the Children's Guardian.

The NSW Children's Guardian National Standards for Out of Home Care

Submission in response to the January 2010 Consultation Paper

NSW GOVERNMENT Communities
The Children's Guardian

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Introduction

The New South Wales Children's Guardian welcomes the development of National Standards for out-of-home care (OOHC).

This submission addresses the questions asked in the January 2010 Consultation Paper and other issues relevant to the establishment of an effective National OOHC Standards framework.

The introduction of National Standards has the potential to improve outcomes for some of Australia's most vulnerable children and young people, including Aboriginal and Torres Strait Islander children and young people who are significantly over-represented in the OOHC system.

The introduction of National Standards also provides a unique opportunity to:

- develop consensus across Australian jurisdictions as to the most important outcomes for children and young people in OOHC, having regard to the current evidence base;
- improve consistency in the OOHC experiences of children and young people across Australia, and in the practices of organisations that provide or support OOHC;
- promote greater consistency between the states and territories in child protection decision making, including decisions concerning entry into care;
- embed Continuous Quality Improvement (CQI) into OOHC service and support systems; and
- analyse which practices positively influence outcomes for children and young people in OOHC, with the potential for improved sharing of information between jurisdictions on "what works and what doesn't".

Improving outcomes for children and young people in OOHC requires a genuine partnership between the agencies that contribute to those outcomes and across levels of government. The Federal Minister for Families, Housing, Community Services and Indigenous Affairs recognised this in saying:

> "*All governments and the non-government sector are committed to make sure that vulnerable children are looked after and cared for in a safe and supportive environment wherever they live. This requires a consistent and concerted national response across all levels of government.*"

These were the words used to introduce the Consultation Paper.

The Children's Guardian was therefore concerned at comments made by KPMG at the recent public consultation session in Sydney that suggested the Standards and associated performance measures would only apply to state/territory OOHC providers.

The National Standards must be child-centred and focus on outcomes for children and young people in OOHC. Health and education agencies must have a role in supporting health and educational outcomes for children and young people in OOHC. Housing, employment, welfare and Indigenous affairs agencies also contribute to positive outcomes for children and young people in OOHC.

Commonwealth agencies also have an important role to play in these areas. Agencies that contribute to positive outcomes for children and young people in OOHC, whether they be state/territory or federal, should work together to improve performance against the Standards, with performance indicators put in place to measure their contribution.

New South Wales has had OOHC standards in place longer than any other Australian jurisdiction and is the only jurisdiction that provides for independent accreditation and case file auditing of government and non-government OOHC providers. As the Children's Guardian, I am responsible for accrediting NSW OOHC agencies against the NSW OOHC Standards and the ongoing monitoring of those agencies through case file audits.

Accreditation is one way to encourage compliance with OOHC standards in a CQI framework, but it is not suggested that all jurisdictions should adopt an OOHC accreditation scheme.

While the NSW OOHC quality framework has improved outcomes for children and young people in OOHC, overtime changes have been made to improve its effectiveness and efficiency. The lessons learned in New South Wales, both positive and negative, should be considered in the development of the National OOHC Standards and the framework put in place to monitor and report on performance against those Standards. Section 1 of this submission addresses the evolution of the NSW OOHC quality framework.

Sections 2 and 3 of this submission look at the scope of OOHC that is appropriately covered by the National Standards and some key principles that should be considered in developing the National Standards framework. Both sections looks at the opportunities and risks associated with the introduction of National Standards.

Whilst the introduction of National Standards for OOHC provide opportunities to improve outcomes for children and young people in OOHC, those opportunities may be squandered if:

- current OOHC definition and data collection/reporting differences between Australian jurisdictions are not resolved in the development of the Standards and the performance measures that underpin them;
- the National Standards apply across all care arrangements under the Australian Institute of Health & Welfare definition of OOHC and the Standards are not first piloted, reviewed and adapted as necessary before being rolled out beyond court-ordered OOHC;
- the National Standards are not outcomes focussed;
- too many standards and associated performance measures are introduced at one time;
- the National Standards purport to be exhaustive and replace, rather than refocus, state/territory standards that may be broader in scope and reflect aspects of particular state/territory OOHC legislation; and
- innovation in the provision of services for children and young people in OOHC is discouraged through the National Standards being applied in a prescriptive manner that focuses too much on process and "ritualistic compliance", and not enough on outcomes.

Section 4 of this submission considers the key areas of wellbeing that should inform outcome focused standards and performance measures.

Section 5 of this submission suggests a model for monitoring and reporting on performance against the National Standards.

Each state/territory should leverage off existing systems to establish a performance monitoring and reporting framework that is administered by an agency that is independent of the agencies that provide or fund OOHC. A system that relies on self-reporting, or reporting by an agency responsible for funding OOHC services, is more likely to result in actual or perceived bias in reporting.

Each state/territory would provide an appropriate independent Commonwealth agency with a performance report to enable national trends and priorities, and good practice, to be identified.

Monitoring of performance against the National Standards should largely occur through audits of statistically valid samples of case files, which provide the most reliable and comprehensive source of information on children and young people in OOHC.

The Children's Guardian's Case File Audit tool, detailed in this submission, should be able to be adapted to report on performance against most, if not all, of the National OOHC Standards. A tool similar to the Children's Guardian's Case File Audit could also be adopted by other jurisdictions to monitor and report on performance against the Standards.

Qualitative performance measures and a survey tool might also be developed to measure the perceptions of children and young people in OOHC. The Commonwealth should also support a longitudinal study for children and young people in OOHC, which would be linked to *Growing Up in Australia:: The Longitudinal Study of Australian Children*.

Each jurisdiction should initially benchmark annual performance against the jurisdiction's baseline for each performance measure, with the aim of improving performance each year. Consideration might be given to establishing national baselines after common data collection and reporting systems are in place and jurisdictional baselines against each performance measure are established.

I look forward to contributing to the success of the National OOHC Standards framework.

Kerryn Boland
NSW Children's Guardian

Summary

Scope of National OOHC Standards and the children and young people to which they apply

1. That the National OOHC Standards are initially confined to children and young people in all forms of OOHC ordered by a court or resulting from other state initiated legal processes ("statutory care").

2. That consideration is given to extending appropriately modified National OOHC Standards to those voluntary OOHC arrangements where there are child protection concerns, after the operation of the National Standards in statutory OOHC is evaluated.

3. That any future extension of the National OOHC Standards to relative and kinship care outside statutory OOHC is considered in the light of any possible adverse impact this may have on relative and kinship care arrangements, with Indigenous carers and communities to be consulted on how the Standards might apply to such care.

4. That the National OOHC Standards are not extended to voluntary care arrangements where a financial payment has been declined.

5. That the National OOHC Standards are not extended to respite care, as respite is provided as a family support service and the capacity to improve outcomes is obviously limited for children and young people who enter short-term respite.

Key principles in establishing a National OOHC Standards framework

6. That the National OOHC Standards are expressed as child focussed policy outcomes, with performance measures developed for key factors that contribute to those outcomes.

7. That the National OOHC Standards apply to government and non-government OOHC providers and other agencies responsible for contributing to those outcomes (eg: Health and Education departments have a role in supporting health and education outcomes for children and young people in OOHC).

8. That the National OOHC Standards framework recognises that Commonwealth agencies have responsibilities in improving outcomes for children and young people in OOHC and performance measures are developed to measure the contribution of those agencies to improving outcomes for children and young people in OOHC.

9. That state/territory OOHC Standards must be consistent with the National Standards, but may be worded or grouped differently. However, common language and data collection and reporting tools should be required for performance measures under each National Standard.

10. That the National OOHC Standards should not purport to be exhaustive of the matters that contribute towards positive outcomes for children and young people in OOHC, and state/territory standards are not "watered down" where they are more comprehensive.

11. That the National OOHC Standards focus on a relatively small number of outcomes/measures that will have the greatest impact on the wellbeing of children and young people in OOHC, with the capacity to broaden the Standards over time.

Key areas of wellbeing, possible desired outcomes, and possible performance measures for children and young people in OOHC

12. That family is recognised as a key area of wellbeing, with outcomes relating to "identity" and "belonging" grouped under a "Family, Culture and Community" area of wellbeing.

13. That Spirituality is recognised as part of "Family, Culture and Community".

14. That child development is considered within a health paradigm, with "Health and Development" one of the key areas of wellbeing.

15. That "stability" is recognised as a key area of wellbeing, not just at the outcome level, with "Safety and Stability" recognised as a key area of wellbeing.

16. That "Independence" is regarded as a key area of wellbeing, with outcomes and performance measures developed around leaving care.

17. That participation of children and young people in OOHC decision making should be considered across all aspects of wellbeing.

18. That consideration is given to the possible outcomes and performance measures suggested under each recommended key area of wellbeing.

Monitoring, measuring and reporting performance against the National OOHC Standards

19. That the Community Services Ministers establish an inter-jurisdictional OOHC data collection and reporting working group, comprising representatives of both OOHC funding and monitoring bodies and any Commonwealth organisation that will be involved in the preparation of national reports on performance against the National Standards. The working group should be tasked with setting data collection and measurement rules that, to the greatest extent possible, can apply across all jurisdictions.

20. That monitoring and reporting on performance against the Standards is conducted/coordinated by an organisation that is independent of organisations that provide or fund OOHC.

21. That monitoring and reporting is conducted/coordinated by a state/territory organisation that would report to the responsible state/territory Minister, before providing a whole of government report to the appropriate Commonwealth body.

22. That other agencies, such as Health and Education Departments, prepare reports to the coordinating state/territory body on their contributions to improving outcomes for children and young people in OOHC, including performance against any measures for which they are responsible.

23. State/territory reports should:

    (a) address state/territory performance against the National Standards;

    (b) contextualise that performance, having regard to issues particular to the jurisdiction and any changes in policy or practice that have impacted on outcomes for children and young people in OOHC;

    (c) indicate any areas where performance improvement is required, with those areas prioritised where possible;

    (d) make recommendations for changes to policy and practice;

    (e) indicate any performance measures that cannot be reported against, providing reasons;

(f) be made available to the public.

24. That consideration should be given to reports to the Commonwealth being made every two years, rather than annually. This would allow improvements to be embedded, trends to be identified and a period of reflection to inform performance improvement strategies

25. There should be an independent Commonwealth body that is responsible for:

(a) monitoring and promoting consistency in jurisdictional data collection and reporting;

(b) receiving whole of government performance reports from each jurisdiction;

(c) reporting on national performance, having regard to state/territory reports and the contribution of Commonwealth agencies towards improving outcomes for children and young people in OOHC;

(d) identifying areas where Commonwealth agencies can improve their performance in improving outcomes for children and young people in OOHC;

(e) make recommendations for changes to Commonwealth policy and practice;

(f) publishing information on good and innovative state/territory OOHC practice;

(g) identifying priorities requiring national attention;

(h) improving coordination between Commonwealth and state/territory OOHC and OOHC support agencies;

(i) entering into partnerships with relevant state/territory and non-government organisations to support research relevant to improving outcomes for children and young people in OOHC.

26. That most performance monitoring should take place through independent auditing of a statistically valid sample of OOHC case files - case files being the single most comprehensive and reliable source of OOHC performance data.

27. That consideration is given to developing some qualitative performance measures that reflect the responses of children and young people in OOHC to agreed survey questions.

28. That performance against each measure is reported separately for Aboriginal and Torres Strait Islander children and young people in OOHC.

29. That the Commonwealth support a longitudinal study for children and young people in OOHC, which would be linked to *Growing Up in Australia: The Longitudinal Study of Australian Children*.

30. That each jurisdiction initially benchmark annual performance against the jurisdiction's baseline for each standard/performance measure, with the aim of improving performance each year.

31. That consideration be given to setting national baselines only after common data collection and reporting systems are in place and jurisdictional baselines against each performance measure are established.

32. That compliance thresholds for any national baselines are set at a level that is achievable and recognise that the best interests of a child may sometimes mean what is appropriate for a particular child varies from what is considered appropriate for most of the OOHC population - for example, placement stability is important but it is also important to move children and young people from placements that are not meeting their needs (ie: there should never be a target of 100% placement stability).

SECTION 1
The NSW Children's Guardian's Out-Of-Home Care (OOHC) Quality Framework

1. OOHC functions of the NSW Children's Guardian

The NSW Children's Guardian is a statutory office, established by s178 of the *Children and Young Persons (Care and Protection) Act 1998* ("the Act").

The OOHC functions of the Children's Guardian are set out in the Act, the *Children and Young Persons (Care and Protection) Regulation 2000* ("the Regulation") and the *Children and Young Persons (Savings and Transitional) Regulation 2000* ("the Transitional Regulation").

The main OOHC functions of the Children's Guardian are to:

- promote and safeguard the best interests and rights of all children and young people in OOHC - s181(1)(b)-(c) of the Act;
- develop criteria for the accreditation of designated agencies (organisations that provide court ordered OOHC), for the approval of the Minister[1] – cl 36(2) of the Regulation;
- accredit designated agencies - s181(1)(e) of the Act and Division 4 of Part 6 of the Regulation;
- administer a Quality Improvement Program to progress designated agencies that were making arrangements for the provision of OOHC before the accreditation scheme commenced to accreditation by mid-2013 – s181(1)(e) of the Act and Part 3A of the Transitional Regulation;
- monitor the responsibilities of designated agencies under the Act and regulations - s181(1)(e) of the Act;
- register organisations to provide voluntary OOHC and monitor the statutory responsibilities of voluntary OOHC providers;
- set statutory guidelines and procedures, in defined areas, for organisations providing statutory and/or voluntary OOHC – eg: s149D and s156A of the Act;
- make recommendations for legislative change or administrative action relevant to OOHC – s187 of the Act.

[1] All references to the Minister in this submission are references to the NSW Minister for Community Services.

The independence of the Children's Guardian is reinforced by it being able to report directly to Parliament (sections 187-188 of the Act), as well as to the Minister.

The accreditation scheme ensures agencies which provide court-ordered OOHC meet the Standards and as such are 'licensed' to operate. Only designated agencies who are accredited or who are participating in the Children's Guardian's Quality Improvement Program may be funded to provide court-ordered OOHC in NSW.

2. The evolution of NSW OOHC Standards and OOHC accreditation

1998 Standards for Substitute Care Services

In 1998, NSW became the first Australian jurisdiction to introduce comprehensive service standards for foster care. The *NSW Standards for Substitute Care Services* were developed by the then Department of Community Services and representatives of the non-government OOHC sector as "best practice" standards to serve as practice ideals for a voluntary accreditation scheme.

The introduction to the *NSW Standards for Substitute Care Services* stated:

> "*It is unlikely that any organisation will currently be achieving all of the standards…. Most agencies will be achieving some of the standards and, over time, will move to achieving them all.*"[2]

Standards used after the establishment of the OOHC Accreditation Program

In 2003, NSW commenced a mandatory OOHC accreditation scheme that required all government and non-government organisations that arrange or provide statutory OOHC (court-ordered care of more than 14 days) to be accredited by the Children's Guardian.

The OOHC sector favoured the *NSW Standards for Substitute Care Services* forming the basis of the accreditation regime, given the considerable work that had been put into developing those standards and their use by a number of agencies in their internal performance monitoring and improvement programs.

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[2] *NSW Standards for Substitute Care Services*. Department of Community Services (NSW). 1998: 6.

The Children's Guardian modified the 1998 standards to extend to children and young people in statutory OOHC with disabilities and children and young people in residential statutory OOHC.

The Standards were divided into three categories; core, critical and significant, according to their significance for children and young people in care. There were:

- 31 core standards;
- 8 critical standards;
- 11 significant standards.

Agencies needed to demonstrate compliance with all core and critical standards to be accredited for 3 years. Pre-existing OOHC service providers that could also demonstrate compliance with 5 significant standards were accredited for 5 years.

In addition, all agencies needed to demonstrate compliance with 10 additional "mandatory requirements" contained in the *Children and Young Persons (Care and Protection) Act 1998* ("the Act") before they could be accredited. These requirements reflected statutory requirements that were not covered by the Standards.

Agencies were required to demonstrate compliance with each of the Standards/mandatory requirements by addressing the requirements contained in a lengthy checklist.

Standards used for determining participation in a particular industry are traditionally pitched as "minimum standards". However, in NSW it was decided that OOHC standards should reflect optimum or "best practice" standards and form the basis of the new Accreditation Program.

A trial of the Accreditation Program undertaken by the Children's Guardian confirmed it would take many existing OOHC providers several years to be able to demonstrate compliance with the Standards.

Legislation was therefore introduced to require existing OOHC providers to demonstrate annual improvement against the Standards, with a requirement that all such providers achieve full accreditation by mid-2013. These providers were required to participate in the Children's Guardian's Quality Improvement Program until they were compliant with the OOHC Standards and received Accreditation.

New OOHC providers were required to have policies and practices to support compliance with the Standards/mandatory requirements, with practice assessed after the agency had been providing OOHC for more than 12

months. These agencies are now "provisionally accredited", pending a determination that their practices are consistent with the Standards.

There are currently 41 accredited agencies, 3 provisionally accredited agencies and 12 agencies in the Quality Improvement Program (QIP) in NSW. Community Services, which provides approximately 85% of OOHC in NSW, remains in the QIP.

Revised NSW OOHC Standards and a more flexible accreditation regime

The Children's Guardian reviewed the OOHC Accreditation and Quality Improvement Program (AQIP) in 2007. As part of the Review, 52 agencies responded to a detailed questionnaire about the Program. Significant findings included:

- 46% of Quality Improvement Program (QIP) agencies had no programs in place for reviewing and improving their policies, procedures and practices prior to entering the QIP;
- 30% of accredited agencies that operated before the AQIP was established had no programs in place for reviewing and improving their policies, procedures and practices prior to entering the AQIP[3];
- 93% of respondents in the accreditation stream and 96% of respondents in the QIP stream agreed the AQIP had resulted in them improving their OOHC policies to support better outcomes for their OOHC clients;
- 88% of respondents in both the accreditation and QIP streams agreed the AQIP had resulted in them improving their OOHC procedures to support better outcomes for their OOHC clients; and
- 85% of respondents in the accreditation stream and 88% of respondents in the QIP stream agreed the AQIP had resulted in them improving their OOHC practices to support better outcomes for their OOHC clients

However, the Review also clearly identified concerns about the large number of Standards, duplication within the Standards, and the overly prescriptive "checklists" used in assessing compliance with the Standards. There was also consensus that the Standards generally focused on structure and process, instead of outcomes for children and young people in statutory OOHC.

[3] These first two finding demonstrate that the introduction of a standards based regime, with some form of independent oversight, focus service providers on improving performance. In the absence of such a regime, only some organisations will focus on improving their performance in any kind of structured way.

The Review recommended a more flexible accreditation regime, with legislation to support this introduced in 2008. The Review also recommended that the NSW OOHC Standards be streamlined and given an outcomes focus.

The Standards were reviewed in consultation with 18 OOHC providers, ACWA, CREATE, the NSW Ombudsman, academics, and forty-one 12-17 year old young people in residential care. Other Australian and international OOHC standards and quality assurance/improvement systems were also considered in this review.

The review has resulted in the 50 previous Standards and 10 mandatory requirements being replaced with 22 revised Standards which are grouped generally into 4 quality areas: They are:

- 10 of which address the wellbeing of children and young people;
- 6 of which address casework practice which supports children and young people;
- 4 of which address management of carers and staff who care for children and young people ;
- 2 of which relate to organisational management that underpin a child or young persons journey in OOHC.

NSW OOHC Standards 4 Quality Areas

The revised Standards:

- are expressed as outcomes and are more child-centred;
- have been streamlined to reduce duplication and to improve focus on core elements of quality practice and organisational capacity;
- incorporate the NSW Charter of Rights for Children and Young People in OOHC;
- roughly align with the ARACY wellbeing indicators;
- reflect recent research;
- are supported by a comprehensive set of guidance notes that explain the importance of the Standards and describe the quality practices that support them.

The revised NSW Standards address the key areas of wellbeing currently being examined in the development of the National Standards. It is envisaged they will be broader than the proposed National Standards, given the maturity of NSW OOHC quality systems compared to most other Australian jurisdictions and the need for the NSW Standards to address particular NSW legislative requirements.

The revised NSW Standards are supported by a more flexible accreditation regime, where agencies are required to reflect on, and demonstrate, how they contribute to outcomes for children and young people in OOHC, rather than just demonstrate compliance with a prescriptive list of process focussed requirements.

The new accreditation regime reflects a similar approach taken by the UK National Health Service (NHS), which has also influenced reform of Australian aged care and childcare accreditation standards.

The NHS recognised that while standards can describe the parameters of good practice, assessment of compliance for accreditation purposes needs to be more flexible and recognise local conditions and differences between services and populations. The NHS standards are written in a way which communicates fundamental requirements while permitting local freedom and flexibility[4]. This approach will better support innovation and a continuing quality improvement focus.

[4] Scrivens, E: Eye of the Beholder: will the Department of Health's "Standards for Better Health" reflect patients' needs in the 21st century? *Health Services Journal,* 22 April 2004.

Administration of the revised Accreditation Scheme

The initial accreditation regime was largely paper-based, while the new regime places a greater emphasis on site inspections and interviews with key staff.

The new accreditation regime recognises that over the past 7 years, most organisations have met the original OOHC Standards which now operate much as "minimum standards". Given the maturity of the NSW accreditation regime, it performs a dual function: that of ensuring organisations comply with minimum standards while encouraging continuous quality improvement (CQI) against the Standards after accreditation is achieved.

The Continuous Improvement stream will recognise quality excellence in significant domains of wellbeing eg: health, education and 'connectedness' etc where better outcomes for children and young people can be identified.

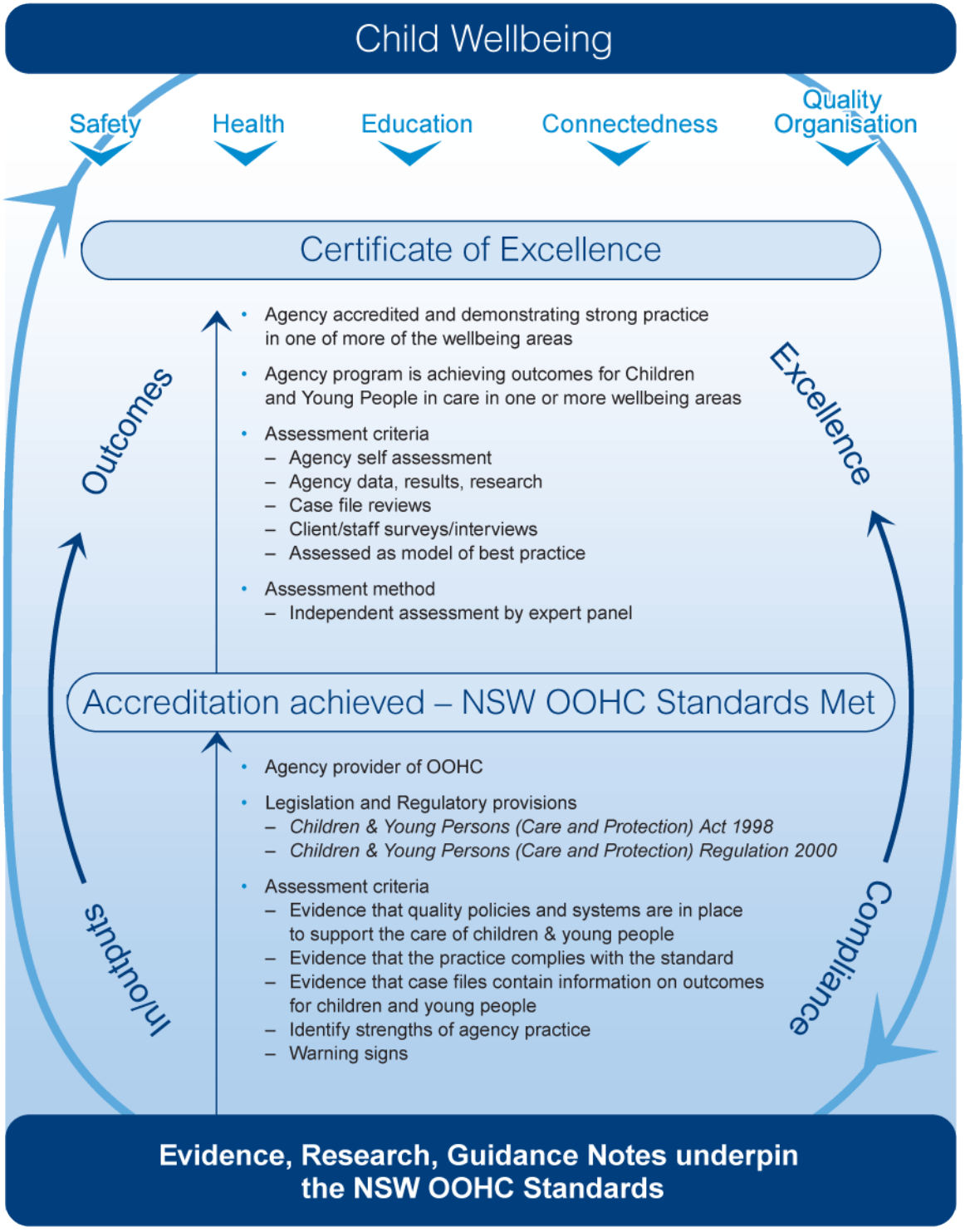
These domains have also consistently been identified in the Children's Guardian's case file audits as areas of concern and focus for our statutory functions.

The high level 'architecture' of the NSW system and its broad characteristics are described in the diagram on page 19.

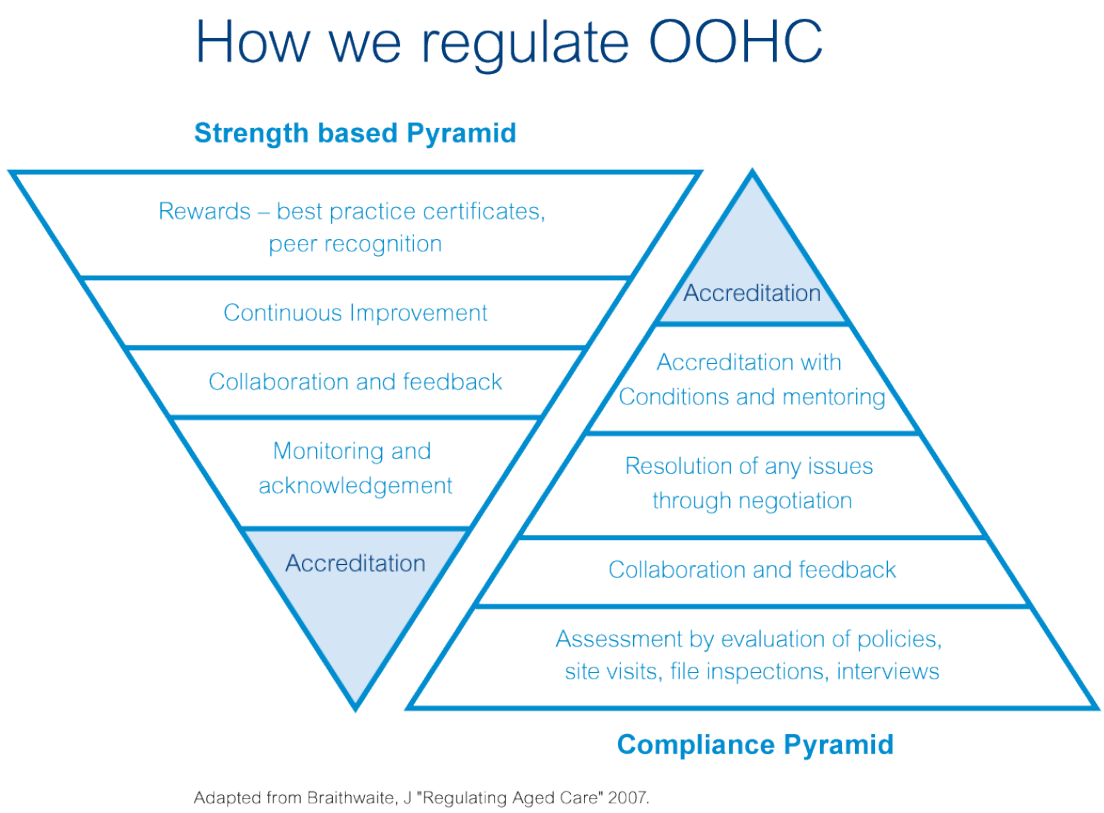
NSW OOHC Standards 'Architecture'

Objective: States the over-arching outcome for child and young person

Standard: States the factors in the OOHC system that contribute to the outcome



The assessment tools for the revised system have been developed to allow the Children's Guardian to assess compliance while increasing focus on the strengths of an organisation's practice. This "strength based" regulatory approach has been adapted from work by the Braithwaites who outlined this approach in "*Regulating Aged Care*" 2007.



Adapted from Braithwaite, J "Regulating Aged Care" 2007.

The revised Standards and accreditation regime have been trialled with three OOHC providers seeking reaccreditation. The trial results have been positive and have resulted in some further refinement of the NSW Standards.

The revised Standards have recently been reviewed by the Australian Council for Educational Research (ACER), noting a significant improvement on the standards originally used for statutory OOHC accreditation in NSW. ACER is likely to recommend some minor changes, which will be incorporated before the Standards are submitted to the Minister for approval as the criteria for accrediting statutory OOHC providers in NSW.

3. NSW Case File Audit (CFA) Program

The NSW CFA Program is of particular relevance to the development of a framework for monitoring and reporting on compliance with the National Standards. It also offers some guidance on setting performance benchmarks for the National Standards. The relevance of the CFA to the National Standards framework is further discussed at section 5 of this submission.

The CFA Program is the Children's Guardian's principal means of monitoring designated agencies' ongoing performance against the NSW OOHC Standards, legislative requirements and other indicators of quality practice.

It is also used to identify issues, trends and opportunities for research in statutory OOHC and to help designated agencies improve their practices and case planning for individual children and young people in statutory care.

Case files provide the most comprehensive consolidated source of information in respect of individual children and young people in statutory OOHC, their needs and the care and support they receive.

It is important to note that the CFA focuses on documentation held on case files - there may be undocumented practice that is not captured by the CFA. This audit is however the best available indicator of compliant practice. There should be a strong correlation between actual and documented practice, given the statutory OOHC system's emphasis on documenting material relevant to case management and planning for the care of children and young people.

A lack of effective record keeping will also compromise ongoing case management and planning, as caseworkers move on or children and young people in statutory OOHC transition to other placements. If relevant material is not held on file, it cannot be considered in future case management or planning.

The failure of statutory OOHC providers to retain relevant information that can travel with a child or young person as they move in OOHC is a significant barrier to improving outcomes for children and young people in statutory OOHC.

Scope of Case File Audits

The CFA Program has been refined and expanded since the first CFA was conducted in 2004/05. The methodology for each CFA has been developed in accordance with independent advice from PricewaterhouseCoopers.

The 2004/05 CFA applied to 450 files for children and young people on long term orders under the parental responsibility of the Minister.

The 2005/06 CFA applied to 748 files for children and young people on final orders, and included files where parental responsibility was assigned to the principal officers of specialist Aboriginal OOHC agencies.

In 2006, the Children's Guardian identified health, education and connectedness as major areas of risk and as priority areas for future CFAs.

The 2006/07 CFA of 2,335 files extended to children and young people on interim orders, and provides the first statistically valid audit sample of the whole statutory OOHC population in NSW. The 2006/07 CFA established a baseline against which future practice across the statutory OOHC sector can be assessed.

In 2006/07, the Children's Guardian introduced post-audit interviews to give statutory OOHC providers the opportunity to identify and correct any omissions the auditors may have made. This review process is considered vital in ensuring the reliability of CFA information.

In 2008/09, the Children's Guardian developed a health-focused CFA in consultation with peak clinical and OOHC bodies. This audit was conducted over two years. In 2008/09, 1198 of 2064 non-government agency statutory OOHC case files were audited during 89 onsite audits. 926 of 2322 of Community Services' case files were audited from 3 Regions and the Metro ISS Team. A further 1358 Community Services files from the rest of the state have been audited in 2009/10.

The next CFA, currently under development, will have an education focus.

How Case File Audit information is used to improve agency practice and outcomes for children and young people in OOHC

There are three levels of reporting for each CFA:

- reports to each statutory OOHC provider on aggregated compliance with audit items;
- reports to each statutory OOHC provider on compliance for each individual case file audited;
- reports to the Minister on statewide performance of government and non-government statutory OOHC providers – these reports have a particular focus on performance in respect to Indigenous children and young people in statutory OOHC[5].

The Children's Guardian provides each designated agency with an agency specific CFA Report following each audit. The Report addresses the agency's compliance with each applicable audit item. In keeping with the principles of quality improvement, the compliance threshold is set at 80%[6].

This means that where 80% of the files in an agency are assessed as meeting the requirements against a particular audit item, the agency is considered to have met the compliance threshold for that particular item. Where fewer than 80% of files meet the compliance threshold, the result is highlighted, and the agency is asked to develop and advise the Children's Guardian of strategies to improve compliance.

In 2006/07, the Children's Guardian commenced providing agencies with compliance data for each individual case file audited on CD-ROM. Agencies can use that information to better identify action that needs to be taken in case management or planning for individual children and young people in OOHC.

In addition, the Children's Guardian may make detailed CFA data available to other organisations with responsibilities for children and young people in OOHC. Data from the 2008/09 and 2009/10 CFAs is provided to NSW Health to assist identify unmet health needs for children and young people in statutory OOHC, to identify areas for practice improvement, and to inform the

[5] These reports are publicly available. The most recent statewide report is for the 2007/08 CFA and is available at www.kidsguardian.nsw.gov.au/accreditation/case-file-audits. As the health-focused audit has been conducted over two years, a single report will be published in mid-2010 and made available to KPMG and FaHCSIA when available.

[6] This threshold was based on *Gore's National Performance Review: Best Practice in Performance Measurement* (1997) which states that the setting of a quality standard with zero tolerance for human error undermines morale and makes goals appear unattainable, particularly where benchmark standards have not been determined and it is not known if 100% compliance is realistically attainable.

development of the *National Clinical Assessment Framework for Children and Young People in OOHC*.

The Children's Guardian has noted a significant improvement in OOHC case files in the five years the CFA Program has been operating, which means agencies and carers have access to better information to inform care planning.

Making it clear that particular agency activity and outcomes for children and young people in OOHC will be audited focuses OOHC agencies on improving performance in those areas. For example:

- in 2006/07 case files recorded the culture of 96% of Indigenous children and young people in statutory OOHC and 70% of other children and young people – in 2008/09 recording of Aboriginal/other culture had increased to 98% and 94% respectively;
- in 2006/07 only 40% of case files recorded the Aboriginality of the parents of children and young people in statutory OOHC who identified as Aboriginal – in 2008/09 the Aboriginality of parents was recorded in 70% of case files[7];
- in 2006/07 case files recorded case planning taking account of cultural needs for 73% of Aboriginal children and 65% of other children with identified cultural needs - in 2008/09 this had increased to 88% and 93% respectively;
- in 2006/07 case files recorded only 50% of Aboriginal children under 8 and 48% of other children under 8 had been immunised - in 2008/09 this had increased to 65% and 60% respectively;
- in 2006/07 case files recorded only 24% of Aboriginal children over 8 and 26% of other children over 8 had been immunised - in 2008/09 this had increased to 45% and 47% respectively as immunisation catch up programs were implemented;
- in 2006/07 case files recorded only 38% of Aboriginal children and 47% of non-Aboriginal children had recent school reports in their case files - in 2008/09 this had increased to 61% and 66% respectively; and
- in 2006/07 case files recorded only 78% of Aboriginal children and 84% of non-Aboriginal children had their educational needs considered in case planning – in 2008/09 this had increased to 91% and 95% respectively.

[7] This information is essential in considering the placement of Indigenous children – if an Indigenous child is placed with a non-Indigenous relative with whom they identify, this should not be considered as a placement that conflicts with the Aboriginal and Torres Strait Islander Placement Principles.

In 2007, the Children's Guardian surveyed OOHC providers on the usefulness of CFAs, with 31 agencies responding. Significant findings included:

- 48% of agencies found preparing for the CFA very helpful, and 52% found it fairly helpful;
- 61% of agencies found the CFA report content to be very good, and 39% found it fairly good;
- 43% of agencies found reading, considering and responding to the CFA very helpful, and 50% found it fairly helpful;
- 77% of agencies said they used the CFA results a lot to improve case work practices, with 17% of agencies saying they used the results "a medium" amount.

Feedback from the survey has been used to improve subsequent CFAs.

SECTION 2
Scope of National OOHC Standards and the Children and Young People to Which they Apply

1. Proposed scope of coverage – Consultation Paper

It is currently proposed that the Standards apply to OOHC as defined by the Australian Institute of Health and Welfare (AIHW). AIHW defines OOHC as:

> "*alternative accommodation for children under 18 years of age who are unable to live with their parents, where the State or Territory makes a financial payment or where a financial payment has been offered but declined.*"

It is suggested that this definition operates to exclude children and young people who live in OOHC outside the child protection system. AIHW states:

> "***Child protection*** *refers to protecting an individual less than 18 years of age from actions of physical, sexual or emotional abuse or neglect that have resulted in, or are likely to result in, significant harm or injury. The aim of child protection services is to protect children and young people who are at risk of harm or neglect within their families, or whose families do not have the capacity to protect them or care for them.*"

AIHW states the definition therefore excludes children in placements with disability services, medical or psychiatric services, juvenile justice facilities, overnight childcare services or supported accommodation assistance services.

However, AIHW notes the definition includes respite care, "which is a form of out-of-home care that is used to provide short-term accommodation for children whose parents are ill or unable to care for them on a temporary basis".

It should also be noted that the definition extends to detached refugees who are children and non-citizen children, if they are living in the community. Both are under the guardianship of the Minister for Immigration and Citizenship, but responsibility for care is delegated to state agencies that in turn provide financial payments to support that care. NSW Community Services has reported that it includes detached refugees/non-citizens in OOHC data reported to AIHW.

2. Problems with the AIHW definition and the negative impact its application may have on some children and young people currently in OOHC

Unfortunately the Consultation Paper does not acknowledge the extensive data reporting problems under the current AIHW definition, with AIHW acknowledging some jurisdictions are not always able to exclude the above types of non child protection matters from the OOHC data they submit to AIHW.

AIHW reports repeatedly point out that the OOHC data from jurisdictions is not comparable, given differing OOHC arrangements in each jurisdiction, and should not be generally used to measure the performance of one jurisdiction relative to another.

Proceeding with the AIHW definition of OOHC will simply entrench anomalies that make comparisons of state/territory OOHC performance largely meaningless. While concerted attempts should be made to improve consistency in state/territory data and reporting across the broad AIHW definition of OOHC, the history of OOHC data reporting would suggest this may take considerable time. This should not delay the introduction of National Standards in those areas where there is greater commonality between the jurisdictions (ie: court-ordered OOHC).

The National Standards and associated performance measures would also need to apply differentially to different types of OOHC within the AIHW definition.

For example, states/territories have an opportunity to promote positive health outcomes for children and young people who are in court-ordered care, as there will be sufficient time in most cases to arrange a health assessment and appropriate health interventions. However, the capacity to improve health or other outcomes for children placed in short term respite is obviously extremely limited.

It is also difficult to extend the application of National Standards to care arrangements where “a financial payment has been offered but declined.” States/territories obviously have an extremely limited role in those voluntary care arrangements where offers for support are refused and should not be expected to invest scarce child protection resources in monitoring outcomes for a group of children who do not receive state/territory support (but who may very well receive financial support from the Commonwealth through the welfare system).

It also needs to be acknowledged that financial support arrangements differ markedly across jurisdictions and may include support for children and young who are not assessed as being in need of care and protection. For example, NSW has traditionally provided financial support to relative/kinship carers under voluntary care arrangements that are not similarly supported in other jurisdictions. These care arrangements have been reported to AIHW and contribute to NSW having a significantly higher reported OOHC population than other Australian jurisdictions.

Children in voluntary care (as opposed to court-ordered care) do not receive the same case management/planning support as children in statutory (court-ordered) care. The state does not assume the same level of responsibility for those children as it does for children who are placed in the care of the state or some other person by virtue of state-initiated proceedings.

During consultations with NSW OOHC providers, concerns were raised that extending the National Standards to relative/kinship care arrangements that do not involve statutory care, and the resulting increased state intervention in those arrangements, may discourage relatives/kinship carers from caring for children and young people. These concerns were greatest for Aboriginal kinship/relative carers who operate outside the statutory care system.

Extending National OOHC Standards to such voluntary/supported care arrangements may also provide a perverse incentive for states/territories to tighten eligibility criteria for voluntary/supported care and focus on those children and young people whose need for care and protection is so great that court intervention is warranted. The resulting withdrawal of all support or drift of children and young people into the statutory system would not be in the best interests of children and young people currently receiving supported care.

This is not to say that there should be no standards for supported care. However any such standards should be adapted to reflect key differences between statutory and different types of supported care arrangements and be implemented in close consultation with Indigenous communities, after the National Standards are implemented and properly assessed.

3. Scope of National OOHC Standards – a suggested approach

Standards to be initially confined to "statutory care"

It is recommended that the National Standards are initially confined to OOHC that is ordered by a court or that results from some other state-initiated legal process (eg: detached refugees/non-citizens who receive support from states/territories under delegation from the Minister for Immigration and Citizenship).

There are a number of reasons for this:

- these children and young people are most in need of care and protection by the state;
- states/territories have greater responsibility for such children and young people – they often have all the legal responsibilities of a parent;
- there should be greater commonality across the states/territories as to the children and young people subject to such care arrangements (allowing greater consistency in data collection and reporting); and
- most of the research relied upon to justify the need for National Standards is confined to such "statutory care".

The Consultation Paper notes that the standards will support children and young people in OOHC having the same opportunities as other children to reach their potential in all key areas of wellbeing.

Barth and Jonson Reid wrote:

> "*If the state is the parent (be it temporary or long term) of children it should do at least what parents are expected to do… The expectation that the state would provide a set of outcomes for children under temporary or long term oversight that approximates those of children in the general population seems within reason.*"[8]

Most children in statutory OOHC are placed "in the care of the state", although some may be placed under the parental responsibility of another person. However, even where a child is placed under the parental responsibility of a person other than the Minister for Community Services/Chief Executive of Community Services, the state is responsible for the child entering care.

[8] Barth, R.P. and Jonson-Reid, M. (2000) Outcomes After Child Welfare Services: Implications for the Design of Performance Measures. *Children and Youth Services Review*, 22, pp. 763-798.

In NSW, all children and young people in court-ordered OOHC are meant to receive the same quality of care, irrespective of whether the state and/or another person exercises parental responsibility. The NSW OOHC Standards apply to all statutory OOHC arrangements.

However, the argument for children in voluntary/supported care who remain under the parental responsibility of their parents to have the same opportunities as other children, and the state to be responsible for ensuring that occurs, is not as strong. The state may have a relatively minimal role in supporting such OOHC arrangements.

Standards to apply to all forms of statutory care

The Standards should operate at such a level that they can be applied equally to foster, relative/kinship and residential care.

Consideration to be given to applying adapted Standards to supported/ voluntary care arrangements where there are child protection concerns after evaluation of the operation of Standards in "statutory care"

It is suggested that the operation of the National Standards in "statutory care" is reviewed and evaluated before the Standards are adapted to apply to those supported/voluntary care arrangements where children and young people have been assessed as being at risk of harm (how ever this test is formulated in each jurisdiction).

Indigenous communities and service providers should be extensively consulted in determining how National Standards should apply to non-statutory relative/kinship care arrangements.

It is suggested that the Standards might also be adapted in the future to promote improved outcomes for other categories of vulnerable children and young people who do not live with their parents, such as those cared for in disability and supported accommodation services.

National Standards not to extend to respite care or other voluntary arrangements where there are no child protection concerns

It is recommended that the National Standards do not apply to respite arrangements outside the statutory OOHC system[9], as respite is generally provided for a short period/s of time and the capacity of states/territories to influence outcomes for children and young people in respite is limited.

It also needs to be recognised that respite is designed to keep children and young people in a home environment by providing parents/carers with a short break from caring to enable them to continue caring for the child in the longer term. As such, respite is really an early intervention support and standards for measuring its effectiveness would differ considerably from the National Standards currently being developed.

It is also noted that longer term voluntary care outside the child protection system is generally provided by the disability services/mental health systems.

The Children's Guardian has previously considered the merits of extending the NSW OOHC Standards to children and young people outside the child protection system who are placed in respite or other voluntary care arrangements.

The Children's Guardian advised the NSW Government that the NSW OOHC Standards were not appropriate for children in respite and other voluntary care where there were no child protection concerns, given the differences in the population groups, the length and frequency of voluntary care arrangements, and the continued responsibility parents have for their children in such care. While standards may very well be appropriate for such services, they would need to be tailored to reflect the needs of these population groups and the nature of the care provided.

Instead, NSW introduced legislation in 2010 that provides a more limited regulatory framework for voluntary care outside the child protection/Community Services system. Voluntary OOHC providers are required to comply with procedures set by the Children's Guardian in the areas of intake, assessment, interagency cooperation and case planning for children and young people in longer term care. Detailed case planning, including an assessment of available non-OOHC supports, needs to begin under the supervision of a designated agency after a child or young person has been in care for more than 90 days in a 12 month period[10].

[9] Some carers of children and young people in statutory OOHC may access respite services. In these circumstances, the children and young people remain part of the statutory OOHC system.

[10] See Part 3A of the *Children and Young Persons (Care and Protection) Act 2008* and clauses 40C-40T of the *Children and Young Persons (Care and Protection) Regulation 2000*.

SECTION 3
Key Principles in Establishing a National OOHC Standards Framework

This section of the submission addresses questions 3 and 4 of the Consultation Paper and other matters relevant to the development and operation of National Standards. Measuring performance against best practice benchmarks is considered at sections 4 and 5 of this submission.

1. Standards should be expressed as outcomes, not just factors that may influence outcomes

The Children's Guardian strongly supports standards being expressed as policy outcomes for children and young people in OOHC. This is consistent with best-practice standards systems and necessary to support a reflective Continuous Quality Improvement (CQI) approach.

As outlined in section 1 of this submission, the Children's Guardian is currently finalising revised outcomes focused NSW OOHC Standards to replace current Standards that are largely process focussed.

When standards-based quality systems were first developed, standards generally focussed on structure and process, rather than outcomes for clients. However, standards that focus on management requirements have progressively been replaced by broader, higher level standards that articulate policy outcomes[11].

The principles of best-practice regulation suggest that, as far as possible, standards should be linked to outcomes, as opposed to the methods of achieving the outcomes.

Outcome standards encourage those using them to think about what they are trying to achieve, rather than only focusing on specified inputs/outputs. The focus on achievement against outcomes is intended to encourage innovation and continuous quality improvement[12].

[11] Scrivens, E. (1998). Policy Issues in Accreditation (editorial). *International Journal of Quality in Health* Care. Vol 10, Number 1, pp1-5.
[12] Scrivens, E (2004). *Choices in the Structure of External Review Systems*. September 2004, p13.

This means that the language of the standards themselves is unlikely to include performance targets. Skok et al[13] looked at some of the earliest Australian use of outcome oriented standards, holding up Home and Community Care (HACC) standards as a good example. The HACC standards were written as consumer outcomes. Although the outcomes themselves were not directly measured, performance was assessed through the organisation meeting criteria for each outcome standard.

Performance against outcome oriented standards may be measured with reference to specific performance measures that generally operate at a process and output/input level, but those measures are not intended to be exhaustive of practice that may contribute to improved performance against the outcome.

Outcome standards also facilitate an inter-agency approach to improving service delivery. Process standards tend to apply to a specified type of organisation, which means other organisations that can contribute to positive outcomes regard performance as the responsibility of the organisation that is subject to the standard.

Outcome standards focus on the client (eg: children and young people in OOHC), rather than an organisation delivering a particular service, and this encourages other types of organisation to contribute to improving outcomes for the client.

The Children's Guardian is concerned that the Consultation Paper appears to be recommending the development of standards that influence outcomes, rather than standards that are expressed as outcomes.

This means service providers will focus on standards that are largely expressed as service provider process inputs/outputs, rather than the broader outcomes for children and young people in OOHC. This may restrict inter-agency collaboration and limit some organisations from exploring and developing other innovative means of achieving the desired outcome.

It is strongly recommended that, consistent with current international best practice in standards design, the standards are expressed as outcomes, and specified factors in OOHC that influence outcomes are used to develop performance measures (not standards) for each standard.

[13] Skok, A., Swerissen, H and Macmillan, J. (2000) *Standards and Quality Improvement Processes in Health and Community Services: A Review of the Literature*. p63.

2. Standards should apply to OOHC providers and government, both state/territory and Commonwealth

Application of Standards to carers and government/NGO providers

It is not practical to extend the Standards to every single carer, but performance measures relating to a child safety outcome should be developed to measure the extent to which OOHC providers and/or government assess, screen, train, supervise and support carers.

The Standards framework should largely focus on OOHC providers, whether they be government or non-government providers. It is understood that the ACT is the only jurisdiction where a government agency is not an OOHC provider and that government provides only small scale OOHC services in Victoria.

New South Wales has the highest proportion of children and young people in government provided OOHC (approx 85%) although it is committed to progressively transferring responsibility for care provision to non-government providers.

When the NSW OOHC system was reviewed in 1997, Professor Parkinson argued:

> "*If the Department is to continue to be a major provider of substitute care services, then there needs to be a means of ensuring that it, along with all the other agencies, meets the same standards and is accountable outside of its own organisation for the quality of those services.*"[14]

Government cannot expect funded services to embrace accountability for improving outcomes for children and young people in OOHC if it is not prepared to be similarly accountable.

This principle underpins the accreditation provisions of the NSW *Children and Young People (Care and Protection) Act 1998*, which make both government and non-government providers subject to the OOHC accreditation and monitoring framework administered by the Children's Guardian.

[14] Department of Community Services (1997). Review of the *Children (Care and Protection) Act 1987*. p99.

Application of Standards/performance measures to other state/territory agencies

While the National Standards framework should largely focus on OOHC providers, it should not be confined to them. They should recognise the need for, and encourage, an inter-agency approach to improve outcomes for children and young people in OOHC.

The Standards will address key areas of wellbeing, including health and education, and health and education authorities need to have clear accountabilities for improving health and educational outcomes for children and young people in OOHC.

This shared responsibility is recognised in the NSW Government's five year plan to reform the manner in which children and families are supported and protected in NSW, *Keep Them Safe: A shared approach to child wellbeing*.

Keep Them Safe recognises NSW Health has responsibilities for developing and delivering a health assessment system for children and young people in OOHC, while the Department of Education and Training (DET) is responsible for ensuring that all children and young people in OOHC who attend government schools have an Education Plan. Both NSW Health and DET have appointed, or are in the process of appointing, OOHC coordinators. Similarly, NSW Housing is developing initiatives to stop children and young people who are in OOHC from drifting into homelessness.

State agencies should contribute to meeting relevant outcomes and performance measures should be introduced to measure their contribution.

State/territory governments should be responsible for ensuring that government and funded non-government agencies work in a coordinated manner to improve outcomes for children and young people in OOHC. Governments have the ability to set funding priorities, influence policy settings and coordinate responses that can improve outcomes for children and young people in OOHC.

The National Standards framework provides a unique opportunity for all Australian governments to move beyond standards that are confined to OOHC providers, which already exist in various forms in most jurisdictions and are used to determine eligibility for funding and/or to provide OOHC services. This opportunity to move towards child-centred standards that promote inter-agency collaboration should not be squandered.

Application of Standards/performance measures to Commonwealth agencies – a partnership approach

The Consultation Paper starts with the following quote from the Federal Minister for Families, Housing, Community Services and Indigenous Affairs:

> "*All governments and the non-government sector are committed to make sure that vulnerable children are looked after and cared for in a safe and supportive environment wherever they live. This requires a consistent and concerted national response across all levels of government.*"

The Children's Guardian regards such a partnership approach between Commonwealth and state/territory levels of government as vital to improving outcomes for children and young people in OOHC. Achieving the desired outcomes for children and young people will require a collaborative effort, in which the Commonwealth and state and territory governments, as well as non-government organisations, all play major roles.

However, the remainder of the Consultation Paper and comments made by KPMG during the Sydney national consultation forum suggest that the National Standards and associated performance measures will be confined to state/territory and state/territory funded agencies.

It is sincerely hoped that the Commonwealth's commitment to improving outcomes for children and young people in OOHC extends beyond mere rhetoric. The Commonwealth should take measurable action to improve those outcomes in areas where it has responsibilities.

While states/territories are responsible for providing OOHC, they are not responsible for all of the supports and services that children and young people in OOHC need. The Commonwealth has responsibility for a number of key drivers for the wellbeing of children and young people in, or transitioning from, OOHC.

The Consultation Paper and consultations with jurisdictions have identified the importance of comprehensive health assessments for children and young people in OOHC. The Commonwealth has responsibility for general practitioner provision of primary health services and could significantly improve the access of children and young people in OOHC to health assessments, coordinated health care planning and other health services by introducing Medicare Benefits Schedule items that would provide an incentive for general practitioners and other eligible health service providers to provide health services to this vulnerable group.

Such an approach would be appropriate, given the evidence that the majority of children and young people in OOHC have one or more significant physical and/or mental health problems requiring treatment. A coordinated care approach is needed to address high levels of comorbidity in OOHC populations.

The Federal Government is proposing to assume responsibility for all primary health care services and its role in improving health outcomes for children and young people will increase if proposed national health reforms are implemented.

Performance measures should be developed for Commonwealth contributions to improving health outcomes for children and young people in OOHC[15].

The Commonwealth can help track and promote availability of health and education information for children and young people in OOHC through introducing unique patient and student identifiers to support health/education passports[16].

The Commonwealth also has a role in supporting transition to independent living and could look at improving supports for OOHC clients in areas such as traineeships, employment, income support and higher education. Performance measures should be developed in these areas – for example, the proportion of clients under the age of 25 who have been in OOHC who are successfully referred for employment.

FaHCSIA can also contribute funding and support for innovative programs that improve outcomes for Indigenous children and young people in OOHC, given the significant over-representation of Indigenous children and young people in the OOHC system and the poor outcomes experienced by those children and young people.

[15] Any performance measures in this area, and the obligations of states/territories and the Commonwealth in supporting the health needs of children and young people in OOHC, will need to be settled having regard to the *National Clinical Assessment Framework for Children and Young People in OOHC*, currently being developed under the auspices of the Australian Health Ministers Advisory Council.

[16] There has been a longstanding commitment to introduce unique patient identifiers and electronic health records/health passports. The Deputy Prime Minister has recently flagged the possibility of introducing a unique student identifier which could assist in helping track educational outcomes for children and young people in OOHC and target interventions appropriately.

3. The relationship between National and State/Territory OOHC Standards

The National Standards framework should establish minimum standards and performance measures that states and territories should apply domestically and report against.

It is likely that, at least initially, National Standards and performance measures will not be able to be as comprehensive as those that apply in some jurisdictions (see 4 below). They will need to be tailored to support jurisdictions with less developed OOHC quality frameworks.

National Standards should not purport to be exhaustive of the matters that contribute towards positive outcomes for children and young people in OOHC. It is important that state/territory quality standards/measures are not watered down where National Standards are less comprehensive in a particular area.

Performance against each National Standard will be measurable, with performance measurements to be developed. This is appropriate for National Standards. However, state/territory standards that are used to accredit, licence or determine funding for OOHC service providers will also allow performance against the standard to be demonstrated in other ways. It is important that standards used in regulating OOHC providers are not reduced entirely to pre-determined performance measures as this may stifle innovation and flexible service delivery. That being said, each state/territory standard will need to incorporate relevant nationally agreed performance measures.

While there needs to be common performance measures and data rules for reporting on performance against National Standards, states and territories should be able to apply outcome focused standards in language that best meets their needs and those of their OOHC systems. For example, a NSW Standard might be expressed slightly differently to an equivalent National Standard, but that will be appropriate so long as the same performance measures underpin both and the NSW Standards address all of the matters in each National Standard.

4. Number of standards

It is recommended that the National Standards initially focus on a relatively small number of outcomes/measures that will have the greatest impact on the wellbeing of children and young people in OOHC.

The Standards may be broadened over time.

The NSW experience involved the introduction of too many standards at once, which meant OOHC providers were trying to address too many criteria and not focusing enough of their energy and attention on the most important outcomes/measures. This has led to NSW streamlining its standards, as outlined in section 1 of this submission.

John and Valerie Braithwaite, who are Australian leaders in regulatory frameworks and standards based quality systems, argue:

> "*The smaller the number of standards, the better the prospects of ensuring that a) the most vital information for assessing the total quality of life and quality of care of residents is pursued; b) lying behind each rating is a collective deliberative process on what that particular rating should be; c) there is effective public accountability to audit that a) and b) actually occur; and d) inspectors have the capacity to stand back to document the wider patterns in the problems that have identified, to see the woods for the trees.*"[17]

NSW is probably in a better position to support a larger number of standards than other jurisdictions, given comprehensive OOHC standards have been operating in NSW for over 12 years.

[17] Braithwaite, J and V (1995). "The Politics of Legalism: Rules vs Standards in Nursing Home Regulation". *Social and Legal Studies* Vol 4. pp 307-341

SECTION 4
Key Areas of Wellbeing, Possible Desired Outcomes, and Possible Performance Measures for Children and Young People in OOHC

This section of the submission addresses questions 1 and 2 of the Consultation Paper, as well as providing suggestions on possible outcome focused standards and related performance measures.

However, it is acknowledged that areas of wellbeing may be grouped in a number of ways, outcomes may be expressed in different language, and a range of performance measures might be developed.

The revised draft of the NSW OOHC Standards and the Case File Audit tool provide an indication on the types of standards and performance measures that will be able to be adopted in NSW, assuming that performance is measured through an independent assessment of individual case files of children and young people in OOHC (see section 5 of this submission).

1. General comments about the framework set out in the Consultation Paper

The key areas of wellbeing identified in the Consultation Paper are all reflected in the NSW OOHC Standards and *Keep Them Safe* outcomes. They are generally appropriate, but some refinements are suggested, including consolidating some of the current areas and recognising additional areas.

Some of the desired outcomes for children and young people in OOHC at the table on page 3 and repeated at page 17 are expressed as "positive conditions for healthy development" at the figure on page 11. The table and figure also group these differently against the proposed areas of wellbeing.

This creates considerable confusion as to what is intended to be an outcome, as opposed to a factor that may influence an outcome, and the conceptual framework that underpins the National Standards.

Section 3 of this submission recommends that standards are expressed as outcomes for children and young people in OOHC, with performance measures developed for factors that may influence an outcome.

It is noted that related "outcomes" are sometimes distributed across several areas of wellbeing, rather than being grouped together under the area of wellbeing that best accommodates them all. For example, links to family are in some way addressed under the wellbeing areas of "Safety", "Emotional Development" and "Spirituality".

The NSW Standards originally had standards that overlapped and while this recognises the inter-relationship of various areas of wellbeing/outcomes, it can also cause confusion amongst OOHC providers and lead to the proliferation of duplicative performance criteria. The revised NSW Standards attempt to reduce duplication and overlap between the Standards and this approach might be considered in settling the National Standards.

2. Proposed key areas of wellbeing and possible desired outcomes and performance measures

Each area of wellbeing is numbered and is in bold, underlined italics.

Each possible outcome is a bold dot point.

Each possible area in which performance might be measured is italicised and marked with an arrow – most of these should be evidenced in a well developed case file, although some would rely on health/developmental/ educational assessments or surveys of a representative sample of children and young people in OOHC.

Participation of children and young people in decision making should be considered across all aspects of wellbeing[18]. Some possible performance measures that would require children and young people to express their views about themselves or a particular aspect of care are put forward as examples of measures that might be developed from regularly surveying children and young people in OOHC. The qualitative measures used as examples below are not intended to be exhaustive.

[18] The National Standards should assist in improving engagement processes so that the participation of children and young people in OOHC in decision making that affects them is enacted in a thorough and meaningful way. There are a number of effective models and styles of engaging with children and young people that could be used to capture their views. Models and processes will vary depending on factors such as the age of the children, the setting in which views are sought and the relationship between the children and the person or people recording this information.

The Children's Guardian is not advocating that all of the following performance measures are adopted – they are put forward for consideration as the type of measures that could be adopted, pending agreement between jurisdictions as to which measures are most relevant to outcomes for children and young people in OOHC.

(i) Family, culture and community

The failure of the areas of wellbeing to recognise the importance of family is a significant weakness in the conceptual framework presented in the Consultation Paper.

Family is dealt with as a second order matter spread across the "Safety", "Emotional Development" and "Spirituality" areas of wellbeing.

All OOHC systems recognise the importance of maintaining family relationships, with reunification the preferred option where consistent with the best interests of the child. "Family" needs to be central to areas of wellbeing.

"Family" might be grouped with "Culture and Community" and "Spirituality", which would establish a single area of wellbeing that deals with "identity" and "belonging".

"Spirituality" is really a subset of "Culture and Community". Not all children and young people in OOHC have a religious/spiritual identity and emphasising this area over other aspects of identity/community seems inappropriate. Spirituality should be addressed as an important part of a "Family, culture and community" area of wellbeing. That being said, spirituality and connection with land/country is extremely important in Indigenous placements and this should be explicitly recognised at the outcome level.

The following possible outcomes and measures encompass and might replace and consolidate the following inter-related Consultation Paper draft outcomes that are currently spread across the areas of wellbeing:

- ✓ Culture and Spirituality outcomes at figure 1
- ✓ Establishment of a positive family and peer group (figure 1)
- ✓ Strong social/community connections (figure 1)
- ✓ Development of social skills (figure 1)
- ✓ Capacity to empathise with others (figure 1)
- ✓ Positive parenting (figure 1)
- ✓ Develop social connections (table 2)
- ✓ Positive and supportive relationships (table 2)

- ✓ Cultural identity and ethnic pride (table 2) - the term "ethnic pride" is not supported and is potentially divisive.
- ✓ Positive sense of identity (table 2)
- ✓ Connection to family/significant others and land/country (table 2)
- ✓ Participation in community (table 2) - it is important to tie participation in community to an identifiable activity.

- **Children and young people in OOHC maintain connections to family and significant others.**
  - *Proportion of children and young people in OOHC who have contact with living parent/siblings/significant others.*[19]
  - *Proportion of children and young people in OOHC who are placed in reasonable proximity to their family home.*[20]
  - *Proportion of children and young people in OOHC with siblings in OOHC who are placed with (a) a sibling in OOHC and (b) all siblings in OOHC.*

- **Children and young people in OOHC have positive connections with their peers.**
  - *Proportion of children and young people in OOHC who report a positive relationship with their peers.*[21]

- **Children and young people in OOHC maintain a positive cultural identity.**
  - *Proportion of children and young people in OOHC who are placed with carers who have the same cultural background as the child or young person.*
  - *Proportion of children and young people in OOHC who participate in cultural activities.*

[19] This only measures whether there is some contact, not the frequency or quality of contact. An indicator might be developed to examine the proportion of children and young people who have contact in accordance with the terms of a court order or their case plan.
[20] Definitional issues would need to settled and consideration given to rural issues. It may be difficult to develop a meaningful and consistent measure.
[21] This might be further broken down to school peers (relevant to education) and non-school peers.

- *Proportion of children and young people in OOHC who are placed with carers who speak the same language primarily spoken in the child or young person's family.*

- **Indigenous children and young people in OOHC have a connection with family and land/country.**

  - *Proportion of Indigenous children and young people in OOHC who are placed in accordance with the Aboriginal and Torres Strait Islander Placement Principles.*
  - *Proportion of Indigenous children and young people in OOHC who participate in Indigenous cultural activities.*

- **Children and young people in OOHC have their religious/spiritual identity supported**

  - *Proportion of children and young people in OOHC with a religious/spiritual identity who receive religious/spiritual support within the carer's home.*
  - *Proportion of children and young people in OOHC with a religious/spiritual identity who participate in church or other religious/spiritual groups outside the carer's home.*

- **Children and young people in OOHC participate in community activities.**[22]

  - *Proportion of children and young people in OOHC who participate in one or more sporting, hobby, youth, performing arts or other community activities.*

[22] Note participation in extra-curricula school activities is addressed under Education and Achieving.

(ii) Health and Development

Achievement of developmental milestones is addressed within an educational framework at table 2 and a health framework at figure 1.

Developmental issues are often identified through a health assessment and may be linked to particular physical and mental health problems. Behavioural issues may be addressed through clinical treatment (e.g. psychologist/psychiatrist), including the administration of psychotropic medication.

The National Clinical Assessment Framework for Children and Young People in OOHC addresses developmental assessment and clinical responses arising from that assessment.

Development should be considered within a health and wellbeing, rather than educational, paradigm. The Emotional Development area of wellbeing should be incorporated into the Health and Development and Family, Community and Culture areas of wellbeing.

Clarification is needed as to what the following "outcomes" entail and the sorts of performance measures that might be developed in these areas:

- ✓ Capacity to self-regulate;
- ✓ Establishment of an effective coping style.

"A safe environment" (figure 1) and positive relationship with carers in the care environment might be addressed under the "Safety" area of wellbeing, rather than Health.

- **Children and young people in OOHC attain and maintain good physical and mental health[23]**

  - *Proportion of children and young people in OOHC who receive comprehensive health and developmental assessments within [x] days of entering care.*[24]

[23] References to health should be taken to include the aspects of health referred to in the National Clinical Assessment Framework for Children and Young People in OOHC.
[24] This measure should be informed by the outcomes of the National Clinical Assessment Framework for Children and Young People in OOHC.

- *Proportion of children and young people in OOHC who are referred for specialist review or treatment after health issues are identified.*[25]
- *Proportion of children and young people in OOHC whose carers are informed of current medication and health needs.*
- *Proportion of children and young people in OOHC who have a healthy Body Max Index (BMI).*[26]
- *Proportion of children and young people in OOHC who are known to be fully immunised.*
- *Proportion of children in OOHC who are known to (a) smoke tobacco, (b) drink alcohol or (c) consume illicit drugs.*[27]
- *Proportion of children and young people who have been in OOHC for over 12 months who have had their health needs considered in a case plan or case plan review within the last 12 months.*
- *Proportion of children and young people who have been in OOHC for [x period] who have a Health Management Plan.* [28]

- **Children and young people in OOHC attain developmental milestones**

  - *Proportion of children and young people who have been assessed as meeting the developmental milestones of the general population of children and young people of their age.*[29]

[25] It is difficult to build the suggested notions of "timeliness" and "appropriateness" into an OOHC health performance measure. The timeliness of the treatment will depend upon the nature of the medical condition and waiting lists over which OOHC providers have no control. OOHC auditors are unlikely to be able to determine whether a particular treatment is the most appropriate treatment – at the end of the day that is a matter for clinicians and there will frequently be differences of opinion between clinicians as to the most appropriate form of treatment in any given case.

[26] This should inform whether preventative health intervention is required. It is also particularly relevant to children and young people in OOHC as an unhealthy BMI may be an indicator for eating or other behavioural disorders/health conditions, as well as being a predictor for future adverse health outcomes.

[27] This data does not appear to be routinely collected and any collection of data should occur within a health and wellbeing, rather than criminal, framework. Consideration also needs to be given as to whether collection of this sort of information may prejudice child/carer relationships.

[28] This measure should be informed by the outcomes of the National Clinical Assessment Framework for Children and Young People in OOHC.

[29] Common age-specific developmental assessment tools would need to be used in all jurisdictions. Developmental assessment tools are being considered in the National Clinical Assessment Framework for Children and Young People in OOHC.

- **The behavioural needs[30] of children and young people in OOHC are met**

  - *Proportion of children and young people in OOHC with identified behavioural problems.*[31]
  - *Proportion of children and young people with identified behavioural problems who are receiving treatment/support for those problems.*
  - *Proportion of children and young people with identified behavioural problems who have been in OOHC for over 12 months and who have had their behavioural needs considered in a case plan or case plan review within the last 12 months.*

(iii) Safety and Stability

It is suggested that placement stability and a child or young person's relationship with carers is considered within the "Safety" aspect of wellbeing, with consideration given to renaming the aspect "Safety and Stability".

Placement stability can be an indicator of the suitability of a child's care environment/s.

The relationship a child has with carers is integral to security within the care environment. It is suggested other relationships/connections are addressed in "Family, Culture and Community", as outlined above.

Carer assessment, screening, training and support should also be addressed under this aspect of wellbeing.

The proposed outcome that children and young people in OOHC live in an environment free from violence and abuse is too narrow. A care relationship can be extremely poor, absent violence and abuse, and children may suffer from neglect or a lack of warmth. Outcomes should focus on freedom from physical, emotional and sexual harm and the qualitative relationship a child has with their carer/s.

[30] Emotional and social needs are addressed under other areas of wellbeing.
[31] This will rely on an effective health/developmental assessment system and common definitions as to what constitutes a behavioural problem. This type of measure might be developed after the National Clinical Assessment Framework for OOHC is in place.

- **Children and young people in OOHC live in a safe and secure environment that is free from physical, emotional and sexual harm**

  - *Proportion of children and young people in OOHC who live in a care environment that has been assessed for suitability and safety.*[32]
  - *Proportion of children and young people in OOHC who are cared for by a person who has been (a) appropriately assessed for suitability as a carer; (b) screened*[33]*; (c) trained; and (d) supported.*[34]
  - *Proportion of child and carer complaints that are responded to appropriately within required timeframes.*

Effective complaints management can resolve tension in a placement or a more appropriate placement being provided. In NSW, the Ombudsman is responsible for oversighting the community services complaints management system and could assist in developing an indicator on complaint system responsiveness.

  - *Proportion of investigations of allegations that a child or young person has been abused, neglected or otherwise harmed in OOHC that are substantiated.*[35]

- **Children and young people in OOHC have a positive relationship with their carers**

  - *Proportion of children and young people in OOHC who report a positive relationship with their carer/s.*[36]

[32] There would need to be agreement between the jurisdictions as to the minimum requirements of an assessment of the care environment.
[33] Consideration also needs to be given to the screening of other members of the carer's household. Mandatory screening of household members will be introduced in NSW in late March 2010.
[34] Developing indicators in these areas that are comparable across jurisdictions will require agreement as to the minimum level of carer assessment, screening, training and support that is appropriate.
[35] AIHW has already developed such an indicator.
[36] In developing such a measure, it will be necessary to determine whether children and young people would rather not be in care. Where a child or young person does not want to be in care, this will inevitably result in some negative perceptions of individual carers. The best means of gathering data would be through a survey of a statistically valid sample of children and young people in OOHC. Such a survey could address various aspects of the care experience and be used to inform a wide range of indicators.

- **Children and young people in OOHC have placement stability**

There is a significant body of Australian and international research that demonstrates a correlation between multiple OOHC placements and poor outcomes for children and young people in OOHC. Children whose placements change are more likely to lose touch with peers and community and change schools/health providers.

A performance measure should be developed for placement stability.

However, consideration needs to be given to the way this measure is used and interpreted.

While there is a correlation between placement instability and poor outcomes, instability may not be the cause of all poor outcomes. Children with significant problems are more likely to experience poor outcomes and are also more likely to have placements break down.

Also, it may be in the best interests of a child or young person to move from an unsuitable placement or to transition to a new type of care that involves placement change (eg: foster care to semi-independent living). Placement change may occur to reunite a child with a sibling or to maintain family connections where a parent changes residence.

Any performance measure should not operate to encourage OOHC providers to keep children in placements that are not in their best interests.

Clare Tilbury argues that OOHC indicators need to be viewed holistically and not in isolation, citing placement stability as a classic example:

> *"While research supports that a stable placement is more likely to meet a child's need for attachment and security...the quality of placement is mediated by other factors, such as whether placements are culturally appropriate, whether family contact is maintained during placement, or whether a child is placed with her or his siblings: factors that also promote security for children."*[37]

Consideration might be given to developing a measure for unplanned placement changes that indicate placement breakdown rather than planned transfers to more appropriate placements.

[37] Tilbury, C. (2004). The Influence of Performance Measurement on Child Welfare Policy and Practice. *British Journal of Social Work, 34*, pp. 225-241: p 234.

(iv) Learning and achieving

The Deputy Prime Minister's recent suggestion that a unique student identifier might be established may assist in tracking educational outcomes for children and young people in OOHC.

Note the possibility of a survey based measure for relationship with school peers is flagged under "Family, Culture and Community".

- **Children and young people in OOHC attend preschool or long daycare**
  - *Proportion of eligible children and young people in OOHC who attend preschool or long daycare.*

- **Children and young people in OOHC participate in compulsory schooling**
  - *Proportion of children and young people in OOHC who comply with state/territory compulsory schooling requirements.*
  - *Proportion of children and young people in OOHC who participate in extra-curricula school activities.*

- **Children and young people in OOHC have stability in schooling**
  - *Proportion of children and young people in OOHC who have been excluded or suspended from school in the last 12 months.*
  - *Proportion of children and young people in OOHC who change school before the completion of schooling available at that school.*

- **Children and young people in OOHC achieve literacy and numeracy benchmarks**
  - *Proportion of children and young people in OOHC who achieve literacy and numeracy benchmarks.*[38]

- **Children and young people in OOHC complete secondary education**
  - *Proportion of children and young people in OOHC who complete year 12 or equivalent.*

[38] Reporting against such an indicator would need to be carried out by educational authorities.

- **Children and young people in OOHC who leave secondary education transition to vocational training, tertiary education or employment**
  - *Proportion of children and young people in OOHC who leave secondary school who transition to (a) vocational training; (b) tertiary education; (c) employment.*

The Commonwealth plays an important role in this area and Commonwealth agency performance measures should be developed.

- **Children and young people in OOHC have their educational or employment needs considered in case planning**
  - *Proportion of children and young people who have been in OOHC for over 12 months who have had their education needs considered in a case plan or case plan review within the last 12 months.*[39]

(v) Independence

- **Children and young people in OOHC develop self care skills**
- **Young people transitioning from OOHC are linked to appropriate support services**

There needs to be a greater focus on developing self-care skills and preparing children and young people for life outside the OOHC system. "Self Care Skills" is one of the seven LAC Assessment and Action objectives. Case planning under LAC looks at whether a child or young person is learning to care for him/herself at a level appropriate to his/her age and ability when given the necessary resources and support.

There is also a need for children and young people leaving OOHC to access accommodation, education, training, health, employment and income and family support services.

"Independence" should be recognised as a distinct area of wellbeing to emphasise the importance of action in this area. It should be emphasised that independence does not mean a person does not need support – rather it means support may be needed to assist them live in the broader community.

[39] In NSW, education needs must be considered in case planning. As part of *Keep Them Safe*, the Department of Education and Training will be developing Education Plans for all children and young people in OOHC who attend public schools.

The Commonwealth can play a proactive role in linking children and young people who are leaving OOHC to Commonwealth support services and programs and should develop performance measures as to how it assists young people transitioning from the OOHC system to Commonwealth services.

The Australian Children's Commissioners and Guardians (ACCG) Group, of which I am a member, has recommended young people in OOHC should receive support for the transition from care process by specialised Transition from Care teams in each state and territory. Transition from Care teams would mentor young people in the transition from care and assist them to link to services.

While I support the rationale behind Transition from Care teams, governments would need to satisfy themselves that such universal support for all children and young people leaving care over a ten year period is an efficient use of resources and does not result in a transfer of resources from children and young people currently in the OOHC system. It is also important that resources in this area are targeted and children and young people who are able to enter community life without support are not labelled as "disadvantaged" for the rest of their life simply by virtue of them having once been in OOHC.

I believe that other transition from care support models should also be examined, including the possibility of Centrelink serving as a hub for linking those who have transitioned from care to appropriate Commonwealth and state/territory services.

I believe that all jurisdictions need to explore models for supporting young people transitioning out of care and the Commonwealth must be an active participant and contributor to this process, given the Commonwealth has a role in providing many of the supports this vulnerable population group need to access after leaving care.

Further discussion between jurisdictions will be necessary to develop meaningful performance measures in this area. This work should be a priority and CREATE should play a lead role in progressing reform in this area.

SECTION 5
Monitoring, Measuring and Reporting Performance Against the National OOHC Standards

This section of the submission addresses question 5 of the Consultation Paper and addresses benchmarking performance.

1. National Standards will not be in themselves sufficient to drive performance improvement

The establishment of standards is not in itself sufficient to drive performance improvement. Performance against standards needs to be monitored and reported against, with performance reports fed back to service providers and decision makers to inform performance improvement.

For example, standards for foster care were introduced in NSW in 1998, but there was no requirement that OOHC providers meet these standards or any independent assessment of performance against those standards until 2003.

When the Children's Guardian surveyed NSW OOHC providers about the impact of the OOHC Accreditation and Quality Improvement Program (AQIP) in 2007:

- 46% of agencies in the Quality Improvement Program (QIP) advised they had no programs in place for reviewing and improving their policies, procedures and practices prior to entering the QIP; and
- 30% of the accredited respondents advised they had no programs in place for reviewing and improving their policies, procedures and practices prior to entering the AQIP.

Although OOHC standards had existed for five years, a significant number of agencies did not use them, or indeed anything else, to improve the quality of their OOHC services.

2. Common data collection and measurement tools

The lack of common data collection and measurement tools across jurisdictions will provide a significant barrier to meaningful measurement and reporting of performance against the National Standards.

Jurisdictions should not only be encouraged to measure the same things, but to measure them in the same way. Consideration might be given to how consistency in measurement/judgement is encouraged in the assessment of foster and residential care services in England, where the Office for Standards in Education, Children's Services and Skills provides benchmarking guidance to assist inspectors make consistent judgements and provides information to key stakeholders on how judgments are made[40].

It is recommended that the Community Services Ministers direct the establishment of an inter-jurisdictional OOHC data collection and reporting working group, comprising representatives of both OOHC funding and monitoring bodies and any Commonwealth organisation that will be involved in the preparation of national reports on performance against the National Standards.

This working group should be tasked with settling data collection and measurement rules that, to the greatest extent possible, can apply across all jurisdictions.

As outlined in section 2 of this submission, jurisdictions are most likely to be able to develop meaningful and consistent data collection and reporting rules for court-ordered OOHC.

3. Performance monitoring and reporting to be conducted by a body that is independent of OOHC funders/providers

In NSW, the importance of independent oversight of OOHC quality has been a constant theme since 1992. The strength of the independent oversight framework, discussed at section 1 of this submission and further below, owes much to the government being by far the largest provider of OOHC in NSW.

There is a real risk in a government OOHC provider setting standards in OOHC and determining what constitutes "quality" OOHC. For example, in NSW the main government provider is yet to achieve accreditation by the Children's Guardian and the Children's Guardian's Case File Audits have

[40] Office for Standards in Education, Children's Services and Skills. (2009) Ofsted inspects, A framework for all Ofsted inspection and regulation.

shown that the non-government sector generally providers a higher quality of OOHC service across a wide range of indicators. The performance gap between government and non-government providers contributed to the recent *Special Commission of Inquiry into Child Protection Services in NSW* recommending an expansion of the NSW non-government OOHC sector.

Vesting responsibility for OOHC standard/quality setting, monitoring and reporting in a government provider may result in performance targets being set at a level that can comfortably be achieved by the government provider. This may result in a lowering of standards in the non-government sector. Self-reporting might also result in actual or perceived bias in reporting.

There is also an inevitable tension for funders of OOHC services reporting on the quality of those services.

The problems associated with NSW Community Services regulating OOHC quality were canvassed in both the 1992 Report of the Ministerial Review Committee established to review substitute care services in NSW and again in the 1997 Review of the *Children (Care and Protection) Act 1987*, chaired by Professor Patrick Parkinson.

Both reviews concluded that there is an inevitable tension between Community Services' role in managing resources and always acting in the best interests of children and young people. Both reviews recommended the establishment of an independent Guardian for reasons including the separation of the government funder from the body responsible for the quality of OOHC services.

In NSW, some data about OOHC clients and services is self-reported by OOHC providers to Community Services through the Minimum Data Set. This data is used to inform Community Services OOHC funding and placement decisions. However, there is a greater likelihood of bias in self-reported data that is not independently audited, particularly when that data informs funding decisions. Also, the Minimum Data Set does not contain information on children and young people who receive OOHC services from government.

Best practice standards frameworks are supported by independent monitoring/auditing and reporting of performance against standards, which is necessary to maximise government and public confidence in the impartiality and reliability of performance reporting and the quality framework generally.

4. Performance monitoring and reporting to be conducted by appropriate state/territory bodies

Most jurisdictions have one or more bodies that monitor aspects of OOHC service delivery and performance. For example, in NSW the Children's Guardian, Ombudsman and Official Community Visitors all have distinct but complementary roles. Community Services and Ageing, Disability & Home Care, as funders of non-government OOHC providers also monitor aspects of provider performance to inform funding and placement decisions.

Both the Children's Guardian and Ombudsman have the power to make independent reports on performance issues in the OOHC sector – the Children's Guardian from a whole of population and organisational performance perspective, and the Ombudsman in response to individual complaints, investigations and Official Community Visitor reports.

These NSW organisations all have a focus/role beyond the scope of any likely National OOHC Standards.

It is important that jurisdictions leverage off existing bodies to monitor and report on performance against the National Standards, rather than establishing a new layer of Commonwealth bureaucracy to take on this role, which would likely result in waste and duplication. State/territory bodies will have established links with OOHC providers and an understanding of performance/service issues relevant to the OOHC population, or parts of it, within the jurisdiction.

States/territories fund OOHC services and many OOHC support services and cannot be properly accountable for improving performance if they are not responsible for monitoring performance and ensuring proper feedback is provided.

It should be noted that performance monitoring and reporting is likely to become far more expensive, and divert additional resources away from direct service delivery, if the National Standards extend outside the court-ordered OOHC system.

While most performance monitoring should be able to be conducted through auditing a representative sample of case files for children and young people in OOHC, some performance reporting might require the surveying of children and young people in OOHC or reports from health/education or other authorities with particular OOHC responsibilities.

A single independent state/territory body should:

- consolidate performance information from various sources;
- report to the responsible state/territory Minister; and
- provide a whole of government report to the responsible Commonwealth body (see 5 below) – consideration should be given to reports being made every two years, rather than annually, to allow improvements to be embedded, trends to be identified and a period of reflection to inform performance improvement strategies.

The whole of government report should:

- address state/territory performance against the National Standards;
- contextualise that performance, having regard to issues particular to the jurisdiction and any changes in policy or practice that have impacted on outcomes for children and young people in OOHC (this may provide internal guidance and guidance to other jurisdiction on "what works and what doesn't");
- indicate any areas where performance improvement is required, with those areas prioritised where possible;
- make recommendations for changes to policy and practice;
- indicate any performance measures that cannot be reported against, providing reasons;
- be made available to the public.

The Children's Guardian's statewide Case File Audit Reports[41] are an example of this type of report, although reporting would no doubt need to be modified to report fully against future National Standards.

5. A national body

There should be a Commonwealth body that is responsible for:

- monitoring and promoting consistency in jurisdictional data collection and reporting;
- receiving whole of government performance reports from each jurisdiction;

[41] See www.kidsguardian.nsw.gov.au/accreditation/case-file-audits.

- reporting on national performance, having regard to state/territory reports and the contribution of Commonwealth agencies towards improving outcomes for children and young people in OOHC;
- identifying areas where Commonwealth agencies can improve their performance in improving outcomes for children and young people in OOHC;
- publishing information on good and innovative state/territory OOHC practice;
- identifying priorities requiring national attention;
- improving coordination between Commonwealth and state/territory OOHC and OOHC support agencies;
- entering into partnerships with relevant state/territory and non-government organisations to support research relevant to improving outcomes for children and young people in OOHC.

The national body should operate at arms length from the Federal Government, so that its independence is assured and it is able to make recommendations for the Commonwealth to take action to improve outcomes for children and young people in OOHC. This will maximise public confidence in the body's reports and recommendations.

These functions would not justify a stand alone body that focuses only on OOHC issues. Consideration might be given to vesting these functions in the Australian Institute of Health and Welfare or the proposed National Children's Commission.

6. Specific monitoring and measuring tools

It is not possible to identify specific monitoring and measuring arrangements, without further information on the likely National Standards and associated performance measures. However, the following general arrangements are suggested

Case files are likely to be the single most comprehensive and reliable source of OOHC performance data.

The NSW Children's Guardian has developed a Case File Audit tool, outlined at section 1, which it uses to conduct audits of a statistically valid sample of statutory OOHC case files.

This sort of tool can be used to:

- provide feedback to OOHC providers at the organisational level;
- identify action that needs to be taken in individual audited cases; and
- report on performance against relevant state/territory and National Standards.

The Children's Guardian would be happy to make its Case File Audit tool available to other jurisdictions.

Health/Education authorities may need to monitor and report on some health and education outcomes through the appropriate state/territory coordinating body. OOHC complaint oversight bodies might similarly report on complaints performance.

A sample of children and young people in OOHC might be surveyed to provide information for some qualitative indicators.

All monitoring/measuring tools should be able to break down data by Indigenous status, with reports against each performance measure to address performance in respect of the Indigenous OOHC population and the OOHC population as a whole.

This capacity is vital, given the extent to which Indigenous children and young people are over-represented in the OOHC system and the poor outcomes experienced by Indigenous children and young people in OOHC.

The Commonwealth should support a longitudinal study for children and young people in OOHC, which would look at outcomes for children and young people who have been in OOHC. This should be linked to *Growing Up in Australia: The Longitudinal Study of Australian Children*.

7. Benchmarking performance

As pointed out by Mark Courtney:

> "*the goal of outcome evaluation systems, at least initially, should not be to coerce providers into meeting certain outcome ratios (e.g., retaining a minimum percentage of children in placement for a specified period of time), but to give the providers, placement workers, child welfare administrators, and researchers a basis of comparison between programs which is totally lacking at present...it will take several years to establish baseline measures of performance with respect to some important outcomes (e.g., measures of placement stability or transitions to independent living), let alone to begin to have a critical understanding of variations in performance.*"[42]

Experience with OOHC performance reporting to date also suggests jurisdictions may take a while to establish some data sets and settle common counting and reporting rules. National best practice benchmarks will not be able to be set until after this is done.

Each jurisdiction should initially benchmark annual performance against the jurisdiction's baseline for each standard/performance measure, with the aim of improving performance each year. It is desirable that each jurisdiction set realistic performance targets that state the desired extent of improvement (e.g. increase the proportion of children and young people in OOHC who are immunised by 5%).

When each jurisdiction has established a baseline and common data collection and reporting systems are in place, a national baseline might be set. Jurisdictions would then report performance against the national baseline and the bar at which compliance with a measure is set can be raised as performance improves nationally.

While it is important that children and young people in OOHC have the same opportunities as other children and young people to reach their potential, this does not mean performance against the Standards should be benchmarked against children and young people in the general population. Such an approach is unrealistic, given the long history of disadvantage many children and young people in OOHC have before entering the OOHC system.

[42] Courtney, M. (1993). Standardized Outcome Evaluation of Child Welfare Services Out-of-Home Care: Problems and Possibilities. *Children and Youth Services Review, 15*, pp. 349-369.

The focus should be on continually improving outcomes for children and young people in OOHC, benchmarked against previous outcomes for that population.

It is important that compliance thresholds for any nationally applied performance measures are not set at 100% - for example, children and young people in OOHC may have needs that warrant placement changes, not being placed with a sibling, and having no contact with families. While performance measures might appropriately be developed for placement stability, sibling placements and family contact, it will not always be in the best interests of individual children in OOHC to apply arrangements that would be in the best interests of most such children.

In NSW, the compliance thresholds for Case File Audit items are set at 80%. This threshold was based on *Gore's National Performance Review: Best Practice in Performance Measurement* (1997) which states that the setting of a quality standard with zero tolerance for human error undermines morale and makes goals appear unattainable, particularly where benchmark standards have not been determined and it is not known if 100% compliance is realistically attainable.

----------End----------