

# Review of the Statutory Procedures for Voluntary Out-of- home Care

Consultation paper

## Introduction

The Office of the Children's Guardian administers a regulatory framework that registers and monitors organisations providing voluntary out-of-home care. The purpose of the regulatory framework is to:

- safeguard the interests of children and their families in these arrangements
- improve the consistency and quality of intake, assessment, supervision, care planning and inter-agency coordination, and
- reduce drift of children into statutory out-of-home care.

The *Children's Guardian Act 2019* defines voluntary out-of-home care broadly as an arrangement between a parent and an organisation for a child to receive overnight care outside the family home in NSW.<sup>i</sup> This overnight care can be on a short to long-term basis. It can take place in a variety of settings including camps, home-based environments, in motels and Airbnb.

Over the years there have been significant policy and regulatory changes impacting the sector. The commencement of the National Disability Insurance Scheme (NDIS) and the establishment of the NDIS Quality and Safeguards Commission in 2018 resulted in significant changes in how the sector operates and how organisations are regulated.

In November 2021, the *Children's Guardian Amendment (Child Safe Scheme) Act 2021* passed NSW Parliament and commenced on 1 February 2022. The commencement of the Child Safe Scheme resulted in voluntary out-of-home care providers being subject to two different regulatory schemes administered by the Office of the Children's Guardian:

1. the current registration and monitoring scheme, which required agencies to comply with the Statutory Procedures for Voluntary Out-of-home Care, and
2. the new Child Safe Scheme.

This provided an opportunity to consider how the regulatory framework for voluntary out-of-home care can be streamlined and improved.

Within this regulatory framework, a key function of the Children's Guardian is to develop policies and procedures about voluntary out-of-home care to ensure:<sup>ii</sup>

- children are not placed in voluntary out-of-home care if adequate services can be provided to enable the children to remain with their family, and
- proper case planning occurs for all children placed in voluntary out-of-home care.

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## Consultation on the Child Safe Scheme and voluntary out-of-home care

We released a consultation paper and an online survey on 9 December 2021 outlining a proposal to regulate voluntary out-of-home care only under the new Child Safe Scheme. Submissions and survey responses closed on 21 January 2022.

In our recent consultation, you told us:

- You support maintaining strong external regulation and oversight for voluntary out-of-home care services.
- The sector would benefit from mandatory prescriptive requirements. This is due to the heightened vulnerability of children who access care and the nature of service delivery, which involves overnight care sometimes for extended periods of time.
- More should be done to streamline regulatory requirements for agencies to reduce duplication and resource burden.
- Our regulatory approach could have a strengthened focus on children's safety and placement needs.

## Review of Statutory Procedures

In response to your feedback, we have undertaken an internal review of the Statutory Procedures for Voluntary Out-of-home Care. The purpose of this review has been to look at opportunities to streamline and simplify the requirements placed on providers. It involved:

- Systematically reviewing the *Statutory Procedures* to determine mandatory requirements specifically for VOOHC providers.
- Conducting internal consultation with relevant Directorates within the Office of the Children's Guardian.
- Drafting new mandatory prescriptive requirements for public consultation.

The review also considered how child safe practice could be strengthened in voluntary out-of-home care services by focusing on the specific risks to child safety that arise in these settings. These has been informed by research from the Royal Commission into Institutional Responses to Child Sexual Abuse, which expanded the evidence base around what risk and protective factors contribute to child safety in organisations.

It is our view, consistent with the views of stakeholders, that there is a need to maintain mandatory prescriptive requirements for the sector. However, these requirements should be simple and easy to understand noting the overlap with relevant State and Commonwealth requirements, such as the NDIS Quality and Safeguards Commission requirements, and the workforce and resources of the sector.

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## Invitation for comments on proposed Mandatory Prescriptive Requirements

We are now seeking your views on the Mandatory Prescriptive Requirements, which will be an important component of the improved voluntary out-of-home care regulatory framework.

Comment is sought on the proposed Requirements attached to this paper. Respondents are invited to provide feedback on any or all the questions set out below.

Feedback or submissions can be sent via email to [PolicyTeam@ocg.nsw.gov.au](mailto:PolicyTeam@ocg.nsw.gov.au). Please provide any feedback by **COB Monday, 23 May 2022**.

### Questions to guide feedback

We ask you to look at the proposed Requirements and consider the following questions:

- Are these the **minimum** requirements for providers to ensure the safety of children in their care?
- Have the Requirements missed anything critical in terms of minimum requirements for providers? If so, what are the gaps?
- Do the Requirements have clear demonstrable criteria to measure compliance?
- Do the Requirements strike the right balance between prescriptive detail and allowing providers the flexibility to apply the requirements to their specific setting?
- Are the Requirements logical and easy to understand?
- Are the Requirements consistent with other applicable legislation that providers are required to comply with?

There are also some **specific questions (Attachment A)** on the proposed Requirements to guide your thinking and feedback. These are not exhaustive.

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## Further work to streamline regulation

The review of the Statutory Procedures is part of a broader program of work the Office of the Children's Guardian is undertaking to streamline and strengthen voluntary out-of-home care regulation in the context of the Child Safe Scheme.

Under the Child Safe Scheme, voluntary out-of-home care providers are (or will be) subject to strengthened monitoring, investigation, and enforcement powers including Compliance Notices and Enforceable Undertakings. Enforcement provisions are anticipated to commence in February 2023. How the proposed Requirements link to enforcement provisions is currently being considered.

The proposed Requirements are intended to supplement the Child Safe Standards by supporting providers to implement child safe practice in this sector.

The Requirements would complement existing legislative requirements and are not intended to replace all requirements that are currently provided for in the regulations. For example, the regulation will continue to impose obligations on providers to record certain placement information on the VOOHC register.

The Requirements would be accompanied by guidance materials to support the implementation of the improved voluntary out-of-home care regulatory model. This guidance will detail the specific roles and responsibilities of other agencies involved in the sector.

## Attachment A – Specific questions on the Mandatory Prescriptive Requirements

### Section 1 – Objects of the Requirements

- Do you agree with the purpose and scope of the Requirements?

### Section 2 – Definitions

- Are all the definitions relevant and consistent within the current voluntary out-of-home care sector?
- Do any definitions need to be removed/added?

### Section 3 – Policies and procedures

- Are there any additional policies or procedures that should be included?
- Is there enough detail for providers to understand their mandatory obligations?

### Section 4 – Entry of children’s placements on the VOOHC Register

Further detail about entry of children’s placement on the VOOHC Register will be included in the Children’s Guardian Regulation. This will reflect existing regulatory placement requirements.

### Section 5 – Risk management

We have developed comprehensive handbooks to assist organisations in NSW to develop and implement a risk management plan. These can be found on our website, [under Resources](#).

- Are there any specific requirements that should be added to this section?

### Section 6 – Code of Conduct requirements

We have developed a comprehensive handbook to assist organisations in NSW to develop and implement a Code of Conduct. This can be found on our website, [under Child safe resources](#).

- Are there any specific requirements that should be added to this section?

### Section 7 – Recruitment, education and training requirements

The Working with Children Check is a requirement for anyone in paid or volunteer child-related work in NSW. The Office of the Children’s Guardian administers the Check and has developed comprehensive resources to support organisations to comply with their obligations. There is [information on our website for both employers and applicants](#).

- Are there any specific risks in the sector in relation to recruitment, education and training that **are not** addressed in this section? If you have identified any, what requirements would address these risks?

### Section 8 – Intake and assessment requirements

- Does the detail in this section strike the right balance between being prescriptive enough and allowing flexibility for providers to apply the requirements to their specific setting?
- Are there any critical intake and assessment requirements missing?

### Section 9 – Appropriate placement and placement-matching requirements

- Are there other specific placement-matching requirements that should be included?
- Are there specific placement-matching requirements that should be included for First Nations children?

## Section 10 – Supervision and case planning requirements

- Does the detail in this section strike the right balance between being prescriptive enough and allowing flexibility for providers to apply the requirements to their specific setting?
- Are there any critical supervision and case planning requirements for providers missing?
- Are there any supervision and case planning requirements for providers that should be included?
- Are there specific supervision or case planning requirements that should be included for First Nations children?

## Section 11 – Leaving VOOHC

- Are there any requirements when a child exits a voluntary out-of-home care arrangement that should be included?
- Are there any requirements for providers beyond a child's 18th birthday?

## Section 12 – Record keeping, information sharing and complaint handling requirements

Chapter 16A of the Act establishes a framework for interagency coordination and information exchange between voluntary out-of-home care agencies and other prescribed bodies. Resources regarding information exchange are available on the Department and Community Justice website.

We also have comprehensive information and resources available to inform providers about the NSW Reportable Conduct Scheme and child safe complaint handling. It can be found on our website [under Organisations](#).

- Are there any specific requirements about record keeping that should be included?

## Section 13 - Behaviour support

*'A positive approach to behaviour support **must** be used and all behaviour support plans **must** be consented to by the parent (s) and regularly reviewed'.*

- Is there enough detail for providers to understand their mandatory obligations?
- How often should Behaviour Support Plans be reviewed?

### Office of the Children's Guardian

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<sup>i</sup> Section 76, *Children's Guardian Act 2019*

<sup>ii</sup> *Children's Guardian Act 2019*, Section 80 (a) and (b)