designated agencies and adoption service providers.**

Designated agencies and adoption service providers were not included in the first iteration of the Child Safe Scheme to provide further time for consultation on options to bring the sector into the scheme.

An enforcement framework supports the Child Safe Scheme but will not commence until February 2023. The primary focus of the compliance and enforcement framework is on encouraging compliance with the Child Safe Standards through education and capacity building. There are more formal enforcement options where an organisation is unwilling to implement the Child Safe Standards or engage in capacity building work. These formal enforcement mechanisms include Compliance Notices and Enforceable Undertakings. These are similar to conditions of accreditation,

where the Children's Guardian can require an organisation to do certain things to address concerns. Under the Child Safe Scheme, the Children's Guardian may also impose financial penalties on an organisation.

We sought the sector's views on bringing statutory out-of-home care and adoption services into the Child Safe Scheme and implementing the 10 Child Safe Standards – with additional sector-specific requirements- as the new accreditation criteria.

This would mean that the 10 Child Safe Standards and sector-specific practice requirements would replace the current permanent care standards. The sector specific practice requirements would be developed in consultation with the sector.

We proposed that the accreditation scheme would continue to operate within the Child Safe Scheme and non-compliance with the new accreditation criteria would continue to be addressed through conditions on accreditation and shortening or cancelling accreditation. Given the nature of the services the sector provides, we would not use financial penalties to address non-compliance in this sector.

Almost all submissions addressed this proposal. There was broad support for bringing the sector into the Child Safe Scheme.

All submissions responding to this proposal indicated support. Submissions noted that there are clear benefits in one set of standards for all child-related organisations, however noted that additional sector-specific practice requirements are also necessary to ensure the needs of children and young people in statutory out-of-home care and adoption arrangements would continue to be met under the Child Safe Standards.

Some submissions noted that organisations that deliver a range of child-related services would be required to operate under two sets of standards if the sector remains outside of the Child Safe Scheme, with no benefit to children and young people or the organisations that work with them.

All submissions welcomed further consultation on the development of the sector-specific practice requirements that could support implementation of the 10 Child Safe Standards in the statutory out-of-home care and adoption sector.

Office of the
Children's Guardian

Locked Bag 5100
Strawberry Hills NSW 2012

Office hours:
Monday to Friday
9.00am – 5.00pm

E: accreditation@ocg.nsw.gov.au
W: www.ocg.nsw.gov.au
