

Ms Janet Schorer
NSW Children's Guardian
Office of the Children's Guardian

Email: accreditation@ocg.nsw.gov.au

Dear Ms Schorer

Review of Children's Guardian accreditation and monitoring functions

Thank you for the opportunity to provide a submission to the review of the Children's Guardian's accreditation and monitoring framework for statutory out-of-home care and adoption service providers. The Children in Care Collective is appreciative of the extension to the deadline for submissions that it has been afforded.

The Collective notes that the aim of the review is to ensure the accreditation scheme reflects the contemporary service system and addresses particular challenges in the statutory out-of-home care and adoption sector. The Collective welcomes the intention to clarify and simplify elements of the scheme and its legislative underpinning. The Collective supports the focus of the proposed amendments, and makes some suggestions intended to strengthen the proposals. Where the Collective supports the OCG's proposal and has no further comment, no reference to the proposal is included in this submission and support can be assumed.

1. Accreditation of designated agencies and adoption service providers

Key proposal 1

Without discounting Professor Davis' view as expressed in the *Family is Culture* review, and understanding the historical basis of the concern, the Collective suggests that for-profit organisations are in some instances well placed to provide some models of care, particularly for children and young people with complex needs. Limiting the provision of statutory out-of-home care to government and not-for-profit agencies, when it is clear that existing services are stretched to capacity, runs the risk of excluding organisations that are able to provide additional appropriate services. It goes without question that high standards of compliance with the accreditation framework are essential.

Section 1.3.2

The Collective strongly supports the proposal that an application for accreditation should set out how the agency intends to meet the particular needs of Aboriginal children and young people. Included among the things an agency should consider when reflecting on its capacity to provide culturally safe care are its connections to Aboriginal communities, its willingness to embrace Aboriginal leadership and knowledge in how to meet the cultural and wellbeing needs of Aboriginal children and young people, and the possibility of partnership with ACCOs.

Key proposals 6 and 7

The Collective agrees that having an appropriate governing body and governance structure in place should be a prerequisite for agencies applying for accreditation and that the principal officer should have relevant skills and experience in delivering services to children and young people.

However, it would be useful for the OCG to clarify what it would deem as relevant skills and experience, noting that the legal requirements of principal officers under the legislation are quite broad. In terms of process, the Adoption Regulation 2015 requires, among other checks, that the principal officer's appointment is supported by at least two references attesting to their suitability. This requirement could be usefully applied to the appointment of principal officers for statutory out-of-home care agencies, offering as it does an opportunity to ensure the principal officer has skills and experience relevant to the position in a specific agency.

The rationale for why the OCG has decided that four members of the governing body should be independent of the organisation is not clear and may be a difficult requirement for small services. There are other governance issues, such as the charter and protocols covering the operation of the board, which would seem more significant. Further consideration of the intent of this proposal and how to achieve it would seem to be warranted.

Key proposals 8, 9 and 10

Enabling the Children's Guardian to exercise discretion in assessing applications for accreditation according to priority is supported. The Collective agrees that this would assist in the sector meeting the need for particular types of services and allow the OCG to direct its resources effectively. We agree that the OCG should publish on its website the factors being taken into account in the exercise of this discretion and perhaps its rationale for determining need. It is assumed that these guidelines will be updated as required to reflect current priorities.

In relation to key proposal 10, the Collective agrees that any agency that has had its accreditation shortened or cancelled should be required to review and correct its systems and practices before seeking accreditation in the future. However, the prohibition from applying for a period of two years seems somewhat arbitrary and perhaps punitive. The Collective believes there should be capacity for an agency to reapply when it can demonstrate required improvements, particularly if it provides specialised services and there are service system gaps.

Section 1.8

The Collective agrees with the proposal to create a new class of accreditation for agencies providing short-term, emergency care arrangements. This will bring non-designated agencies within the accreditation framework thereby improving oversight of their services to children and young people who are likely to be extremely vulnerable at the time of such placements. However, care should be taken that any changes do not limit the services that can be accessed and that the level of regulation does not add to the challenges that agencies already face when sourcing an emergency arrangement. Case management and decision making about the child's care should remain with a fully accredited agency.

Key proposals 14 – 17

The Collective supports the intention to streamline the accreditation renewal process by utilising information gathered during monitoring visits. While the restructured OCG processes are intended to provide for 'briefer but more regular monitoring of agencies' practices', being every 12-18 months, the Collective notes that the OCG's Fact Sheet *Monitoring accredited agencies* already states that every accredited agency will be visited at least once in every 12-18 months. It is not clear what will change in terms of frequency of visits although the Collective acknowledges that the visits may be briefer. It will be even more important than now that the feedback report is provided to agencies in a very timely fashion, particularly if areas for improvement are identified.

Notwithstanding this, the Collective supports the increased focus on continuous improvement rather than compliance and the proposed model with three pathways to accreditation renewal based on information gathered by the OCG during monitoring visits.

The Collective also supports that information gathered by DCJ and oversight bodies and information gathered by the OCG for other regulatory purposes could be considered as evidence of compliance with the Standards and other accreditation criteria – with an important proviso: that the principles of procedural fairness are applied. The application of the 'hearing rule' would ensure agencies are given an opportunity to review this information prior to any decision on its accreditation and be given an opportunity to respond.

Key proposal 19

The Collective agrees that the provision for what must be included in the Standards and accreditation criteria should be broadened to include practices that promote the safety, welfare and wellbeing of children and young people in out-of-home care. This broadening of criteria would presumably be in line with the core and focus themes set out in the new monitoring and accreditation framework.

5. Intersection with the Child Safe Scheme

The Collective acknowledges the significance of embedding the Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse as the primary framework guiding child safe practices and making organisations safer for children in New South Wales. We also acknowledge the benefits of bringing statutory out-of-home care and accredited adoption sectors into the Child Safe Scheme, particularly in terms of avoiding over-regulation and duplication of reporting.

There is obvious complexity in how to implement this change and we note that, as discussed by OCG representatives in a meeting with the Collective, the OCG has been working on how to incorporate the existing 23 NSW Child Safe Standards for Permanent Care into the ten Child Safe Standards since 2019.

Since the Standards for Permanent Care establish the minimum requirements for the accreditation of out-of-home care and adoption services in New South Wales, and agencies already provide services in accordance with them, there is a logic to these Standards continuing to form the basis of the proposed additional accreditation criteria, with care being taken to ensure consistency without duplication of regulation and reporting. The Collective strongly supports the OCG's proposition that there will be no penalties for non-compliance once the two systems are merged and that enforcement decisions will continue to be based on the existing compliance and enforcement framework in the accreditation scheme.

There is a clear need for further consultation with the sector about how this would operate in practice.

Conclusion

The Children in Care Collective would be pleased to continue to assist the Office of the Children's Guardian with its aim of amending and updating its accreditation and monitoring model. Should you have any queries arising from this submission, please direct them to me at Rob.Ryan@lwb.org.au.

Yours sincerely



Rob Ryan
Chair
Children in Care Collective
15 December 2021

On behalf of the Children in Care Collective:

Allambi Care; Anglicare NSW South | NSW West | ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Settlement Services International; Institute of Child Protection Studies (ICPS) - Australian Catholic University; Australian Centre for Child Protection (ACCP) - University of South Australia