

# Consultation on a proposed code of practice

For statutory out-of-home care and adoption

September 2022

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## Background

In November 2021 the Office of the Children's Guardian (OCG) released a consultation paper on the review of the Children's Guardian's accreditation functions. The purpose of the consultation was to seek feedback on the existing accreditation scheme and opportunities to clarify and strengthen the Children's Guardian's functions. We also sought feedback on opportunities to streamline our accreditation and monitoring processes. A consultation summary was published in April 2022.

We also sought feedback on a proposal to bring the statutory out-of-home care and adoption sector into the child safe scheme, by building the Child Safe Standards into accreditation requirements. We proposed that the Child Safe Standards – with additional sector-specific practice requirements – should replace the current NSW Child Safe Standards for Permanent Care ('the Permanent Care Standards') as the new accreditation criteria.

There was broad support in the sector for the proposal and agencies noted that there are clear benefits in having one set of standards for all child-related organisations in NSW. However, the sector also noted that sector-specific practices would need to be reflected in new accreditation criteria to ensure that the particular needs of children and young people in statutory out-of-home

care and adoption arrangements continue to be met under the Child Safe Standards.

Following sector consultation, we made recommendations to Government regarding the consolidation of the Children's Guardian's accreditation and monitoring functions into the Children's Guardian Act 2019 as well as options for bringing the statutory out-of-home care and adoption sector into the child safe scheme. We have also considered feedback on agencies' experiences of our accreditation and monitoring processes.

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## Key changes made by the *Children's Guardian Amendment Act 2022*

The *Children's Guardian Amendment Act 2022* ('the CG Amendment Act') makes a number of changes to the accreditation and monitoring scheme. A summary of the accreditation and monitoring provisions is attached to this paper at TAB A.

The key changes made by the CG Amendment Act are:

- From 1 September 2022, the accreditation and monitoring functions previously set out in the Children and Young Person's (Care and Protection) Regulation 2012 and the Adoption Regulation 2015 will be transferred into the *Children's Guardian Act 2019* and Children's Guardian Regulation 2022
- From 1 September 2022 the Child Safe Standards will be mandatory for designated agencies and adoption service providers.
- There are new provisions for a code of practice for designated agencies and adoption service providers, setting out how the Child Safe Standards are to be implemented in the sector, including the steps an agency must take to achieve accreditation.

**While the Child Safe Standards will become mandatory for designated agencies and adoption service providers from 1 September 2022, agencies that are meeting the Permanent Care Standards are also considered to be meeting the Child Safe Standards.**

The code of practice will set out how the Child Safe Standards are to be implemented by designated agencies and adoption service providers. When the code of practice commences, it will become the new accreditation criteria. **The code of practice will not commence before the end of 2023.**

Currently, accreditation criteria are approved by the Minister, on the recommendation of the Children's Guardian and the Permanent Care Standards are set out in a document on the [OCG website](#).

Unlike the Permanent Care Standards, the code of practice will be set out in a schedule to the Children's Guardian Regulation 2022. This means that accreditation criteria and any changes made to that criteria will be subject to additional scrutiny.

It also means that the code of practice will be different in structure and form to the Permanent Care Standards, and we will develop guidance material to assist the sector to transition to the new accreditation criteria.

The guidance material will also consolidate other relevant information to assist agencies to understand their obligations under relevant legislation, such as:

- Working with Children Check requirements
- roles and responsibilities of principal officers, heads of a child safe organisation and heads of relevant entities
- Carers Register and Residential Care Workers Register requirements
- mandatory requirements for the assessment and authorisation of authorised carers and the assessment and approval of adoptive applicants and guardians
- guidelines on the provision of placement information to parents and significant others
- guidelines on the review of children and young people's case plans and placements

- the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles
- the Permanent Placement Principles.

The guide will also set out the issues and questions OCG assessors will consider when assessing an agency's practices against the code of practice.

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## Purpose of this consultation paper

The purpose of this consultation paper is to seek feedback from the statutory out-of-home care and adoption sector regarding the practices that should be addressed in the code of practice.

We also seek the sector's views on the guiding principles that should underpin the requirements in the code of practice. For example, the guiding principles could reflect that:

- decision making should be child-centred
- decision making should be collaborative and support the participation of children and young people, their families and their community
- Aboriginal and Torres Strait Islander children and young people should be placed in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles
- Connections to community and culture should be supported
- Decision making should take into account children and young people's culture, gender identity and sexuality
- Decision making should take into account the needs of children and young people with a disability.

We have prepared proposed **minimum** practice requirements that, if implemented by an agency, would indicate the agency is meeting the Child Safe Standards and should be accredited. These mandatory practice requirements would be set out in the code of practice.

The proposed mandatory requirements are set out below.

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## Consultation questions

- What do you believe should be the guiding principles that underpin the code of practice?
- For each of the proposed practice requirements, do you agree that the minimum requirements are reasonable for determining whether an agency should be accredited? Is it reasonable to expect that an agency can demonstrate it is meeting these practice requirements?
- Are there any other practice requirements that should be included as minimum requirements for accreditation?
- Are the requirements clear?
- Do the requirements allow sufficient flexibility for the code of practice to be applied to both home-based care, adoption arrangements and residential care?

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## Proposed practice requirement 1 – Governance and leadership

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 1 *Child Safety is embedded in institutional leadership, governance, and culture.*

The OCG proposes that the following requirements be included in the code of practice:

- There are clear delegations of responsibility throughout the organisation.
- There are policies and processes for managing conflicts of interest.
- Decisions made by the governing authority are clearly documented including the rationale for decisions made.
- There is a transparent recruitment process for members of the governing body and the principal officer. This includes keeping records of recruitment or nomination processes and completion of probity and suitability checks.
- The governing authority and principal officer have expertise in child protection, statutory out-of-home care and/or adoption or access to this expertise to assist them to fulfil their responsibilities.
- Information regarding risk, including critical incidents, complaints and reportable allegations are reported to the head of relevant entity and the governing authority.
- The governing authority ensures that people who work with and care for children and young people have the necessary training, supervision, support and resources to perform their roles.
- The governing authority provides clear information to people who work with and care for children and young people regarding roles and responsibilities and expectations regarding behaviour towards children and young people.

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## Proposed practice requirement 2 – supporting participation of children and young people

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 2: *children participate in decisions affecting them and are taken seriously.*

The OCG proposes that the following requirements be included in the code of practice:

- Children and young people are provided with the Charter of Rights and it is explained to them in a way they can understand.
- Children and young people are supported to make choices about their personal appearance, personal space, name and identity.
- Wherever possible and appropriate, meetings and discussions about decisions that affect children and young people's lives occur in a place and at a time that allow them to participate. If children and young people do not want to attend formal meetings, or if their attendance would not be appropriate or in their best interests, their views are gathered in other ways.
- Decisions are explained to children and young people in a way they can understand.
- Children and young people for whom guardianship or adoption is being considered are provided with information and counselling to help them make informed decisions and to give consent where relevant.
- Children and young people are supported when accessing information held about them and their family and care history.
- Children and young people's rights to privacy and confidentiality are upheld.

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## Proposed practice requirement 3 – participation of family and community

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 3: *families and communities are informed and involved*.

The OCG proposes that the following requirements be included in the code of practice:

- All reasonable steps are taken to locate and gather information about children and young people's parents, extended family and community.
- Parents and other people who are important to the child or young person are supported to participate in making decisions about their child's life. This includes inviting parents and people who are important to the child or young person to meetings wherever possible and appropriate.
- Where parents or other people who are important to the child or young person do not wish to participate in meetings or formal decision-making processes, or where their attendance is not appropriate or not in the child or young person's best interests, their views are gathered in other ways.
- Parents and people who are important to the child or young person are provided with information about their placement and their progress in care, as far as it is safe to do so and having consideration for the child or young person's wishes.
- Parents and people who are important to the child or young person are provided with information about how to contact the agency responsible for their child's care and the agency is responsive to their requests and concerns.
- Where guardianship or adoption orders are under consideration, families are provided with appropriate information, counselling and support to participate in decision-making processes and to give their consent if they wish.
- Parents considering adoption for their child are supported wherever possible to participate in the selection of the approved adoptive family.

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## Proposed practice requirement 4 – Meeting the individual needs of children and young people

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 4: *Equity is upheld and diversity taken into account*.

The OCG proposes that the following requirements be included in the code of practice:

### **Case plans, documentation and record keeping**

- Children and young people have a case plan that addresses all their care needs and sets out responsibilities of significant parties and timeframes for completing casework tasks.
- Case plans are reviewed at least annually and when there is a placement change or a significant change in the child or young person's circumstances.
- The agency maintains accurate, up-to-date information and records about the child or young person, including records of casework and rationale for casework decisions.
- The agency works collaboratively with other organisations responsible for providing care and support to the child or young person, their carers or their family, including sharing relevant information with the other organisations relevant to the child or young person's safety, welfare and wellbeing.

## Health and education

- Children and young people's health and educational needs are reviewed at least annually, as part of the annual case plan review.
- Children and young people are supported to attend an appropriate educational institution.
- Children and young people are supported to access health services.
- Health and educational needs are addressed as required and recommendations for further assessment, treatment, supports or interventions are followed-up in a timely manner.

## Social and emotional development, identity and connections to family and culture

- Children and young people are supported to develop and maintain safe and healthy peer relationships and engage in social and recreational activities.
- Children and young people are supported to maintain connections with their community, culture, language and spirituality.
- Family and people of significance to the child or young person are included in decisions about how to support cultural and community connections.
- Children and young people's relationships with family and significant others are supported, in accordance with their wishes and best interests.
- Adoption and guardianship plans are developed in consultation with children and young people's birth family and include strategies to support ongoing family contact and connection to culture.
- Life story work is undertaken with children and young people to assist them to understand their family of origin and journey in care and to celebrate and record their achievements.
- Children and young people's personal belongings, photos, mementos and important family information is gathered and kept safe for them.

## Behaviour support

- Behaviour support plans are developed where a child or young person has behaviour support needs that require a planned, consistent response from their caregivers. This includes where psychotropic medication is prescribed to assist in managing behaviour.
- Behaviour support plans are developed by a suitably qualified professionals, with input from the child or young person, their caregivers and relevant professionals and include strategies to develop the child or young person's capacity to manage their own emotions and behaviours.
- Behaviour support plans are reviewed as recommended by the professional who has prepared the plan, where medication changes, where the child or young person's behaviour changes, at the request of the child or young person or their caregivers, or otherwise, annually.
- People who are required to implement behaviour support plans are provided with appropriate training and supervision and changes to behaviour support strategies are communicated to all people who work with or care for the child or young person.
- There are clear protocols regarding the use of police to respond to challenging or risk-taking behaviour by children and young people.

## Preparing for adulthood

- Work to prepare young people for adulthood commences at 15 years of age. This includes supporting young people to develop and practise independent living skills in the years prior to leaving care.
- Work with young people includes re-establishing important relationships with family and community that may have been lost and implementing supports so these relationships can be maintained.

- Leaving care plans are developed with the young person, people involved in their care and with their family and people of significance to the young person, in accordance with their wishes.
- Young people have an approved leaving care plan before attaining adulthood, which reflects the young person's circumstances.
- Leaving care plans set out the financial assistance to be provided to the young person and where the young person will live.
- Young people are provided with information about how to access after care support.
- Young people are provided with their life story material, original identity documents and information about how to access their care records upon attaining adulthood.

### **Post-adoption support (adoption service providers only)**

- Information is provided to children and young people, their adoptive family and birth family regarding post adoption support services.
- Where relevant, post adoption support is provided as set out in the adoption plan.
- Parties to adoption are provided with information and support to access adoption information.

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## **Proposed practice requirement 5– People who work with and care for children and young people are suitable and supported**

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 5: *People working with children are suitable and supported* and Child Safe Standard 7: *staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training*.

The OCG proposes that the following requirements be included in the code of practice:

- The assessment and authorisation of carers, guardians and prospective adoptive parents is undertaken in accordance with legislative requirements and includes mandatory suitability and probity checks (NB: the OCG will consolidate all of the legislative requirements for the assessment and authorisation of carers, guardians and prospective adoptive parents into a guide that will sit alongside the code of practice).
- Information about the authorisation of people who provide care in a private capacity and members of the carer household is recorded on the Carers Register.
- The recruitment and selection of staff includes assessment of the person's safety and suitability to work with children and young people. Information about the employment of residential care workers is recorded on the Residential Care Workers Register.
- The agency has a recruitment strategy for staff and caregivers relevant to its circumstances, which takes into account the cultural backgrounds of the children and young people in its care.
- Agencies maintain comprehensive records of staff, carers and prospective adoptive parents. Records include recruitment and selection, appointment/authorisation/approval decisions, personal details, allegations and complaints against the person, supervision and performance management and other records relevant to the person's engagement. These records are stored securely and treated with confidentiality.
- Prospective carers and prospective adoptive parents are provided with training prior to their authorisation or approval, relevant to their caring role.
- Staff receive training at the commencement of their employment relevant to their role.
- People who work with and care for children and young people receive regular supervision and support and have opportunities to raise concerns or seek additional support and training.

- Care and prospective adoptive parents' training and support needs are reviewed at least annually.
- The agency has processes for reviewing staff performance and identifying training and support needs.
- The agency provides ongoing opportunities for training for people who work with and care for children and young people and has a planned approach to ongoing education and training.

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## Proposed practice requirement 6– Child protection and child safety

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 6: *processes to respond to complaints of child abuse (or other concerns) are child-focused.*

The OCG proposes that the following requirements be included in the code of practice:

- People who work with and care for children and young people are provided with information about their responsibility to report concerns about children and young people's safety and are supported to fulfil these responsibilities.
- People who work with and care for children and young people receive training on child protection and child safety including how to talk to children and young people about protective behaviours.
- Children and young people are supported to recognise behaviour that makes them feel unsafe or uncomfortable and provided with information about how to raise concerns about their safety or wellbeing.
- Children and young people have regular and direct access to a caseworker or other agency staff member and are supported to raise concerns or complaints.
- Where child protection concerns are identified the agency responds promptly to manage any immediate risks to the child or young person and where there is a risk of significant harm to a child or young person, this is reported to the child protection helpline.
- Allegations of reportable conduct are reported, recorded and investigated in line with legislative requirements.
- Recommendations following a reportable conduct investigation, or a child protection risk assessment are implemented.



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## Proposed practice requirement 7– Providing safe and suitable care environments

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 8: *physical and online environments minimise the opportunity for abuse or other kinds of harm to occur.*

The OCG proposes that the following requirements be included in the code of practice:

- Children and young people are provided with information about their proposed placement in a manner that is appropriate to their age and stage of development.
- People who care for children and young people are provided with information about the child or young person who may be placed with them, to assist them to decide whether they have capacity to meet the child or young person’s needs.
- Continuity of care and relationships is considered in placement decisions.
- The agency provides clear information to people who work with and care for children and young people regarding roles and responsibilities and expectations regarding behaviour towards children and young people.
- In making placement decisions the agency considers the needs of any children and young people already in the placement and has strategies to manage placement dynamics.
- Placement decisions are informed by the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles and the Permanent Placement Principles.
- Children and young people’s case plans include an appropriate permanency goal and casework tasks to achieve the permanency goal.
- Children and young people are visited in their care environment on a regular basis and have information about how to contact the agency for urgent assistance, including after hours.
- There is ongoing monitoring of the safety and suitability of the care environment.
- Critical incidents occurring in the care environment are reported and recorded and prompt action is taken to address risks and provide support to children and young people and others involved.
- Placement issues and concerns are addressed in a timely manner to avoid disruptions to placements, including arranging respite or other supports.
- Where a change of placement is required, transitions are planned wherever possible, children and young people are supported through the transition and all relevant information about the child or young person is provided to the new carer or agency.
- People who work with and care for children and young people are assisted to have conversations about online safety.

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## Proposed practice requirement 8– Strategic planning and continuous improvement

Implementing this practice requirement would demonstrate compliance with Child Safe Standard 9: *implementation of the Child Safe Standards is continuously reviewed and improved* and Child Safe Standard 10: *policies and procedures document how the organisation is child safe.*

The OCG proposes that the following requirements be included in the code of practice:

- The agency has processes to assess its compliance with the Child Safe Standards and the Code of Practice.
- Where the agency identifies non-compliance with the Child Safe Standards or the Code of Practice it implements strategies to improve practice.

- It seeks feedback from children and young people and the people who work with and care for them, on their experiences of the agency and opportunities to improve practice.
- Critical incidents and complaints are reviewed to identify opportunities to improve practice.
- The governing authority considers the capacity of the agency to maintain compliance with the Child Safe Standards and the Code of Practice before expanding its services.
- Policies and procedures set out how the agency will deliver services in accordance with the Child Safe Standards and the Code of Practice.
- Policies and procedures are accessible to staff and are easy to understand.
- The agency verifies that staff understand and implement the policies and procedures.
- Policies and procedures are reviewed and updated to reflect changes in legislation, policy or practices.

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## Monitoring and compliance with the code of practice

Bringing the Children’s Guardian’s accreditation and monitoring functions within the child safe scheme provides an opportunity for us to reflect on the way we engage with the sector. We acknowledge that we are one part of a broader system that helps to promote the safety and wellbeing of children and young people. We also recognise that while we can influence sector practices through the accreditation criteria we cannot, through our regulatory activities, remove all risk to children and young people in out-of-home care or adoption arrangements.

Accredited agencies are ultimately responsible for their own compliance and should have their own processes for reviewing their compliance with accreditation criteria and identifying areas of strength and areas for improvement. Our role within our monitoring function is to form a view about whether the agency’s systems to maintain compliance with accreditation requirements are adequate.

Sector feedback about agencies’ experiences of our accreditation and monitoring activities is that we need to take a stronger focus on agencies’ own systems for continuous improvement and that monitoring activities should not become ‘mini’ renewal assessments.

Feedback from Aboriginal Community Controlled Organisations emphasised that we cannot form a view about how agencies are promoting the wellbeing of Aboriginal children and young people without a strong focus on meaningful participation of family in children and young people’s lives and how agencies support ongoing connections to community and culture. These are practices that should be considered every time we visit agencies to review their practices.

Most of the Children’s Guardian’s activities in the statutory out-of-home care and adoption sector fall within the monitoring function. Examples of monitoring activities include:

- provisionally accredited agencies participating in direct evidence programs
- planned monitoring programs where the OCG reviews a particular area of practice across the sector, for example the 2021 review of leaving care practices
- monitoring visits to agencies during the accreditation period to verify the agency continues to meet accreditation requirements
- accreditation renewal assessments where the OCG verifies that an agency continues to meet accreditation requirements, and
- monitoring agencies that are substantially compliant with accreditation requirements and are working towards being wholly compliant.

In some circumstances the Children’s Guardian also undertakes investigative activities where ongoing noncompliance is evident and the Children’s Guardian must determine whether any action needs to be taken in respect of an agency’s accreditation. Examples include assessment of:

- compliance with the Permanent Care Standards to determine whether additional conditions should be imposed on an agency's accreditation.
- compliance with the Permanent Care Standards to determine whether the agency's accreditation should be shortened or cancelled.
- an agency's compliance with the Permanent Care Standards to determine whether an agency's application for accreditation should be refused.

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## Principles underpinning our regulatory activities

In making decisions about our regulatory activities, we are guided by the following principles:

- We must be proportionate in our regulatory responses. This means that agencies will receive different regulatory responses depending on the agency's state of compliance and risk.
- We must be risk-based and responsive. This means that some agencies will experience more regular or intensive engagement with the OCG than others.
- We must be transparent in our decision making. This means that we will clearly explain what is required of an agency and what they should expect in their engagements with the OCG.
- Agencies are ultimately responsible for their own compliance and are expected to have their own systems for identifying and responding to non-compliance and risk.

Overall, sector feedback to the November 2021 consultation paper regarding our approaches to monitoring indicated broad support for a proposal to move towards a more streamlined accreditation renewal and monitoring process with an increased focus on continuous improvement.

The proposal to use information gathered during monitoring visits as the basis for informing accreditation renewal decisions was supported with the proviso that decision making processes are transparent. We are considering options to focus our monitoring activities on better understanding how agencies review their own compliance, how they identify risks and gaps in practice and implement strategies to improve practice. This will require more regular, targeted engagements with agencies during their accreditation period.

We will continue to visit all agencies during their accreditation cycle to verify that practice continues to meet accreditation requirements. The participation of children and young people's families in decision making and practices to support connections to culture will be considered at every visit.

Some agencies may receive more regular monitoring visits, and this will be informed by the agency's state of compliance with accreditation criteria. We will also use our other holdings from the reportable conduct unit, the Carers Register, the Residential Care Workers Register, Official Community Visitors and Working with Children Check compliance team to form a view about the agency's compliance with accreditation criteria.

We will discuss with each agency the proposed monitoring program over the agency's accreditation cycle and changes to the monitoring program will be made in response to any changes in the agency's circumstances. We will also consider whether and when further monitoring is required after each monitoring visit.

When an agency is due to renew its accreditation, we will consider the information gathered over the course of the agency's accreditation cycle to decide what standards will be reviewed during the accreditation renewal process. Where an agency can demonstrate that it has its own systems to accurately identify and manage risk and non-compliance and is open and honest about its areas of strength and areas for improvement, the accreditation assessment will be briefer and focus on key standards.

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## Next steps

We welcome feedback on the proposed practice requirements to be included in a code of practice, and the guiding principles that should underpin the code.

Feedback should be provided by **Friday 18 November 2022** and agencies are welcome to make contact with the accreditation team to seek further information or discuss their feedback.

**Feedback can be sent to [accreditation@ocg.nsw.gov.au](mailto:accreditation@ocg.nsw.gov.au).**

Following feedback from the sector we will work with Parliamentary Counsel's Office (the agency responsible for drafting legislation in NSW), to prepare a draft code of practice. A consultation draft of the code of practice will be circulated for comment in early 2023.

Once we have reviewed comments on the consultation draft, we will make any changes that we consider necessary to address sector comments and suggestions. We will then finalise the code of practice so that it can be incorporated into the Children's Guardian Regulation 2022.

We will keep the sector updated on when the code of practice will commence, arrangements to transition from the Permanent Care Standards to the code of practice and we will also publish guidance material to support the code of practice.

### Office of the Children's Guardian

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