

26 July 2022

Mr Mark Follett
A/Executive Director
Policy, Reform and Legislation Branch
NSW Department of Communities and Justice

Via Email: policy@justice.nsw.gov.au

Dear Mark

Barnardos Australia (Barnardos) welcomes the opportunity to provide feedback on the consultation draft of the *Children and Young Persons (Care and Protection) Regulation 2022* and Regulatory Impact Statement.

As NSW non-government funded organisation (NGO) service providers deliver more than 50% of statutory out-of-home care (OOHC) in NSW, it is of crucial importance to children and young people that the Department of Communities and Justice (DCJ) partners and engages in a meaningful way to ensure NGO insights and views are sought and captured in required changes.

Barnardos is one of the largest children's social care organisations, providing assistance to 15,000+ children and their families each year. This includes supporting over 1000 children and young people in OOHC. As a major provider of the full suite of Permanency Support Program service delivery, Barnardos is committed to current NSW Premier's Priorities for vulnerable children, and specifically to providing planned and desired permanency outcomes.

The Regulatory Impact Statement states that in 2020 the Department called for submissions from key stakeholders on any required amendments. This was followed in January 2021 with feedback on specific proposals from key government and non-government agencies, including peak bodies. Barnardos has no record of being invited to contribute feedback at that time, our organisation appears therefore not to have been an identified stakeholder and has only been provided the opportunity to do so now which is of concern to us and we would appreciate clarification regarding this.

In addition, we express disappointment that NGOs such as Barnardos have only been provided a matter of weeks to review and provide feedback when DCJ has been working on this staged repeal since December 2020. This makes the consultation appear tokenistic and is not reflective of a true commitment by DCJ to partnership.

Barnardos notes that there have been previous references to some of the Regulations relating to functions of the NSW Children's Guardian being moved into a new regulation to be made under the Children's Guardian Act 2019. Barnardos in its submission (dated 5 May 2022) advised that we **did not**

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support a number of proposed changes under the Children and Young Persons (Care and Protection) Amendment (Authorised Residential Care Workers) Regulation 2022. Barnardos supported that interstate workers should have the same authorisation as those based in NSW.

It is also noted that the first time the term co-resident appeared was in the NSW Office of the Children's Guardian's Consultation Paper for clarifying the scope of 'reside on property' in the Child Protection (Working with Children) ACT 2012 released in 2021. Barnardos in our response dated 25 January 2022 strongly agreed that the present legislation was placing, "unnecessary barriers" on people who reside on property and have limited or no direct contact with children in placement.

Barnardos maintains its significant concern that the Department is relying on out-of-date statistics to inform policy and legislative reform. The Regulatory Impact Statement is using out-of-date statistics that are now over 12 months old. This aligns with the most recent publicly available Statistical Report available for children and young people, families and communities which is for Q1 FY2020/21 – now almost two years ago. Up until recently, the Department maintained a strict timetable for the release of quarterly and annual statistic reports which had the reports released in subsequent quarters. Barnardos urgently requests that the Department reinstates this timeframe commitment.

New Prescribed Bodies under Chapter 16A

Barnardos welcomes the inclusion of additional Commonwealth agencies to be prescribed bodies, including the Australian Federal Police, Commonwealth Department of Health, Commonwealth Department of Social Services, National Disability Insurance Agency and NDIS Quality and Safeguards Commission. This will give NSW prescribed bodies greater certainty that is currently afforded under the current "catch-all" provision of Clause 8(j).

Notification to a designated agency if a child or young person is charged with a criminal offence

While Barnardos supports the inclusion of a requirement for a carer to advise if a child or young person has been charged with a criminal offence for which there is a penalty of imprisonment of 12 months or more, it has been Barnardos' experience that our carers advise of serious issues or concerns, including criminal charges. This occurs because of the trusting relationship our practitioners have developed with our carers and the value and recognition of the early support that Barnardos can provide in these difficult circumstances.

However, it is recognised that this may not always be the case for all agencies and carers. This can be a very challenging and traumatising period for children and young people and their carers and it reinforces the need for better information exchange protocols, whereby this information could be shared directly by NSW Police with respective agencies.

Addressing challenging behaviour through behaviour management plans

The proposed refinements of the existing Regulation, in recognition that changing a child or young person's placement should be an option of last resort only when other options (including adjusting the approved behaviour management practices and preparing a behaviour management plan) have been exhausted, are welcomed.

Limiting the application of the presumption that an authorisation will be automatically cancelled

While Barnardos supports ensuring that due process is followed, and carers are not disadvantaged due to an ongoing investigation, including a pending NSW Civil and Administrative Tribunal decision, we are concerned that carers may be forced to wait unacceptable timeframes until decisions are made. It would be more appropriate to ensure that most investigations are concluded within 3 months. Therefore, ensuring that the period of uncertainty for carers is minimised as much as possible.

It is also noted that the new Sections 17 and 18 does not have the same conditions for withdrawal of an application as the current regulations. The proposed new clause states that an application can be withdrawn before it's determined, whereas the current clause specifies that this can occur verbally or via written notice. It is not clear why removing this specification was necessary or needed?

Authorisation of residential care workers

Barnardos is not a designated residential care provider and has made a deliberate policy position to exit residential care in NSW in recognition that it does not provide the extent and quality of permanency outcomes for children and young people that can be achieved by early intervention, including through home-based care.

While we support ensuring that there are robust assessment processes in place for residential care workers, including required probity checks, Barnardos is concerned about unintended consequences of the proposed changes. Assessing people to be authorised foster carers is and should be a very different process than onboarding employees to work in residential care settings. There are also very different relationships governed by different legislative and policy contexts. Barnardos is also deeply concerned by the increasing array of quasi residential care placement alternatives being developed and funded by DCJ, which potentially sit outside the Regulations for residential care (ACAs – Alternative Care Arrangements, IPAs – Individual Placement Arrangements, STEP – Short Term Emergency Placement, ICMs – Interim Care Model).

Cessation of the term “prospective adoptive parent”

The proposed changes include removal of the term *prospective adoptive parent* from current Schedule 2, clause 2(2)(c) on the grounds that it is redundant and adds unnecessary complexity. Apparently, the term is not needed as the assessable person referred to in this provision has already been assessed as suitable to adopt a child.

While any perceived unintended consequence of having to re-do assessments is welcomed (while they are still current), Barnardos does not share the view that the term prospective adoptive parent is redundant and adds unnecessary complexity. Noting that assessing a person to adopt a child to is very different than assessing a foster carer, based on the serious nature of adoption being a change of legal identity. As the largest provider of open adoptions from OOHC, we would argue that there is no confusion or lack of clarity.

Due to the lack of prior discussion and information, Barnardos is concerned about the implications of removing the term from the regulation. How will this impact the dual authorisation process? Do we still authorise under both the *Children and Young Person (Care and Protection) Act 1988* and the *Adoption Act 2000*? Do we still authorise as an authorised carer and adoptive applicant? Is there any remediation required for existing carers for whom we have issued authorisation letters as dual? Is this reflective of a broader intention to progress towards a permanency outcome for a child or young person in the similar vein in which guardianship is addressed within the *Children and Young Person (Care and Protection) Act 1988* and Regulations?

Also, does the change in terminology trigger a greater assessment requirement for co-residents than was the case for adult household members. Specifically, adult household members were only required to be subject to probity check. Do co-residents need to be assessed like authorised carers?

The above change and introduction of the term co-resident (in lieu of household resident) will require changes to policies, procedures, the Code of Conduct, client management system and communication to carer households. Without further explanation we are unclear why investment in the required changes is needed.

This would have significant workload implications and consideration would need to be given to the number of interviews required to assess a co-resident – as well as providing initial care training or a version of same.

We would appreciate a written response to our questions noting the lack of certainty for designated agencies moving forward.

For further information and discussion of specific issues raised by Barnardos, please contact Penny Hood, Executive Leader Children and Families phood@barnardos.org.au or Margi Andrew, Acting Manager Safeguarding mandrew@barnardos.org.au

Yours sincerely



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