

Response to the Children's Guardian Regulatory Impact Statement regarding the NSW OOHC Residential Care Workers Register



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Subject	Response to the Office of the Children's Guardian Regulatory Impact Statement regarding establishing an NSW OOHC Residential Care Worker Register
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Barnardos Australia (Barnardos) thanks the Office of the Children's Guardian for the opportunity to provide feedback to its proposed Regulatory Impact Statement (RIS) for the establishment of an NSW OOHC Residential Care Workers Register.

Overview of Barnardos' programs and service

Barnardos is a not for profit children's social care organisation, providing family support and out-of-home care (OOHC) to 13,654 children and their families in the Australian Capital Territory (ACT) and New South Wales (NSW) during 2019-20. Of these, 12,241 (89.7%) families were able to keep their children safe at home with tailored support, and 1,413 (10.3%) children lived safely in Barnardos' auspiced foster and kinship care. For non-Aboriginal children living in foster and kinship care supported by Barnardos, 61 orders for open adoption were made by the Supreme Court, this represents 35% of all NSW adoptions from out-of-home care (OOHC) in the 2019-2020 financial year reporting period.

In Barnardos' extensive child protection-focussed family support work, our interventions target vulnerable children at risk of separation from their families and statutory removal into OOHC. Our services are targeted to the most vulnerable communities where child at risk notifications to statutory departments are high, with associated child removal rates into OOHC. For 100 years, Barnardos has worked with children, young people and families to break the cycle of disadvantage, creating safe, nurturing and stable homes for children, connected to family and community.

Barnardos works with families as they are experiencing the toughest of times. Our practice is child-centred, multifaceted and evidence-based. Our longstanding experience as a leading Australian service provider, combined with a strong commitment to research, and the need for evidence-based practice, means that we are able to specialise in working with the most vulnerable children and families. This extensive experience, understanding and commitment informs our views on the effectiveness of the child protection and social services systems in responding to vulnerable children and families. Key features of Barnardos' practice include:

- 90% of the families supported by Barnardos are in programs designed to keep children safe at home with their parents.
- Barnardos' Children's Family Centres provide community-embedded individualised support for children and their families who are impacted by child protection reports; chronic poverty; substance abuse; family, domestic and sexual violence; homelessness; and mental illness.
- Where a NSW Children's Court has decided that children are unable to safely live at home, Barnardos' outcome-focussed programs are able to deliver the full spectrum of permanency outcomes which enable children to experience a safe, stable and secure childhood with positive life outcomes. Barnardos is the largest provider of the full suite of permanency outcomes for vulnerable children in NSW, inclusive of restoration, foster and kinship care, guardianship and open adoption

Barnardos experience and capability in providing residential care to young people stems from its previous operation of services in NSW and current delivery of residential care in the Australian Capital Territory (ACT). The agency's past and present expertise in the provision of residential care services and our recent participation in the consultation process with relevant residential care provider stakeholders, informs our response to the proposed Regulation.

Barnardo's experience tells us that highly vulnerable young people, who have often experienced cumulative harm both in and out of the care system are often unsafe in residential care as they are at increased risk of being cared for by unsuitable workers who are not monitored by effective safeguarding mechanisms.

From October 2017, the Permanency Support Program (PSP) was implemented via new OOHC contracts for NGOs, based on the permanent placement hierarchy now within the Care Act legislation. The introduction of the PSP reform changed the way OOHC NGOs were funded to set new expectations regarding working towards permanency from the point at which a child or young person first enters care.

- A key component of the PSP reform was to develop and establish NSW Therapeutic Residential Care (TRC) programs to work intensively with young people to provide trauma informed individualised assessment and treatment plans to enable them to transition from residential care into more suitable care in a timely manner. When the tendering process for therapeutic residential services commenced, Barnardos had already reduced its NSW residential services to one program, Kingston House, which had been established in the 1980s to respond to unaccompanied refugees. Barnardos was unsuccessful in its tender to convert the Kingston House program into a TRC and the program closed in January 2020.
- Within ACT Together, an OOHC Consortium delivering all OOHC in the ACT, Barnardos (who is the lead agency) delivers a therapeutic residential care program for approximately 40 young people across 16 properties.
- Since 2018 Barnardos has operated a very small number of time-limited, emergency 1:1 alternative care arrangements. These have either been supported by Barnardos employees or workers engaged through sub-contracted companies. Often these types of care arrangements are necessary due to delays in TRC placements.

Barnardos Response to the proposed Regulation

In principal, Barnardos supports the establishment and maintenance of an NSW OOHC Residential Care Workers register. The proposed register will add to and compliment the suite of responses in NSW which promote and regulate child safe practices in organisations that care for young people.

The proposed register addresses the concerns raised by the Royal Commission Report into Institutional Responses to Child Sexual Abuse (2017 and 2018) and enables all NSW residential care workers to be recorded and monitored by a similar regulatory system to the NSW Carers Register. Barnardos understands the proposed residential care workers register will record all prospective and existing residential care workers' probity checks, behaviors of concerns such as reportable conduct matters, and act as a central point of reference for the OCG and residential care providers to share information which will prevent, identify and respond to risk posed by unsuitable workers.

About the ACT and proposed Regulations

The need for Regulation

- Barnardos agrees that residential care settings increase children and young people's vulnerability to sexual abuse and the proposed Regulation addresses this, by ensuring,

"agencies have the tools to prevent, identify and respond to risks posed by residential workers"

- Barnardos supports the establishment of a restricted access database for residential care workers which will mandate and record probity checks and maintain certain specified information relating to applicants in their final stages of reference checking and existing employees.

Objectives of the proposed Regulation

Barnardos is supportive of the proposed Regulation as it will facilitate information exchange about probity checks, reportable conduct matters and other prescribed information for all future and existing residential care workers between residential care providers.

Impact Statement

Barnardos supports a fully regulated response rather than a self-regulatory or co-regulated one. We agree that a non-regulated approach will likely result in faulty record keeping and limited information sharing which will not address unsuitable workers moving from one agency to another and continue to place children and young people in residential care at risk of harm.

Barnardos is aware the introduction of a regulated recording system will be accompanied by some financial costs to train and implement the system, however the safety benefits to children and young people outweighs these concerns.

Discussions of proposed Regulation

In summary Barnardos supports the following:

Whose information will be recorded.

- Residential care workers being considered for employment, are to be probity checked when they reach the referee stage.
- The definition of residential care worker includes a caseworker and or administration worker who spends 60% or more of their time at the residential facility.

Whose information will not be recorded.

- It is noted that DCJ workers are proposed to be exempt from the register, however Barnardos does not support any workers, including those that provide special or respite care, being exempt from the proposed Regulation. This appears to be inconsistent with the intention of the Regulation as many of these workers often perform multiple roles as youth workers in OOHC, including residential care.

Authorisation of workers providing direct care

- Barnardos agrees with amending the Care Regulation to prescribe residential care workers as a category of authorised carer.

Workers authorised to provide emergency care

- The definition of residential care workers includes workers who provide direct care in emergency accommodation i.e. ACAs.

- In emergency situations where a residential care worker has not been fully probity checked, a provider has *72 hours* to complete them and during this period, the agency is required to report to the OCG the details of the individual for whom the exemption applies.
- Prior to the recruitment of residential care workers, agencies are obliged to inform a prospective employee of the existence of the register and that some of their personal details will be recorded in the register. This will occur when the applicant reaches the referee stage. An applicant may decline to disclose the information, with no ramifications if they chose not to and the agency will inform the register of this decision.

Barnardos notes the proposed register procedures is not designed to take the place of our organisation's formal recruitment procedures. However, the probity checks required for the residential care workers register align with Barnardos recruitment procedures for prospective employees. Barnardos is concerned it will be required to introduce dual systems to address the mandatory probity checks. Although Barnardos agrees the register will record probity check outcomes as either satisfactory or unsatisfactory, we are also responsible for retaining more detailed internal records. Barnardos anticipates residential care providers will require additional resources, including staffing, to maintain these records and respond to requests for information from other providers.

- Barnardos strongly supports the proposed register probity checks as:
 1. A verified WWCC
 2. National Criminal Check
 3. Community Services Check
 4. Other Agency Check (Second or Previous Provider Check)

In regard to the provision of the fourth probity check relating to Other Agency checks, Barnardos is aware any existing residential care workers will be required to retrospectively provide this information for the register and it will apply to any new applicant who reaches the referee stage. Further clarity about how the robustness of this check will be conducted to ensure consistency across all agencies and HR Teams oversight.

Additionally, Barnardos supports reporting Reportable Conduct Allegations to the register within the recommended time frames, as this aligns with existing Reportable Conduct practices.

What if a decision is made not to engage/employ an individual?

Barnardos agrees that a residential care workers records will be valid for 12 months, however after this period we would support all mandatory checks to be redone.

Who will have access to the information on the register?

Barnardos agrees with the proposed restricted access conditions.

Arrangements on commencement

Barnardos agrees to the proposed time frame for commencing the Regulation on 1 September 2021, including a period of up to two years to address the existing employees Community Service checks.

Barnardos has appreciated the opportunity to contribute to this consultation and looks forward to the implementation of the residential care workers register.