

Royal Commission Into Institutional Responses to Child Sexual Abuse  
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Dear Commissioners

Thank you for the opportunity to provide feedback on the Royal Commission's comprehensive consultation paper dealing with *Institutional Responses to Child Sexual Abuse in Out of Home Care*.

Please note my support for the NSW Government submission to the consultation paper. Our additional comments provided in the attached document relate to my core functions as the Children's Guardian and should be read with reference to our previous submission to the Royal Commission's *Issues Paper four- Preventing Sexual Abuse of Children in Out-of-Home-Care*. Our submission to Issues Paper four outlined in detail the role and evolution of the functions of the office of the Children's Guardian, and provides a comprehensive outline of the framework in NSW to keep children in OOHC safe.

If you would like further clarification about any of the matters referred to in our comments, please do not hesitate to contact me on 8219 3601.

Yours sincerely



**Kerryn Boland**  
Children's Guardian  
Office of the Children's Guardian

4 May 2016

**Response of the NSW Children's Guardian**  
**Royal Commission into Institutional Responses**  
**to Child sexual abuse**  
**Consultation paper - *Institutional Responses to Child Sexual***  
***Abuse in Out of Home Care***

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The child protection system in the out-of-home care (OOHC) sector in NSW consists of an integrated framework of service delivery, oversight and regulation that has been designed or adapted over time to promote the safety and best interests of children and young people.

Children and young people continue to be vulnerable upon entry into OOHC, having come from backgrounds of trauma and neglect, and remain vulnerable throughout their time in care and often, long after they leave OOHC. As the Royal Commission has noted in the Consultation Paper, the vulnerability of children and young people in OOHC settings increases their likelihood of being subject to sexual exploitation and child-to-child abuse in these settings.

This presents clear challenges to providers and regulators within the OOHC sector to minimise the opportunity of further harm and trauma occurring to a child while in OOHC. To meet these challenges, the Office of the Children's Guardian (OCG) as a regulator works closely and regularly with OOHC service providers to improve the quality of care provided. The principal means by which the OCG does this is through the accreditation scheme for agencies that provide OOHC by ensuring that agencies comply with the OCG's Child Safe Standards for Permanent Care in order to be accredited to provide OOHC.

This is supported by a number of important tools to assist with keeping children and young people safe, including the Working with Children Check and the Carer's Register. In addition, the OCG recognises that these tools alone are not sufficient to prevent abuse and provides a range of comprehensive resources to promote child safe policies and practices in organisations. The complementary roles of agencies and the broad provisions for sharing information and reporting behaviours of concern, assists in excluding people who may cause harm to a child.

The OCG supports the need to broaden the focus of efforts within the sector to identify and appropriately respond to the needs of children who are affected by sexually harmful behaviours. This includes the need for timely specialised therapeutic treatment for victims and offenders. We acknowledge the work done by NSW Health in this area and believe these treatment programs should be widely accessible to all children in OOHC.

## **1. Key Strengths of the OOHC system in NSW**

The key strengths of the current system in NSW include:

- The multifaceted strategies in place for ensuring that known offenders and other unsuitable individuals are prevented from caring for children, central to this is the Working with Children Check (WWCC) which plays a key part in the screening and

authorisation of carers, and the provision of tools to enable information about their suitability to be shared, primarily through the Carers Register which extends to adult household members who reside on the property

- Oversight and regulatory bodies that are independent from the lead child protection agency and other service delivery agencies, and have distinct but complementary roles
- Broad information sharing provisions under Ch 16 A of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) which promote increased information sharing between prescribed bodies (as defined by s 245B of the Care Act and which includes the OCG, NSW Ombudsman, NSW Police, Department of Family and Community Services (FACS) and other organisations providing OOHC, health, education and children's services) where that information relates to the safety, welfare or well-being of a child or young person or class of children and young people
- The Reportable Conduct scheme discussed at paragraph 3.1.

These arrangements have resulted in significantly improved cooperation between agencies to support their distinct functions in the system.

## **2. Screening, authorisation of Carers and employment related protections**

Rigorous screening of carers and staff is recognised as being essential to ensure that children and young people in OOHC are well cared for in safe environments, and is an important component in preventing sexual abuse of children and young people in OOHC. In NSW, statutory OOHC can only be provided by an authorised carer<sup>1</sup>. The responsibility for the recruitment, assessment and selection of carers and staff is with the designated agency. Central to this is the requirement for all carers, prospective adoptive parents, prospective guardians and adults residing with them to obtain a WWCC clearance<sup>2</sup>.

### **2.1. WWCCs**

A key requirement for carers, prospective carers and their adult household members to be authorized to provide care is a Working with Children Check (WWCC) clearance. The object of the *Child Protection (Working with Children) Act 2012* (WWC Act) which came into operation on 15 June 2013, is to protect children by not permitting certain persons to engage in child related work and by requiring persons engaged in child related work to have working with children check clearances. The introduction of the Carers Register in 2015 allows for information obtained under the WWCC system to be integrated with the Carer's Register and the Reportable Conduct scheme to further improve protections for children.

The requirement for carers and adult household members to obtain a WWCC clearance has been incorporated into the NSW Carers Register. As both systems are administered by the OCG we are able to cross reference information and advise agencies where there has been non-compliance with either scheme.

The Children's Guardian implements the objects of the WWC Act by automatically disqualifying persons who have certain records listed in Schedule 2 to the WWC Act and by

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<sup>1</sup> Section s136 of the Care Act provides that a person providing such care who is not an authorised carer is guilty of an offence.

<sup>2</sup> Sections 10, 11 and 11A into the WWC Act

risk assessing those who may be subject to an assessment requirement as set out in Schedule 1 of the Act. The Guardian is also able to risk assess individuals as a result of any other information that suggests there may be a likely risk to the safety of children. This includes information obtained under Ch16A information sharing provisions, workplace misconduct records and Notifications of Concern.

Where an authorised carer is refused a clearance, clause 42B (1) of the Care Regulation 2012 provides the authorisation of that person is automatically cancelled and the designated agency must not allow the person to have children in their care. The agency supervising the OOHC arrangement must, within 48 hours of becoming aware of the automatic cancellation, ensure that the child or young person no longer resides in the home. The same 48 hour rule applies to other adults residing at the home of an authorised carer, if the adult person no longer has a WWCC clearance or current WWCC application.

Further, section 39 of the WWC Act provides the Children's Guardian with compliance functions to monitor and audit compliance with the requirements of the WWC Act. The Children's Guardian's compliance functions are multi-faceted to ensure that the legislation is complied with. Should the Children's Guardian become aware that an interim barred or barred person engages in child related work at any time while they are subject to an interim bar or otherwise refused a clearance, the OCG will provide the relevant information to the NSW Police to initiate prosecution of the breach of the WWC Act. The OCG has already successfully prosecuted in this area.

## **2.2. Carer authorisation and the NSW Carer's Register**

In addition to mandatory suitability assessment requirements set out in Part 6 the Children and Young Persons (Care and Protection) Regulation 2012 ( the Care Regulation ) , the NSW Child Safe Standards for Permanent Care ( the Standards) includes requirements regarding the assessment, training, supervision and support of authorised carers.

A decision to authorise a carer also includes assessment of other adult household members residing with the carer. The OCG supports nationally consistent minimum standards that are not confined to probity checks, but also include consideration of the skills, qualities and capacities required to provide care to children and young people.

The NSW Carers Register acts as a centralised database of those persons who are authorised, or who apply to be authorised to provide OOHC in NSW and operates similar to a licensing tool. The Register began operation on 15 June 2015 with the commencement of the Children and Young Persons (Care and Protection) Amendment (Authorised Carers) Regulation 2015. As at 19 February 2016 there were 17,500 authorised carers and 9,085 household members recorded on the Register.

The Register responds to past concerns raised by the NSW Ombudsman and the NGO sector that some carers whose authorisation was cancelled may have been moving to other agencies who were unaware of the relevant carer's previous history. It is not a casework tool; it records essential information only and assists designated agencies to share relevant probity information about the suitability of carer applicants, authorised carers and their household members. The Register does not replace the role that individual agencies play in undertaking their own assessment of the suitability of an individual and their household members to provide care.

A key benefit of the Carers Register, as noted above, is that it significantly integrates key functions of the OCG and allows important information to be cross checked against information obtained by the OCG in the course of the Children's Guardian's other functions. It also complements the information obtained from the NSW Ombudsman through the Reportable Conduct scheme. It has assisted designated agencies to meet the Standards in relation to assessment and selection of carers; helped to ensure that individuals comply with WWCC obligations and assisted them to be safer for children through the exchange of information.

In developing the Carer's Register, the OCG was mindful not to impose a significant administrative burden on agencies using the register.

The OCG has also commenced preliminary discussions to scope the benefits of a similar register of carers in residential care.

The Children's Guardian would welcome discussion regarding the implementation of carer's registers in each jurisdiction and options for facilitating exchange of information.

### **3. Information sharing provisions**

The OCG supports a national information-sharing model that is based on the NSW framework provided in Chapter 16A of the Care Act. The Ch 16 A framework is integral to the exchange of information between a broad range of prescribed bodies in areas such as carer recruitment, the risk assessment stage of the WWCC process, reportable conduct allegations and decision making in relation to removing a child at risk of sexual abuse in a particular OOHC placement.

The OCG's submission to Issues paper 4 discussed, at page 16, the importance of information sharing for the operation of the Carers Register.

One of the strengths of the Ch 16 A framework is its broad ambit and the low threshold for exchanging information in NSW compelling the child protection agency to exchange information if it *reasonably believes* that the information may assist the recipient agency in functions relevant to the safety and wellbeing of children.

In NSW the mechanisms for exchanging information in the OOHC sector rely on the ability to access and exchange information without being impeded. Chapter 16 recognises the often clandestine environment in which child sexual abuse occurs and the challenges faced by law enforcement and child protection agencies in predicting and detecting child abusive behaviour, gathering sufficient evidence to support prosecutions and delivering proactive measures to prevent child abuse.

#### **3.1. The Reportable Conduct Scheme**

The Reportable Conduct scheme ensures that government and non-government agencies have appropriate systems in place to prevent reportable conduct and handle reportable allegations and convictions involving employees of designated agencies<sup>3</sup>. The Scheme was expanded in November 2015<sup>4</sup> to include persons residing with authorised carers by

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<sup>3</sup> Section 35 (4) of the *Child Protection (Working with Children) Act 2012* — includes designated OOHC agencies as reporting bodies.

<sup>4</sup> By insertion of s25AAA into the *Ombudsman Act 1974*

recognizing them as employees of the designated agency that authorised the primary authorised carer. This was a significant change and has resulted in all instances of allegations made against adult household members of authorized carers being brought within the purview of the NSW Ombudsman's investigation.

Reportable conduct allegations by designated agencies are notified to the NSW Ombudsman. Of these allegations, sustained findings of sexual misconduct and serious physical assault of a child are reported to the Children's Guardian under the WWCC scheme. These findings are considered as part of the WWCC risk assessment process by the OCG. The Ombudsman may also trigger a risk assessment on an individual's WWCC by making a Notification of Concern<sup>5</sup> and otherwise share or request information pursuant to Chapter 16A of the Care Act 1998.

The Children's Guardian supports proposals for a similar 'reportable conduct scheme' in each jurisdiction which contributes to the rich holding of information which can be accessed by the Children's Guardian in the performance of her related functions in this space, importantly including information about allegations that do reach the threshold for a criminal conviction

#### **4. Child Safe Standards for Permanent Care and Accreditation**

The NSW Child Safe Standards for Permanent Care apply to all OOHC and adoption providers, irrespective of whether they provide foster care, relative/kinship care, residential care or adoption services. The Care Act makes the Standards binding on designated agencies by requiring them to comply with the Standards<sup>6</sup>, as prescribed in the Care Regulation. As acknowledged in the consultation paper, the mandatory accreditation scheme for OOHC providers has been operating in NSW since 2003 and applies to both Government and non-government providers.

The accreditation scheme was a recommendation of the 1992 review of substitute care in NSW and the 1997 Royal Commission into the New South Wales Police Service – the Paedophile Inquiry. Both reviews recommended the establishment of an independent body to provide for the separation of the government funder of OOHC services from the body responsible for ensuring the quality of those services and that the then Department of Community Services as the largest provider of OOHC services, be subject to the regulatory regime.

To achieve accreditation agencies must demonstrate compliance with the Standards. The assessment process involves a triangulated appraisal of evidence, including reviewing policies and procedures, discussions with agency staff and assessment of completed documentation. This ensures all aspects of practice are assessed.

While broadly aligned with the *National Standards for Out-of-Home Care*, the *NSW Child Safe Standards for Permanent Care* are more comprehensive, based on NSW care and protection legislation and reflect NSW policy priorities.

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<sup>5</sup> There were 9 Notifications of Concern to the OCG by the NSW Ombudsman in the 12 months to March 2016.

<sup>6</sup> Section 139 of the Care Act

The NSW Standards were reviewed in 2015 to support significant child protection reforms reflecting requirements of the new WWCC and the Carers Register.

The Standards are important in driving practice improvements and implementing policy priorities. While the Children's Guardian supports consistency in principles underpinning jurisdictions' regulatory frameworks, individual jurisdictions should retain the capacity to develop their own accreditation criteria to reflect local legislation and policy settings.

The revised Standards also more explicitly incorporate child safe principles and the standards relating to governance have been strengthened. Importantly, in developing the Standards the OCG was careful to ensure that flexibility existed in how agencies would adapt their practices to meet the Standards. This was with a view to allowing the particular needs of their service to be taken into consideration. Similarly they are not prescriptive in how to respond to the needs of individual children, but require that<sup>7</sup> the particular cultural, disability, language, religious, and sexuality needs of each child are considered in all decisions that affect them.

The NSW accreditation scheme has been effective in preventing unsuitable non-government providers from entering or remaining in the market and addressing performance issues in accredited non-government providers.

#### **4.1. Accreditation Assessment**

Agencies must demonstrate that they deliver child safe services in order to maintain accreditation and receive funding to provide an OOHC service, as outlined above.

The Children's Guardian monitors child safe OOHC providers through the accreditation and monitoring program and can impose a range of sanctions on an agency which is unable to meet minimum standards. These sanctions include imposing conditions on their accreditation limiting their capacity to place additional children in care, shorten their accreditation period or cancel or suspend their accreditation. Agencies may be required to develop an action plan to remediate any identified gaps in practice or they could be required to enter a risk management program with the OCG which would require additional monitoring for a period of time.

The OCG's monitoring activities include on-site assessments of agencies' practice against the Standards as well as targeted assessments of specific areas of practice. The Children's Guardian has used her condition making powers to require designated agencies to provide information regarding allegations of sexual misconduct and serious physical assault towards a child or young person in OOHC. The circumstances of children or young people who have been the victims of sexual misconduct or serious physical assault, can be monitored through the Children's Guardian's compliance and monitoring program to ensure appropriate responses by the service provider.

Where allegations of abuse in care are identified during a visit by the OCG (via a review of the agency's Reportable Conduct register, children and young people's files or carer files, and discussions with staff and management), staff of the OCG will consider whether a range of systems and processes are in place, including if the agency:

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<sup>7</sup> See in particular Standard 4: Identity

- Has appropriate procedures in place for staff to follow on receipt of an allegation including systems of internal reporting and documentation
- Has appropriate mechanisms for undertaking initial and subsequent risk assessments including assessment of the safety of the child or young person concerned
- Demonstrates a process for deciding what action, if any, is to be taken regarding the employee or the carer who is the subject of the allegation
- Assesses and monitors the risk of continued access of that employee or carer to children and young people
- Understands its responsibilities and has an appropriate process in place for conducting internal investigations where an allegation does not meet the threshold for reporting to the NSW Ombudsman
- Demonstrates appropriate levels of monitoring and follow up subsequent to allegations / investigations regardless of the outcome

There are benefits in implementing child safe standards within broader accreditation or licensing requirements for OOHC providers. This includes ensuring that OOHC providers are delivering services that meet at least the minimum accepted standard of care, embedding child safe principles as an integral part of an organisation's ongoing development, and ensuring that there is sufficient flexibility to be applicable to all service types.

While the original accreditation programs acted as a driver in a previously unregulated system, the OOHC sector in NSW has matured and the Children's Guardian's monitoring activities are now largely focused on continuous improvement in designated agencies and the maintenance of minimum standards in a sector which has experienced rapid growth under the NSW Government transition program. We believe the child safe Standards have contributed to significantly improving service delivery.

The OCG has also consulted and provided guidance to other States and territories in implementing their own standards in relation to Child Safe Organisations.

## **5. Challenges**

The OOHC sector in NSW is now regulated space. Agencies providing care are required to demonstrate ongoing compliance with the Standards and to meet contractual requirements of their funding bodies. Accreditation is not a point in time assessment. Once accredited, an agency will be required to participate in further monitoring programs during their accreditation period and will also undergo an accreditation renewal process commencing 12 months out from their renewal date. The accreditation scheme for OOHC provides the OCG with significant information on the systems agencies have in place to keep children safe and demonstrate compliance with the NSW Child Safe Standards for Permanent Care. Requirements are imposed on agencies with respect to authorisation, selection and training of carers as well as additional requirements flowing from the oversight and regulatory frameworks in place to identify and respond to disclosures by children and young people.

The Children's Guardian's functions in respect of the WWCC, encouraging organisations to be safe for children and the accreditation and monitoring of OOHC providers allows her to align regulatory approaches across these functions, streamline information sharing and minimise the regulatory burden on non- government agencies.

The OCG is aware that there are a number of challenges and gaps that remain despite the strengths of the system, outlined below.

### **5.1. Regulatory burden limiting non-government sector capacity to provide direct services**

Agencies have expressed concern to the OCG that the regulatory and reporting requirements placed on them have increased over time. While there have been additional reporting and compliance requirements, the information obtained could be better shared between regulatory and oversight agencies to reduce duplication for the relevant agencies.

For example while agencies are required to make reportable conduct allegations to the Ombudsman, the OCG has recently placed a requirement on OOHC agencies to report allegations of serious sexual assault or sexual misconduct towards a child or young person in statutory out-of-home care, committed by a child-related worker (inclusive of employees, authorised carers, adult household members and board members), to the OCG. These allegations are required to be reported within 14 days. The OCG requires this live information in order to inform our continuous monitoring of agencies and to identify any trends which may require immediate or targeted response.

If the information is not available to the OCG we will not be able to determine if the agency has appropriate systems in place to use this and respond. There are therefore compelling child protection reasons for the information to be obtained by the OCG, however we are aware that the regulatory burden on the non-government sector may impact on their capacity to focus on service delivery.

The OCG acknowledges that further work can be undertaken by way of collaboration with the NSW Ombudsman who also receives this information for different purposes and within a different time frame as part of the Reportable Conduct scheme, to achieve maximum impact with the available information and to minimise duplication on agencies.

Particular consideration will also need to be given in the development of FACS' Quality Assurance Framework to ensure that the relationship with the NSW Child Safe Standards for Permanent Care are clarified. The OCG will need to work with FACS to promote role clarity with regards to oversight, and to ensure that the two frameworks are complementary in nature to avoid duplication of reporting requirements.

Similarly, the OCG will need to work closely with FACS to ensure that any contractual requirements imposed on agencies as a result of the Quality Assurance Framework avoid duplication with accreditation requirements and are focused on achieving the best outcomes for children.

### **5.2. Sector capacity**

The transition of OOHC services from FACS to the non-government sector is now significantly progressed. This has resulted in an increase in the number of designated agencies within NSW and an increase in the number of children and young people whose case management has been transferred from FACS to non-government organisations. During this period of rapid growth the OCG has become concerned, as part of its monitoring of these agencies, that some designated agencies have been unable to maintain consistent, minimum compliance with the Standards. To address this, the OCG has made changes to

the accreditation and monitoring processes to allow for additional assessments prior to accreditation renewal.

Challenges for some designated agencies that accompany the changes to delivery of OOHC and adoption services in NSW include recruiting and maintaining appropriately skilled staff. While this has been an ongoing issue for OOHC and human services delivery generally the increase in demand for services within the NGO sectors has resulted in an increased need for appropriately skilled and qualified staff. The OCG supports further consideration being given to recruitment options and training to ensure a strong OOHC sector.

### **5.3. Effective regulatory tools to respond to the government provider**

The OCG has experienced challenges in applying the accreditation scheme to the government provider. Unlike non-government providers, FACS as a provider of first instance and last resort cannot be excluded from the service system as they have a legislative mandate to provide OOHC to children and young in certain circumstances. It has been the Children's Guardian's experience that sanctions that may be imposed on non-government OOHC providers are impractical in addressing performance issues in respect of government providers.

The OCG is currently reviewing the regulatory options available to the Children's Guardian to better address performance issues in the government provider and improve accountability.

### **5.4. Improving the quality of data collection**

In NSW various agencies collect information about disclosures including: NSW Police, FACS, Courts, NSW Ombudsman, individual NGO's, NSW Health and the OCG. As highlighted earlier, some designated agencies have expressed their concerns about the burgeoning reporting requirements and data collection requests that have been placed on them by government agencies. The combined data held by these agencies is likely to cover the data model proposed in the Royal Commission's consultation paper ( and we refer to the submissions of the NSW Government and the Ombudsman which outline the nature of data collected more comprehensively) in relation to disclosures that are subsequently substantiated, with the exception of addressing life outcomes. However we are aware that this is an area that FACS is looking at, and developing a Quality Assurance Framework to measure the outcomes of individual children in OOHC.

Although a wide range of data is collected there is opportunity for further sharing of information, and no clear agreement as to exchanging the data including for research, policy and practice improvement purposes.

The OCG supports a nationally consistent approach to the collection and sharing of data, however it is of the opinion that further work is required by individual jurisdictions and nationally to reach agreement on: the scope of data collection, key definitions and thresholds, any agreed data model and standardised reporting by relevant agencies of allegations to enable national consistency. We acknowledge that variations in the data collected across jurisdictions also impede the sharing of relevant information.

The OCG would welcome the opportunity to contribute to discussions at a national level to progress this work, including reaching agreement on the strategic purpose of data that is collected and ensuring that relevant cross jurisdictional information can be shared.

## **5.5. Purposes of collection and use of data**

The OCG believes that efforts in NSW may best be focused at the outset on reaching a clear understanding of what data is currently collected and by which agency with a view to developing an agreed data collection and exchange protocol. This should be accompanied by discussions to align the data that is collected by the various agencies with a clear strategic purpose and governance model for the data.

This approach may avoid duplication of effort and minimise the resource implications for centralising the collection of this data within one agency, in the event that no single agency is found to hold all the relevant data.

The approach data model should focus on identifying the trajectories of children who have been abused prior to or following entry to OOHC and the arising responses to their needs. There should be a coordinated approach to assessment of trends in data. This would be with a view to developing a strong evidence base about the extent, nature and responses to child sexual abuse in OOHC.

**Attachment A** provides our direct responses to the proposed data model.

## **5.6. Monitoring vulnerable children**

Currently there appears to be limited information and monitoring of the trajectories of some particular groups children and young people, particularly:

- those who exhibit harmful behaviours, or
- those that are the subject of harmful behavior by other children in care,
- those that make allegations about abuse which does not reach a threshold requiring follow up by any existing body, or
- where they relate to carers that are not authorized ie self-placed children and young people.

While the OCG monitors that agencies have systems in place to respond to children who have made substantiated disclosures, including that appropriate referrals to treatment and services have been made, and that appropriate placement decisions have been made, this is not the case where the child or young person's disclosure is not substantiated. The Ombudsman's oversight does not extend to all situations involving child on child abuse or harm. The integrated framework covering suitability and screening of carers, oversight, monitoring and ongoing development does not cover people who a child self-places with, if they are not already authorized carers.

The issue of a special guardian function to intervene on behalf of some very vulnerable individual children was canvassed by the OCG in its submission to the Wood Special Commission of Enquiry into Child Protection Services in NSW in 2008. This was done in the context of the Children's Guardian's unproclaimed provisions in the Care Act which relate to the functions regarding powers of guardianship of children and young people in OOHC. At that time it was considered preferable to equip DOCS and other designated agencies better so they can respond to the children and young people in their care and to the Children's Guardian when she draws attention to concerns.

The service system has changed considerably since that time and it is clear that it sits within a rigorous regulation and oversight system by the Children's Guardian, the NSW Ombudsman and FACS. However some children and young people remain particularly vulnerable in the existing OOHC framework. With the transfer of OOHC services to the NGO sector and FACS exiting from having a significant role in OOHC delivery, it may be an opportune time to re-consider how best to respond to the needs of these very vulnerable children in the system.

## 6. Continuous improvement

A number of legislative amendments were introduced in late 2015 to *the Children and Young Person (Care and Protection) Act 1998*, *the Child Protection (Working with Children) Act 2012* and the *Ombudsman Act 1974* to promote further meaningful information sharing arrangements to support timely and appropriate responses to the needs of children and young people in care. These include amendments to promote sharing of information:

- **With children and carers:** OCG supports better information sharing with children, their parents and carers where appropriate. The *Child Protection Legislation Amendment Act 2015* (the Amendment Act 2015) inserted s25GA of the *Ombudsman Act 1974 (NSW)* to enable the progress and outcomes of reportable allegations investigations under the *Ombudsman Act 1974 (NSW)* with children who are allegedly the subject of the reportable conduct, as well as with their parents or carers.
- **Intra- jurisdictional and inter-jurisdictional:** The *Children and Young Person (Care and Protection) Act 1998* was amended by the Amendment Act 2015 to enable the Minister for FACS to make protocols for designated agencies and accredited adoption providers that assess the suitability of persons to be adoptive parents, guardians or authorised carers to be able to exchange suitability assessment information and obtain relevant information from relevant NSW child protection, OOHC, guardianship and adoption agencies.
- **Between the Children's Guardian and the FACS Secretary:** Changes were also made to permit the Children's Guardian to disclose information obtained under the WWCC system to the Secretary of FACS for the child protection purposes more broadly<sup>8</sup>.
- **Other legislative amendments:** The *Child Protection Legislation Amendment Act 2015* also introduced changes to allow designated agencies to consider information provided by *any* person about an authorised carer, carer applicant, guardian, prospective guardian or person who resides on the same property when determining if a person is suitable to be in that role.

These legislative amendments are supported by the NSW Child Safe Standards for Permanent Care which require through a number of Standards, that appropriate arrangements be made for children to participate in decisions about their lives, including:

- Standard 1 – Rights of the child
- Standard 4 – Identity
- Standard 6 – Participation in decision making.

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<sup>8</sup> S48A(1A0 inserted by Schedule 2 of the Amendment Act

- Standard 15 – Casework and monitoring placements. Under this standard, ‘people caring for children and young people must be provided with information to assist them in providing appropriate care’.

Underpinning these is the requirement in Standard 23 for agencies to continuously assess the quality of their services and develop strategies to address gaps. The OCG assists agencies in this process to drive practice and policy improvements.

As noted above challenges remain in the sector. Some of these stem from attempts to keep up with the increasing population of children in care in NSW and the transition of children from FACS to the non-government sector. Others relate to the interplay of agencies.

There is ongoing improvement required to respond to these challenges to keep pace with the evolving maturity of the sector. Significant efforts are occurring in this regard. The OCG is considering changes to the accreditation and monitoring processes to reflect the level of maturity of the sector and assess whether children’s outcomes are positive without imposing an unnecessary reporting burden. Efforts are progressing for a proposal for inter-jurisdictional carer information sharing to enable important information about carers to be shared between jurisdictions to ensure that relevant probity information is able to be considered by agencies across jurisdictional border. A range of data improvements and measurement of children and young people’s outcomes is also occurring as outlined in the NSW Government response to this Consultation paper.

# ATTACHMENT A

1. The OCG considers that the scope of the data should not be limited to allegations of 'sexual abuse'. Outcomes for children in OOHC would be better served by including allegations of physical abuse and neglect, and in light of the issues identified in Chapter 2 of the Consultation paper, it may also be appropriate to consider whether allegations of child sexual exploitation should be included. The unit record data file should be extractable for a range of abuse categories that are included in any proposed data model. Any model that is developed needs to be flexible, expandable and able to be modified with national agreement to incorporate changes in knowledge over time.
2. Supported, with reference to our comments above at 1) and the addition of a response field to indicate if the incident occurred prior to or following entry to OOHC.
3. The OCG supports demographic descriptors in relation to children who have been the victims of the perpetrated abuse and / or any child who is the perpetrator of abuse in care. However, the requirement to collect the same demographic descriptors for adult perpetrators is not supported. This would require a far greater amount of resourcing to input and could be problematic in terms of accuracy of information and raises questions about the purpose for which this information would be gathered and used. This type of information should be captured by investigative bodies such as JIRT in NSW or the Police. Consideration could be given to how perpetrator information that is collected by these bodies could be linked.
4. Supported.
5. The data collected should include data about treatment and support across all sectors, including the criminal justice system and the child protection system. Whether this data should be used to monitor treatment, support and life outcomes requires further consideration which the Children's Guardian is happy to contribute to. This would be with a view to reaching agreement on how life outcomes would be measured, the roles and responsibilities of agencies in relation to collection and the resourcing impacts.
6. All State and Territory Governments have a police/ court system that captures this information and duplication in reporting and collection of this information should be avoided. However the Children's Guardian supports an agreed data collection and exchange protocol as indicated above, to ensure that all relevant information is being collected by at least one agency.