

# Child Safe and Voluntary Out-of- Home Care Consultation Summary

May 2022

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## Introduction

In November 2021, the *Children's Guardian Amendment (Child Safe Scheme) Act 2021* was passed by NSW Parliament. It commenced on 1 February 2022. This Act embeds the Child Safe Standards as the primary framework to guide child safe practice for child-related organisations in NSW. It requires certain organisations to implement the Child Safe Standards, including voluntary out-of-home care providers.

Voluntary out-of-home care is broadly defined as an arrangement between a parent and an organisation for a child to receive overnight care outside the family home in NSW. 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.

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 (OCG); being, the current voluntary out-of-home care registration and monitoring scheme, which required agencies to comply with the *Statutory Procedures for Voluntary Out-of-Home Care*, and the new Child Safe Scheme. This provided an opportunity to consider how the regulatory framework for voluntary out-of-home care can be strengthened, streamlined, and improved.

The Office of the Children’s Guardian released a consultation paper and online survey to the public 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. We received eight government and non-government agency submissions and a total of 24 responses to the online survey.

This consultation summary provides an overview of the main themes that arose during consultation.

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## Voluntary out-of-home care regulation under the Child Safe Scheme

### Sector response

Most stakeholders supported regulating voluntary out-of-home care providers under the Child Safe Scheme. Providers considered this approach could strengthen the focus of regulation on children’s safety and placement needs.

Stakeholders considered the use of consistent language and standards in legislation for child-related services would benefit families, communities, and staff by establishing clear expectations on what organisations can do to be safer for children. One stakeholder stated:

**‘It would be useful to have both OOHC and VOOHC operating under the same standards for consistency and more streamlined approaches to caring for children and young people in these agencies.’**

Stakeholders confirmed this support through responses to our survey:<sup>1</sup>

- Eighty-three per cent (n=20) either agreed or strongly agreed that more should be done to streamline regulatory requirements for voluntary out-of-home care providers.
- Seventy-seven per cent (n=19) either agreed or strongly agreed that using the Child Safe Standards to guide child safe practice provides an opportunity to streamline regulation.
- Ninety-one per cent (n=22) either agreed or strongly agreed that regulation in the voluntary out-of-home care sector should be focused on outcomes that keep children and young people safe.
- Seventy per cent (n=17) either agreed or strongly agreed that regulatory requirements on providers can be duplicative and resource intensive.

While most stakeholders indicated support for the proposal to streamline regulation, some stakeholder identified concerns about the unique vulnerabilities for children and young people who access these services. One stakeholder noted that, compared to the NSW Permanent Standards for Out-of-Home Care, the Child Safe Standards are purposefully ‘light’ to enable their application to the vast services for children in NSW.

Stakeholders supported maintaining strong external regulation and oversight for voluntary out-of-home care services. One stakeholder suggested the sector:

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<sup>1</sup> All percentages are of the total of 24 survey respondents.

‘would benefit from more detail and guidelines regarding their [the Child Safe Standards] implementation, otherwise they are at risk of minimal interpretation and application’.

## Office of the Children’s Guardian response

We appreciate current regulatory requirements for providers may be duplicative and resource intensive. The objective of any changes to the current voluntary out-of-home care framework will be to make the regulation of providers more effective and efficient, noting they currently fall under parallel regulatory systems within the Office of the Children’s Guardian.

We appreciate the children and young people who access these services have heightened vulnerabilities and the need for strong external regulation to facilitate accountability for the implementation of child safe practice.

The proposal to establish clear mandatory prescriptive requirements specific to the sector aims to address these concerns (see below).

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.

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## Capability building and support

### Sector response

Stakeholders suggested organisations would benefit from capability building and support to implement the Child Safe Standards under the Child Safe Scheme and additional information on how it would be administered. Survey results indicated 54 per cent (n=13) of respondents either agreed or strongly agreed that guidance material on how providers can implement the Child Safe Standards is preferable to the existing *Statutory Procedures for Voluntary Out-of-Home Care*.

Stakeholders noted, for example, they would require:

- Greater detail on the implementation structure and monitoring approach proposed
- Ongoing education, support, and advocacy for the sector
- Provision of additional resources including online support from the Office of the Children’s Guardian to support the sector’s transition.

### Office of the Children’s Guardian’s response

We will continue work to provide stakeholders with appropriate capability building resources, access to relevant training and opportunities for online learning.

See [our website](#) for education and training options.

We are currently developing an online self-assessment tool to assist organisations with their implementation of the Child Safe Standards. We will notify all child-related organisations in NSW when the tool is available.

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## Mandatory prescriptive requirements

### Sector response

Stakeholders supported mandatory prescriptive requirements due to the heightened vulnerability of children who access voluntary out-of-home care and the nature of service delivery, which involves overnight care and can sometimes be for extended periods of time.

Stakeholders noted that because of the principle-based design of the Child Safe Standards, prescriptive requirements and strong external oversight *'are necessary to protect children and families'*. One stakeholder noted:

**'[m]any families who access VOOHC are going through significant stress and trauma when navigating these arrangements for their children and rely on external oversight to give them confidence when choosing services.'**

Mandatory prescriptive requirements would aim to address stakeholder concerns around the perceived diminution of safeguarding in voluntary out-of-home care because of streamlining regulation under the Child Safe Scheme. Survey results demonstrated that 79 per cent (n=19) of respondents agree or strongly agree that prescriptive detail on how providers must implement the Child Safe Standards should be mandatory.

Conversely, some stakeholders expressed concern for prescriptive requirements, stating this could result in additional regulatory burden and duplication with existing regulatory requirements. For example, two-thirds (n=16) of survey respondents either agreed or strongly agreed that the current registration requirements (by the Office of the Children's Guardian) can be duplicative with NDIS Quality and Safeguards Commission legislative requirements. Stakeholders requested further information to clarify how duplicative requirements and processes will be minimised.

### Office of the Children's Guardian's response

We will review the *Statutory Procedures for Voluntary Out-of-Home Care* and welcome feedback from the sector on any new or revised mandatory prescriptive requirements that are developed.

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## VOOHC register, 90-day supervision and 180-day case planning requirements

### Sector response

In the child safe and voluntary out-of-home care [consultation paper](#), we proposed to remove the requirement to keep a register of the number of children accessing care. It was suggested relevant information about a child's time in care may be able to be gathered by other means, such as the National Disability Insurance Agency.

Stakeholders who supported the removal of the register suggested it is not necessary for supervision and case planning oversight to be duplicated. One stakeholder noted that overall,

**'the register does not address or inform the quality of care, level of safety or otherwise a child may be experiencing in a VOOHC placement'**.

However, some stakeholders did not support the removal of the register. Only 20 per cent (n=5) of survey respondents either supported or strongly supported removing the register. Additionally, only thirty-three percent (n=8) of respondents supported the removal of the related 90-day supervision and 180-day case planning notification requirements.

Not all children and young people who access voluntary out-of-home care are registered with NDIS. Removal of the register, 90-day supervision and 180-day case planning requirements could result in some children and young people not receiving regular case conference meetings or required supports.

Additionally, removing the register:

- could make it hard for providers to track placement history, particularly where families are not transparent about services they are using
- could provide greater opportunities for families to access smaller and multiple providers
- may lead to young carers and children with complex care needs who are in unsustainable family caring arrangements being overlooked, resulting in significant negative impacts on their long-term health, safety and educational outcomes of carers and care recipients.

## Office of the Children’s Guardian’s response

Sector submissions and survey responses indicate that on balance, stakeholders support maintaining the current register, 90-day supervision and 180-day case planning requirements.

Based on this feedback, we will retain these features of the current regulatory framework. We will also re-consider how the 90- and 180-day requirements in the broader context of our objective to make the regulation of providers more efficient and effective.

### Office of the Children’s Guardian

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