

Code of Practice Implementation Handbook

Designated agencies and
adoption service providers

March 2025

ocg.nsw.gov.au





Acknowledgement of Country

We acknowledge the Traditional Custodians of the land where we live, learn and young people play. We celebrate the longest living cultures in the world, Aboriginal and Torres Strait Islander peoples.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with. We acknowledge their continuous connection to Country, including the land, waterways, and skies.

We reflect on the ongoing impacts of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander children, families, and communities.

We extend this acknowledgment to all Aboriginal and Torres Strait Islander peoples across NSW and recognise the unique and vital contributions they provide in keeping their children safe.

Artwork on previous page
and throughout this
communication, created
by Wiradjuri woman
Lua Pellegrini



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This handbook provides information for designated agencies and adoption service providers about their accreditation requirements. Compliance with the Code of Practice for Designated Agencies and Adoption Service Providers (the Code of Practice) is a requirement for achieving and maintaining accreditation to provide statutory and supported out-of-home care (OOHC) and adoption services in New South Wales.

1.

How to use this handbook

The handbook is divided into 6 chapters:

Chapter 1

Provides information about how to use this handbook, an overview of relevant legislation, and definitions of terms used throughout this resource.

Chapter 2

Provides an overview of the out-of-home care and adoption sector, the accreditation scheme and the Child Safe Scheme.

Chapter 3

Provides information about the roles and responsibilities of principal officers and governing authorities or boards, including their important role in creating and maintaining a child safe culture.

Chapter 4

Sets out each of the practice requirements under the Code of Practice and provides information about how the Office of the Children's Guardian (OCG) assesses each of these practice requirements.

Chapter 5

Sets out how the OCG accredits and monitors agencies against the Code of Practice.

Chapter 6

Provides information about other obligations agencies have in addition to the Code of Practice.

This handbook has been prepared in response to sector feedback on the Code of Practice and agencies' experiences of the accreditation scheme. It will evolve over time to reflect changes in policy and practice in the sector.

Sections of this handbook are colour-coded to highlight key information:



Principal officer role/responsibility—provides information about principal officer roles and responsibilities



Mandatory practice requirements or legislative requirements—sets out mandatory practice or legislative requirements



Types of evidence—provides examples of the types of evidence that can demonstrate compliance



Resources and guidance—provides resources or guidance for agencies to consider



Assessing and monitoring compliance—provides information about how the OCG assesses and monitors compliance with practice requirement

Other applicable legislation

The Code of Practice reflects requirements in other relevant New South Wales legislation. Referred to collectively as 'children's care legislation', this includes:

- **Children's Guardian Act 2019** and **Children's Guardian Regulation 2022**
- **Children and Young Persons (Care and Protection) Act 1998** and **Children and Young Persons (Care and Protection) Regulation 2022**
- **Child Protection (Working with Children) Act 2012** and **Child Protection (Working with Children) Regulation 2013**
- **Adoption Act 2000** and **Adoption Regulation 2015**

All legislation referred to in this document is New South Wales legislation unless otherwise specified.

Glossary

Accreditation criteria

The Code of Practice for Designated Agencies and Adoption Service Providers, referred to throughout this handbook as 'the Code of Practice'. The Code of Practice commences on 1 October 2025.

Adoption

Adoption orders are made by the NSW Supreme Court and legally transfer all parental rights and responsibilities, guardianship and custody from anyone who has parental responsibility for the child to the adoptive parents.

Adoption service provider

- A charitable organisation accredited by the Children's Guardian to provide adoption services
- Adoption services provided by the Secretary of the NSW Department of Communities and Justice.

Caregivers

People who provide direct care to children and young people in a private capacity. This includes:

- relevant authorised carers (often referred to as foster carers, relative carers or kinship carers)
- prospective guardians
- prospective adoptive parents.

Child

A person under the age of 18.

The OCG recognises that the sector typically refers to 'children and young people' or 'child and young person' when talking about children in out-of-home care and adoption arrangements.

In this handbook, the term 'child' is used to refer to all people under the age of 18, consistent with the terminology used in the *Children's Guardian Act 2019*.

Children's care legislation (New South Wales)

- ***Children's Guardian Act 2019*** and ***Children's Guardian Regulation 2022***
- ***Children and Young Persons (Care and Protection) Act 1998*** and ***Children and Young Persons (Care and Protection) Regulation 2022***
- ***Child Protection (Working with Children) Act 2012*** and ***Child Protection (Working with Children) Regulation 2013***
- ***Adoption Act 2000*** and ***Adoption Regulation 2015***

Children's Guardian

The position that is responsible for accrediting agencies to provide and arrange statutory and supported out-of-home care services in New South Wales. The Children's Guardian leads the Office of the Children's Guardian (OCG), which is the NSW Government agency responsible for assessing agencies' compliance with accreditation criteria.

Critical event

An incident or circumstance with significant actual or potential impact on the safety, welfare or wellbeing of a child.

Examples of critical events are set out in section 16 of the Code of Practice.

Department of Communities and Justice (DCJ)

The lead agency in the NSW Government's Communities and Justice portfolio.

Information about DCJ's role in the out-of-home care and adoption sector is provided in section 2.

Designated agency

An agency accredited by the Children's Guardian to provide and arrange statutory and supported out-of-home care services in New South Wales.

Entity

- A designated agency
- An adoption service provider

Governing body

The board or management committee with oversight of the activities of a designated agency or adoption service provider.

Guardianship

An Order of the Children's Court where a guardian is given full parental responsibility of the child, making all decisions about their care until they reach 18 years of age. A child under a guardianship order is not considered to be in out-of-home care but in the independent care of their guardian.

Home-based care

Statutory or supported OOHC provided in a private home, by a relevant authorised carer.

This type of care is often referred to as foster care, relative care or kinship care.

Intensive therapeutic care (ITC)

The service system that supports children with identified high needs assessed as CAT 5 or 6 who are either 12 years or over and unable to be adequately supported in foster care or require specialised and intensive supports to maintain stability in their care arrangements.

ITC placements are typically provided in residential care settings.

Office of the Children's Guardian (OGC)

A statutory NSW Government agency that oversees organisations to uphold children's and young people's right to be safe.

Out-of-home care (OOHC)

Residential care and control of a child that is provided by a person other than a parent of the child, and at a place other than the usual home of the child.

Principal officer of designated agency

The person who has the overall supervision of the agency's arrangements for providing statutory out-of-home care and supported out-of-home care.

Principal officer of an adoption service provider

The person who has the overall supervision of the provision of adoption services by the adoption service provider.

Probity checks

- Working with Children Check
- National Police Check
- Other designated agency check
- Community Services Check

Prospective adoptive parent

A person who has applied to be approved as suitable to adopt a child.

Prospective guardian

A person who has applied to be approved as a guardian for a child.

Relevant authorised carer

A person authorised by a designated agency to provide statutory or supported OOHC in a private capacity.

These people are often referred to as foster carers, relative carers or kinship carers.

Residential care

Statutory out-of-home care or supported out-of-home care that is provided under an arrangement by a designated agency, and at a home managed by a designated agency or in a place where accommodation is provided on a temporary basis.

Residential care provider

A designated agency that arranges the provision of residential care.

Residential setting

A home managed by a designated agency, or a place where accommodation is provided on a temporary basis.

Residential care worker

A person authorised under section 22 or 23 of the Children and Young Persons (Care and Protection) Regulation 2022 to provide residential care.

Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission')

An enquiry into child sexual abuse within institutions that ran from 2012 to 2017. Its findings have since informed child protection policy, regulation and practice.

Staff

- A member of the governing body of a designated agency or adoption service provider
- A person who is engaged, whether or not the person is paid, to provide or assist in the provision of services by a designated agency or adoption service provider.

Statutory OOHC

OOHC provided to children for a period of more than 14 days either pursuant to an order of the Children's Court, where parental responsibility is transferred to the Minister for Families and Communities, or by virtue of the child being a protected person.

Supported OOHC

OOHC provided to a child in need of care and protection, with parental responsibility assigned by a court order to a relative or to a kin member.



2.

Overview of the NSW out-of-home care and adoption sector

Statutory out-of-home care and adoption

Statutory out-of-home care is care provided to a child for 14 days or more following an order made by the Children's Court, or where parental responsibility is transferred to the NSW Minister for Families and Communities by virtue of the child being a protected person.¹

Statutory out-of-home care may only be provided or arranged by an agency that has been accredited by the Children's Guardian. Children in statutory out-of-home care are cared for either in private homes by authorised foster, relative or kinship carers, or in residential care by authorised residential care workers.

Agencies accredited to arrange statutory out-of-home care are referred to as **designated agencies**. They may arrange home-based care, residential care, or both.

Government or non-government organisations may apply for accreditation as designated agencies. In New South Wales, statutory out-of-home care is arranged by the NSW Department of Communities and Justice (DCJ), non-government organisations and Aboriginal Community-Controlled Organisations.

Adoption is a care arrangement where the Supreme Court of New South Wales makes an adoption order, transferring all parental rights and responsibilities, guardianship and custody from the parents of a child to adoptive parents.

Adoption services may only be provided by the Secretary of DCJ, and charitable or not-for-profit organisations accredited by the Children's Guardian to provide adoption services. These organisations are referred to as **adoption service providers**. Adoption service providers may provide domestic adoption services, intercountry adoption services, or both.

Agencies may be accredited as both designated agencies and adoption service providers.



¹ Children and Young Persons (Care and Protection) Act 1998 (NSW), s 135A(1)

The Child Safe Scheme

The NSW Child Safe Scheme prioritises the safety of children in organisations in New South Wales and sets up a regulatory environment to address risks to child safety in out-of-home care, adoption and other organisational contexts. The OCG is responsible for implementing the Child Safe Scheme.

The Scheme's primary objective is to embed the Child Safe Standards in organisations, including out-of-home care and adoption service providers. The Child Safe Standards aim to improve child safe cultures, processes and environments, to protect children from harm and abuse, and to improve responses if it does occur. They are designed to drive cultural change within organisations and are based on extensive research and consultation by the Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission').

The 10 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 diversity is 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. ² |

Organisations that must implement the Child Safe Standards

All organisations that work with children will benefit from implementing the Child Safe Standards. However, child-safe organisations *must* implement the Child Safe Standards through their systems, policies and processes. Child-safe organisations are set out in Schedule 6 of the *Children's Guardian Act 2019* and include:

- organisations in education and early childhood sectors
- organisations in health and youth justice sectors
- local councils
- organisations providing sport and recreational services to children
- religious organisations providing services to children
- child protection services and out-of-home care providers
- adoption services
- substitute residential care providers and specialised substitute residential care providers.

The Child Safe Standards are implemented in the out-of-home care and adoption sector through the accreditation scheme.

² *Children's Guardian Act 2019* (NSW), s 8C

The accreditation scheme

The accreditation scheme is the primary way in which the OCG fulfils the Children's Guardian's functions to promote the best interests of children in out-of-home care and ensure the rights of all children in out-of-home care are safeguarded and promoted.

The purpose of the accreditation scheme is to ensure designated agencies and adoption service providers meet mandatory standards in delivering services to children who cannot remain in the care of their parents. The accreditation scheme also allows the Children's Guardian to take action if an agency is not meeting mandatory practice requirements or is not fulfilling its obligations under the children's care legislation.

The OCG's roles

The OCG has 3 key roles in regulating the out-of-home care and adoption sector:

- determining whether agencies are suitable to be accredited³
- monitoring agencies' ongoing compliance with the Code of Practice and children's care legislation⁴
- investigating compliance with the children's care legislation.⁵

The way in which the Children's Guardian makes accreditation decisions about designated agencies is set out in **Schedule 3A of the *Children's Guardian Act 2019***.

The way in which the Children's Guardian makes accreditation decisions about adoption service providers is set out in **Schedule 3B of the *Children's Guardian Act 2019***.

Accreditation criteria and requirements

To achieve accreditation, designated agencies or adoption service providers must be able to demonstrate that they comply with accreditation criteria.⁶ The accreditation criteria are in the Code of Practice, which sets out the minimum requirements to achieve and maintain accreditation. An agency compliant with the Code of Practice is also compliant with the Child Safe Standards.

Agencies must also demonstrate that they are compliant with the requirements of the children's care legislation to achieve and maintain accreditation.

Agencies may be accredited for up to 5 years to provide statutory out-of-home care services, adoption services, or both. They must be able to demonstrate a capacity to maintain compliance with the Code of Practice over the duration of the accreditation period. The OCG undertakes regular monitoring visits to agencies during the accreditation period to make sure the agency continues to comply with accreditation requirements.

The principal officer of a designated agency or adoption service provider is responsible for making sure the agency implements the Child Safe Standards through its policies, procedures and practices.

³ *Children's Guardian Act 2019* (NSW), s 128(1)(e) and (f)

⁴ *Children's Guardian Act 2019* (NSW), s 128(1)(f1)–(f3)

⁵ *Children's Guardian Act 2019* (NSW), s 128(1)(f4)

⁶ *Children's Guardian Act 2019* (NSW), sch 3A cl 3(1)(b), sch 3B cl 3(1)(b)

Principles underpinning the Code of Practice for Designated Agencies and Adoption Service Providers

The Code of Practice is underpinned by a set of principles that guide the services provided by designated agencies and adoption service providers.⁷

Best interests of children

The best interests of children must be the paramount consideration in all decisions that affect their lives.

Right to safety

Children have a right to be safe and cared for in nurturing, stable and secure care environments.

Trauma-informed care

Children in out-of-home care or the subject of adoption arrangements may have experienced harm or neglect and require the support of caregivers who understand the impact of trauma on psychological and physical development.

Right to participate

Children have a right to participate in decisions that affect their lives and decision-making must take account of their views, preferences, personal goals and aspirations.

Diversity and inclusion

All decisions about children must take into account—

- (a) culture and language,
- (b) religion and spirituality,
- (c) gender identity and sexuality,
- (d) the strengths and needs of children who live with a disability.

Role of family, kin and community

Decision-making must be collaborative and support the participation of children's families, kin and community.

Openness in adoption

- (a) Adopted children have a right—
 - (i) to family history information, and
 - (ii) to be supported to understand why they are adopted, and
 - (iii) to experience connection to family and culture.
- (b) Adoptive parents must demonstrate a commitment and capacity to support openness in adoption to meet these lifelong identity needs of their adopted child.

Aboriginal and Torres Strait Islander Children and Young Persons Principle

Decisions about the lives of Aboriginal and Torres Strait Islander children must be made by applying each of the elements of the Aboriginal and Torres Strait Islander Children and Young Persons Principle within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

Principle of active efforts

Decisions about placement or casework must be made with regard to the principle of active efforts referred to in the *Children and Young Persons (Care and Protection) Act 1998*, section 9A.

⁷ Children's Guardian Regulation 2022 (NSW), sch 3A s 4

Role of other government agencies in the out-of-home care and adoption sector

Department of Communities and Justice

DCJ is the statutory authority for the delivery of child protection and early intervention services to children and families in New South Wales. It operates the NSW Child Protection Helpline and is responsible for investigating reports of children in the community who are at risk of significant harm.

DCJ exercises parental responsibility for most children and young people in statutory out-of-home care and arranges statutory and supported out-of-home care in New South Wales. DCJ also provides domestic and intercountry adoption services.

DCJ is also responsible for commissioning non-government agencies to deliver services to children and families in New South Wales, including out-of-home care and adoption services.

Information about children in out-of-home care is shared between the OCG and DCJ under a memorandum of understanding. Information about designated agencies and adoption service providers may also be shared where there are concerns about an agency's compliance with accreditation requirements. This includes information about an agency's accreditation status and conditions on the agency's accreditation. DCJ may also share information about an agency's performance where there are concerns that the agency may not be meeting accreditation requirements.

More information can be found on the **DCJ website**.

NSW Ombudsman

The NSW Ombudsman handles complaints about New South Wales Government agencies, local councils and community service providers, which includes child protection and out-of-home care providers. Children, carers, parents and family members may make a complaint to the NSW Ombudsman about their experiences in government or government-funded community services.

The NSW Ombudsman is also responsible for convening the NSW Child Death Review Team. The team reviews and reports on all deaths of children in out-of-home care and undertakes research to reduce or prevent child deaths and to inform policies and practices.

Reports prepared by the Child Death Review Team are published on the NSW Ombudsman's website.

Advocate for Children and Young People

The Advocate for Children and Young People (ACYP) also has a role to improve the safety, welfare and wellbeing of all children and young people in New South Wales. This includes making sure children and young people participate in decisions that affect their lives.

The ACYP is an independent statutory office that reports to the NSW Parliament via the Joint Committee of Children and Young People. It makes recommendations to government and non-government agencies on legislation, policies and practices that affect children and young people. It consults with children and young people on a range of issues affecting their lives, and conducts, monitors or promotes research into issues affecting children and young people.

Consultation reports, guides and resources are available on the ACYP website.



3.

Roles and responsibilities of principal officers and governing bodies

The governing body and principal officer have overall responsibility for supervising an agency's arrangements for providing statutory out-of-home care or adoption services. An agency may nominate other people to be agency contacts regarding day-to-day communication with the OCG; however, important information regarding the agency's accreditation or sector reforms that will impact the agency is communicated to the principal officer.

The governing body and the principal officer are responsible for making sure that the agency complies with its obligations under the children's care legislation. Where the Children's Guardian has concerns about an agency's compliance with accreditation requirements or its obligations under the children's care legislation, the OCG will communicate with the principal officer and governing body.

The OCG does not prescribe where the position of the principal officer role should sit within an organisation. In a small community organisation, the principal officer role most commonly sits with the chief executive officer or head of agency, or with a senior manager. In national or international organisations, the role most commonly sits with a senior manager, or a director at the state/territory level.

When appointing a person to the principal officer role, agencies should consider whether the person:

- is sufficiently senior within the organisation to make critical decisions regarding the operation and management of the statutory out-of-home care or adoption program
- has sufficient oversight or familiarity with the work occurring at the front line to inform these decisions.

The principal officer role has several important functions and responsibilities under the children's care legislation. Some of these responsibilities may be delegated to other people within the organisation.



The principal officer of a designated agency is responsible for:

- making sure immediate notification of the death of a child in statutory or supported out-of-home care is made to the parents of the child, the Children's Guardian and the coroner⁸
- making sure a behaviour support plan is prepared when a medical practitioner has prescribed a psychotropic drug for a child in statutory out-of-home care⁹
- determining whether an individual is capable and suitable to be an authorised carer and authorising individuals as authorised carers¹⁰
- determining whether a person is capable and suitable to be an authorised carer on a provisional basis and authorising individuals as authorised carers on a provisional basis¹¹
- determining whether a person is capable and suitable to be authorised as a residential care worker¹²
- determining whether a person is capable and suitable to be authorised as a carer to provide emergency care and authorising individuals as authorised carers to provide emergency care¹³
- authorising individuals to give respite to a child or young person's usual authorised carers.¹⁴

8 *Children's Guardian Act 2019 (NSW)*, s 83

9 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, s 49

10 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, s 18

11 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, s 20

12 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, ss 22–23

13 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, s 22

14 *Children and Young Persons (Care and Protection) Regulation 2022 (NSW)*, s 28



The principal officer of an adoption service provider is responsible for:

- ensuring that appropriate consultation occurs regarding about the proposed placement of an Aboriginal or Torres Strait Islander child.¹⁵ This includes making enquiries about the cultural background of a child and application of the Aboriginal Child Placement Principles¹⁶ and the Torres Strait Islander Child Placement Principles¹⁷
- receiving expressions of interest and inviting applications from individuals to be assessed as prospective adoptive parents¹⁸
- assessing and determining an applicant's suitability to adopt a child¹⁹
- providing information and training to prospective adoptive parents²⁰
- providing information about adoption and rights to birth parents and children proposed for adoption²¹
- witnessing consents to an adoption²² and notifying consenting parties about their right to revoke their consent²³
- preparing a report for the court regarding a proposed adoption²⁴
- applying to the court to dispense with the requirement of a person's consent to a child's adoption²⁵
- applying to the court for an adoption order²⁶
- agreeing to an adoption plan and notifying parties to adoption, of the plan²⁷
- handling requests for adoption information.²⁸

15 *Adoption Act 2000* (NSW), ss 33, 37

16 *Adoption Act 2000* (NSW), s 34

17 *Adoption Act 2000* (NSW), s 38

18 *Adoption Act 2000* (NSW), s 42

19 *Adoption Act 2000* (NSW), ss 45, 45F

20 *Adoption Regulation 2015* (NSW), ss 38–39, ss 53–54

21 *Adoption Act 2000* (NSW), s 59, ss 64–65

22 *Adoption Regulation 2015* (NSW), s 81

23 *Adoption Act 2000* (NSW), s 74

24 *Adoption Act 2000* (NSW), s91

25 *Adoption Act 2000* (NSW), s 68

26 *Adoption Act 2000* (NSW), s 87

27 *Adoption Act 2000* (NSW), pt 4

28 *Adoption Act 2000* (NSW), ch 8

Principal officer functions that may be delegated

The principal officer may delegate some of these functions to other people within the agency.

- Principal officers may delegate their responsibility for making sure that a behaviour support plan is prepared when a medical practitioner prescribes a psychotropic drug to a child or young person in statutory out-of-home care. The principal officer **cannot**, however, delegate the approval of the plan.
- Principal officers may also, with the approval of the Children's Guardian, delegate their functions regarding the authorisation of carers, including provisionally authorised carers, carers authorised to provide emergency care and carers authorised to provide respite care.

Agencies should, in writing, advise the Children's Guardian of:

- the functions the principal officer intends to delegate and the position within the organisation that will exercise these functions
- detail regarding why it is appropriate for this function to be exercised by a different role within the organisation
- whether the person who will exercise the delegated functions holds a current Working with Children Check clearance or has applied for a Working with Children Check clearance that has been verified by the agency
- whether the function will be delegated on an ongoing basis or for a specified length of time.



Legislative requirement

The principal officer of a designated agency **must not** reside at the same property as a child who is in statutory or supported out-of-home care supervised by the designated agency.²⁹

Head of Relevant Entity

Designated agencies and adoption service providers are included in the Reportable Conduct Scheme. The Head of Relevant Entity (HRE) is the person with primary responsibility for making sure the organisation meets its obligations under the scheme.

Under the Reportable Conduct Scheme, organisations must have systems in place for preventing, detecting and dealing with reportable conduct and reportable convictions. These systems aim to keep children safe, while also ensuring that employees are treated fairly when an allegation is investigated.

The HRE is ultimately responsible for ensuring these systems are in place. The HRE is usually the most senior person within an organisation, such as the chief executive officer or head of agency, or principal officer.³⁰

The HRE may delegate some or all of their functions to another suitable person within the organisation but is ultimately responsible for making sure the organisation meets its obligations under the scheme.

²⁹ *Children's Guardian Act 2019* (NSW), s 81

³⁰ *Children's Guardian Act 2019* (NSW), s 17

The key responsibilities of the HRE include:

- maintaining proper systems for preventing, detecting and responding to reportable allegations or convictions
- notifying the OCG within 7 business days of becoming aware of any reportable allegation or conviction against an employee of the organisation
- arranging for a reportable allegation or conviction to be investigated
- providing either an interim or final entity report (containing a finding for every reportable allegation and a determination for each reportable conviction) to the OCG within 30 days of becoming aware of a reportable allegation or conviction
- assessing and managing any risks to children and young people, other workers and the subject of the allegation as a result of a reportable allegation or conviction
- providing the OCG with any relevant information requested under the *Children's Guardian Act 2019*
- ensuring that appropriate level of confidentiality is maintained about information relating to reportable allegations and convictions.

Find out more about the **Reportable Conduct Scheme** and the responsibilities of the HRE on the OCG website.

Governing body and Working with Children Check obligations

A Working with Children Check is a mandatory requirement for child-related work in NSW.

The principal officer role is child-related work and the person who holds this position must either have a Working with Children Check clearance or have applied for a Working with Children Check clearance.

Members of a governing body of a statutory out-of-home care or adoption service provider are also considered to be in child-related work and are required to have a Working with Children Check clearance or have applied for a Working with Children Check clearance before they can be appointed to the role.

When an agency appoints a person to the principal office role or to its governing authority, it **must** verify the person's WWC number or, if they are awaiting a clearance, the application (APP) number.

If a person employed or engaged by the agency has their Working with Children Check clearance refused or cancelled, the agency must make sure the person is removed from child-related work.

Agencies must have processes to make sure people are not appointed to child-related roles unless they have a Working with Children Check clearance or have applied for a Working with Children Check clearance, as well as processes to make sure a person who has their Working with Children Check clearance refused or cancelled is removed from child-related work.

Find out more about the **Working with Children Check** on the OCG website.

Creating and maintaining a child safe culture

Leaders in organisations are responsible for creating, maintaining and improving a child safe culture. Keeping children safe is the responsibility of everyone in an organisation; however, leaders are in a unique position to promote child safety and make it part of everyday practice. This can be achieved by:

- talking about child safety in all communications (such as in emails, newsletters, or social media)
- having frontline staff regularly present best practice
- having frontline staff raise emerging child safety risks with leaders/the board
- ensuring management have child safety on the agenda at every staff meeting
- facilitating child safe training opportunities for all staff.

The Royal Commission highlighted how critical leaders are in ensuring there is a culture where children are heard, believed and supported when they raise concerns or make allegations of harm and abuse. Leaders are able to make children's rights and safety a prominent feature of their service. This can be achieved through systems, policies and procedures that inform everyday practice. Caseworkers should be encouraged to spend time with and know the children they are supporting so that children can raise worries, concerns or complaints to them directly. The organisation should support carers to build up their capacity to care and connect with the child so a safe and trusting relationship is established.

Part of keeping children safe in OOHC involves understanding child safe risks. Leaders and their staff should be aware of organisational risk across the different service types so they can identify, report and respond to harm and abuse of children.

Risks of harm and abuse in OOHC

Providing OOHC to children involves helping them have a sense of belonging and strong sense of identity. Agencies are required to actively support a child's overall wellbeing and keep them safe from harm and abuse.

The Royal Commission identified 4 dimensions of risk in relation to children being harmed and abused in organisational settings. These are:

- organisational risk (governance and leadership)
- situational risk (physical and online risks)
- vulnerability risk (child's age, cultural background, disability, previous maltreatment)
- propensity risk (culture of organisation and risk posed by employees).

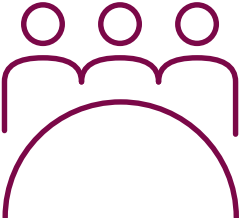
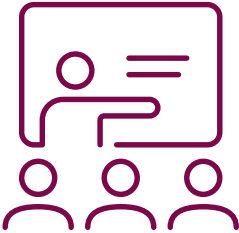
Understanding these dimensions of risk in the OOHC context can help agencies identify and mitigate the risk of children being harmed or abused while in care.



The tables below outline some known and general risks in the OOHC context. However, it is important to remember that each agency will have to identify their unique risks based on their agency culture, the geographical area they service, the specific characteristics of children in their care and the types of services being provided.

Dimension 1: Organisational risk

Every agency will have a unique governance structure and culture that influences how services are provided.

Table 1: Organisational risk in OOHC and adoption

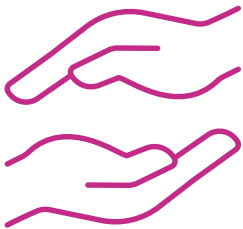
| Area of risk | Considerations |
|--|--|
| Governance  | <p>Consider the culture and type of leadership in your service.</p> <ul style="list-style-type: none">• Is it a small community-based service, or a large organisation that delivers a range of services over a large geographical area?• How involved is leadership in the service? Do they promote child safety and support training opportunities?• Are leaders aware of incidents, complaints, risks and emerging best practice?• How and when are leaders or boards updated by frontline workers? <p>Consider if leaders are regularly reflecting on the rigour of their systems, policies, procedures to prevent and respond to harm and abuse of children.</p> <ul style="list-style-type: none">• Are conflicts of interest from the board level down to the front line declared and managed so potential child safety issues are managed appropriately?• Are there mechanisms in place for continuous improvement and quality control? |
| Recruitment, turnover and upskilling of staff  | <p>Consider how you conduct recruitment:</p> <ul style="list-style-type: none">• Do you have systems to ensure that all checks (Working with Children Check, National Police Check, carer authorisation/approval) are completed prior to a person having contact with children?• What skills and personal qualities do you look for in staff and caregivers?• Is your workforce stable? Is there a high turnover? Is your workforce casualised? <p>Consider your induction and training practices:</p> <ul style="list-style-type: none">• What training are you providing staff in relation to child safe practices?• How are you inducting new staff? Is it a week of orientation? A 3-month probation that involves supervision and shadowing?• Is there regular training of staff in relation to preventing abuse, being able to identify grooming behaviour, and reporting concerns about harm or abuse?• Do staff and caregivers receive ongoing supervision and support to perform in their roles? |

| Area of risk | Considerations |
|--|--|
| Conflicts of interest  | <p>Reflect on the relationships between leaders, management and staff/caregivers in your organisation:</p> <ul style="list-style-type: none"> • Are there relationships (familial or friendships) between staff in the organisation that need to be declared? • Are there staff who have relationships with families and children in your care outside of the agency service? • Do staff/carers maintain professional relationships with the children? • Is there conflict between staff that may impact on child safe practices while they are working together? |
| Reporting and awareness of organisational abuse  | <p>An agency can prioritise child safety and make safety a prominent feature of their service. They can do this by ensuring staff are aware of the risk of organisational abuse and are confident in their ability to identify and report concerns or abuse.</p> <p>Consider the training and support you offer to staff/caregivers:</p> <ul style="list-style-type: none"> • Are staff aware of the risk of harm and abuse to children when in OOHC? This includes risk of staff/carers, risk of other children with harmful behaviours, and risk of adults outside of the service whom the child may interact with. • What is staff/carers' knowledge of reporting agencies? • How you are training and supporting staff and caregivers to identify, report and respond to abuse or suspected abuse? • Could your staff/caregivers identify grooming behaviour? • Do children have access to a caseworker, away from their day-to-day caregivers, so they can raise any concerns? |

Dimension 2: Situational and environmental risk

The physical environments and the nature of service delivery in residential care and home-based care are diverse. Each setting and service type will present with different risks that need to be identified and managed.

Table 2: Situational and environmental risk in OOHC and adoption

| Area of risk | Considerations |
|--|---|
| Nature of services provided  | <p>Settings include:</p> <ul style="list-style-type: none">• residential care• intensive therapeutic care (ITC)• home-based care (foster care, kinship care, adoption)• emergency care (alternative care arrangements, interim care arrangements, short-term emergency placements and individual placement agreements). <p>The known risk factors for potential harm and abuse across these settings include:</p> <ul style="list-style-type: none">• children being alone with adults (no visibility/oversight of interactions with the child by another adult)• children being placed with adults that are not related to them• grouping children who have experienced complex trauma, including children who display problematic harmful sexualised behaviours. |



| Area of risk | Considerations |
|-----------------------------|---|
| Physical environment | <p data-bbox="579 344 1508 443">When children can't remain in the care of their families, they may be placed in residential care or home-based care settings (including foster care, relative/kinship care, guardianship or adoption arrangements).</p> <p data-bbox="579 465 1508 533">Every agency will have a unique physical setting where they support children.</p> <p data-bbox="579 555 1508 654">In residential care settings children are placed together in larger numbers with more staff/carers to support them. Children in placed in this type of care usually have higher support needs.</p> <p data-bbox="579 676 1508 801">When considering the physical environment for risk, it may be helpful to sketch out your physical floorplan and outdoor area so you can mark up your potential risk areas and where staff are positioned for supervision. Other risks to consider include:</p> <ul data-bbox="579 813 1508 1729" style="list-style-type: none"> • Placement matching: This is a particularly important risk to manage in residential settings. Consider how you are matching children and weighing up the trauma and risks each child may present. • Visibility of staff/carer interactions: Consider physical layout, windows and management of staffing during shift changes and night times. • Visibility of child-to-child interactions: Consider if there are any spaces where children are out of your line of sight, and if staff know about children that have plans for additional supervision. For example, children may have behaviour support plans to manage problematic or harmful sexual behaviours. • Staff supervision of children: Are staff/carers ever alone or one-on-one with children or a child? If so, what are the safeguards being used to minimise potential risk (e.g. roaming supervision of other staff, regular contact with caseworker, ensuring children know who to call if they feel unsafe). • Supervision practices and staff awareness of abuse: Consider where your staff/carers are placed in the physical spaces. <ul data-bbox="619 1406 1508 1729" style="list-style-type: none"> – Would your staff recognise abuse, neglect or grooming behaviours if they saw them? – Does the agency have a code of conduct describing acceptable and unacceptable behaviours towards children? – Do staff know all the types of reportable allegations? – Would staff recognise what is normal sexual development/curiosity in a child versus problematic or harmful sexual behaviour? – Do staff know how to respond to incidents between children in a supportive way? <p data-bbox="579 1751 1508 1908">In home-based care a child is placed with a caregiver in a family environment. Some caregivers may already be supporting other children in care or guardianship/adoption arrangements. Some carers might also have their biological children living in the home alongside other children in their care.</p> |

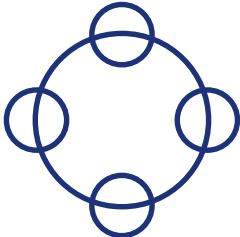



| Area of risk | Considerations |
|---|--|
| Physical environment (continued) | <p data-bbox="504 349 1070 383">Some risks to consider in this context include:</p> <ul data-bbox="504 394 1426 864" style="list-style-type: none"> <li data-bbox="504 394 1398 461">• Placement matching of child to caregivers and to other children in the home: Have risks of potential harm between children been assessed? <li data-bbox="504 465 1310 533">• Information: Has the agency provided adequate information to caregivers in relation to the child's support needs? <li data-bbox="504 537 1385 640">• Training and support: Does the agency provide training and support to caregivers? Do caregivers receive targeted training when they are caring for a child with very specific, challenging or high-level needs? <li data-bbox="504 645 1426 864">• Caseworker visits: Is the caseworker visiting the child in regularly to: <ul data-bbox="544 678 1426 864" style="list-style-type: none"> <li data-bbox="544 678 1091 712">– Identify if the child's needs are being met <li data-bbox="544 716 1011 750">– identify the child's emerging needs <li data-bbox="544 754 1235 788">– discuss if the child is settling into the new placement <li data-bbox="544 792 1426 864">– spend time talking to the child to build rapport so the child identifies the caseworker as a safe and trusted adult? <p data-bbox="504 887 1369 1021">Supporting children in home-based care often means supporting the family with whom the child is living. It is critical that caregivers receive support, not only regarding their caring role but also to manage any personal or family stressors.</p> <p data-bbox="504 1043 1426 1200">There are some situations when children come into emergency care, for example following removal from their family or following a placement breakdown. When this happens an agency may place a child in temporary accommodation with an adult carer until they find a longer-term residential or home-based placement that meets the child's needs.</p> <p data-bbox="504 1223 1315 1323">If your agency arranges this type of care (for example, alternative care arrangements), consider how you are managing the potential child safe risks:</p> <ul data-bbox="504 1335 1426 2056" style="list-style-type: none"> <li data-bbox="504 1335 1426 1559">• Hiring practices: Consider how your organisation seeks out emergency care staff and the rigour of background checks (Working with Children Check, reference checks, National Police Check) before they have contact with children. Reference checks are critical, as not all concerning or inappropriate behaviour will reach a criminal threshold or reportable conduct threshold. Consider how direct and specific your child safe questions need to be when doing reference checks. <li data-bbox="504 1563 1426 1794">• Caseworker allocation and support: How quickly does your agency allocate a caseworker to visit and build rapport with the child in care to ensure they know they have a safe adult to talk to if they feel unsafe? Have the child's usual support networks been maintained while they are in emergency care (e.g. preschool, school, therapy services)? These are all known people to the child who also can be safeguards against harm and abuse during this period of instability. <li data-bbox="504 1798 1426 2056">• Supervision of placements and care coordination: How regularly does the caseworker visit the child in the emergency placement? These placements are high-risk and should be monitored closely. Do the staff providing direct care to the child have enough information to understand the child's care needs? This is particularly important where a child has complex behaviours. How does the agency work with the staff providing direct care to ensure that the child's ongoing needs are met and case plan goals are achieved? |

| Area of risk | Considerations |
|---------------------------|--|
| Online environment | <p data-bbox="580 344 1437 510">Online risks to children have increased in recent years and new risks continue to emerge as children engage in various online platforms. Online risks can be present on phones, tablets, smart devices such as televisions, laptops, online gaming platforms, and social media apps such as TikTok, YouTube and Snapchat.</p> <p data-bbox="580 533 1437 562">Agencies may need to consider the following risks and manage them:</p> <ul data-bbox="580 573 1437 1355" style="list-style-type: none"> <li data-bbox="580 573 1437 824">• Online risks: <ul style="list-style-type: none"> <li data-bbox="619 613 1286 642">– What online devices does the child have access to? <li data-bbox="619 654 1437 784">– Are there policies that guide interactions between staff and children online? For example, can staff be friends with children or families on social media? Can children ‘follow’ staff on social media platforms? <li data-bbox="619 790 1345 819">– Do staff have phones on them while caring for children? <li data-bbox="580 831 1437 1137">• Supervision of children using online platforms and ability to recognise signs of harm while using devices (bullying, grooming etc): <ul style="list-style-type: none"> <li data-bbox="619 936 1374 1032">– How are staff/caregivers supported to have conversations about why they are supervising online activities to see if children are being safe online? <li data-bbox="619 1039 1437 1137">– Are there rules or boundaries around where children can and can’t access phones? For example, are children allowed to take their phones into their bedrooms or into the bathroom? <li data-bbox="580 1144 1437 1355">• Safety education for children that use online platforms so they know how to use devices safely and report concerns: <ul style="list-style-type: none"> <li data-bbox="619 1218 1417 1283">– Are staff/carers aware of eSafety Commissioner resources to support children’s education? <li data-bbox="619 1290 1294 1355">– Do staff/carers engage children to play the eSafety Commissioner games to learn together? |

Dimension 3: Vulnerability risk

The Royal Commission identified many groups of children who are at higher risk of abuse, including First Nations children, children from culturally and linguistically diverse backgrounds, children who have experienced prior harm or abuse, and children who live with a single parent or no parents (are in out-of-home care).

Table 3: Vulnerability risk in OOHC and adoption



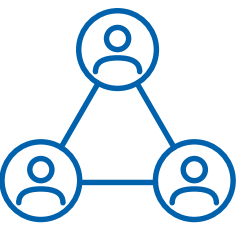
| Area of risk | Considerations |
|---|--|
| First Nations children  | First Nations children are overrepresented in OOHC and also often present with additional support needs related to intergenerational trauma stemming from the impacts of colonisation. Consider what additional supports and child safe practices are in place for these children, especially culturally safe placements and practices. This includes ensuring that families and community are meaningfully engaged in the child's life and are supported to have an active role in decision-making about their child's care. |
| Previous trauma  | <p>Children in OOHC may have experienced harm, abuse and trauma, which can make them more vulnerable to ongoing harm and abuse. They have been removed from their family and support networks, and can experience placement instability, frequently shifting care arrangements and changes in caseworkers. These circumstances can result in children not having any trusted adults to whom they can disclose concerns, harm or abuse. Perpetrators are also known to target children who have experienced prior abuse and who are socially isolated from protective adults in their life.</p> <p>Trauma in children can present in many different ways, such as risky behaviours and mental health concerns. Consider if your agency responds in a timely manner to these issues and if children are appropriately connected to local services.</p> |
| Age  | <p>All children can be vulnerable to harm and abuse. Many children may not be able to identify and report abuse and may not have access to programs that promote rights and consent. Younger children are especially dependent on staff/caregivers reporting potential abuse and neglect. Consider how your agency educates or supports a child's access to education on identifying and reporting harm or abuse.</p> <p>Consider if older children have access at school to education programs on harm and abuse.</p> <p>Consider how well and how often you provide training to staff on how to identify, respond and report abuse or suspected abuse of children.</p> |
| Additional support needs or disability  | Children with disability experience abuse at higher rates than their age-equivalent peers. Some agencies may be supporting children with diagnosed and undiagnosed disability. Children with disability are often not provided with education on identifying and reporting harm and abuse. Consider how you are facilitating the education of children with disability on identifying and reporting harm. Do you need the additional support of therapists to facilitate or modify this information so it is understood? |

Dimension 4: Propensity risk

The Royal Commission described propensity risk as the grouping of staff who may have a propensity to abuse children or young people.

For the purposes of describing risk more broadly, the general staffing challenges in OOHC are identified in Table 4, as well as risks children may pose to each other.

Table 4: Propensity risk in OOHC and adoption

| Area of risk | Considerations |
|--|---|
| Qualifications of staff  | Consider what additional support and training your staff may need based on their work experiences, life experiences and previous training. How skilled are staff at picking up on risks to children? How confident are staff in responding to children when they raise concerns? |
| Workforce and retention  | This is related to organisational risk, discussed in Table 1. Consider how your organisation attracts and trains staff, as well as the turnover rate of staff working with children, the authorisation of staff or caregivers in an emergency, and the mobility of casual workers. |
| Grouping of children with complex trauma  | <p>Children who have experienced trauma may re-enact their trauma behaviourally and may not react to situations the same way other children would (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017). Consider how your agency supports staff and carers' understanding of trauma support.</p> <ul style="list-style-type: none">• What training do you offer staff/carers on trauma support?• Are your systems and caseworkers responsive when staff/carers need additional support when caring for children with complex trauma needs? <p>Some children can present with problematic or harmful sexualised behaviours and require additional support, planning of safe placement matching and closer supervision to ensure interactions with other children are safe. Consider the following:</p> <ul style="list-style-type: none">• Do staff have adequate training to identify and support children with problematic or harmful sexualised behaviours?• Is there consideration given to which children are safe to place with each other?• Are there clear supervision guidelines for children who display harmful behaviours towards other children?• Are children with problematic or harmful sexualised behaviours routinely connected with appropriate services, including specialised behaviour support? |



This section discusses the Code of Practice for Designated Agencies and Adoption Service Providers, which is set out in the Children's Guardian Regulation 2022. It also provides information about other rules and requirements in the children's care legislation that are relevant to designated agencies and adoption service providers.

4.

Mandatory practice requirements

Practice requirement 1—governance and leadership

Implementing this practice requirement demonstrates compliance with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture.

About this practice requirement

Leaders within an organisation play a critical role in creating cultures that value and respect children and young people, and place safety and wellbeing at the centre of all that they do.

For leaders to be effective, their employees and the people who receive their services must have trust in their competence and integrity. An organisation that does not operate legally or ethically is unlikely to adequately support and resource staff and caregivers to provide high-quality care to children. It is also unlikely to create an organisational culture where people can raise concerns and have their concerns taken seriously.

Organisations with strong governance are accountable for their decisions, welcome feedback and are proactive in managing risk and identifying opportunities to improve their services.

The purpose of this requirement is to support ethical decision-making and make sure agencies have governing bodies and senior leaders who understand the organisation's obligations to the children they serve, as well as to their staff and volunteers.



Mandatory practice requirements

This practice requirement is set out in section 7 of Schedule 3A of the Children’s Guardian Regulation 2022.



Division 2

Practice requirement 1—governance and leadership

17 Systems, policy and procedure

- (1) An entity must clearly document—
 - (a) the persons to whom the entity delegates its functions, and
 - (b) the decisions of its governing body and the reasons for the decisions.
- (2) An entity must have policies and processes for managing conflicts of interest.
- (3) An entity must have systems, policies and procedures that set out the entity’s commitment to child safety and how the entity will achieve that commitment.

18 Principal officer and governing body

- (1) An entity must have a transparent recruitment process for the entity’s principal officer and the members of its governing body, including—
 - (a) keeping records of recruitment or nomination processes, and
 - (b) completing probity and suitability checks.
- (2) An entity’s principal officer and governing body must have, or have access to, expertise in—
 - (a) child protection, and
 - (b) if the entity provides out-of-home care—out-of-home care, and
 - (c) if the entity is an adoption service provider—adoption services.
- (3) An entity’s governing body must understand, and have the skills necessary to fulfil, its roles and responsibilities.

19 Staff

- (1) An entity’s staff must report information to the entity’s principal officer and governing body about risks to the safety, welfare or wellbeing of children, including the following—
 - (a) critical events,
 - (b) complaints,
 - (c) reportable allegations.
- (2) An entity must ensure staff who work with and care for children have the training, supervision, support and resources necessary to perform their roles.



Assessing and monitoring compliance with these requirements

The OCG’s primary concern is the safety and wellbeing of children in out-of-home care and adoption arrangements.

Typically, the governing body will be characterised by a group of individuals who are legally charged with the responsibility to govern the organisation. This includes providing leadership, strategic and corporate direction, monitoring performance and ensuring compliance with legislation.

The OCG does not prescribe the structure or operations of an agency's governing body. However, it does need to be satisfied that the agency has systems that govern its operations to ensure that decisions are made in the best interests of children, caregivers and employees.

In assessing an agency's systems to support good governance, OCG assessors consider the following questions.

- How does the agency make sure the people elected or appointed to the governing body are safe and suitable for the role?
- How does the agency make sure the governing body understands and fulfils its roles and responsibilities?
- Does the governing body have access to advice and expertise regarding child protection, out-of-home care or adoption (where relevant)? Agencies might achieve this by appointing people to the governing authority or leadership positions who have these skills and experience, or by making sure the agency has access to external advice and support.
- How does the governing body know what is happening at the front line? How does it know what risks exist to children and what challenges impact service delivery? This includes critical information such as reportable conduct allegations, critical incidents, patterns and trends regarding any complaints received by the agency, and staff turnover.
- How does the governing body use this information? Does the governing body implement changes to systems where necessary?
- How does the governing body know that staff and caregivers are receiving the support, supervision and training they require to perform well in their roles?
- How does the governing body communicate its commitment to child safety to children, staff, caregivers and the community?
- How do people within the organisation know what their roles and responsibilities are? How do people know who is responsible for decision-making at different levels within the organisation?
- How does the governing body manage any real or perceived conflicts of interest when it makes decisions?



Types of evidence of compliance

When considering an agency's practices, OCG assessors are looking for evidence that the agency has a system in place to support good governance. The agency is best placed to determine what evidence it can provide to demonstrate its systems to support good governance. Assessors will consider a range of evidence provided by the agency.

Types of evidence agencies commonly provide are:

- discussions with members of the governing body and senior leaders within the organisation regarding how decisions are made, what types of information is provided to the governing body and how this information is used
- discussions with agency staff regarding how they become informed about key decisions or directives issued by the governing body or senior leaders
- policies and procedures regarding recruitment of the governing body and senior leaders
- recruitment records, minutes of meetings of the governing body and reports provided to the governing body
- policies and procedures for managing conflicts of interest, and examples where these policies and procedures have been applied (if relevant)
- complaints and risk registers, and any analysis undertaken by the agency regarding patterns and trends.

Practice requirement 2—supporting participation of children

Implementing this practice requirement demonstrates compliance with Child Safe Standard 2: Children participate in decisions affecting them and are taken seriously.

About this practice requirement

Children are safer in organisations where their voices are heard and when their concerns or complaints are taken seriously. Where this does not happen, there is a higher risk of abuse occurring and continuing undetected. Children will be disempowered and less likely to speak up about safety concerns (Kaufman et al., 2016). Children in care need to have opportunities to speak up and exercise their right to be heard—particularly about their safety—and to actively participate in decisions that impact them. This is critical to their safety and wellbeing, and their sense of control over their own lives (Office of the Advocate for Children and Young People, 2022).

People who work with and care for children have an important role to play by ensuring that children have an age-appropriate understanding of their rights and how their rights apply in everyday matters. Child-safe organisations demonstrate a commitment to upholding children's rights in all aspects of practice and empowering children to understand and exercise their rights.

Children have a right to see information held about them.³¹ Agencies should exercise judgement about whether it is in a child's best interests to view certain information, taking into account the child's age, level of maturity and the nature of the information they might see. When allowing children to access information from their files, agencies should make sure there are supports in place for them, such as a support person, debriefing or counselling.



³¹ *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, s 160

Agencies should make sure that information about children and their families is treated confidentially and with sensitivity. Children may be reluctant to share their concerns with caregivers or staff if they don't trust that their information will be treated confidentially and with respect. This means explaining to children why information is collected and how it is used and shared to support their safety and wellbeing.

Hearing directly from children about what keeps them safe and valuing children's voices is a protective factor against abuse. Poor emotional wellbeing is associated with children feeling unheard or that they do not fit in anywhere (Smales et al., 2020).

Child-safe organisations actively seek the opinions of children and young people and create opportunities for them to influence decisions that are made about their lives. They regularly consult with children in their care as part of their continuous improvement processes (NSW Ombudsman, 2022).

By supporting genuine participation, agencies empower children. People who work with and care for children have a critical role in helping them to develop skills and confidence in expressing their views and opinions. They should also create opportunities for children and young people to influence decisions that impact their lives.

Empowerment and participation in the form of life story work helps children understand their personal history, gather knowledge about their family, heritage, culture and community, and create a record of the important events in their life.

The participation of children in decisions that affect their lives is a key principle underpinning the *Children and Young Persons (Care and Protection) Act 1998*³². Children must be provided with information, in an age-appropriate manner, to help them understand the decisions that are being made about their lives. They must also be provided with opportunities to express their views and with information about the outcome of any decisions. Children have a right to be provided with information about their proposed authorised carer³³ as well as a right to participate in decisions about guardianship³⁴ or adoption³⁵.

Participation can be formal or informal. Formal participation can be in the form of meetings and case conferences. Informal participation can include documenting children's views in day-to-day casework or allowing children to express their preferences to identify with particular names, places or people, as well as expressing choice in their personal appearance and living spaces.

The purpose of this practice requirement is to make sure agencies create opportunities for children to express their views and, wherever possible, take an active role in making decisions that impact their own lives.



The OCG has developed a **participation and empowerment handbook to help child-related organisations think about how they support the participation of children.**

32 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 10

33 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 145

34 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 79A

35 *Adoption Act 2000* (NSW), s 55

Mandatory practice requirements

The practice requirements are set out in section 8 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 3

Practice requirement 2—supporting participation of children

20 Application of division

In the application of this division, an entity must have due regard to the age and developmental capacity of a child.

21 Information

- (1) An entity must—
 - (a) give a child a copy of the Charter of Rights prepared under the *Children and Young Persons (Care and Protection) Act 1998*, section 162, and
 - (b) explain the Charter of Rights to the child in a way the child can understand.
- (2) An entity must give information to a child in a way the child can understand, taking into account the child's age, capacity and development, to help the child make informed decisions about and, if relevant, give consent to guardianship or adoption.
- (3) An entity must support a child to access information about the child and the child's family and care history.
- (4) An entity must uphold a child's right to privacy and confidentiality.

22 Decisions involving a child

- (1) An entity must support a child to—
 - (a) make informed choices about the child's personal appearance, personal space, name and identity, and
 - (b) maintain relationships with siblings and peers in accordance with the child's wishes and best interests.
- (2) An entity must ensure—
 - (a) if possible and appropriate—meetings and discussions about decisions that affect a child's life occur in a place and at a time that supports the child's participation, or
 - (b) if the child does not attend formal meetings—the child's views are gathered in other ways.
- (3) If a child can form the child's own views about the child's safety, welfare and wellbeing, an entity must ensure—
 - (a) the child is given the opportunity to express the child's views, and
 - (b) the entity gives the child's views due weight.
- (4) An entity must explain decisions to a child in a way the child can understand.



Assessing and monitoring compliance with these requirements

In assessing an agency's practices regarding participation of children, OCG assessors consider the following questions.

- How does the agency create opportunities for children to express their views and opinions? This includes both formal processes, such as meetings and case conferences, and informal ones, such as discussions with children during home visits or day-to-day casework.
- Does the agency explain decisions that have been made to children and the reasons why these decisions were made?
- Does the agency engage in life story work with children? How are children supported to understand their personal history and to maintain a historical record of important events in their lives?
- Where an agency is considering restoration, guardianship or adoption, how are these concepts explained to the child and how are their views taken into account?



Types of evidence of compliance

When considering an agency's practices, OCG assessors are looking for evidence that the agency provides opportunities for children to express their views and opinions and influence decisions made about their lives. The agency is best-placed to determine what evidence it can provide to demonstrate its practices and strategies to support participation. Assessors will consider a range of evidence provided by the agency.

Types of evidence that agencies commonly provide are:

- discussions with staff about how they work with children and the strategies they use to support participation
- file notes and other records of discussions with children
- case plans and records of meetings demonstrating how views are collected and documented
- tools, guidance materials or resources the agency uses to support children's participation.

The Charter of Rights

The Minister for Families and Communities is required to develop a charter of rights for children and young people in out-of-home care.³⁶

DCJ has developed resources on the Charter of Rights, to help children and young people in out-of-home care understand their rights.

³⁶ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 162

Practice requirement 3—participation of family and community

Implementing this practice requirement demonstrates compliance with Child Safe Standard 3: Families and communities are informed and involved.

About this practice requirement

Child-safe organisations welcome the involvement of people who are important in the lives of children. A child's community includes the people who know and care about them.

Supporting the participation of family and members of the child's community can include inviting them to attend meetings and case conferences where important decisions about their child are being made. Participation can be encouraged by convening meetings at a time or place that makes it easier for parents and others to attend. Where parents or others are not able to attend meetings, their views should still be gathered and documented. This may help a child to understand their family's views and wishes about their life.

Participation can also be informal, by supporting contact between children, their families and other people who are important to them. The type of contact and its purpose, frequency and duration will be different for each child, and determining how to best support contact requires skilled casework. Discussion about contact and how to make it a positive experience for children should be conducted regularly, such, as part of the annual case plan review.

Asking parents about the child's family and history, and documenting these important conversations, can assist a child to understand their family and where they have come from. It also signals to parents and others that they are an important and valued part of a child's life.

Parents have additional rights where adoption or guardianship orders are being sought for their child, including the right to consent to or oppose an adoption.³⁷ Agencies must support parents to understand and exercise their rights, in accordance with the agency's accreditation type and conditions.

Parents seeking adoption for their children voluntarily (local adoption) have full parental responsibility for their children up until consent to adoption is given. They may also request that their child be placed with prospective adoptive parents of a particular background, beliefs or domestic relationship.³⁸ Accredited adoption service providers must work openly and collaboratively with parents seeking adoption for their children.

Parents working towards restoration should be supported to understand what they are required to demonstrate in order for restoration to be considered and recommended. Agencies should provide support, monitoring and feedback to parents as they work towards a restoration goal.



³⁷ *Adoption Act 2000* (NSW) pt 5 div 1; *Adoption Regulation 2015* (NSW), s 90(e)

³⁸ *Adoption Act 2000* (NSW) s 45B

Mandatory practice requirements

These practice requirements are set out in section 9 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 4

Practice requirement 3—participation of family and community

23 Family and community

- (1) An entity must take all reasonable steps to locate and gather information about a child's parents, extended family and community.
- (2) An entity must, if possible and appropriate, support the following persons (relevant persons) to participate in making decisions about a child's life, including inviting the persons to meetings—
 - (a) the child's parents,
 - (b) the child's extended family,
 - (c) members of the child's community,
 - (d) other persons who have a close connection with the child.
- (3) An entity must, if a relevant person does not want to participate in making decisions, ensure the person's views are gathered in other ways.
- (4) An entity must give a relevant person for a child information about the child's placement and progress in care—
 - (a) to the extent it is safe to do so, and
 - (b) having consideration for the child's wishes, and
 - (c) in accordance with the children's care legislation.
- (5) An entity must, if possible and appropriate—
 - (a) give a relevant person information about how to contact the entity, and
 - (b) be responsive to the person's requests and concerns.
- (6) An entity must give the parents and family of a child information about future care options for the child—
 - (a) in a way the parents and family can understand, and
 - (b) to help the parents and family—
 - (i) participate in decision-making processes, and
 - (ii) make informed decisions about restoration, guardianship or adoption, and
 - (iii) if relevant, give informed consent to adoption.
- (7) An entity must give parents and family information and support to facilitate restoration where relevant and appropriate.



Assessing and monitoring compliance with these requirements

In assessing an agency's practices regarding family and community participation, OCG assessors consider the following questions.

- How does the agency know who the child's family and community are?
- Are efforts made to locate family members or people who are important to the child?
- How does the agency create opportunities for family and others to participate in decision-making?
- How does the agency support children to maintain important relationships? Are contact arrangements reviewed regularly and changes made to provide a positive experience for children?
- Does the agency share information with family and other important people so they know who is caring for their child and how their child is progressing? Does the agency review the type and amount of information to be provided on a regular basis (at least annually during case plan reviews)? (See 'Guidelines for sharing placement information', below).
- Do family and other important people know how to contact the agency to seek information about their child or raise any concerns?
- Are parents considering guardianship or adoption for their child provided with information and counselling to assist them to make informed decisions about their child's care?



Types of evidence of compliance

When considering an agency's practices, OCG assessors are looking for evidence that the agency provides opportunities for family and important people in the lives of children to express their views and opinions and to influence decisions. The agency is best placed to determine what evidence it can provide to demonstrate its practices and strategies to support participation. Assessors will consider a range of evidence provided by the agency.

Types of evidence agencies commonly provide are:

- discussions with staff about how they work with children's family and members of their community, and strategies they use to support participation
- file notes and other records of discussions with family and other important people, along with observations of contact
- case plans and records of meetings demonstrating how views are collected and documented
- tools, guidance materials or resources the agency uses to support participation of family and community, and to make sure important information about the child's placement and progress is shared.

Guidelines for sharing placement information with parents and other significant people

Family and community can experience lifelong grief when their child is not in their care. They have a right to know about what arrangements have been made for the care of their child.

It is important the agency responsible for a child's care maintains contact with family and other significant people, even where a child may not wish to have face-to-face contact. This is to make sure important relationships and connections are not lost. It is also critical that caregivers are supported to understand the importance of their role in supporting these relationships.

Family members and people in the child's community may also struggle to engage with the agency or child at times. Having contact with a child or participating in meetings may be painful or overwhelming. In these circumstances, the role of the agency in maintaining contact and keeping family informed of their child's placement and progress is critical for making sure that connections and relationships can be rekindled in the future. This includes maintaining contact with siblings or other family members who may also be in care.

Section 149B-K of the *Children and Young Persons (Care and Protection) Act 1998* provides a framework for providing this information. The Children's Guardian is responsible for developing guidelines to assist agencies to manage the disclosure of placement information to parents and other people of significance to a child.³⁹ These guidelines are set out below and will assist agencies to comply with practice requirement 3 of the Code of Practice.

Guidelines issued by the Children's Guardian on the disclosure of placement information to parents and significant others

The *Children and Young Persons (Care and Protection) Act 1998* requires the designated agency providing the placement to disclose information about the placement to the child's parents as soon as practical after the placement commences. The Act also requires a designated agency to provide information regarding the child's placement to any other person who is significant to the child, where that person has made a written request for information.

The Act defines a 'parent' as a person who had parental responsibility immediately before the child or young person was placed in out-of-home care, or immediately before the Children's Court of New South Wales made an order placing them under the parental responsibility of the Minister of Family and Community Services or the Secretary of the NSW Department of Communities and Justice.⁴⁰ In most cases, this will be the biological parent of a child or young person, but it could also include a guardian or an adoptive parent.

'Other significant people' may include, but are not limited to, step-parents, siblings, extended family members, peers, family friends and community members. Where a person other than the parent requests information about the child's placement, the agency will need to determine whether it is appropriate to provide placement information, and the amount and type of information to provide. The child should be consulted, where age-appropriate, and provided with help to express their views. When making decisions about providing placement information for Aboriginal and Torres Strait Islander children, agencies should recognise that ties between children and their community members are not necessarily based on blood or marriage relationships, and agencies should consult with family members to understand the important connections for the child.

³⁹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 149D

⁴⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 149B(1)

Principles underpinning the disclosure of placement information

Providing placement information to parents and other significant people assists the child to maintain important relationships and helps the child, their parents and people of significance cope with separation and loss.

Therefore, as a general principle, agencies should provide parents and people who are significant to the child with as much information about the placement as possible.

For carers and members of the child's household, disclosing placement information may cause some anxiety, particularly where a placement is new or where carers have not had the opportunity to develop relationships with the child's family and extended network. Sensitive and skilled casework is required to assist children and their carers to understand the purpose and importance of sharing information with parents and other significant people.

Agencies should talk to children about the people who are important to them and who they want to be kept informed of their placement. This information should be documented and reviewed regularly, as the people who are important to a child may change over time. The agency may proactively reach out to these people to invite them to request information about the child's placement.

The amount and type of information that is provided is determined on a case-by-case basis. Where a placement is new and the agency is still developing an understanding of the child's family dynamics, the agency may choose to provide non-identifying information initially while it considers any risks in disclosing more-detailed information.

For some children, there may be circumstances where only limited placement information can be provided. This includes situations where:

- there are reasonable grounds to believe that disclosing identifying or high-level placement information may impact the safety, welfare and wellbeing of the child, their carer or any member of the household in which the child lives, including in residential care
- in recognising and respecting the wishes of the child, it is not appropriate to release identifying information to parents or significant others
- a carer or member of the household has reasonable concerns regarding the safety, welfare and wellbeing of the child or people in the household if identifying information were to be disclosed
- there are orders from a court or tribunal regarding the disclosure of placement information.

Disclosure of placement information should be seen as an ongoing part of casework, as children's wishes may change over time. The level of risk regarding disclosing placement information may also change over time, and agencies should review the amount and type of information to be provided to parents and other significant people as part of the annual case plan review. For example, a parent who is highly distressed following the removal of their child may not be in a position to appropriately manage high-level identifying information about the placement. However, the risk of misuse of this information may decline over time.

Types and amount of placement information that may be disclosed

The type and amount of placement information that may be disclosed is determined by the agency on a case-by-case basis, taking into account known information about risk, as well as the views and wishes of the child and their carers.

It may be helpful for agencies to consider the types of information that can be provided in terms of the following categories.

High-level identifying information may include the full names of the child's carers and household members; the address and contact details for the placement; information about the carer, such as their employment or other activities; and identifying information about the school or educational facility the child attends.

Information that may allow a person to establish identity could include a description of the child's school or information about the location of the school; or an email address for the carer that may allow a person to work out the carer's full name.

Non-identifying contact information could include non-identifying email addresses or mobile phone numbers; or general information about the locality in which the child lives. If a child lives in a small community, the agency may decide not to release this information where there is reasonable grounds to believe this could place the safety, welfare and wellbeing of the child or young person, or the household, at risk.

Non-identifying information about events of significance could include information about events in the life of the child's household (that is, informing of the event but not providing identifying information). These could include births, deaths, marriages, separations or changes to the household composition, moving house or changing school.

Non-identifying information about the placement could include general information about the household composition, such as the number of carers, ages of other children in the placement, pets, family routines, carers' cultural background and religion, and any other information that would provide a parent with a sense of the day-to-day life of their child.

When considering the type and amount of placement information to be disclosed, agencies should consider any risks to the child, their carers or members of the household. Relevant information to inform a risk assessment may include:

- a person's history of violence or threatening behaviour
- any drug or alcohol issues which may impair a person's capacity to manage their relationship with a child or the child's carers appropriately
- the person's views about the child being in care and their attitudes towards the carer
- any other information that indicates a person may pose a risk to the child or the carer.

When the agency has determined the amount and type of information that may be provided, the decision and rationale for the decision should be documented. All disclosures of placement information should be approved by an appropriately authorised senior officer within the agency.

Agencies should review this decision regularly and at least annually during case plan reviews.

Consulting with children and their carers regarding disclosure of placement information

Children must be given an opportunity to express their views regarding the type and amount of placement information to be provided, relative to their age and stage of development.⁴¹ It may therefore be necessary to assist a child to consider the implications of providing placement information, including how providing this information may help them to maintain a connection to their family. The child's views should be documented and the final decision about the information to be disclosed should be explained to them.

The views of the authorised carer should also inform the decision regarding the amount and type of placement information to be disclosed. Where **high-level identifying information** is to be disclosed, the agency must obtain **written consent** from the carer before it is disclosed.⁴² The *Children and Young Persons (Care and Protection) Act 1998* states that if the carer has not given written consent within 28 days, the agency may still decide to disclose high-level identifying information.

Disclosing high-level identifying placement information where the carer has not provided consent

Where a carer has refused to provide written consent to disclosing high-level identifying information, the agency may still disclose this information, where it is satisfied that doing so would not pose a risk to the safety, welfare and wellbeing of the child, the carer or any other member of the household.

Where an agency has determined to disclose high-level identifying information without the consent of the carer, it must provide

- the carer with written reasons why it believes that disclosure will not pose a risk to the safety, welfare and wellbeing of the child, the carer or any member of the household

⁴¹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), ss 149D(a), 149I(3)(a)

⁴² *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 149E

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- the carer with a written notice stating that the information will not be disclosed within 21 days after the date of the notice and that the decision to disclose the information may be reviewed by the NSW Civil and Administrative Tribunal (NCAT)
 - the child with a copy of the written reasons if the child is 12 years of age or older, unless the agency is of the view it is not in the child's best interests to do so (for example, if the written reasons contain information about the parents that may be distressing for the child or not appropriate for their age and stage of development)
 - a copy of the written reasons to any person nominated by the child if the child is under 12 years of age, unless the agency is of the view that it is not in the child's best interests to do so. A copy of the written reasons should be kept on the child's records to be shared with them once they are 12 years old, unless the agency considers that it is not in their best interest to do so⁴³:

Some private health information about carers or their household members cannot be shared unless written consent is provided, regardless of the provisions in the *Children and Young Persons (Care and Protection) Act 1998*. For example, if a parent is aware of a carer's identity and that carer has been diagnosed with a medical condition, the agency cannot provide information about that medical condition unless the carer consents to this information being shared.⁴⁴

Review of a decision to disclose high-level identifying information without the carer's consent

A decision to disclose high-level identifying information without the carer's consent may be reviewed by NCAT.⁴⁵ The carer, or the agency at the request of the carer, may make an application for review within 21 days of the written notice of the agency's intention to disclose the information.

Where a carer requests that the agency makes an application for review on their behalf, the agency **must** comply with this request. However, the agency must first undertake an internal review of the decision.

Where an application for a review of the decision to disclose high-level identifying information has been made, the agency must not disclose the information until the review has been resolved.

Refusal to disclose placement information

If an agency decides not to disclose placement information to a parent or other significant person, it must provide written notification to the person of the decision. There is no avenue for a parent or other significant person to seek a review of this decision. While there is no requirement in the *Children and Young Persons (Care and Protection) Act 1998* to do so, it is good practice and in the interests of fairness and transparency to provide the parent or significant other with reasons for the decision not to provide placement information and to offer support and assistance where appropriate.

A decision to withhold any placement information from a parent or other significant person should be clearly documented and reviewed regularly (at least annually as part of the case plan review).

Improper disclosure of placement information

The *Children and Young Persons (Care and Protection) Act 1998* establishes an offence for improperly disclosing information obtained in connection with carrying out responsibilities under the Act. This includes placement information.

However, a person who discloses placement information in accordance with sections 149B-149K of the Act and these guidelines, in good faith, does not contravene the confidentiality provisions of the Act, the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*. To act in good faith means to act with an honest and genuine intention or with a sincere belief. Keeping clear records about decisions made around the type and amount of placement information to be disclosed will help demonstrate that disclosure of placement information was made in good faith.

⁴³ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 149F

⁴⁴ See the *Health Records and Information Privacy Act 2002* (NSW)

⁴⁵ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s149G

Sharing information regarding children and young people's progress in care

The *Children and Young Persons (Care and Protection) Act 1998* requires that a designated agency provides parents with information about the progress and development of their child.⁴⁶ This includes information about the child's health, education, and social and emotional development, and activities the child is engaged in.

Supporting the participation of family and other significant people in key decisions such as case plan reviews is one way to keep parents informed of their child's progress and development.

Agencies may share placement information and information about progress and development in whatever manner is most appropriate for the parent, including in writing or in conversations with parents and other significant people. Agencies should keep a record on the child's file regarding information that has been shared, and important information should be stored safely in the event that a parent comes forward in the future seeking information about their child.



⁴⁶ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 163

Practice requirement 4—meeting the individual needs of children

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

About this practice requirement

Designated agencies and adoption service providers have responsibilities beyond keeping children safe. They play a critical role in supporting wellbeing and promoting and upholding children's rights and best interests. Designated agencies and adoption service providers are key advocates for the children in their care and are responsible for making sure children's cultural, spiritual, social, emotional, health and educational needs are met. They also play an important role in supporting children to recover from trauma.

Understanding children's needs

Child-safe organisations are responsive to the individual needs of the children in their care. The role of the caseworker is key in understanding children's needs and coordinating assessments, plans and interventions where required. Case planning and regular case reviews are important to help those who work with or care for children understand their roles and responsibilities and ensure that children's needs are not overlooked.

Most children entering care have experienced trauma and neglect. They may also have additional health and wellbeing needs that carers may not know how to respond to due to lack of awareness or understanding (Smales et al., 2020). Children with undiagnosed developmental or mental health needs or disability may present with challenging behaviours and not get access to specialist assessment and support. Abuse and harm can occur if carers are not equipped with the relevant knowledge, skills and coping strategies to support these additional needs. A placement can break down if the carer feels unsupported or excluded from important decisions about a child in their care (Powell et al., 2021).

Thorough assessments of a child's health and development are important in guiding casework and developing case plans. Agencies should endeavour to gather as much information as possible about the child's social history and care experiences prior to placement with the agency. Engaging family and previous carers can provide agencies with valuable information regarding the child's care needs.



Mandatory practice requirements

The practice requirements are set out in sections 10 to 15 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 5

Practice requirement 4—meeting the individual needs of children

24 Case plans, documentation and record keeping

- (1) An entity must ensure a child has a case plan that addresses all the child's care needs and sets out responsibilities and timeframes for completing casework tasks.
- (2) The entity must review the case plan—
 - (a) at least annually, and
 - (b) if there is an unplanned placement change or a significant change in the child's circumstances.
- (3) An entity must maintain accurate, up-to-date information and records about a child, including records of casework and the reasons for casework decisions, including placement decisions.
- (4) An entity must work collaboratively with other persons responsible for providing care and support to a child, the child's carers and the child's family, including sharing information relating to the child's safety, welfare and wellbeing in accordance with the children's care legislation.
- (5) An entity must ensure the following persons are given information about, and supported to engage in the development and review of, a child's case plan—
 - (a) the child,
 - (b) the child's family,
 - (c) persons who are important to the child and to the child's family,
 - (d) the child's caregivers.

25 Health and education

- (1) An entity must review a child's health and educational needs at least annually, as part of the annual case plan review.
- (2) An entity must support a child to—
 - (a) attend an appropriate educational institution, and
 - (b) access health services.
- (3) An entity must ensure—
 - (a) a child's health and educational needs are addressed as required, and
 - (b) recommendations for further assessment, treatment, supports or interventions are followed up.
- (4) An entity must support Aboriginal and Torres Strait Islander children to access culturally appropriate health services.

Guidelines for the review of placements effected by order of the Children's Court



A designated agency providing care to a child or young person who has been placed in out-of-home care by an order of the Children's Court of New South Wales must review the placement regularly, to make sure the placement is promoting the safety, welfare and wellbeing of the child or young person.⁴⁷ Placements should be reviewed in accordance with guidelines prepared by the Children's Guardian.⁴⁸

The *Children and Young Persons (Care and Protection) Act 1998* requires a designated agency to review the placement of children and young people:

- within 4 months of the making of an interim order by the Children's Court placing a child or young person in out-of-home care
- where a child is less than 2 years of age—within 2 months of the making of a final order by the Children's Court placing the child in out-of-home care, and thereafter every 12 months
- where a child is more than 2 years of age—within 4 months of the making of a final order by the Children's Court placing the child or young person in out-of-home care, and thereafter every 12 months
- after the death of a parent or authorised carer
- after an unplanned change of placement
- at any other time as required by the child or young person's circumstances.⁴⁹

Case plans

A case plan is an accurate and up-to-date record of decisions, services and actions that will be taken to support the needs of the child. It provides structure for ongoing intervention and guides what needs to occur to meet the child's care needs.

Case plans should be developed from the beginning of an agency's involvement with a child. They should set out the goals, objectives and tasks, with clearly identified responsibilities and timeframes for completing casework tasks. Case plans should be sufficiently detailed so a worker unfamiliar with the child's circumstances can understand casework activities that need to occur and who is responsible for completing them.

⁴⁷ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 150(1)

⁴⁸ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 150(4)

⁴⁹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 150(2)

Placement and case plan reviews

Frequent placement changes and less-involved caregivers can leave children in care without a consistent adult figure who can advocate for and support them (Smales et al., 2020). Placement instability is both cause and outcome of physical and mental health issues, as well as sexual and criminal risk-taking behaviour (Jones et al., 2011). This means that challenging behaviours exhibited by children as a result of trauma may be difficult for carers to manage if they are not made aware of these behaviours or supported to manage them. This may lead to placement breakdown, which could further traumatise the child, leading to more complex behaviours and feelings of abandonment and rejection. Behaviour challenges can compound and escalate because of multiple placement breakdowns.

Placement instability is highly correlated with older children, longer time spent in care, separation from siblings, and externalising challenging behaviours (Rock et al., 2015). Sexual abuse can also lead to placement instability, as children may be removed from a placement because they disclose abuse or because carers are unable to manage the ways that children express complex trauma (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

Placement reviews are an important opportunity for people involved in the care of the child to consider whether the placement continues to promote the child's safety, welfare and wellbeing, and agree on what actions need to occur to meet the child's needs. Placement reviews are also an opportunity to consider caregivers' needs, and agencies may choose to conduct carer reviews to coincide with the placement and case plan review.

Ideally, placement reviews should bring the child, their caregivers, family, people of significance and other professionals together to discuss the child's needs and agree on actions to be taken over the coming year. These actions and decisions should be set out in the case plan.

However, there may be circumstances where it is not possible or suitable to convene a formal meeting. In these circumstances the agency should still seek and record the views of those people who are unable to attend a meeting and make sure that copies of the case plan are provided.

Consideration should be given to the time and location of placement review meetings to encourage the participation of children and their families. To participate, some people may require assistance with transport, support people or interpreters.



Agencies will have their own case plan format and tools, but case plans should address all aspects of a child's care:

- health and education
- social and emotional development
- identity and connections to culture
- relationships and contact with family and people who are important to the child
- behaviour support
- planning for leaving care and transitioning to independence.

Case plans should guide casework with children and should be reviewed regularly to make sure casework tasks are completed. The frequency of placement and case plan reviews will depend on the circumstances of the child, but reviews should occur at least annually.

Keeping accurate records

Agencies are responsible for keeping complete, accurate and timely records about children.⁵⁰ Omissions and inaccuracies in children's records lead to flawed decisions, and risks or tasks requiring follow-up being missed. Good record keeping contributes to accountability and transparency, and provides children with a lasting record of their history and time in care. Records must be securely maintained and protected from unintentional release.



⁵⁰ *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, ss 160, 170



Supporting relationships

Children entering statutory out-of-home care or adoption come with their own family and network of relationships. They have a right to maintain these important connections and can experience grief and loss when these are diminished. The child's relationships with their family and other people who are important in their life are central to their wellbeing. The child's family and other important people should be supported to be meaningfully involved in their life. Regular, positive birth family contact also increases a child's self-esteem and reduces behaviour problems (Zabern and Bouteyre, 2017).

Maintaining contact with family is particularly important where restoration is the goal. If guardianship or adoption is a child's preferred permanency option, prospective guardians and prospective adoptive parents need support to build and demonstrate capacity to independently facilitate the child's relationships and contact with their family. The type of contact, its purpose, frequency and duration will be different for each child. Ways to make contact a positive experience for children should be reviewed regularly, for example as part of the annual case plan review.

Supporting children to maintain these relationships can be complex, requiring sensitive, skilled casework. Carers may feel worried or uncomfortable about family having a role in their lives. Children's views and wishes about having contact with their family and other people who are important to them may change over time.

Agencies should also support children to develop social skills and provide opportunities for them to form and maintain friendships. Peer relationships are an important source of support to children in out-of-home care and contribute to their self-esteem, resilience and social belonging. Participation in sport or other community activities can also help children to build a positive sense of self, form friendships and practice social skills. Minimising placement and school changes and supporting children to maintain contact with friends following unavoidable changes are key to ensuring that children do not experience further losses in their relationships and connections.

Culture and identity

Part of children developing a positive sense of identity includes knowing who they are, where they come from and where they belong. Children need to be provided with age-appropriate information about their family background and why they are in care. A child's capacity to understand will change as they mature and they need to be provided with regular opportunities to ask questions about their personal and family history and their journey through care. Prospective guardians and prospective adoptive parents need support from agencies as they build capacity to undertake life story work with children independently, as children grow up into adolescence and adulthood.

Culture is central to a child's wellbeing. All children need to understand where they come from and the family and community to which they belong (Davis, 2019). This is particularly important for Aboriginal and Torres Strait Islander children, who cannot have the depth of cultural experience and understanding they need if their families and communities are not closely and meaningfully engaged in their lives.

Detachment from cultural identity and community denies Aboriginal and Torres Strait Islander children a sense of belonging and poses cultural safety risks. Aboriginal and Torres Strait Islander children in care can experience serious psychological and emotional harm from unresolved trauma, both historical and related to care experiences (Mendes et al., 2022).

Kinship carers are protective for a child's emotional and behavioural wellbeing (Zabern and Bouteyre, 2017; Kothari et al., 2020). Kinship care and culturally matched placements promote child health and wellbeing in care. These placements are associated with enhanced stability and sibling co-placement, and with reunification with their birth family (Rock et al., 2015). Regular birth family contact also increases a child's self-esteem and reduces behaviour problems (Zabern and Bouteyre, 2017).

Cultural support plans can never replace the experiences a child would have growing up in their family and community. However, meaningful and authentic cultural support plans can support children to understand their place in the world. Cultural support plans should be developed with family and the people who are important to the child. The child's family and people of significance to them should be supported to be meaningfully engaged in their life.

Where guardianship or adoption is a child's preferred permanency option, prospective guardians and prospective adoptive parents should be supported to independently facilitate the child's cultural knowledge and connections.



Mandatory practice requirements

The practice requirements are set out in sections 10 to 15 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 5

Practice requirement 4—meeting the individual needs of children

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

- (1) An entity must support a child to—
 - (a) develop and maintain safe and healthy peer relationships, and
 - (b) engage in social and recreational activities, and
 - (c) develop and maintain connections with the child's community, culture, language and spirituality.
- (2) An entity must include a child's family and persons who are important to the child in decisions about how to support cultural and community connections.
- (3) The entity must support the child's relationships with the child's family and persons who are important to the child in accordance with the child's wishes and best interests.
- (4) An entity must—
 - (a) develop restoration, adoption and guardianship plans for a child in consultation with the child's birth family, and
 - (b) ensure an adoption or guardianship plan includes strategies to support ongoing family contact and connections to culture.
- (5) An entity must—
 - (a) undertake life story work, and
 - (b) record a child's achievements and important milestones, and
 - (c) assist carers to participate in life story work with the child and support family contact if appropriate.
- (6) An entity must gather and keep safe a child's personal belongings, photos, mementos and important family information.
- (7) In this section—

life story work means assisting a child to understand the child's personal history, including—

 - (a) assisting the child to gather knowledge about the child's family, heritage, culture, community and history in care, and
 - (b) creating a record of the important events in the child's life.

The Aboriginal and Torres Strait Islander Children and Young Persons Principle

Section 12A of the *Children and Young Persons (Care and Protection) Act 1998* includes 5 elements that must guide decision-making and practice regarding Aboriginal and Torres Strait Islander children and young people and their families.⁵² These principles also underpin the Code of Practice.

Section 12A of the *Children and Young Persons (Care and Protection) Act 1998* includes 5 elements that must guide decision-making and practice regarding Aboriginal and Torres Strait Islander children and young people and their families.⁵⁵ These principles also underpin the Code of Practice.

The NSW Government's ***Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*** report (Davis, 2019) recommended that the *Children and Young Persons (Care and Protection) Act 1998* be amended to reflect the 5 critical elements that underpin the placement principles (prevention, partnership, participation, placement, and connection) (Davis, 2019). These amendments were made in November 2022.

The principle is more than a hierarchy of preferred placement options for Aboriginal and Torres Strait Islander children and young people who come into the out-of-home care system. Indeed, the first element of the placement principle is prevention work to minimise the risk of Aboriginal and Torres Strait Islander children entering the out-of-home care system.

The principle recognises that connections to family, community and culture are central to Aboriginal and Torres Strait Islander children's safety and wellbeing. The principle also emphasises that self-determination is critical to making sure these important connections are not lost. The principle aims to reduce the over-representation of Aboriginal and Torres Strait Islander children in the out-of-home care system and ensure that, if a child does enter out-of-home care, they remain connected to family, community, culture and Country (SNAICC – National Voice for Our Children, 2018).

The Aboriginal and Torres Strait Islander Children and Young Persons Principle is made up of 5 elements:

- **prevention**—recognising that a child or young person has a right to be brought up within the child's or young person's own family and culture⁵³
- **partnership**—recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons⁵⁴
- **placement**—recognising that, if a child is to be placed in out-of-home care, the child's placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13 [of the *Children and Young Persons (Care and Protection) Act 1998*]⁵⁵
- **participation**—recognising that a child or young person, and the child's or young person's parents and family members, should participate in decisions about the care and protection of the child or young person⁵⁶
- **connection**—recognising that a child or young person has a right to be supported to maintain connections to family, culture and country.⁵⁷

Section 12A(3) of the *Children and Young Persons (Care and Protection) Act 1998* requires that decision-makers apply each of these five elements that are relevant to the decision being made.

52 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A

53 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A(2)(a)

54 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A(2)(b)

55 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A(2)(c)

56 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A(2)(d)

57 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 12A(2)(e)

Supporting connections to family, community and culture

In November 2020, the OCG held a series of workshops with Aboriginal out-of-home care providers and Aboriginal staff working in non-Aboriginal agencies about practices that are most critical in promoting the safety, welfare and wellbeing of Aboriginal children in out-of-home care.

The following important messages came out of these conversations.

A genuine commitment to supporting families to be involved in the lives of their children, including participating in decisions that affect children's lives, is critical to wellbeing.

Cultural understanding and experience are inextricably linked to family. While supporting family connections is important for all children, failure to support these important connections is particularly harmful to Aboriginal children.

Connection to culture and a sense of belonging cannot be fully realised without a recognition that culture exists, and is embedded, in all aspects of the lives of children and across all of the practice requirements.

Out-of-home care workers require a sophisticated understanding of the meaning of family. A narrow concept of 'family' means that children may miss out on relationships with people who can provide rich cultural experiences. It may also limit permanent placement options for Aboriginal children.

It is critical that out-of-home care workers understand that connection to culture is central to children's ongoing wellbeing.

The OCG has commissioned Curiyo, an Aboriginal-controlled consultancy firm, to develop resources to assist non-Aboriginal out-of-home care providers develop culturally safe cultural support plans. The resources were tested with some Aboriginal Community-Controlled Organisations and have been informed by resources prepared by the Secretariat of Aboriginal and Torres Strait Islander Child Care.

The **Developing Aboriginal Cultural Support Plans resource** can be found on the OCG website.

Two videos about the importance of cultural support work with Aboriginal children, developed in conjunction with Burrin Dalai Aboriginal Corporation, are also available on the OCG website. The video should be viewed in conjunction with the Curiyo materials:

Video 1—Cultural connections for children and young people in OOHC

<https://ocg.nsw.gov.au/resources/cultural-connections-children-and-young-people-care>

Video 2—Culture and care

<https://ocg.nsw.gov.au/resources/culture-and-care>



Other reading and resources

SNAICC – National Voice for Our Children publishes research and guidance materials to support the safety, development and wellbeing of Aboriginal and Torres Strait Islander children and young people. This includes guidance on implementing the Aboriginal and Torres Strait Islander Children and Young Person Principle. **SNAICC’s research and policy work** can be found on its website.

The NSW Child, Family and Community Peak Aboriginal Corporation (AbSec) is the peak body for Aboriginal children and families in New South Wales. AbSec provides child protection and out-of-home care policy advice on issues affecting Aboriginal children and their families. **AbSec’s training and resources** can be found on its website.

Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements (Tilbury, 2013)

The Australian Institute of Aboriginal and Torres Strait Islander Studies is an Indigenous-led Australian Government statutory authority that celebrates and educates people about Australia’s First Nations’ cultures and undertakes research on issues impacting on Aboriginal and Torres Strait Islander people.

The ***Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*** (Davis, 2019) examined why New South Wales has a disproportionate and increasing number of children and young people in OOHHC.

The ***Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*** (Human Rights and Equal Opportunity Commission, 1997) is the report of the Human Rights and Equal Opportunity Commission’s inquiry into the forcible removal of Aboriginal and Torres Strait Islander children from their families.

The Healing Foundation is a national Aboriginal and Torres Strait Islander organisation that works with communities to help Stolen Generations survivors and their families tell their stories, and to address ongoing trauma caused by the forced removal of children from their families.



Behaviour support plans

Where a child under 16 years is prescribed psychotropic medication, or where the child has complex behaviours that require a planned, consistent response from staff and caregivers, the agency must develop a behaviour support plan.

Psychotropic medication is medication that affects cognition, mood, level of arousal and behaviour, and agencies should seek advice from the prescribing medical practitioner regarding safe administration of the medication.

The behaviour support plan should set out information about the medication, when and how the medication is to be administered, and how to manage any side effects. The purpose of the behaviour support plan is to ensure that medication is not the only strategy to assist children to manage their own behaviour.

Behaviour support plans should be prepared by an appropriately qualified person and reflect a child's strengths and current behaviour support needs. Plans should aim to prevent and reduce problematic behaviours and build children's skills to identify and manage their own emotions and behaviours. Agencies can talk with children about what they find helpful or unhelpful when managing their emotions, to inform strategies to be included in plans. Plans should set out the behaviour support strategies to be used by staff and caregivers. Behaviour support plans should be developed and reviewed in consultation with children (where appropriate), their caregivers and any professionals who may be involved in their care.

The agency should explain, and provide a copy of, the behaviour support plan to the child's caregivers, as well as to any other people who may need to implement behaviour support strategies. These include residential care workers, teachers, family members and respite carers. Depending on the child's age and stage of development, the agency should talk to the child about the plan, its purpose and how it will be implemented.

Behaviour support plans should be reviewed as recommended by the person preparing the plan, or where there are changes in medication or significant changes in behaviour. Plans should also be reviewed when children or their caregivers have concerns.

Principal officer responsibilities



When a principal officer is made aware that a child under 16 years has been prescribed psychotropic medication, they must make sure a behaviour support plan is prepared.⁵¹ The principal officer may delegate responsibility for preparing the plan to another person. However, the principal officer is responsible for approving the plan.

⁵¹ Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 49

Mandatory practice requirements

The practice requirements are set out in sections 10 to 15 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 5

Practice requirement 4—meeting the individual needs of children

27 Behaviour support

- (1) An entity must develop a behaviour support plan for a child if the child has behaviour support needs requiring a planned, consistent response from the child's caregivers and the entity's staff, including if—
 - (a) the child is prescribed psychotropic medication, or
 - (b) practices that restrict the child's ordinary freedoms are used to support positive behaviour change.
- (2) The behaviour support plan must include strategies to develop the child's capacity to manage the child's own emotions and behaviours, with input from—
 - (a) the child, and
 - (b) the child's caregivers, and
 - (c) the entity's staff and relevant professionals.
- (3) The entity must review the behaviour support plan—
 - (a) at the request of the child, the child's caregivers or the entity's staff, and
 - (b) if the child's medication or behaviour changes, and
 - (c) as recommended by a relevant professional or, if a relevant professional makes no recommendation, at least annually.
- (4) The entity must—
 - (a) provide appropriate training and supervision to persons implementing the behaviour support plan, and
 - (b) communicate changes to the behaviour support plan to all persons who work with or care for the child.
- (5) An entity must ensure there are clear protocols about the use of police to respond to challenging or risk-taking behaviour by a child.
- (6) In this section—

relevant professional means—

 - (a) a medical practitioner who provides to the child therapeutic treatment relevant to behaviour support, such as prescribing a psychotropic medication, or
 - (b) a psychologist, occupational therapist, social worker or equivalent professional with specialist training and expertise in behaviour support who provides therapeutic or behaviour support to the child.

NSW Government joint protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system ('the Protocol')

Children living in residential care settings may have complex needs and behaviour as a result of trauma, abuse or neglect. Residential care and intensive therapeutic care (ITC) providers may at times need to contact police for help in responding to incidents in the care environment. Agencies may also be supporting young people living in residential care who are already in contact with the criminal justice system.

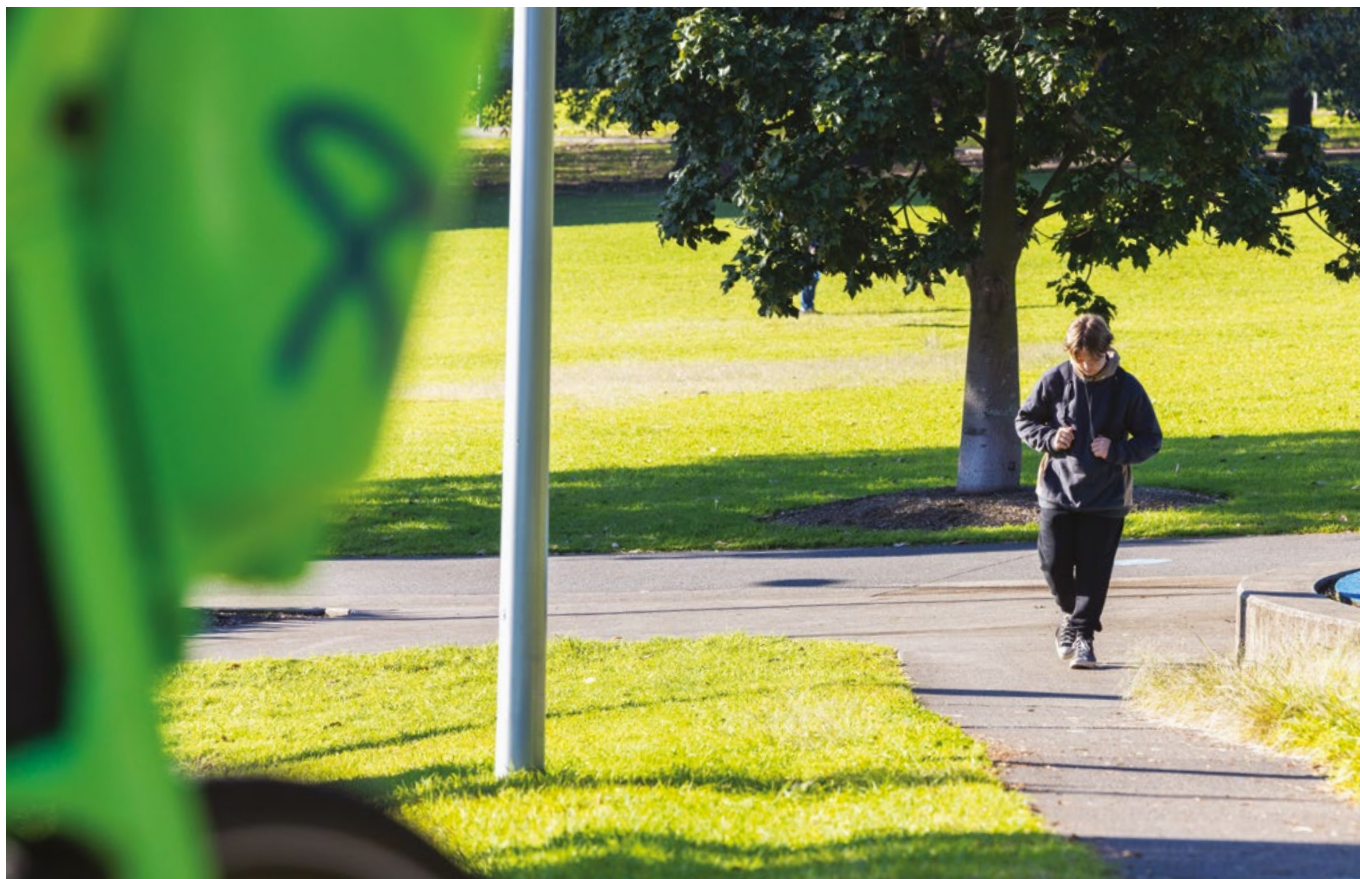
The **Protocol** provides a framework for police, residential care and ITC providers to work together. It aims to reduce the involvement of police in responding to behaviours by children living in residential care and ITC settings. It promotes the use of alternatives to criminal charges wherever possible and appropriate and articulates a shared commitment between police and residential care providers to share information and collaborate to prevent and reduce contact between children and the criminal justice system.

The Protocol includes guidance and procedures for residential care and ITC providers in managing children's behaviour and contacting police for assistance. Implementation of the Protocol is supported at the local level through meetings between NSW Police, ITC providers and DCJ. The protocol is also supported by a statewide governance structure which focuses on resolution of systemic issues to support operationalisation of the Protocol across the state.

Each agency is responsible for ensuring its staff are trained in the Protocol and understand how to implement it.



Introductory training regarding the Protocol and how it can be implemented in residential care and ITC settings is available on the Association of Children's Welfare Agencies' website. **Full training** is available for free on the Centre for Excellence in Therapeutic Care website.



Preparing children for adulthood

Children in out-of-home care need to be supported to prepare for adulthood, including by making sure they build the capacity, knowledge and skills to successfully navigate young adulthood and transition out of formal out-of-home care. Leaving care casework should start when a child turns 15 by assessing their capacity, strengths and needs and considering what support they need, as well as talking with children about their rights and entitlements as care-leavers and how to access them. Preparing for adulthood should be part of day-to-day casework and annual case planning, as children's needs and future goals evolve and change.

Planning and casework must address:

- the building of independent living skills
- study, employment and training
- accessing university, apprenticeships and traineeships.

Planning and preparation should consider:

- living arrangements and housing options
- accessing health and mental health supports
- practical help with things such as driving lessons and opening a bank account
- supporting children to build their personal support network and manage family, social relationships and cultural connections independently.

Plans may include referrals and connections to other supports and programs. Some children may need additional assistance and planning, such as children with disability who require supported accommodation and substitute decision-makers, children who are parents or expecting a baby, or children involved with the criminal justice system. Leaving care plans that are hopeful and realistic and are developed with the child and their family and support network are more comprehensive and anticipate and address children's future needs more effectively.

A final leaving care plan must be in place for children prior to them turning 18, setting out how a child's individual needs will be met post-care.⁵⁸ The leaving care plan is accompanied by a financial plan listing after-care entitlements and the additional financial assistance required to meet a child's specific additional needs post-care. These plans must be approved by the NSW Department of Communities and Justice. When submitting plans to DCJ, agencies must allow sufficient time for these to be approved before the child turns 18.

Upon leaving care, children should be provided with their approved leaving care plan and financial plan, and agencies should make sure that children understand their plans and how to access their entitlements and after-care support services. Children also need to be provided with their original identity documents, such as original birth certificates, along with any original life story material.⁵⁹ Agencies must make sure that children understand how to access their care records if they wish.⁶⁰

Young people should be provided with information about the DCJ Care Leavers Line and they should understand that if their circumstances or needs change, they can seek further support and for their plan to be reviewed. For example, they may not be ready to commence driving lessons or a TAFE course until they are 21, and may seek support then.



DCJ has a suite of **leaving and after-care resources** to assist out-of-home care practitioners in preparing young people to transition to independence.

⁵⁸ *Children and Young Persons (Care and Protection) Act 1998* (NSW), ss 165–166

⁵⁹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 169

⁶⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 168

Mandatory practice requirements

The practice requirements are set out in sections 10 to 15 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 5

Practice requirement 4—meeting the individual needs of children

28 Preparing for adulthood

- (1) A designated agency's work to prepare a child for adulthood must—
 - (a) start when the child is 15 years of age, and
 - (b) include supporting the child to—
 - (i) develop and practise independent living skills, and
 - (ii) make informed choices about housing, health services, employment and further education, and
 - (iii) independently maintain safe and positive relationships with the child's family and community.
- (2) A designated agency must, for a child transitioning into independence, develop a leaving out-of-home care plan with the child, persons involved in the child's care, the child's family and persons of significance to the child.
- (3) A designated agency must ensure—
 - (a) a child, before reaching 18 years of age, has a leaving out-of-home care plan that reflects the child's circumstance and wishes, and
 - (b) the plan takes account of the child's—
 - (i) culture and language, and
 - (ii) disability, if any, and
 - (iii) gender identity and sexuality, and
 - (c) the plan sets out—
 - (i) the financial assistance to be provided to the child, and
 - (ii) where the child will live.
- (4) A designated agency must give a child the following—
 - (a) the child's life story material collected under section 22(5) and (6),
 - (b) the child's original identity documents,
 - (c) information about how to access—
 - (i) care records in accordance with the children's care legislation, and
 - (ii) after-care support.
- (5) In this section—

leaving out-of-home care plan means a plan under the *Children and Young Persons (Care and Protection) Act 1998*, section 166.

Post adoption summary

The NSW adoption legislation enshrines the rights of people impacted by adoption, to have ongoing contact and relationships with their birth families, to have access to their adoption information and to receive support in implementing adoption plans.

The needs of adopted children continue to evolve over the course of their lives, and people affected by adoption need access to support from agencies with adoption expertise. People impacted by adoption may need support in navigating relationships between adoptive families and birth families, or dealing with issues of grief and loss that may arise over the course of their lives. Supporting people impacted by past practices of forced adoption practices to access their adoption records or reunite with family requires skilled, sensitive work from an organisation with expertise in adoption practice.

Mandatory practice requirements

The practice requirements are set out in sections 10 to 15 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 5

Practice requirement 4—meeting the individual needs of children

29 Post-adoption support by adoption service providers

- (1) An adoption service provider must give information about post adoption support services to—
 - (a) the adopted child, and
 - (b) the child's adoptive family, and
 - (c) the child's birth family.
- (2) An adoption service provider must, where relevant, make referrals to post adoption support services or other relevant services.
- (3) An adoption service provider may implement supports agreed to in an adoption plan.
- (4) An adoption service provider must provide support to a person affected by adoption when the person accesses the person's adoption information.
- (5) An adoption service provider must provide adoption information in accordance with the children's care legislation.



Assessing and monitoring practice

When considering an agency's practices, OCG assessors are looking for evidence that the agency understands the particular needs of every child in its care and has a plan for making sure children's care needs are met. The OCG is also looking for evidence that caregivers and other people who are important in the life of a child are involved in supporting connections to community and culture, as well as planning how to support a child once they leave care.

In assessing an agency's practices, OCG assessors consider the following questions:

- Does each child have a current case plan? Does the case plan reflect the child's current circumstances?
- How regularly are case plans reviewed? What triggers a case plan review?
- How does the agency make sure children's health and educational needs are followed up? Is the agency responsive when further health or educational assessments, treatment, support or interventions are required?
- Are family members and people of significance to the child encouraged, wherever possible, to take an active role in supporting cultural development? This includes through contact with family members and attending important family and community events.
- How are Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds supported to maintain connections to family and culture? Where a child has a cultural case plan, who is involved in developing it? Are family and other significant people consulted?
- How does the agency support children with diverse gender expressions and sexual orientations? How are staff and caregivers supported to have respectful and sensitive discussions with children about gender and sexual orientation?
- Where children are prescribed psychotropic medication, or have complex behaviours that require a planned response, is there a behaviour support plan?
- How are caregivers supported to implement behaviour support plans?
- Are behaviour support plans reviewed as recommended by the person developing the plan? Are plans reviewed when there are changes to medication, or where different behaviour support strategies are needed?
- When does the agency start talking to children about preparing for leaving care?
- Does leaving care casework include providing opportunities for children to develop independent living skills?
- Do children leaving care have a final approved leaving care plan? Does the leaving care plan address all of their post-care needs?
- Who is involved in developing leaving care plans? Are family and other significant people encouraged to participate?
- How does the agency make sure children know who to contact for advice and support once they have left care?



Types of evidence of compliance

The agency is best placed to determine what evidence it can produce to demonstrate how it understands and meets the individual needs of children in its care. Assessors will consider a range of evidence provided by the agency.

Types of evidence agencies commonly provide are:

- discussions with staff about how they gather information around children's care needs and the steps they take to understand the circumstances of the children they work with
- file notes indicating the work the agency does to follow up on children's care needs
- file notes indicating work the agency does to understand children's cultural care needs, including discussions with their family and other people who are important to the child
- case plans, leaving care plans, behaviour support plans and records of meetings demonstrating how the agency plans its work with children
- tools, guidance materials or resources the agency uses to help staff and carers support children.



Practice requirement 5—people who work with and care for children are suitable and supported

Implementing this practice requirement demonstrates 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.

About this practice requirement

The recruitment and authorisation of people who work with and care for children is a key component in creating a child-safe organisation. Working with and caring for vulnerable children is complex, demanding work and requires sensitivity and resilience. Providing a skilled, diverse and stable workforce of staff and caregivers is a significant challenge in the contemporary care system, and supervision and support is critical.

Clearly communicating the agency's philosophy of care and its commitment to children's safety in recruitment information can help screen out people who may not be suitable to work with vulnerable children. Selecting staff and carers who are committed to, and understand the importance of, supporting ongoing relationships between children and their family and community is particularly important. Induction or pre-authorisation training for staff and caregivers is an important opportunity to communicate the agency's commitment to child safety and its expectations of staff and caregivers.



While screening staff and caregivers is an essential part of keeping children safe, it's only one part of creating a child safe culture. Organisations may enable opportunities for harm and abuse to occur if they:

- rely too heavily on screening processes to identify potential perpetrators and risky behaviour
- do not continue to supervise and train staff and caregivers in how to keep children safe.

Fair, transparent and consistent recruitment practices are important to make sure staff and caregivers have confidence in the agency's decisions. Agencies should keep comprehensive records of their decision-making around the recruitment of staff and authorisation of caregivers. Staff and caregivers should be given information about their right to access their own records and processes for raising concerns or complaints.

Ongoing training is important so people who work with and care for children understand their obligations and feel competent and confident in their work. Agencies should have a planned approach to ongoing training that recognises that adults learn in different ways.

Supervision, training and support of caregivers

The ability of the caregiver to cope with the demands of their caring role is related to the level of support available from the agency. Agency support for caregivers is associated with increased coping ability and placement stability (Powell et al., 2021). Training for foster, relative and kinship carers should include an understanding of trauma, its impact on children and the principles of trauma-informed care. This will help them to meet the needs of children in care, including children with harmful sexual behaviours (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

The ways an agency supervises and supports caregivers will differ according to the needs of the placement. For example, an experienced carer providing a stable long-term placement, or a carer moving to guardianship or adoption, may require less-intensive supervision and support than a new carer or a carer who is providing care to a child in crisis. The critical issue is that the agency provides opportunities for caregivers to raise concerns or ask for assistance when they need it, and that it is responsive when caregivers need additional support. Agencies should review the ongoing support and training needs of caregivers at least annually. Agencies should seek feedback to evaluate whether the training they provide is useful for caregivers.

It is also important that agencies recognise that caregivers may have their own personal challenges or support needs in addition to the needs of the child they care for. While placement reviews are an important opportunity to consider how the placement is meeting the needs of the child, it is critical that the needs of the caregiver and the broader household are also considered.

Supervision, training and support of staff

Similarly, the ways an agency supervises and supports its staff may vary depending on the roles and responsibilities that staff hold within the organisation. For example, residential care workers who provide direct, day-to-day care to children will require training in appropriate behaviour support strategies and implementing behaviour support plans.

Agencies should make sure there are regular opportunities to discuss staff performance and identify areas for additional training and support. Agencies should also make sure staff have opportunities to raise concerns or discuss any personal matters that may impact on their work in a safe and confidential way, and that they are responsive to staff's training and support needs.

Mandatory practice requirements

This practice requirement is set out in section 16 of Schedule 3A of the Children’s Guardian Regulation 2022.



Division 6

Practice requirement 5—persons who work with and care for children are suitable and supported

30 Suitability

- (1) An entity must undertake an assessment and authorisation of caregivers in accordance with the children’s care legislation, including completing mandatory suitability and probity checks.
- (2) An entity must undertake checks and record information on the carers register, the residential care workers register and the adoption register in accordance with the requirements of the children’s care legislation.
- (3) An entity must assess a person’s suitability to work with children, including the person’s skills and experience, when recruiting and selecting staff.
- (4) An entity must have a recruitment and retention strategy for staff and caregivers that is relevant to the entity’s circumstances and takes into account the cultural backgrounds of the children in the entity’s care.
- (5) An entity must keep, and store securely and treat with confidentiality, records for staff and caregivers, including records relating to the following—
 - (a) recruitment and selection,
 - (b) appointments, authorisations, approvals and engagements,
 - (c) personal details,
 - (d) allegations and complaints,
 - (e) supervision and performance management.



Division 6

Practice requirement 5—persons who work with and care for children are suitable and supported

31 Support and training

- (1) An entity must provide relevant training to the following persons before the authorisation or approval of the persons—
 - (a) prospective carers,
 - (b) prospective guardians,
 - (c) prospective adoptive parents.
- (2) An entity must provide relevant training to a staff member at the commencement of the staff member's engagement.
- (3) An entity must provide the following to persons who work with and care for children—
 - (a) regular supervision and support,
 - (b) opportunities to raise concerns and seek additional support and training.
- (4) An entity must review the training and support needs of caregivers at least annually.
- (5) An entity must have processes for—
 - (a) reviewing the performance of staff, and
 - (b) identifying training and support needs.
- (6) An entity must—
 - (a) provide ongoing training opportunities for persons who work with and care for children, and
 - (b) have a planned approach to ongoing education and training.
- (7) An entity must give persons who care for children information about other carer support services and advocacy organisations.



Assessing and monitoring compliance with these requirements

In assessing an agency's practices regarding people who work with and care for children, OCG assessors consider the following questions:

- How does the agency communicate information about the nature of working with or caring for vulnerable children to prospective staff and caregivers to help them decide whether they would be suited to the role?
- How does the agency assess the safety and suitability of staff and caregivers?
- How does the agency support newly recruited staff and caregivers to assist them to settle into their new roles? Does the agency provide induction training for staff or pre-authorisation training for potential caregivers?
- How does the agency make sure people who work with and care for children are confident and competent in their role? Are there opportunities for regular performance reviews to help identify training or support needs?
- Where the agency identifies that a person is struggling in their role, is additional training, education or support provided?
- Does the agency plan ahead regarding training and development opportunities for people who work with and care for children?
- Are staff and caregivers encouraged to raise concerns and ask for assistance when they need it?
- Is information recorded and updated on the Carers Register and Residential Care Workers Register, as required?



Types of evidence of compliance

Agencies will have their own approaches to training, education and development, and may provide training in a range of ways to reflect different learning styles. The agency is best placed to determine what evidence it can produce to demonstrate how it meets this practice requirement. Assessors will consider a range of evidence provided by the agency.

Common types of evidence agencies provide include:

- recruitment and selection records for staff
- application, assessment and authorisation or approval records for caregivers
- staff induction training materials and pre-authorisation or approval training for caregivers
- staff performance reviews and caregiver reviews
- examples of peer supervision, caregiver support groups and training materials
- training planners or calendars, and training records for staff and caregivers.

Authorisation of carers and the Carers Register

Designated agencies may authorise a person to provide statutory or supported out-of-home care in a private capacity. People who are authorised to provide care in a private capacity are commonly referred to as foster carers or relative or kinship carers. These carers provide care to children in private homes.

Before authorising a person to provide foster, relative or kinship care, designated agencies must undertake mandatory safety and suitability checks and provide the potential carer with information to assist the person to decide whether they wish to become an authorised carer. Information about carer authorisations is recorded on the Carers Register.

When a person applies to become an authorised carer, the designated agency must provide the applicant with information about:

- the rights and responsibilities of authorised carers⁶¹
- the process of authorising a carer and the criteria the applicant must satisfy⁶²
- permanent placement options for children and young people in out-of-home care⁶³.

The Carers Register is a centralised database of people who have applied to or have become an authorised carer, to provide statutory or supported out-of-home care in NSW. The Carers Register supports agencies to assess the safety and suitability of people to be authorised as carers by requiring mandatory probity and suitability checks and facilitating the exchange of information between agencies about the safety and suitability of the carer and their household members.

The Carers Register acts as a licensing tool by issuing individuals with a carer authorisation number, which is required before the person can provide statutory or supported out-of-home care to children.

Before authorising a person as an authorised carer, the designated agency must register the person and their household members on the Carers Register and complete mandatory safety and suitability checks, including:

- identification check
- Working with Children Check
- National Police Check
- Community Services Check
- other designated agency check
- health check
- minimum of 2 reference checks.

In addition, they must also ensure:

- the code of conduct for authorised carers has been sighted and signed (more information about this is below)
- pre-authorisation training has been completed
- carer capability and suitability has been assessed, including the suitability of household members.

61 Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 17(2)(a)

62 Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 17(2)(b)

63 Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 17(2)(c)

Provisional authorisation of carers in emergency situations

In an emergency, a designated agency may provisionally authorise a person who is a relative, kin or person known to the child.⁶⁴ The provisional authorisation commences on the date the child is placed by the designated agency.

The designated agency may grant provisional authorisation if it is satisfied that the person is capable and suitable to be provisionally authorised. Provisionally authorised carers and their adult household members must apply for a Working with Children Check within 5 working days. The designated agency that has placed the child must ensure that the Carers Register is updated within 14 days of the placement commencing.

The designated agency must also ensure that a complete carer authorisation is completed within 3 months of the placement commencing.

Further information about **carer authorisation and Carers Register requirements** can be found on the OCG website.

Code of conduct for authorised carers

Section 248C of the *Children and Young Persons (Care and Protection) Act 1998* provides for the Minister for Families and Communities to issue a code of conduct for authorised carers. The **Code of Conduct for Authorised Carers** sets out carers' roles and responsibilities. Failure to comply with it may lead to a designated agency cancelling or suspending the carer's authorisation.

Before authorising a person as an authorised carer, the designated agency must indicate on the Carers Register that the person has read and signed the Code of Conduct for Authorised Carers.



Carer resources

My Forever Family (MFF) is the first point of contact for potential carers and guardians in New South Wales and provides information and training regarding the roles and responsibilities of caregivers in New South Wales. MFF connects potential caregivers who wish to apply to become authorised to local designated agencies or adoption service providers.

MFF also provides ongoing training and support to caregivers across New South Wales. Further information can be found on the **My Forever Family website**.

AbSec also provides **information and support** for existing carers, as well as for people interested in becoming a carer.

Resources for carers can also be found on the DCJ website.

64 Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 19(1)

Approval of prospective guardians

Where guardianship has been identified as a child's preferred permanency goal, agencies must assess:

- the capacity and suitability of the prospective guardian to meet the needs of the child independently until the child turns 18
- what supports may be required following a guardianship order.

Agencies submit the guardianship assessment to the court as part of the evidence supporting a guardianship application.⁶⁵

Agencies must also provide information to prospective guardians about the role of a guardian.⁶⁶

Guardianship suitability assessments should be revised and updated regularly as guardianship planning and casework progresses and prospective guardians build capacity to parent independently.

Approval of prospective adoptive parents

A non-government organisation requires accreditation as an adoption service provider to assess and approve prospective adoptive parents (PAPs). Depending on the accreditation conditions, agencies can assess and approve PAPs for children whose parents are seeking adoption for them voluntarily (local adoption) or PAPs for children in statutory out-of-home care. PAPs applying to adopt children in out-of-home care must also be authorised as carers.⁶⁷

As well as probity and background checks, there are additional criteria that applicants must satisfy to be approved as PAPs, including age, residency and relationship status. The application, assessment and approval process includes an expression of interest, application, suitability assessment, and approval subject to any conditions the principal officer considers appropriate. Adoption suitability assessments should be revised and updated regularly as adoption planning and casework progresses and PAPs build capacity to parent independently. Evidence of a person's suitability to be approved to adopt a child is included in the agency's report to the court.

Agencies must provide applicants with information and training to help them to understand the adoption process and requirements and the responsibilities of an adoptive parent.

DCJ maintains a register of all approved PAPs.⁶⁸

65 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 79B(1A)

66 *Children and Young Persons (Care and Protection) Regulation 2022* (NSW), s 13

67 *Adoption Act 2000* (NSW), ch 4 pts 3–3A

68 *Adoption Regulation 2015* (NSW), s 65

Authorisation of residential care workers and the Residential Care Workers Register

Residential care settings include residential care homes provided by designated agencies as well as temporary accommodation such as hotels, motels and serviced apartments.

A residential care worker is a person who works for a designated agency and who undertakes one or more of the following in a residential setting:

- providing statutory or supported out-of-home care
- providing security services
- spending 60% or more of their work time with the provider developing or implementing case management plans for children and young people in statutory or supported out-of-home care, or providing administrative support.⁶⁹

The Residential Care Workers Register is a restricted-access, centralised database of people who:

- have applied to work in residential care and who have reached the referee stage of the application process
- are referred to the residential care provider by a labour hire agency to work as a residential care worker
- already work for a residential care provider, providing care to children and young people in a residential care setting.

The purpose of the register is to support residential care providers to assess the safety and suitability of people to provide care to children in a residential care setting by requiring mandatory probity checks be completed. It also facilitates the exchange of information between agencies regarding the safety and suitability of the person.

The Residential Care Workers Register requires residential care providers to undertake mandatory probity checks before engaging a person to provide care to children in a residential care setting. These mandatory checks are:

- National Police Check
- other designated agency check
- Working with Children Check
- Community Services Check (this requirement will commence at a later date).

Like the Carers Register, the Residential Care Workers Register acts as a licensing tool and a person must not provide care to children in a residential care setting until they have been entered onto the Residential Care Workers Register.

⁶⁹ Children's Guardian Regulation 2022 (NSW), s 4

People who are exempt from the Residential Care Workers Register

Some residential care workers are exempt from the requirements of the Residential Care Workers Register. These include:

- a person employed by DCJ as a caseworker and who provides statutory or supported out-of-home care outside their normal duties and in temporary accommodation.⁷⁰ This exemption allows for caseworkers to provide overnight care to a child or young person in an emergency situation in temporary accommodation such as a hotel, motel, serviced apartment or similar
- a person who is authorised, in an emergency, to provide residential care under the provisions in section 22 of the Children and Young Persons (Care and Protection) Regulation 2022. This is a limited exemption and applies where:
 - the person is authorised to provide care in an emergency
 - the person has not previously been authorised to provide care in an emergency
 - the person provides emergency care for no more than 72 hours
 - the designated agency that has authorised the person notifies the Children's Guardian within 72 hours of the emergency authorisation.

Emergency authorisation of residential care workers

A designated agency may, in an emergency, authorise a person to provide statutory or supported out-of-home care if that person is an employee of the agency, a contractor engaged by the agency, or an employee of a contractor whose duties include providing care to children and young people.⁷¹

A person may only be authorised to provide emergency care on one occasion and for a maximum of 72 hours. To continue to provide statutory or supported out-of-home care in a residential care setting after that time, the person must undergo all mandatory probity checks and be recorded on the Residential Care Workers Register.

When authorising a residential care worker in an emergency, the designated agency must:

- assess the person's suitability to be authorised as a residential care worker, taking into account the responsibilities and functions to be performed in this role
- confirm that the person has a Working with Children Check clearance or an application for a Working with Children Check clearance pending
- provide the person with a written authorisation, including any conditions placed on the person's authorisation.

In assessing a person's suitability, the agency may require the person to undergo a National Police Check and may also seek information relating to the person's previous employment.

Emergency authorisation of residential care workers should only be used in genuine unforeseen emergencies. It should not be used to address ongoing staff shortages.

70 Children's Guardian Regulation 2022 (NSW), s 7

71 Children and Young Persons (Care and Protection) Regulation 2022 (NSW), s 22

Engaging residential care workers from an external labour hire agency

Residential care providers may source residential care workers from an external agency such a labour hire provider. This may be in response to an emergency, to cover sick leave or to fill staff shortages within the agency.

Workers who are sourced from labour hire or other external agencies must be entered onto the Residential Care Workers Register. A designated agency has the same obligations and responsibilities for workers sourced from labour hire agencies as workers directly employed by the agency. This includes responsibility to investigate any complaints or allegations of reportable conduct made about the worker.

Designated agencies that source staff from a labour hire or other external agency must have a written service agreement with the external agency. The purpose of the agreement is to make sure the roles and responsibilities of the designated agency and external agency are clear and that mandatory requirements for the authorisation of residential care workers are met.

A **service agreement guide** can be found on the OCG website.

The Children's Guardian has issued guidelines for the engagement and authorisation of staff and contractors in an emergency, or where staff are sourced from a labour hire company. All designated agencies must comply with these guidelines as a condition of accreditation.

The **guidelines and other information regarding residential care worker authorisation** and the Residential Care Workers Register can be found on the OCG website.



Practice requirement 6—child protection and child safety

Implementing this practice requirement demonstrates compliance with Child Safe Standard 6: Processes to respond to complaints of child abuse (or other concerns) are child focused.

About this practice requirement

Child-safe organisations consider the particular risks to children in their organisational context and implement strategies to minimise the risk of harm occurring. This includes creating a culture where all people within the organisation are confident and comfortable in raising concerns about children's safety. When deciding whether to talk about safety concerns, children consider their past experiences of the organisation. It is critical that the people who work with and care for children are confident and competent in responding to their concerns.

In creating a child safe culture, agencies must consider how to minimise the risk of harm occurring to children in their care, as well as having clear processes to respond when a child safety concern is identified.

Strategies that help to create a culture where people feel comfortable in reporting concerns about children's safety include:

- educating people who work with or care for children about child protection dynamics, and indicators or signs that a child may be at risk
- providing staff and caregivers with guidance about talking to children about safety, protective behaviours and how adults should behave towards children
- clearly communicating to people who work with and care for children their responsibilities to be alert to risk and report concerns regarding children's safety
- making sure that staff or caregivers, when they are concerned about the safety of a child, know who to report their concerns to and what steps they should take to respond
- explaining to children how adults should behave towards them and who to talk to if they feel unsafe or uncomfortable
- ensuring that children have access to trusted adults outside of the home or care environment
- ensuring that, when a child raises a concern, the agency explains to them what will happen next and, where formal investigations are required and where appropriate, the agency keeps children informed about what is happening
- promptly investigating complaints or allegations about staff or caregivers and reporting these to external authorities where required.



Mandatory practice requirements

This practice requirement is set out in section 17 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 7

Practice requirement 6—child protection and child safety

32 Training and procedures

- (1) An entity must give a person who works with and cares for children—
 - (a) information about the person's responsibility to report concerns about risks to child safety, and
 - (b) training on child protection and child safety, including how to talk to children about protective behaviours, and
 - (c) training on how to respond to disclosures of harm made by a child.
- (2) An entity must—
 - (a) help a child recognise when a person is behaving inappropriately towards the child, and
 - (b) give the child information about how to raise concerns about the child's safety or wellbeing.
- (3) An entity must—
 - (a) give a child regular and direct access to a caseworker or a staff member of the entity, and
 - (b) support the child to raise concerns or make complaints, including by providing opportunities to speak with a caseworker or a staff member of the entity who is not the person who provides the child with day-to-day care, and
 - (c) provide timely updates to the child about actions taken in response to the child's concern or complaint.
- (4) An entity must—
 - (a) identify concerns about risks to a child's safety, and
 - (b) respond promptly to manage immediate risks to a child, and
 - (c) if a child is at risk of significant harm—report the risk in accordance with the *Children and Young Persons (Care and Protection) Act 1998*, Chapter 3, Part 2.
- (5) An entity must have appropriate policies, practices and procedures in place to identify, report, manage and review all incidents affecting the safety or wellbeing of a child.
- (6) An entity must give clear information to persons who work with and care for children about roles, responsibilities and expectations in relation to behaviour towards children.
- (7) An entity must provide a child with education, appropriate to the child's age and stage of development, about sexuality and healthy relationships.



Division 7

Practice requirement 6—child protection and child safety

33 Responses

- (1) For a critical event, an entity must—
 - (a) report the critical event to the entity’s principal officer and governing body, and
 - (b) record and review the causes and circumstances of the critical event, and
 - (c) implement recommendations following the review of the critical event, and
 - (d) take prompt action to address risks identified from the critical event, and
 - (e) provide support to children, caregivers, staff and the child’s family members involved in or affected by the critical event.
- (2) An entity must, in accordance with the children’s care legislation—
 - (a) investigate a reportable allegation or determine whether a conviction is a reportable conviction, and
 - (b) give the person the subject of a reportable allegation or a potential reportable conviction support and information about the reportable conduct process, and
 - (c) report and record reportable allegations and reportable convictions, and
 - (d) implement recommendations arising from a reportable conduct scheme investigation or another child protection investigation.
- (3) An entity must, in relation to an investigation referred to in subsection (2), support the child involved and give the child information about the investigation process.



Assessing and monitoring practice

The OCG is looking for evidence that the agency talks to children about their safety and who to talk to if they feel unsafe. The OCG is also looking for evidence that children have regular access to a caseworker or staff member to raise concerns, and that there is regular contact with children so potential risks can be identified early.

The Reportable Conduct Directorate within the OCG has primary responsibility for providing:

- advice to agencies regarding reportable conduct requirements and monitoring
- feedback regarding agencies' investigations of reportable conduct matters.

Where child protection concerns are identified or reportable conduct allegations are made, OCG assessors are looking for evidence that the agency:

- responds promptly to manage any immediate risks to children and young people
- makes reports to the DCJ Child Protection Helpline and the OCG's Reportable Conduct Directorate, where relevant
- implements recommendations following a reportable conduct investigation or child protection assessment.

When assessing an agency's practices, OCG assessors consider the following issues:

- How do staff and caregivers know that they have obligations to report concerns about children's safety? How do they know who to report these concerns to?
- How do staff and caregivers know what signs to look for that indicate a child may be at risk?
- How are staff and caregivers supported to talk to children about safety and risk, including how they should expect to be treated in healthy relationships, as well as understanding signs of exploitation and grooming?
- How do staff and caregivers know how to respond when a child reports a concern or makes an allegation?
- How do children know who to talk to if they have a concern about their safety or wellbeing?
- How does the agency provide opportunities for children to raise concerns?
- Are child protection concerns reported? Are allegations of reportable conduct reported, investigated and documented?
- Are recommendations arising from a reportable conduct investigation or an assessment of child protection issues implemented?



Types of evidence of compliance

Agencies will have their own systems for making sure risks to children are identified and managed promptly and, where relevant, reported to the Child Protection Helpline and OCG Reportable Conduct Directorate. The agency is best placed to determine what evidence it can produce to demonstrate how it meets this practice requirement. Assessors will consider a range of evidence provided by the agency.

Common types of evidence agencies provide include:

- discussions with agency staff regarding procedures for responding to allegations, reportable conduct or child protection concerns
- discussions with agency staff regarding their practices in supporting children to make a complaint or allegation
- file notes of home visits or discussions with children indicating how safety issues are discussed with children
- risk assessments, reportable conduct investigations and reports to the DCJ Child Protection Helpline and the OCG Reportable Conduct Directorate where child protection concerns or reportable conduct allegations are made
- risk management plans that set out risks to children in the care environment (or in other environments) and strategies to manage these risks
- file notes or other records demonstrating that recommendations following an investigation or assessment are implemented.

In addition to information provided by agencies, when assessing an agency's practice the OCG also considers information the Reportable Conduct Directorate holds regarding the agency's compliance with reportable conduct reporting and investigation requirements.

Further information about the **Reportable Conduct Scheme**, and resources to help agencies understand their obligations under the scheme, can be found on the OCG website.

Reporting concerns to the DCJ Child Protection Helpline

Designated agencies and adoption service providers are required to report suspected child abuse or neglect to the New South Wales Child Protection Helpline. The **Mandatory Reporter Guide** assists agencies to determine when a report must be made to the Child Protection Helpline.

Further resources and guidance regarding **reporting concerns to the Child Protection Helpline** can be found on the DCJ website.

Practice requirement 7—providing safe and suitable care environments

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

About this practice requirement

Child-safe organisations provide care environments that minimise the opportunity for abuse or harm to children to occur. Designated agencies and adoption service providers have an additional responsibility to provide stable, nurturing care arrangements for children.

Agencies can promote children's safety and wellbeing by making sure they have direct access to a caseworker or staff member, and that children are visited in their care environment regularly. This provides an opportunity for children to raise any concerns, and for the worker to observe the interactions between children and their caregivers and identify any hazards or risks in the care environment.

Placement matching processes can also help to minimise risk in the care environment. Potential dynamics can be considered if a child is brought into a placement with other children and strategies to manage these dynamics can be implemented.

Agencies can better understand the risks to a child in their care environment by tracking incidents, particularly incidents occurring in residential care units, to identify whether changes to the care environment are required.

Providing safe and suitable care environments goes beyond ensuring the physical safety of the care environment. The Aboriginal and Torres Strait Islander Child and Young Person Placement Principles⁷² and the permanent placement principles⁷³ require agencies to consider the most appropriate long-term care arrangement for children who cannot remain in the care of their parents. These principles provide a placement hierarchy to guide decision-making regarding the placement of children.

The permanency goal should guide case planning and casework with children, their caregivers and their families. The permanency goal should also be reviewed regularly as children's needs change.



⁷² *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, s 13

⁷³ *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, s 10A

Mandatory practice requirements

These practice requirements are set out in section 18 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 8

Practice requirement 7—providing safe and suitable care environments

34 Giving information

- (1) An entity must give a child information about the child's proposed placement in a way that is appropriate for the child's age and stage of development.
- (2) An entity must give a person who cares for children information about a child who may be placed with the person to assist the person to decide whether the person has the capacity to meet the child's needs.

35 Placement decisions

- (1) An entity must consider continuity of care and relationships in placement decisions.
- (2) In making placement decisions, an entity must—
 - (a) consider a child's wishes, and
 - (b) consider the needs of children already in the placement, and
 - (c) consider the capacity of the proposed placement to meet the child's needs, and
 - (d) if necessary—have strategies to manage relationships and interactions within the placement.
- (3) Placement decisions must be informed by the following—
 - (a) the principle of active efforts referred to in the *Children and Young Persons (Care and Protection) Act 1998*, section 9A,
 - (b) the permanent placement principles referred to in the *Children and Young Persons (Care and Protection) Act 1998*, section 10A,
 - (c) the Aboriginal and Torres Strait Islander Children and Young Persons Principle referred to in the *Children and Young Persons (Care and Protection) Act 1998*, section 12A,
 - (d) the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles referred to in the *Children and Young Persons (Care and Protection) Act 1998*, section 13,
 - (e) if the decision relates to the adoption of a child—the *Adoption Act 2000*, Chapter 2.



Division 8

Practice requirement 7—providing safe and suitable care environments

36 Supervision of placement

An entity must ensure a child—

- (a) is visited in the child's care environment on a regular basis by a caseworker or a staff member of the entity, and
- (b) has information about who to contact if the child needs urgent assistance after hours.

37 End or change of placement

- (1) An entity must promptly address issues and concerns that may lead to an unplanned end to a placement, including arranging respite or other support for the child's caregivers.
- (2) If a change of placement for a child is required, an entity must—
 - (a) support the child through the change, and
 - (b) give relevant information about the child to the new carer or entity.

38 Permanent placements

- (1) An entity must include in a child's case plan—
 - (a) an appropriate goal (a permanency goal) relating to the permanent care of the child, including restoration, adoption, guardianship or long-term out-of-home care, and
 - (b) casework tasks to achieve the permanency goal.
- (2) If guardianship or adoption is being considered for a child, an entity must consider the capacity of the prospective guardians or prospective adoptive parents to—
 - (a) independently meet the child's needs, and
 - (b) support ongoing contact with the child's birth family.

39 Child safety

- (1) An entity must continuously monitor the safety and suitability of a care environment.
- (2) An entity must assist persons who work with and care for children to have—
 - (a) conversations about online safety, and
 - (b) access to information about online risks and how to manage the risks.



Assessing and monitoring practice

The OCG is looking for evidence that, prior to placing a child, the safety and suitability of the care environment is assessed. This includes considering the needs of other children already in the placement. The OCG also considers whether there is ongoing monitoring of the safety and suitability of the care environment, including responses to critical incidents.

The OCG is looking for evidence that staff regularly spend time with children in the care environment. The frequency of visits to children may vary depending on the needs of the child and the permanency goal. For example, where a child is being restored to the care of their family, or where a placement is in crisis, there may be frequent and intensive monitoring of the placement. Where a placement is proceeding to adoption, the agency may visit less frequently to allow the prospective adoptive parents to test their autonomous parenting skills.

The OCG does not specify how regularly a placement should be visited. However, children in stable out-of-home care placements are typically visited every 4 to 6 weeks. The OCG is looking for evidence that the agency has considered the needs of the placement and has adjusted the frequency and intensity of placement monitoring accordingly. The OCG is also looking for evidence that the safety of the care environment is monitored and interactions between children and their caregivers are observed.

The OCG is also looking for evidence that the agency has a clear permanency goal for each child, and that casework is directed at achieving the permanency goal.

When assessing an agency's practices, OCG assessors consider the following issues:

- Does the agency check the safety of the care environment before the placement commences? Are any risks or hazards in the care environment addressed?
- How does the agency involve children in decision-making processes related to their care environment? Are children empowered to express their preferences, concerns and opinions regarding their care environment and wellbeing?
- How does the agency consider potential risks or challenging dynamics when placing children together?
- How are incidents in the care environment that pose risk to children managed? Does the agency monitor incidents for trends and patterns?
- Does the agency explain to children how they can contact the agency for urgent assistance if needed?
- Does the agency verify that requirements regarding swimming pools have been complied with?
- Are children visited in their care environment? Does the agency make observations of the care environment and interactions between children, their caregivers and other members of the household?
- Does the agency provide staff and caregivers with strategies for talking to children about online safety?
- How do the placement principles inform the agency's decision-making about the most appropriate placements for children?
- Do children have clearly documented permanency planning goals? Do case plans and casework tasks reflect these goals?
- If the agency is an adoption service provider, what post-adoption support is provided? How are people affected by adoption supported to access adoption information or post-adoption support and counselling?



Types of evidence of compliance

Agencies will have their own processes for making sure they provide safe and suitable children's care environments. The agency is best placed to determine what evidence it can produce to demonstrate how it meets this practice requirement. Assessors will consider a range of evidence provided by the agency.

Common types of evidence agencies provide include:

- discussions with staff about how they consider the safety of the care environment and how they support and monitor placements
- home safety checks, placement matching assessments and safety plans
- file notes or reports of home visits that indicate that risks in the care environment are identified and managed
- critical incident logs, and reports and analyses of incidents to identify trends or patterns
- permanency planning assessments and goals.

Placement principles

Section 10A of the *Children and Young Persons (Care and Protection) Act 1998* sets out the preferred placement options to provide permanent placements for children who enter out-of-home care.⁷⁴ The placement principles must inform the agency's decision-making about the most appropriate placement for a child.

Section 13 of the *Children and Young Persons (Care and Protection) Act 1998* sets out the preferred placement options for Aboriginal and Torres Strait Islander children who enter out-of-home care, as well as the principles to be applied to decisions about the placement of Aboriginal and Torres Strait Islander children.⁷⁵

Children's case plans should clearly articulate the child's permanency goal and casework that is required to achieve this goal. Children's permanency goals should be reviewed at least annually.

⁷⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 10A

⁷⁵ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 13

Placing children in adoption arrangements

Part 2 of the *Adoption Act 2000* sets out the requirements when placing children for adoption.⁷⁶ This includes decision-making when adoption is being considered for Aboriginal or Torres Strait Islander children.

When placing children for adoption, adoption service providers must consider the child's cultural heritage, language, religion and any disability. Children's given names, identity, language, cultural and religious ties should, as far as possible, be preserved.⁷⁷ The adoption service provider must also consider the wishes of the parents consenting to the adoption of the child.

Adoption service providers must consider the prospective adoptive parents':

- capacity to assist the child to develop a healthy and positive cultural identity
- knowledge or willingness to learn and teach the child about their cultural heritage and foster links with their cultural heritage
- capacity and willingness to help the child if they encounter racism in the community.⁷⁸

Adoption of Aboriginal and Torres Strait Islander children

The OCG acknowledges the lifelong intergenerational impacts of the Stolen Generations and recognises that many Aboriginal and Torres Strait Islander peak bodies and Aboriginal and Torres Strait Islander leaders unequivocally oppose the adoption of Aboriginal and Torres Strait Islander children. The adoption of Aboriginal and Torres Strait Islander children is currently legal in New South Wales; however, the *Adoption Act 2000* sets out the additional requirements where adoption is being considered for Aboriginal and Torres Strait Islander children.⁷⁹

When the OCG reviews agencies' practices regarding decision-making for Aboriginal and Torres Strait Islander children, it considers:

- if the provider has made reasonable enquiries regarding whether a child to be placed for adoption is Aboriginal or Torres Strait Islander
- how the provider applies the permanency principles to decision-making about adoption, given that it is the least preferred option for Aboriginal and Torres Strait Islander children and young people
- how the provider applies the placement principles set out in the *Adoption Act 2000*
- whether alternatives to adoption have been properly explored with the child (where appropriate) and their family
- family-finding and casework to ensure that the child's wider family can participate in decision-making about the child's care
- consultation with family and approved Aboriginal or Torres Strait Islander consultants on the proposed adoption plan
- provisions in the adoption plan, made in consultation with family and community, to ensure that the adoptive parent/s will help the child to develop their cultural identity and maintain connection to family and cultural heritage in an open adoption
- if legal requirements, including preliminary hearings in the Supreme Court, are adhered to when considering adoption for an Aboriginal or Torres Strait Islander child.

⁷⁶ *Adoption Act 2000* (NSW), pt 2

⁷⁷ *Adoption Act 2000* (NSW), s 32(1)

⁷⁸ *Adoption Act 2000* (NSW), s 32(2)

⁷⁹ *Adoption Act 2000* (NSW), ss 33–39

Incidents in the care environment

Agencies are required to have systems in place to respond to incidents in the care environment that may pose a risk to children, and to ensure incidents are recorded and reported. Agencies are also required to implement any recommendations following incidents in the care environment where a child is placed at risk.

‘Incidents’ in the care environment refer to events where a child or children are harmed or are at risk of being harmed. Agencies typically have systems to ‘rate’ the seriousness of incidents occurring in the environment—from low through to critical—depending on the severity of real or potential harm to children.

It is important that agencies have systems to respond to incidents in the care environment and consider whether changes to policies, procedures or practices are required.

Agencies with strong systems for responding to incidents in the care environment have several common elements:

- clear guidance and training for staff or caregivers regarding strategies for responding to incidents that commonly occur in the care environment—this is particularly important in residential care environments
- processes for ensuring incidents are documented as soon as possible after the event, with a brief but clear description of the lead-up to the event, the incident itself and how the incident was managed in the immediate term, and then recommendations for follow-up
- debriefing for children, staff and caregivers following a serious incident
- reviewing incident reports to identify whether there are training or support needs for staff or caregivers, or whether a child requires different or additional supports
- discussing incidents during supervision of staff or caregivers
- reporting more-serious incidents to senior leaders within the organisation so the agency can ensure risks are being adequately managed
- reporting information about incidents in the care environment to the agency’s governing body to assist the agency to identify trends or patterns and consider whether additional training, support or resources are required
- ensuring the agency follows up any recommendations following an incident in the care environment.

Online safety

Online safety is a growing concern as the community becomes more aware of the opportunities for inappropriate contact with children online, as well as online bullying and harassment.

Managing children’s activities online can be incredibly challenging, and removing risks to children while they are engaging with others online is not always possible. It can be challenging to strike the right balance between children’s right to privacy and making sure they are not being exposed to inappropriate content or interactions.

Agencies can help to minimise risks to children by providing staff and caregivers with strategies to talk to children about risks such as:

- online grooming, including signs to look for
- sharing of intimate images, including risk of criminalisation
- bullying and harassment, and who children can talk to if they are worried
- meeting in person with people they have met online
- exposure to inappropriate content.

The eSafety Commissioner has a range of **resources for parents and carers**, including webinars about online safety.

Practice requirement 8—strategic planning and continuous improvement

Implementing this practice requirement demonstrates 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.

About this practice requirement

Child-safe organisations engage in continuous review and reflection on their practices and are open to exploring new ways to support children. Child-safe organisations welcome feedback and learn from complaints or mistakes.

Agencies should have systems to regularly review their own practices to identify areas of strength and areas for improvement. This includes processes to review compliance with the Code of Practice. Agencies should consider their capacity to maintain compliance with the Code of Practice when making decisions to expand the size and scope of their out-of-home care or adoption programs.

Agencies should have clear policies and procedures to assist staff to understand what is required of them and to provide guidance regarding their day-to-day work. Policies and procedures should be reviewed regularly as an agency's practice evolves and changes and to reflect sector reforms or changes to legislation.



Mandatory practice requirements

This practice requirement is set out in section 19 of Schedule 3A of the Children's Guardian Regulation 2022.



Division 9

Practice requirement 8—quality assurance and continuous improvement

40 Compliance with Child Safe Standards and this code

- (1) An entity must have processes to assess the entity's compliance with the Child Safe Standards and this code on a continuous basis.
- (2) An entity must implement strategies to improve the entity's practice if it identifies non-compliance with the Child Safe Standards or this code.
- (3) An entity must—
 - (a) have policies and procedures that set out how the entity will deliver services in accordance with the Child Safe Standards and this code, and
 - (b) make the policies and procedures accessible to staff and easy to understand, and
 - (c) verify that staff understand and implement the policies and procedures, and
 - (d) review and update the policies and procedures to reflect changes in legislation, policy or relevant practices.
- (4) An entity's governing body must consider the capacity of the entity to maintain compliance with the Child Safe Standards and this code before expanding the entity's services.

41 Ongoing improvement

- (1) An entity must seek feedback on the following from children, children's families and persons who work with and care for children—
 - (a) the services provided by the entity,
 - (b) opportunities to improve the entity's practice.
- (2) An entity must review critical events and complaints to identify opportunities to improve the entity's practice.



Assessing and monitoring practice

The OCG looks for evidence that the agency regularly reviews its own compliance with the Code of Practice and can accurately identify its areas of strength and areas for improvement. This includes reviewing critical incidents and complaints to identify opportunities to improve practice. It also includes seeking feedback from children, their caregivers and staff regarding their experiences of the agency and opportunities to improve.

The OCG also looks for evidence that staff understand and implement the agency's policies and procedures, and that policies and procedures are updated to reflect changes in legislation and practices.

When assessing an agency's practices, OCG assessors consider the following issues:

- How does the agency know its own state of compliance with the Code of Practice? How does the agency know what its areas of strength and areas for improvement are?
- Where the agency identifies non-compliance or an area for improvement, what steps does it take to implement practice improvements?
- What issues does the governing body consider when deciding to expand the agency's provision of services?
- How does the agency hear from children, their caregivers and staff about their experiences and opportunities to improve services?
- Does the agency review critical incidents or complaints to understand possible causes and identify opportunities to improve practices?
- How does the agency know that staff understand and implement the agency's policies and procedures?
- Are policies and procedures readily accessible to staff? Are they clear and easy to understand? Are they up-to-date?
- Does the agency review its policies and procedures to reflect changes in legislation or practice?



Types of evidence of compliance

Agencies will have their own processes for making sure they are meeting the requirements of the Code of Practice. The agency is best placed to determine what evidence it can produce to demonstrate how it meets this practice requirement. Assessors will consider a range of evidence provided by the agency.

Common types of evidence agencies provide include:

- discussions with staff about how they implement the agency's policies and procedures
- strategic plans, quality assurance reports and service evaluation reports
- action plans and service improvement plans
- surveys of children and their caregivers
- staff satisfaction and feedback surveys
- analysis of complaints and critical incidents
- policies and procedures, practice manuals, casework tools and guidance material.



5.

Accrediting and monitoring agencies against the Code of Practice

This section sets out how the OCG assesses and monitors agencies against the requirements in the Code of Practice, and provides information about the process of applying for accreditation.

Applying for accreditation for the first time

Providing statutory out-of-home care and adoption services is a serious undertaking, and organisations should carefully reflect on their capacity to maintain compliance with accreditation criteria before making an application.

Agencies must provide policies and procedures for assessment, setting out how they will deliver services in accordance with the Code of Practice. Once an agency is accredited it may begin providing services and is required to notify the OCG when it first starts. OCG assessors visit provisionally accredited agencies every 3 to 4 months over the course of the accreditation period to review the agency's practices.

The OCG receives a high volume of applications for accreditation from new providers across New South Wales, and applications from agencies providing services that meet a gap in the service system are prioritised. This includes applications from Aboriginal Community-Controlled Organisations or agencies that are seeking to provide services in geographical areas where there are a limited number of existing providers.

Agencies applying for accreditation for the first time should email or phone the Accreditation and Monitoring Team for further information about the application and assessment process.

Email: accreditation@ocg.nsw.gov.au

Phone: (02) 8219 3796



Provisional accreditation and full accreditation

An agency that has not previously been accredited, or an agency that has not provided statutory out-of-home care (OOHC) or adoption services in the previous 12 months, may apply for provisional accreditation.⁸⁰

An agency applying for provisional accreditation must provide policies and procedures for assessment by the OCG, setting out how the agency will deliver services to children and young people in accordance with the Code of Practice. An agency granted provisional accreditation may be accredited for a maximum period of 3 years.⁸¹

An agency that was previously accredited and has delivered OOHC or adoption services in the past 12 months may apply for full accreditation. An agency applying for full accreditation must provide direct evidence of its practice for assessment by the OCG. Direct evidence is assessed during onsite visits by OCG assessors. An agency granted full accreditation may be accredited for a maximum period of 5 years.⁸²

An agency may be granted provisional or full accreditation if the Children's Guardian is satisfied that the applicant wholly or substantially meets the accreditation criteria.

An agency may be accredited on the basis that it substantially meets accreditation criteria, where it has met most of the requirements and is making the necessary practice improvements to be wholly compliant with accreditation requirements.

When an agency is accredited on the basis that it substantially meets accreditation criteria, it must demonstrate that it is wholly compliant within 12 months of the accreditation decision.⁸³

Direct evidence program for provisionally accredited agencies

When a provisionally accredited agency first begins arranging out-of-home care or adoption services, it must notify the Children's Guardian. The agency must immediately lodge this notification via the accreditation portal. Information about the accreditation portal and how to make a notification is available on our website. The OCG will develop a direct evidence program with the agency, which includes regular onsite visits to review its practices against the requirements of the Code of Practice. Assessors provide verbal and written feedback regarding areas of strength and where there are areas for improvement.

The purpose of the program is to review an agency's compliance with the Code of Practice over the period of provisional accreditation. An agency must progress through the direct evidence program to achieve full accreditation.

⁸⁰ *Children's Guardian Act 2019* (NSW), sch 3A s 10, sch 3B s10

⁸¹ *Children's Guardian Act 2019* (NSW), sch 3A s 11(2)(b), sch 3B s 11(2)(b)

⁸² *Children's Guardian Act 2019* (NSW), sch 3A s 11(2)(a), sch 3B s 11(2)(a)

⁸³ *Children's Guardian Act 2019* (NSW), sch 3A s 15, sch 3B s 15

Monitoring compliance and renewing accreditation

When an agency is granted accreditation, the OCG monitors compliance with accreditation criteria (the Code of Practice) over the course of the accreditation period. A mix of agency self-reporting and onsite visits to review a sample of practice is used to monitor compliance requirements. At the end of an agency's accreditation period, the OCG reviews the information it has gathered through the monitoring program to inform a decision about whether to renew the agency's accreditation.

Agency status update

The OCG will monitor agencies on an annual basis to understand how agencies' quality assurance systems are helping them to maintain compliance with their accreditation requirements, and to identify areas for practice improvement.

Annual monitoring will be done in two ways, over the course of an agency's accreditation cycle. Some years, the agency will be required to submit an Agency Status Update (ASU) which will set out what areas of practice improvement the agency is focusing on that year, challenges the agency may be facing and key changes in the agency.

On other years, OCG assessors will visit the agency to undertake an onsite assessment of the agency's practices. During these assessments, assessors will verify the information the agency has provided in its ASU is evident in practice. The information in the ASU forms part of the evidence the OCG relies on when making a decision to renew an agency's accreditation.

This approach gives the OCG important information about whether the agency is able to maintain good practice over the course of its accreditation cycle, and whether the agency has systems that allows it to pick up risks of gaps in practice, and manage them



Planned versus responsive monitoring visits

Monitoring visits may either be planned ahead of time in consultation with the agency or take place at short notice.

The purpose of planned monitoring visits is for the OCG to check in with an agency and verify that it continues to meet the requirements of the Code of Practice. Planned monitoring visits take place throughout the course of an agency's accreditation cycle and information gathered during these monitoring visits informs a decision around whether to renew an agency's accreditation.

Responsive monitoring visits are undertaken because the OCG has identified concerns or become aware of possible non-compliance in an agency. These visits usually occur at short notice and focus on the particular area of concern. The purpose of responsive monitoring visits is for the OCG to understand whether there are compliance concerns and whether any action on the agency's accreditation needs to be taken.

What happens at an onsite monitoring visit

Monitoring visits to agencies determine whether systems are in place to meet the requirements of the Code of Practice and whether these systems are consistently implemented. OCG assessors will visit agencies' offices and may also visit residential care units, where relevant.

Assessors ask agencies to explain the systems they have in place to meet the requirements of the Code of Practice and describe how these systems work.

During onsite monitoring visits assessors test the efficacy of the systems described. Assessors review a sample of records to see whether the system the agency has described can be seen in practice.

When reviewing an agency's practice, OCG assessors consider the questions set out under each practice requirement in Section 2 of this handbook.

After speaking with staff and reviewing a sample of practice, assessors talk to the agency about what is observed in the records reviewed. If there are significant gaps in practice, assessors may ask the agency if there are other materials that should be reviewed to understand the agency's systems. If assessors have concerns about the safety, welfare or wellbeing of individual children they will alert the agency immediately and make reports to the Child Protection Helpline where necessary.



Powers to enter premises and inspect records

OCG assessors are authorised persons under the *Children's Guardian Act 2019*.⁸⁴ This means they may enter an agency's premises, such as its offices or residential care units, to exercise the Children's Guardian's functions to accredit and monitor agencies. Assessors may also copy, take extracts from or review documents.

During onsite visits OCG assessors may ask to review children's care records and records relating to the recruitment, supervision and support of staff and caregivers. This includes both electronic and paper records.

Assessors may also ask to review governance material. The purpose of reviewing these records is to verify that the agency is compliant with the requirements of the Code of Practice.

The OCG treats all information gathered during onsite monitoring visits as confidential, unless there are concerns for the safety, welfare or wellbeing of children that require mandatory reports to the Child Protection Helpline or police.

The OCG recognises that onsite visits may be disruptive or stressful for agencies. OCG assessors will endeavour to minimise disruption to the agency and will make sure all materials reviewed are returned in the state in which they were provided.

Preparing for an onsite visit

It is the OCG's expectation that agencies' business-as-usual service delivery meets the requirements of the Code of Practice. Agencies should have systems to review their own practice and identify where there are areas for improvement. During onsite visits, assessors will talk to agencies about how they identify areas of strength and areas for improvement.

In preparing for an onsite visit, agencies should review the Code of Practice and the questions set out under each practice requirement in Section 2 of this document. Agencies should consider what evidence would demonstrate how they meet the practice requirements.

Agencies should also review the information they have provided in their agency status updates, as assessors may ask for information to verify the information provided in these updates.

Following an onsite visit

Assessors review the information gathered during the onsite visit and form an opinion about whether this demonstrates that the agency is meeting the requirements of the Code of Practice. The assessment team discusses its findings with a panel of managers before making a final decision on whether the practice reviewed meets the requirements of the Code of Practice.

The OCG prepares a written feedback report for the agency regarding the outcome of the assessment, including whether:

- there is a system to support practice and it is implemented most of the time
- there is a system, but it is not consistently implemented or requires improvement
- a system could not be identified or is poorly implemented.

Where the assessment finds that there are areas for improvement, the agency will be asked to provide an update on how it is addressing these areas in its next agency status update.

If there are concerns regarding non-compliance with the requirements of the Code of Practice or the children's care legislation, the Children's Guardian may decide to take action on the agency's accreditation. The types of decisions the Children's Guardian may make are set out below under 'Consequences for non-compliance with the Code of Practice and children's care legislation'.

⁸⁴ *Children's Guardian Act 2019* (NSW), sch 2 pt 1 s 4

Making accreditation renewal decisions

At the end of an agency's accreditation cycle, the OCG will review the information from the agency status update and monitoring visits to determine the accreditation renewal pathway.

Some agencies will not need to participate in a renewal assessment and may have their accreditation renewed directly based on the information gathered through the agency status update and onsite visits.

Pathways to renewal of accreditation

There are 3 pathways to accreditation renewal.

Direct renewal

This may be considered where the agency currently holds full accreditation for 5 years and has consistently demonstrated that it has effective systems to guarantee compliance with the Code of Practice. The decision to renew the agency will be based on information gathered in the agency status updates and the onsite monitoring visits. Agencies on a direct renewal pathway will not be required to participate in an accreditation renewal assessment.

Abridged renewal

This may be considered where the agency currently holds full accreditation and throughout the monitoring to renewal program has had areas for improvement identified that require changes to systems or practices. The abridged renewal process will include an onsite renewal assessment and will primarily focus on the areas for improvement or changes to systems and practices identified during the monitoring program.

Full renewal

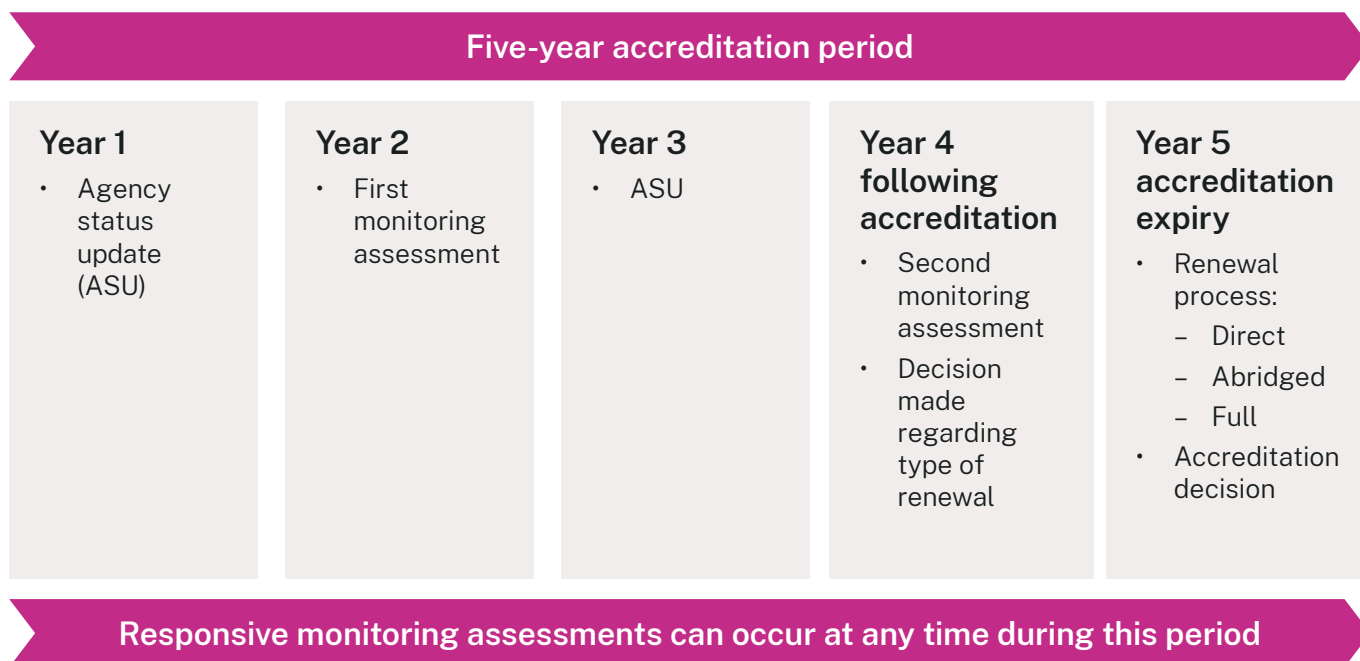
This will apply to:

- agencies holding provisional accreditation and applying for full accreditation
- fully accredited agencies that have had ongoing gaps in practice or non-compliance with the Code of Practice, and have shown little improvement in practice over the monitoring program.

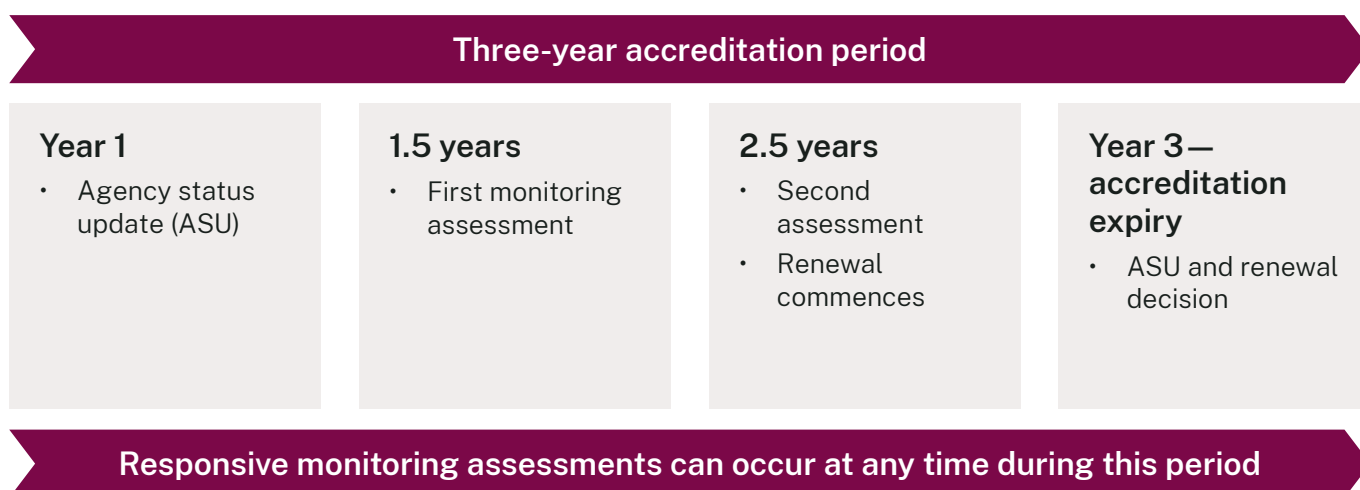
The flowcharts below set out typical accreditation cycles for agencies that are fully accredited for 3 or 5 years.



Flowchart 1 sets out the proposed process for an agency that holds full accreditation for 5 years:



Flowchart 2 sets out the proposed process for an agency that holds full accreditation for 3 years.



Assessing systems to support practice

The OCG does not review the circumstances of every child in out-of-home care or adoption arrangements. Rather, the OCG considers whether an agency has systems in place that will help it deliver services that meet the practice requirements set out in the Code of Practice.

A **system** is a series of interlocking processes that assist an organisation to deliver its desired outcomes. Systems serve a number of important functions in an organisation, including:

- providing a structure for staff to work within and understand their roles and responsibilities
- making sure important information flows within an organisation
- helping staff organise and prioritise their work
- helping an organisation build its philosophy of care into practice
- helping senior decision-makers to keep track of the agency's performance and ensuring key tasks are not forgotten or overlooked.

During onsite visits to agencies, the OCG will speak with agency staff to understand the agency's systems to support practice. Assessors will then review a sample of practice to see if the agency's systems are evident in practice.

Evaluation and continuous improvement of practice

An important part of an agency's systems to support practice are its evaluation and continuous improvement activities. The OCG is looking for evidence that an agency has processes to regularly review its own work and identify its areas of strength and areas for improvement. This includes systems to monitor the agency's ongoing compliance with the requirements of the Code of Practice.

Agencies with strong systems to support evaluation and continuous improvement commonly have the following elements:

- They have an organisation-wide attitude that the agency is responsible for its own compliance and the quality of its services.
- They have an attitude that feedback—both positive and negative— is an opportunity to improve.
- They analyse information regarding risk, such as complaints, reportable conduct allegations and critical incidents, to identify trends and opportunities for improvement.
- They conduct regular reviews of a cross-section of work to consider whether the agency's policies and procedures are being properly implemented. This includes a regular review of a sample of children's or caregiver's files.
- Their file audits or file reviews do not only review whether a document is on file or if a task has been completed but also consider the *quality* of the work. For example, systems that consider whether a case plan has been developed with the participation of children and their carers and family are more likely to promote quality practice than systems that only check if a case plan is on file.
- They use staff supervision to review quality of practice and identify where there are support or training needs.
- Their policies and procedures are regularly reviewed and updated to reflect the agency's expectations regarding practice.

Consequences of non-compliance with the Code of Practice and children's care legislation

Designated agencies and adoption service providers must demonstrate compliance with the Code of Practice and children's care legislation to achieve and maintain accreditation. Where an agency does not comply with these requirements, the Children's Guardian may make these decisions:

- refuse to grant accreditation⁸⁵
- defer a decision on an application for accreditation and require an action plan to address non-compliance⁸⁶
- impose a condition on the accreditation⁸⁷
- shorten or cancel the period of accreditation.⁸⁸

When considering any of these actions, the Children's Guardian will advise the agency of the compliance concerns and the steps the agency must take to address these concerns. In deciding what actions to take, the Children's Guardian considers the degree of risk to children as a result of non-compliance.



85 *Children's Guardian Act 2019* (NSW), sch 3A pt 2 s 6, sch 3B pt 2 s 6

86 *Children's Guardian Act 2019* (NSW), sch 3A pt 2 s 7, sch 3B pt 2 s 7

87 *Children's Guardian Act 2019* (NSW), sch 3A pt 3 ss 12–13, sch 3B pt 3 ss 12–13

88 *Children's Guardian Act 2019* (NSW), sch 3A pt 5 s18, sch 3B pt 3 s 12, sch 3B pt 5 s 19

89 *Children's Guardian Act 2019* (NSW), sch 3A pt 3 s 12(2), sch 3B pt 3 s 12(2)

90 *Children's Guardian Act 2019* (NSW), sch 3A pt 3 s 13, sch 3B pt 3 s13

91 *Children's Guardian Act 2019* (NSW), sch 3A pt 1 s 3(2)(b), sch 3B pt 1 s 3(2)(b)

Conditions of accreditation imposed by the Children's Guardian

All designated agencies and adoption service providers are subject to conditions on their accreditation, and these conditions are set out in the Children's Guardian Regulation 2022. Information about these general conditions of accreditation is set out in next section.

In addition to the conditions of accreditation that apply to all agencies, the Children's Guardian may also impose further conditions on an agency's accreditation to address a particular area of concern.⁸⁹

Examples of conditions that the Children's Guardian may impose on an agency's accreditation include:

- preventing the agency from accepting further placements until a compliance concern has been addressed
- requiring an agency to engage a person with child protection or other expertise to provide training to staff
- preventing an agency from accepting referrals of children with complex needs until an area of concern has been addressed
- requiring an agency to report on progress in addressing compliance concerns.

Conditions imposed by the Children's Guardian relate to a specific issue or concern in an agency, and conditions may be varied or lifted by the Children's Guardian.⁹⁰ Failure to comply with a condition of accreditation may result in the Children's Guardian finding that the agency is not suitable to be accredited.⁹¹

Shortening or cancelling accreditation

The Children's Guardian may shorten or cancel an agency's accreditation if the agency is not suitable to be accredited or the accreditation was granted in error.⁹²

An agency is **not suitable** to be accredited if it:

- is disqualified from being accredited
- does not wholly or substantially meet the accreditation criteria.⁹³

The Children's Guardian may also find that an agency is not suitable to be accredited where:

- the agency, or principal officer of the agency, failed to comply with the children's care legislation
- the agency failed to comply with a condition of its accreditation
- the agency, or principal officer of the agency, made a statement or gave information in connection with the administration of the children's care legislation knowing the statement or information was false or misleading in a material particular.

The Children's Guardian may consider shortening or cancelling an agency's accreditation where there is persistent non-compliance with the Code of Practice or children's care legislation, and where the safety, welfare or wellbeing of children are at risk.

Where the Children's Guardian decides to shorten or cancel an agency's accreditation, the agency is advised of the decision in writing, including the grounds for the decision and the time and date on which the decision takes effect.

When an agency's accreditation is cancelled, it is disqualified from being accredited for a period of 2 years.⁹⁴

⁹² *Children's Guardian Act 2019* (NSW), sch 3A pt 5 s 18, sch 3B pt 5 s 19

⁹³ *Children's Guardian Act 2019* (NSW), sch 3A pt 1 s 3, sch 3B pt 1 s 3

⁹⁴ *Children's Guardian Act 2019* (NSW), sch 3A pt 5 s 20, sch 3B pt 5 s 21

⁹⁵ *Children's Guardian Act 2019* (NSW), sch 3A pt 2 s 7, sch 3B pt 2 s 7

Deferral of a decision on accreditation

When an agency applies for accreditation (including an application to renew accreditation), the agency must demonstrate that it wholly or substantially meets the requirements of the Code of Practice. Where an agency does not demonstrate compliance, the Children's Guardian may refuse to grant accreditation or defer making a decision on the application.⁹⁵

The Children's Guardian may defer making a decision on an application for accreditation where the agency has submitted an action plan setting out how it will become compliant with the Code of Practice, and the Children's Guardian is satisfied with the action plan.

The maximum length of time an agency may have a decision on its accreditation deferred is 24 months. If the agency cannot meet the requirements of the Code of Practice in that time, its application for accreditation is refused.

An agency with a deferred decision on its application for accreditation continues to be accredited but must cooperate with a monitoring program and comply with any conditions imposed by the Children's Guardian.

Public information about accreditation

The Children's Guardian must ensure information about accredited agencies is publicly available.⁹⁶ The OCG publishes **information about designated agencies and adoption service providers** on its website.

Information includes:

- the name and contact details of the organisation
- the name of the principal officer
- the agency's accreditation status
- services the agency is accredited to provide
- conditions on the agency's accreditation.

Review of decisions

Agencies may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the Children's Guardian's accreditation decision.⁹⁷ Decisions that may be reviewed by NCAT include:

- granting accreditation or refusing to grant accreditation to an organisation as a designated agency or as an adoption agency
- specification of the adoption services that may be provided by the accredited adoption service
- imposing or not imposing a condition on the accreditation of an organisation
- varying or revoking a condition of accreditation
- shortening or cancelling a designated agency's accreditation
- transferring or refusing to transfer accreditation
- refusing to make a decision.

To contact NCAT, visit ncat.nsw.gov.au or call 1300 006 228.

⁹⁶ Children's Guardian Regulation 2022 (NSW), ss 30, 51

⁹⁷ Children's Guardian Act 2019 (NSW), s 154



There are other important obligations for designated agencies and adoption service providers outside of the Code of Practice. This section outlines these obligations.

6.

Other obligations outside of the Code of Practice

General conditions of accreditation for designated agencies

All designated agencies must comply with conditions of accreditation are set out in **Schedule 3 of the Children's Guardian Regulation 2022**.

General conditions of accreditation for adoption service providers

All adoption service providers must comply with the conditions of accreditation set out in **Schedule 5 of the Children's Guardian Regulation 2022**.

Notification of deaths of children in statutory out-of-home care

Section 83 of the *Children's Guardian Act 2019* requires that, if a child dies while in statutory or supported out-of-home care, the principal officer with supervisory responsibility ensures the following people are notified immediately:

- the parents of the child, if they can reasonably be located
- the Children's Guardian
- the coroner.

Agencies must lodge a notification of the placement of a child under 12 in residential care via the accreditation portal. Information about the accreditation portal and how to make a notification is available on our website.

Notification of placement of a child under 12 years of age in residential care

Where an agency places a child who is under the age of 12 years in a residential care arrangement, it is required to notify the Children's Guardian with the following details:

- the child's full name
- information about the residential care provider where the child is placed
- the reasons the child is placed in residential care.

Agencies must lodge a notification of the placement of a child under 12 in residential care via the accreditation portal. Information about the accreditation portal and how to make a notification is available on our website.



Notification of allegations of reportable conduct to the OCG

Designated agencies and adoption service providers have obligations under the NSW Reportable Conduct Scheme.⁹⁸ The Reportable Conduct Scheme requires certain organisations that provide services to children to have systems to prevent, detect and deal with allegations or convictions made against employees.

When the Head of Relevant Entity becomes aware of an allegation that an employee has engaged in conduct that may be reportable conduct or is the subject of a reportable conviction, they must notify the OCG within 7 business days of becoming aware of the information.

Designated agencies and adoption service providers are required to notify the OCG of reportable allegations that relate to their employees' conduct both **in and outside the workplace**.

Reportable conduct is defined as:

- a sexual offence committed against, with, or in the presence of a child
- sexual misconduct with, towards, or in the presence of a child
- assault of a child
- ill-treatment of a child
- neglect of a child
- behaviour that causes emotional or psychological harm to a child
- an offence under section 43B or section 316A of the *Crimes Act 1900* (NSW).

A child is defined as a person under the age of 18. It is not necessary—at the initial notification stage—for the Head of Relevant Entity to have determined whether the conduct has occurred or not. The Scheme is an allegations-based scheme, so all reportable allegations must be reported to the OCG.

For designated agencies and adoption service providers, 'employees' include:

- paid staff
- authorised carers, prospective guardians and prospective adoptive parents
- any adult who resides on the same property as an authorised carer, prospective guardian or prospective adoptive parent
- any person engaged by the agency directly or by a third-party employer as a volunteer to provide services to children
- contractors who are engaged directly by the agency or by a third-party employer, if the contractor holds or is required to hold a Working with Children Check for the purpose of the engagement (for example, any employee engaged through a labour hire company).

The OCG has a range of **reportable conduct fact sheets** to assist designated agencies and adoption service providers to understand their obligations under the Reportable Conduct Scheme.

Use the OCG's **Reportable conduct notification forms to report allegations of reportable conduct**.

⁹⁸ *Children's Guardian Act 2019* (NSW), sch 1



7

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