

Proposed mandatory prescriptive requirements for voluntary out-of-home care providers

1. Objects of the mandatory prescriptive requirements

Establishing mandatory requirements for: risk management; code of conduct; intake and assessment, supervision; case planning; age-appropriate placement matching; leaving placement; record keeping, information sharing and complaints handling; and behaviour support, will:

- reduce the risk of children drifting in the voluntary out-of-home (VOOHC) system without appropriate planning and care, and
- promote improved child safety, quality, consistency, and coordination in the delivery of services.

Providers must comply with all relevant laws, including child protection laws, in carrying out their role.

2. Definitions

Voluntary out-of-home care (VOOHC) – 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.^[1] This overnight care can be on a short to long-term basis. It can take place in a variety of settings including, but not limited to, camps, home-based environments, in motels and Airbnb.

Head of a VOOHC agency – the chief executive officer of the VOOHC agency or if no chief executive officer, the principal officer of the VOOHC provider.

Collaborative planning – partnership approach to VOOHC, under which VOOHC providers coordinate decision-making and the delivery of services for children with other organisations that have responsibilities relating to the safety, welfare or wellbeing of those children.

Service Plan – service planning addresses the child’s immediate day-to-day care needs in a placement with a VOOHC agency. In certain circumstances VOOHC service planning may be confined to using information collected through the intake process to meet the child’s immediate needs. Where the child stays in care for longer, or receives regular short periods of care, service plans must address the child’s ongoing day to day care needs, including their:

- day-to-day health, medical, mobility and behavioural needs
- communication and personal care needs
- likes and interests
- maintenance of relationships with family and significant others
- cultural and spiritual/religious needs
- participation in educational/vocational, social and leisure activities.

Case Plan – a case plan is a comprehensive and holistic written plan that addresses:

- the child’s aspirations and ongoing physical, health, emotional and behavioural, family, social, recreational and leisure, educational and/or vocational, spiritual/religious and cultural needs

- the aspirations and needs of the child's parent(s) and, where relevant, other family members
- any risks associated with the child's care, including appropriate management strategies.

Supervising agency – the supervising agency (designated agency or Children's Guardian) is responsible for supervising VOOHC provided to the child by all VOOHC providers until supervision ends. The supervising agency must arrange supervision meetings with VOOHC providers on a minimum of a monthly basis.

- The supervising agency supervises all the VOOHC provided to the child, promotes collaboration and interagency coordination and ensures case planning occurs in line with the 180 day threshold.

Lead planning agency – the agency with lead responsibility for preparing and reviewing case plans. If there is a case manager or NDIS Support Coordinator, the agency with case management. If there is no case manager or NDIS Support Coordinator, the principal care agency or another agency that has agreed, with the principal care agency's consent, to prepare or review a case plan.

Principal care agency – the agency that currently provides most of a child's VOOHC. The Children's Guardian can advise which VOOHC agency is the principal care agency for a particular child.

Designated agency – an agency that may provide statutory and supported out-of-home care. A designated agency may also provide, arrange or supervise VOOHC.

3. Policies and procedures

A provider **must** have in place:

- A Child Safe Policy that includes an organisational statement of commitment to child safety
- A Code of Conduct signed by all staff
- A Risk Management Plan
- Intake policies and procedures
- Complaint Handling Policy to respond to complaints made by children or their parents, in line with applicable legislation.

The head of a VOOHC agency **must** demonstrate that steps have been taken to ensure that the above policies have been understood by all staff.

The head of a VOOHC agency **must** demonstrate that steps have been taken to ensure that children and families understand and have access to the above policies.

These above documents **must** be made available to the Children's Guardian officers on request.

4. Entry of children's placements on the VOOHC register

A provider **must** enter details of the child and the start and end date for each placement of a child in the VOOHC register. This **must** occur within five working days of the child commencing and exiting a placement.

5. Risk management

The head of an agency **must** develop and implement a Risk Management Plan to assist staff to identify risks of abuse and harm against children and put mitigation strategies in place.

6. Code of Conduct requirements

The head of an agency **must**:

- Develop, implement and communicate a Code of Conduct setting out expectations about interactions between staff and children in their care.
- Establish within their Code of Conduct that all staff members must report any allegations or potential signs of grooming and abuse against a child by a staff member.
- Hold staff accountable to the agency's Code of Conduct and their obligations to report any identified or suspected risks to child safety.
- Take action in relation to any suspected, or actual, breaches of the Code of Conduct.

7. Recruitment, education and training requirements

A VOOHC provider **must**:

- Undertake appropriate pre-employment checks for all staff and volunteers, Head of VOOHC Agency and members of the governing body (if applicable), including:
 - online verification of Working with Children checks via the Office of Children's Guardian
 - professional reference checks with previous or current employers.
- Provide child safety awareness training, including identifying and reporting risks of abuse to children before they commence providing care to a child in VOOHC.
- Provide regular and ongoing supervision and support to employees caring for children in VOOHC.

8. Intake and assessment requirements

A VOOHC provider **must** have intake policies and procedures that meet the mandatory prescriptive requirements. Intake and assessment requirements must be completed prior to a child's VOOHC placement.

At intake and assessment, a provider **must**:

- Develop a care plan and assessment plan that meets the needs of the child and their family.
- Obtain information about the child to be recorded in the VOOHC register.
- Access the placement history on the VOOHC register including days spent in care in the last 12 months and any current supervising agency or case plan.
- Obtain information (to the extent relevant) about:
 - Current formal and informal supports for the child and their parent(s)/family.
 - Any health, medication, disability, environmental, safety risk, emotional/behavioural, cognitive/developmental, mobility, nutrition or dietary issues relevant to the child's care, and any management plans for these issues.
 - Any special cultural, language or communication needs of the child.
 - The child's living and socialisation skills and any daily routine (including eating, drinking, dressing, sleeping, bathing, toileting and menstruation) they may have
 - The needs of the parent(s).
 - Emergency contact details for the child's parent(s) and other relevant family members.
- Inform children and parents about:
 - Full range of available services the agency can arrange or provide in a format and language they can understand, including use of alternative communication systems.
 - Any costs the parent(s) must meet to access those services.
 - Who will be responsible for providing the selected available services.

- Respective roles of the agency, any other service provider, the child and parent(s) in making decisions concerning the ongoing care and support of the child.
- Purpose for, and manner in which, information relevant to the child's safety, welfare or wellbeing may be shared with other agencies.
- Entry of information into the VOOHC register and their rights to access and correct information held by the VOOHC provider or entered onto the VOOHC register
- Internal and external complaints handling processes.
- Ask children, to the extent of their capacity, and their parent(s) to sign an acknowledgment that they are aware that information relevant to the child's safety, welfare or wellbeing may be shared with other agencies, including information that will be entered on the VOOHC register.
- Wherever possible, arrange meetings for intake and assessment at places and times that are convenient for children and their parent(s).
- Confirm a placement in writing to the parent(s) within 7 days of the placement being arranged.
- Undertake service planning that addresses the child's immediate and ongoing day-to-day care needs in the VOOHC placement. A child's day to day care needs include, but are not limited to, health, medical, mobility, behavioural, communication, relationships with family and significant others, cultural, educational and religious.

A provider **must** also:

- Obtain and consider information provided by other organisations or people who have previously been involved in supporting the safety, welfare and wellbeing of a child.
- Contact any current supervising agency or agency that has lodged a current supervision plan or case plan notification on the VOOHC register for a child.
- Use the information obtained through intake and assessment to inform service and case planning.

9. Appropriate placement and placement-matching requirements

A VOOHC provider **must** be responsive to the needs of the child and their parent(s) and family. A provider **must** consider their culture, age, disability, language, religion and sexuality. However, if a provider is not able to be responsive to the specific needs of a child and their parent(s) and family, alternative arrangements **must** be made as the safety, welfare and wellbeing of the child or young person is paramount.

A provider **must** consider the age of the child in determining the appropriateness of their service or if other supports should be provided. A provider **must** consider placing a child with peers of similar age, developmental needs and interests:

- For younger children, host-family care with a focus on individualised care should be the preferred option. **Children under the age of 7** must not be placed in centre-based care unless they have complex health needs that require such care.
- **Children aged 16-17** may be placed with either children or adults in centre-based or residential care according to their individual needs.
 - This can only occur following a risk assessment, approval by the Head of a VOOHC Agency or their senior delegate and with the consent of the child's parent or guardian, prior to the placement occurring.
 - This arrangement should be regularly reviewed to determine the ongoing suitability of the placement.

- **Children aged under 16** must only ever be placed in centre-based or residential care with adults in exceptional circumstances. For example, an adult may be placed in a centre that provides support to children under the age of 16 where:

(a) the adult has very high medical support needs and/or such limited mobility so as to present no risk to others, their needs and circumstances indicate such a placement would be appropriate, and there are no other suitable options; and

(b) the adult's individual circumstances, such as their physical size, would pose a potential risk to them if placed in an adult respite centre

- This can only occur following a risk assessment, approval by the Head of a VOOHC Agency or their senior delegate and with the consent of the child's parent or guardian, prior to the placement occurring.
- This arrangement should be regularly reviewed to determine the ongoing suitability of the placement.

A VOOHC provider **must** be responsive to the needs of First Nations families and those from culturally and linguistically diverse backgrounds. These needs must be considered in making arrangements and care planning for each placement.

10. Supervision and case planning requirements

Where a child receives care from a provider and has been in care for 90 days or more, collaborative planning **must** occur.

10.1 Supervision

A child **must not** remain in VOOHC for more than a total of 90 days in any 12-month period unless that care is provided by a supervising agency.

If supervision is required a provider **must**:

- Ensure supervision is arranged with a supervising agency before the child has been in VOOHC for more than a total of 90 days in a 12-month period (if there is no current supervising agency).
- Consult with, and advise the child's parent(s), that supervision has been arranged and provide them with the name and contact details of the supervising agency.
- Discuss the supervision arrangements with the child and their parents.
- Contact any current supervising agency or agency with a recorded case plan on the VOOHC register for the child to discuss case planning and obtain information relevant to meet the child's particular care needs.

If a child has been in VOOHC for more than a total of 90 days in a 12-month period and care is not supervised by a supervising agency, then the provider **must** notify the Children's Guardian immediately.

A provider **must** advise the supervising agency if the child's circumstances change and their placements no longer require supervision.

A provider **must** report any breaches to supervision requirements to the Children's Guardian. The Children's Guardian will then contact the provider and the principal care agency, if different, and the child's parent(s) (where appropriate) to discuss the reasons for the breach and any action being taken to address it. The Children's Guardian will then determine whether it will make a risk of significant harm report to the Department of Communities and Justice.

10.2 Case planning

If a child is to remain in VOOHC for more than a total of 180 days in a 12 month period, a provider, who is the lead planning agency, **must**:

- Identify a case plan coordinator to lead preparation of the case plan.
- Ensure the case plan is developed from a formal case conference.
- Gather relevant documentation of previous assessments and plans (including information gathered at intake) and, if required, arranging for further assessment of the child's needs.
- Communicate with the child and their parent(s) to ascertain their needs, views and wishes.
- Coordinate the involvement of other agencies and individuals that provide care or support to the child in developing the case plan.
- Convene case meetings with, and distributing case meeting minutes to, children (to the extent of their capacity), their parent(s) and other participants involved in developing the case plan.
- Document and distribute case plans and obtaining signatures or other records of agreement of all parties to the case plan.
- Liaise with any supervising agency and other agencies providing care and support.
- Ensure the plan has clear and achievable goals, identifies tasks, responsibilities and timeframes and when the plan will be reviewed.
- Ensure that the plan is submitted for approval to the supervising agency prior to the child reaching 180 days in VOOHC or before the expiry date of a case plan.
- Ensure that the case plan is reviewed when i) the child's ongoing care and support needs or ii) care arrangements change iii) at least annually.
- Attempt to resolve any disagreements or conflict between the provider and a parent about case planning and provide the parent with information about internal and external complaint handling systems.
- Attempt to ascertain the reason for why a parent may refuse to participate in case planning.

11. Leaving VOOHC

A VOOHC provider **must**:

- Only release a child leaving VOOHC into the custody of a parent or a person authorised by the parent.
- If the parent(s) is/are unwilling or refusing to resume caring for the child at the time a VOOHC placement ends, make a report to the Child Protection Helpline. Short term care or an alternative emergency placement must be arranged, in collaboration with the child's parents (if possible) and if the child has one, an NDIS Support Coordinator.
- Enter information about the end of the placement onto the VOOHC register within 5 working days of the placement ending.
- Exit the child from the VOOHC register on their 18th birthday.

12. Record keeping, information sharing and complaint handling requirements

12.1 Record keeping

A VOOHC provider **must** retain:

- Written or electronic records of each assessment and intake process, including records containing the views of the child, how the views of the child and their parent(s) were sought and incorporated into that process.
- Written or electronic records of:
 - the services that they have agreed to provide to each child and their parent(s)

- the responsibilities of the various parties in making decisions concerning the ongoing care of the child (decision-making responsibilities).
- Written or electronic copies of each case plan or review of case plan (if a case plan is required).

A provider must provide copies of the following written or electronic records to the parent(s):

- services
- responsibilities
- each case plan and reviews of case plans, where relevant.

A provider **must** attempt to obtain the signature of children (to the extent of their capacity) and their parent(s) as evidence of their consent to these arrangements. It may sometimes be impractical to obtain signatures for emergency placements. In these circumstances, a provider must document how and when they attempted to obtain consent from the parent(s).

A provider **must** maintain records of practice relevant to the safety, welfare and well-being of children in their care. These records must be made available to the Children's Guardian for inspection upon request, in written form or an electronic format approved by the Children's Guardian.

12.2 Information sharing

A VOOHC provider **must**:

- Coordinate with other organisations that have responsibilities for the safety, welfare or wellbeing of a child in their care.
- Exchange information about children and their families in some circumstances¹¹ - see Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.
- Have internal procedures which specify which of its staff are authorised to provide and receive information.
- Comply with a formal direction to provide the Children's Guardian with information relating to the safety, welfare and wellbeing of a child (or a class of children). Failure to do so is a criminal offence carrying a maximum penalty of \$1,100.
- Notify the Children's Guardian of a death or serious injury of child in their care.

12.3 Complaint handling

A VOOHC provider **must** have complaint-handling policies and procedures to support children who report abuse and to provide guidance to staff about their internal and external mandatory reporting obligations.

13. Behaviour support

Behaviour support for children in VOOHC is subject to requirements and limitations in care and protection legislation. Providers must ensure that the carers and employees they engage with comply with these requirements and limitations. NDIS registered agencies providing VOOHC must also comply with the NDIS Quality and Safeguarding Framework and the NSW Restrictive Practices Authorisation Policy (2019).

A provider **must** approve all behaviour support practices used by carers and employees. A carer must not use:

- any physical coercion or physical punishment (including corporal punishment)

¹¹ Under section 180 of the Act; Chapter 16A and section 248 of the Children and Young Persons (Care and Protection) Act 1998; and clause 20 of the Regulation.

- any punishment that takes the form of immobilisation, force-feeding or depriving of food
- any punishment that is intended to humiliate or frighten a child or young person.

If a provider is notified that approved behaviour support practices are inadequate to manage the behaviour of a child, they must assess the situation in consultation with the parent of the child. This is to determine if problem should be addressed by:

- providing appropriate advice, support and training to the voluntary carer and appropriate support to the child or young person, or
- changing the placement arrangements.

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.

13.1 Physical restraint

The Children and Young Persons (Care and Protection) Act 1998 permits a carer to physically restrain a child if the carer believes that restraint is necessary to prevent serious injury.

Physical restraint is the intentional restriction of a child's movement or behaviour by the use of a device or physical force. Limitations and protections that apply to the use of physical restraint by carers include:

- Physical restraint is permitted as a form of intervention only where children may seriously injure themselves or others if not restrained.
- Physical restraint may only be used on a temporary basis to prevent injury to the child or others.
- Carers may remove from the child any weapon, alcohol, illegal substance or other thing to prevent injury to any person.
- The restraint must be consistent with any behaviour support requirements of a care plan applying to the child. Where behaviour support requirements have not been set out, reasonable force may be used.
- A carer who uses physical restraint in accordance with the *Children and Young Persons (Care and Protection) Act 1998* and who is able to satisfy the Court that their actions were reasonable in all the circumstances is immune from any criminal or civil liability that arises as a consequence.

A VOOHC provider should provide appropriate support and counselling for children who have been physically restrained.

^[1] Section 76, *Children's Guardian Act 2019*