

Child Safe Scheme

Application to statutory out-of-home care and adoption sector

The following table sets out how the proposed Child Safe Scheme would be implemented in the statutory out-of-home care and adoption sector. It should be read in conjunction with the Exposure Draft of the Children's Guardian (Child Safe Scheme) Bill 2020 and Explainer.

Part 3A

Division	Division heading	Proposed application
Div 4	Codes of Practice	<p>The <i>Code of Practice for Permanent Care</i> (the Code) will set out in detail the specific requirements for compliance with the Child Safe Standards. The Code will apply to statutory out-of-home care and adoption service providers and will be like the current indicators of compliance in the <i>NSW Child Safe Standards for Permanent Care</i>.</p> <p>The Code will be recommended to the Minister, for his approval, as the 'standards and other criteria' for determining whether to grant an application for accreditation as a designated agency¹ and as the 'standards and other criteria' for determining whether to grant an application for accreditation as an accredited adoption service provider.²</p>
Div 5	Capability Building	Guidance material and resources will be developed to assist the sector to implement the Child Safe Standards.
Div 6	Monitoring	<p>Examples where the child safe monitoring functions would apply to accreditation and monitoring:</p> <ul style="list-style-type: none"> • Monitoring an agency through a direct evidence program – provisionally accredited agencies delivering services for the first time participate in onsite assessments of practice every three-four months, for the purpose of assessing practice against the Child Safe Standards and the Code. Feedback reports are provided, for the purposes of assisting the agency to identify where its

¹ Clause 48 of the *Children and Young Persons (Care and Protection) Regulation 2012*

² Section 113 of the *Children's Guardian Act 2019*

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		<p>practices are meeting the requirements of the Standards and the Code, and where improvements need to be made.</p> <ul style="list-style-type: none"> • Monitoring an agency that has substantially met the accreditation requirements – where the Children’s Guardian has granted accreditation on the basis of substantial compliance with the Standards and the Code, the OCG will monitor progress towards fully meeting the requirements. • Monitoring compliance with technical child protection requirements – the Children’s Guardian may undertake a review of a particular area of an agency’s practice for the purposes of ensuring individual agencies are compliant with the more technical child protection requirements (e.g. ‘spot checks’ of compliance with Working With Children Check requirements, or compliance with carer assessment and authorisation processes). The purpose of monitoring in this scenario is to verify that the agency is compliant with its various child protection requirements and to provide feedback where improvements are required. <p>When a matter is escalated after monitoring assessment:</p> <ul style="list-style-type: none"> • Decision to undertake a more formal investigation of non-compliance – where monitoring or accreditation assessment processes indicate risks to children and young people, the Children’s Guardian would put the agency on notice that their accreditation is at risk unless certain undertakings are met. This would be similar to the current approach where the Children’s Guardian issues a ‘notice of intention to shorten/suspend/cancel accreditation’.
Div 7	Investigation	<p>More formal investigative responses would be triggered where the Children’s Guardian:</p> <ul style="list-style-type: none"> • has concerns regarding an agency’s compliance with the Child Safe Standards; or • is required to make a decision regarding an agency’s compliance with the Child Safe Standards. This includes where an agency has applied for provisional accreditation or where an agency has applied to renew its accreditation. <p>Examples where an investigative response would be triggered:</p> <ul style="list-style-type: none"> • An agency makes an application for provisional accreditation – the Children’s Guardian assesses an agency’s policies and procedures against the Code. Feedback is provided to the agency as the assessment progresses, for the purposes of assisting the agency to comply with the

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		<p>Standards through the Code. The Children’s Guardian may also review other information held by the OCG regarding the relevant entity and its employees, require the head of the entity (the principal officer) to provide specified information or answer questions.</p> <ul style="list-style-type: none"> • An agency makes an application to renew accreditation – where an existing provider applies to renew its accreditation the Children’s Guardian will conduct onsite assessments of practice and other material, over a 12-month period. The purpose of the assessment is to assess compliance against the Code. Regular feedback is provided to the agency to assist it to make practice improvements, before a final accreditation decision is made. • The agency is put on a risk management program – the Children’s Guardian may place an agency on a risk management program where particular areas of concern have been identified, either through other monitoring processes, or from information provided by another entity (e.g. DCJ). In this scenario the agency may be required to develop an action plan detailing how it will rectify its practices and the OCG will monitor progress against the action plan closely. The agency would be put on notice that failure to rectify practice concerns could result in further regulatory action such as an Enforceable Undertaking or losing its accreditation. • The Children’s Guardian intends to impose conditions/issue a Compliance Notice or an Enforceable Undertaking – this is to address a concern of non-compliance with the Code. • An agency that is substantially compliant with the Code, but is not making adequate progress towards full compliance – agencies that are substantially compliant with the Code must be fully compliant within 12 months.³ Where an agency is not demonstrating sufficient progress towards wholly meeting accreditation requirements the Children’s Guardian would put agency on notice that its accreditation is at risk. The Children’s Guardian may choose to impose conditions, issue a Compliance Notice or enter an Enforceable Undertaking. • An agency’s accreditation decision is deferred – where an existing provider is unable to demonstrate compliance with the Code to support its application to renew accreditation the Children’s Guardian would put the agency on notice that she may decline its application. She may also choose to impose conditions, issue compliance notices or enforceable undertakings.

³ Clause 54(1) of the *Children and Young Persons (Care and Protection) Regulation 2012*

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		<ul style="list-style-type: none"> • There are grounds to shorten/suspend/cancel an agency's accreditation – at any time during an agency's accreditation the Children's Guardian may put an agency on notice to shorten/suspend/cancel accreditation, where any of the grounds in cl.66 of the Care and Protection Regulation 2012 are met (e.g. principal officer knowingly misleads the Children's Guardian, failure to comply with a condition of accreditation, non-compliance with the Code).

Part 9A

Division	Division heading	Proposed application
Div 1	Compliance Notices (ss 152D – 152G)	<p>Compliance Notices would work in a similar way to the current notice of conditions on accreditation. However, conditions are also used for administrative purposes and issuing a Compliance Notice would be a more transparent way of indicating where a condition is being used as a tool to address non-compliance vs as an administrative tool.</p> <p>Conditions of accreditation are currently published on the website, but the OCG does not currently publish our <i>reasons</i> for imposing certain conditions.</p> <p>Conditions would be used to manage the scope of an agency's services, or where there is ongoing or long term need to establish compliance with the Standards, for example:</p> <ul style="list-style-type: none"> • Specifying the types of service an agency can provide (e.g. foster care only) • Requiring agencies to report certain information to the Children's Guardian (e.g. when a child under the age of 12 is placed in residential care) • Limiting the scope of services an agency can provide (e.g. the agency cannot provide services to children and young people assessed as requiring intensive foster care or higher) • The agency cannot take further placements until the Children's Guardian is satisfied certain issues have been rectified. <p>Compliance Notices would be used where an agency is required to take certain action/s, these may be one-off activities, for example:</p>

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		<ul style="list-style-type: none"> • Ensure all staff attend child protection training approved by the Children’s Guardian • Require the agency to engage a child protection expert to oversee its reportable conduct functions • Require the governing authority to do certain things. <p>Compliance would be monitored through various reporting mechanisms and onsite assessments of practice.</p>
Div 2	Enforceable undertakings (ss 152H – 152K)	<p>This would have similar application to Compliance Notices but where the agency agrees with the actions that must be taken, for example, an agency may agree that:</p> <ul style="list-style-type: none"> • it needs to appoint an interim principal officer or an interim governing board where existing governance structures are inadequate • an external consultant must be appointed to work with the agency to address specific issues.