



OFFICE OF THE CHILDREN'S GUARDIAN COMPLIANCE POLICY



Introduction

The Children's Guardian is a statutory office established under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*. The Office of the Children's Guardian (OCG) is a government agency established under Part 3 of Schedule 1 of the *Government Sector Employment Act 2013* that supports the Children's Guardian in the exercise of the Children's Guardian's functions.

Strategic context

The Office of the Children's Guardian's strategic intent is to protect children by promoting and regulating quality, child-safe organisations and services.

The OCG Compliance and Enforcement Policy forms part of a suite of strategic documents describing how the Office goes about its work. This policy needs to be considered in the context of other strategic documents published by the OCG, including the *Corporate Plan* and annual *Compliance Plan*, that provide guidance about the OCG's regulatory focus and approach each year.

Compliance and enforcement approach

The Office of the Children's Guardian promotes a culture of compliance through educating the community and making information available to those who are required to take steps to comply with the positive obligations imposed by law.

We assist the regulated sector of the community to better understand the regulatory environment and to comply with all obligations so as to reduce the need for compliance or enforcement intervention by the OCG.

Our educational activities and provision of information also helps the community to understand the environment and how it helps to improve the safety of children.

Our resources will be allocated where they can best address non-compliant conduct to deliver the greatest benefit to children with priority given to matters that demonstrate a significant public interest or concern.

As a Regulator we monitor systems, organisations and processes which promote the interest and rights of children. While the OCG monitors and accredits certain agencies we also conduct compliance activities to ensure that organisations and individuals are acting within the law when providing services to children.

Compliance and enforcement responses

Targeted compliance

We actively encourage all organisations to adopt child safe policies and practices and focus predominantly on our educational activities which inform the public and regulated agencies of best practice and quality standards aimed at promoting the best interests of children.

To make the best use of resources, our compliance activities are targeted and informed by our operational activities, in particular, the level of risk and consequences of non-compliance.

Enforcement principles

Where enforcement action is required to address non-compliance with the law, the objective of that action will be aimed at stopping the non-compliant behaviour and changing future behaviour to best ensure the protection of children.

We use enforcement remedies both civil and criminal to address conduct which involves potential for significant risks to the safety of children or which shows a blatant or persistent disregard for the law.

In all cases our enforcement action will conform to recognised best practice and we will be guided by the following principles:

1. **Proportional** – the action will be in proportion to the risks posed to the safety of children and the OCG will consider the specific facts in each individual case
2. **Consistent** – the action will adopt a fair, equitable and consistent approach by developing and maintaining effective systems and policies and will be implemented by appropriately qualified and trained staff.
3. **Transparent** – To the extent permitted and required by law, all decisions and actions will be publicised to assist the regulated community to understand what is required of them.
4. **Targeted** – all regulatory effort will be directed primarily towards those activities that pose the greatest risk to the safety of children.
5. **Timely** – action will be conducted in a timely manner to manage, inform and progress matters without delay.

Appropriate enforcement action

In determining the appropriate compliance or enforcement option (or combination of options) the OCG will consider a range of factors including:

- whether the issues involved require urgent action/intervention by the OCG to ensure the protection of children
- the nature of the relevant regulatory objective
- whether the conduct was deliberate, inadvertent or reckless
- whether the conduct indicated systemic issues that may pose ongoing compliance or enforcement issues

We will exercise judgement and discretion in determining the appropriate resources allocated and action to be taken in individual matters based on specific circumstances.

Types of enforcement action

Encouraging voluntary compliance

The Office of the Children's Guardian will endeavour to encourage and achieve voluntary compliance by helping the community to understand the environment and appreciate the need to improve the safety of children. We will educate the community by making information available to those who are required to comply with statutory obligations and help them to better understand the environment and their obligations.

Wherever possible, the OCG will intervene as early as possible to reduce or avoid the need for escalated compliance or enforcement action in the future.

The OCG's activities in this area include publishing information in print and electronically that can be accessed from our website, formal and informal engagement and consultation strategies such as discussions, seminars, consultation papers and advisory committees and publishing the outcomes of compliance activity in appropriate circumstances.

Informal intervention or warnings

Where the OCG detects non-compliance with the law, it will attempt to address the non-compliance using the most efficient, effective and timely responses available. Direct contact with the person or persons involved in the alleged contraventions may be effective in addressing the conduct quickly and without the need to escalate to a more formal response.

Administrative action

Where non-compliance has been identified, it may be necessary and appropriate to take formal administrative action.

There is a range of administrative or disciplinary action that can be taken including

- formal (written) warnings
- suspending and cancelling authorities or accreditations
- barring a person from child related employment either on an interim or permanent basis.

Civil or criminal action

While only used as a last resort, in the most serious cases of non-compliance or where there is a significant risk to children, it may be necessary and appropriate to commence civil litigation to address that risk.

The laws administered by the OCG create a number of criminal offences and in certain cases criminal action may be taken in response to an alleged criminal offence.

Contact us

Visit www.kidsguardian.nsw.gov.au for more information about our services and our approach to ensuring compliance with the law in relation to child related employment or call the Office of the Children's Guardian on (02) 8219 3600.

Alternatively, email us at kids@kidsguardian.nsw.gov.au or visit our website for more information: www.kidsguardian.nsw.gov.au.