

ACT Government

Child Safe Standards



To:	Chief Minister Treasury and Economic Development Directorate
Email:	ChildAbuseRoyalCommission@act.gov.au
From:	Barnardos Australia
Contact:	Dr Robert Urquhart Head of Knowledge, Outcomes and Research rurquhart@barnardos.org.au
Subject	ACT Child Safe Standards
Date submitted:	6 March 2020

Barnardos Australia (Barnardos) thanks the ACT Government for the opportunity to provide a submission in response to the Child Safe Standards Discussion Paper.

Background: Barnardos knowledge of this area

Barnardos is a not for profit children's social care organization, providing family support and out-of-home care (OOHC) to approximately 15,000 children and their families in the Australian Capital Territory (ACT) and New South Wales (NSW) each year. In our family support work we aim to reach vulnerable children at risk of separation from their families, and homelessness is a strong feature of this work. We work together with children, young people and families to break the cycle of disadvantage, creating safe, nurturing and stable homes, connected to family and community.

As the lead agency for ACT Together, a consortium of agencies working together to provide services across the continuum of care consortium lead agency, Barnardos has extensive experience of operating as a child safe organisation with children being supported in an environment which places their safety and wellbeing at the centre of all decision making. We have provided services in the ACT suburbs since 1965 and our Canberra Children's Family Centre, which is currently located at Atherton Street in Downer, has a high profile within the local domestic and family violence and homelessness sector.

Our responses to specific discussion questions presented in the Discussion Paper that we wish to comment on are outlined below.

Scope of organisations to be brought within the scheme

(Q1) Should the coverage of the ACT Child Safe Standards scheme be broader than the organisations specified by the Royal Commission in recommendation 6.9? Examples of broader scope include the Victorian Child Safe Standards scheme and the ACT Working with Vulnerable People scheme.

Barnardos supports Option 2 for direct alignment with the scope of the Working with Vulnerable People (WWVP) scheme, as has been proposed for NSW,¹ noting that the ACT would need to include exemption for those organisations working solely with vulnerable adults. We believe this is the best approach due to the robust criteria and nature of the current WWVP which meets current and projected needs. Additionally, there should be a provision enabling other sectors to be brought under the proposed regulatory scheme if/when the need has been identified.

(Q2) Is it preferable for ACT Child Safe Standards legislation to (a) list the types of organisations that are covered by the scheme, or (b) establish an overarching definition of scope? Which approach offers greater clarity for organisations, and assurance of coverage for child safety outcomes?

Barnardos supports (a) listing the types of organisations that are covered by the scheme,

¹ Office of the Children's Guardian (2019) *Making organisations safer for Children: Regulation of child safe standards in NSW – Consultation Report*, p.6

As an organization focused on delivering high quality, evidence based services to children, we believe establishing a listing will provide the most clarity, minimise the burden of red tape and allow our practitioners more time to work with children and young people.

(Q3) Are there some organisations engaging with children and young people that fall within the scope of the Working with Vulnerable People Scheme, but are not captured by the definition of ‘services for children and young people’ in s8A Human Rights Commission Act 2005?

Barnardos considers that the scope of the WWVP scheme appropriately captures ‘services for children and young people’ in the ACT and aligns with child safe principles and best practice.

(Q4) Are there some organisations not ‘specifically’ provided to children and young people or their carers (so they do not fall within the definition in s8A Human Rights Commission Act 2005) that should be included in an ACT Child Safe Standards scheme?

No.

(Q5) Are there certain organisations engaging with children and young people in the ACT that should not be included in the Child Safe Standards scheme, and if so, for what reasons?

Barnardos believes that all organisations engaging with children and young people in the ACT should be covered by the scope of the Child Safe Standards scheme.

Content and language of the Standards

(Q6) When comparing the National Principles, Victoria Standards and NSW Standards, which elements are:

- a. Important to include in the ACT Standards because they emphasise particular themes, concepts or actions?*
- b. Easier to understand in structure, language or tone?*
- c. Better suited to the ACT context?*

Barnardos strongly supports a principle-based model that encourages all organisations to be safe for children. We understand that the language of the NSW Child Safe Standards has not been finalised, and that the Victorian standards, developed in 2016 are being reviewed and other jurisdictions are also progressing work on this since the National Principles for Child Safe Organisations were endorsed by all jurisdictions.

Basing the standards on the Child Safe Principles will ensure that the standards easier to understand and implement. Additionally, the tools and resources developed by the Human Rights Commission to support organisations implementing the Child Safe Principles will be directly relevant and useful to organisations in ensuring they comply with the standards.

Standards based on the 10 Child Safe Principles will be suited to the ACT context. For children and young people in the ACT in out-of-home care (OOHC), there are both OOHC standards and a Charter of Rights for Kids in Care. These should align with the Child Safe Standards for children and young people in OOHC. The new Standards will provide

guidance to providers of other services to children so that children and young people across the ACT are afforded the same high level of safety measures.

Oversight body

(Q7-9) The location for Child Safe Standards oversight has been decided, and will not be changed. However, government welcomes feedback on how the Child Safe Standards will intersect with the other functions of the Human Rights Commission, to ensure that the benefits of co-location are enhanced, and risks are mitigated.

Which functions proposed for oversight of Child Safe Standards are particularly important, and should be emphasised?

Are any functions potentially unsuitable, and should be reconsidered?

Oversight should emphasise training, community engagement, capacity building and interagency collaboration. A model of monitoring and enforcement will need to be carefully considered and implemented to ensure that compliance does not pose an undue or duplicated burden on organisations already subject to regulatory oversight.

Compliance activity required of organisations

(Q10) In what ways would organisations prefer to be approached by the oversight body to discuss compliance matters? What types of interactions with an oversight body are helpful and unhelpful?

Barnardos recognises that not all organisations providing services to children are the same, and there should be flexibility to ensure compliance with the Child Safe Standards in ways that make sense in the organisational context. The new model should be responsive to the size, nature and sector of the organisation being regulated. A range of methodologies should be available according to the size of the organisation that provides the regulator with sufficient assurance about children's safety and wellbeing.

(Q11) What types of information should be used to inform the Child Safe Standards risk assessment framework (to help the Commission target monitoring activities where it will have the greatest outcomes for child safety)? Do existing government agencies and regulatory bodies have relevant information that they can appropriately share with the Child Safe Standards oversight body for this purpose?

Specific sectors are already subject to extensive regulation and mandatory elements of the Children and Young People Care and Protection Organisations Standards providing statutory OOHC and adoption services. The new regulatory system should be careful not to increase the compliance burden for these service providers.

To reduce compliance burden and duplication, the proposed regulatory system, policies and procedures ought to align with the assessment and approval of Care and Protection Organisations (currently regulated by the ACT Human Services Registrar).

Support for organisations to help them implement child safe practice

(Q12) How should the oversight body support organisations to build their capacity to meet Child Safe Standards?

With respect to how the oversight body should support organisations to build their capacity, we note that:

- Communications from the Commonwealth, State and Territory governments have been limited in relation to the implementation of the Royal Commission Findings, apart from information on the National Redress Scheme.
- Moreover, the existing regulatory model has been fragmented between various regulatory authorities and largely not informed by evidence on what makes for effective implementation, leading to inconsistent implementation efforts.
- Non-government agency input is essential during the scoping, design and implementation processes to ensure the regulation of standards is robust and pragmatic and that it delivers optimal safety for children and young people. An advisory board should be considered (Barnardos would be happy to contribute to this).
- The implementation approach itself should be very practical and well-resourced and provide concrete guidance on executing child safe practice tailored to the size, nature and setting of the organisation being regulated.
- Children and young people should be empowered and enabled to participate in the scoping, design and implementation process. More detailed guidelines including ones about how children's participation will be assessed are needed.
- An alignment project should be undertaken by the regulator to map the new standards against other standards and regulatory frameworks (e.g. Children and Young People (Care and Protection Organisation) Standards 2018; Children and Young People (ACT Out of Home Care) Standards 2016; National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework etc.).
- Timely training and guidance delivered both face-to-face and online, with robust telephone and online support services, is essential to ensure a holistic approach that aligns with all other applicable standards.
- Technology solutions that allow for submission, monitoring and reporting against these and other standards need to be explored. This must consider ease of use for organisations and capacity to interface with other systems.

Monitoring and enforcement to achieve child safe outcomes

(Q14-15) What powers should the oversight body have to monitor compliance with Child Safe Standards? What powers should the oversight body have to enforce compliance with Child Safe Standards?

Barnardos supports a responsive approach to regulating child safe standards, consistent with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. We note that:

- The standards should be neutral to the legal entity of the organisation to be regulated – the same standards should apply to Government as well as non-government organisations.
- More detail on what range of penalties and formal orders and the precise level of risk where they would be applied is needed.
- We support in principle the Human Rights Commission having power to monitor how organisations are implementing the standards, to initiate investigations, and to make reports to the ACT Government.
- Self-assessment can be an appropriate tool if it is tailored to the size and level of risk of the organisation to be regulated

Gradual implementation of the scheme

(Q16) How much time do organisations need to prepare for Child Safe Standards?

Organisations should be allowed as much time as feasibly possible to prepare for the move to this framework to ensure time is not taken away from their work with children and young people which should remain the number one priority during this process.

(Q17) Which of these options for gradual implementation would work best, and why?

- a. Delaying commencement of the entire scheme*
- b. Staging commencement for different types of organisations (eg. starting with government agencies, then incorporating the community and private sectors)*
- c. Delaying the commencement of enforcement powers*

Barnardos supports both options (b) and (c) for the commencement of implementation to ensure the standards are given adequate time to be workshopped, established and evaluated in order to guarantee quality practice. Time should be allocated to raise staff awareness and understanding of the standards and allow updates for organisational systems to occur. It is imperative that during implementation, the focus remains on the safety and wellbeing of children and young people, as opposed to compliance.

Partnering with other entities to reduce duplication and regulatory burden

(Q18) Should sector regulators have a formal role in enforcing compliance with Child Safe Standards?

Enforcing compliance with Child Safe Standards will need to take a staged approach with consideration to engagement, collaboration, development with the goal of achieving compliance rather than applying penalties for non-compliance. Sector regulators can play a role in this process in collaboration with the Human Rights Commission to ensure that compliance activities are not being duplicated or imposing an undue burden on organisations.

(Q19) Should funding bodies have a formal role in promoting compliance with Child Safe Standards?

There is a role for funding bodies in promoting compliance with Child Safe Standards by directing resources to Child Safe organisations, providing incentive for organisations seeking funding to maintain their compliance with the standards. It would not be useful for funding bodies to provide the same oversight or compliance activity as the oversight body

(Q20) What sort of partnerships do the following types of organisations wish to establish with the Child Safe Standards oversight body (what activities are they comfortable undertaking, and what activities do they wish to avoid):

- a. Sector regulators*
- b. Funding bodies*
- c. Peak bodies*

Barnardos supports in principle the central regulator having the flexibility to delegate some regulatory functions to a co-regulator as a means of building capacity in the regulatory system. However, this approach is only recommended if it does not add further complexity to the system and make navigation for people, families, communities and organisations more difficult.

Approved Care and Protection Organisations are regulated by the Human Services Registrar, situated within the Community Services Directorate of the ACT government. Barnardos would expect that the Human Rights Commission would work closely with the Human Services Registrar to ensure that the regulation of Child Safe Standards was co-regulated alongside the Children and Young People (Care and Protection Organisation) Standards 2018 and Children and Young People (ACT Out of Home Care) Standards 2016.

Barnardos would welcome the opportunity to work in partnership with the Human Rights Commission and share our practical knowledge and expertise to help the regulator

design, pilot and test the new system and to develop appropriate resources for the accompanying change process.

An ongoing communications campaign is required to ensure that parents, families and communities understand and can participate in the regulation of child safe organisations. This must include mechanisms for which the important stakeholders can engage with both organisations and the regulator directly and independently if required.

(Q22) How much of the partnership framework should be formally legislated (to authorise collaboration and ensure consistency across sectors); and how much should be left open to negotiation through bilateral MOUs with the oversight body (to allow flexibility in different contexts)?

Barnardos strongly supports a minimalist approach (negotiation with the oversight body to permit flexibility in different contexts) rather than enacting formal legislation. We would be open to exploring the use of bilateral MOUs, or other approaches that build on currently existing partnerships in the sector and that can be tailored to different contexts.

As memorandums of understanding are not legally enforceable, Barnardos believes the best approach to the partnership framework is to

(Q23) To what extent are existing information sharing provisions (eg. in the Human Rights Commission Act 2005, Children & Young People Act 2008, and Ombudsman Act 1989) sufficient to enable the Child Safe Standards oversight body to establish partnerships with regulators, funding bodies and peak bodies. What additional authority to share information may be needed to support collaboration on Child Safe Standards?

As the Lead Agency of ACT Together, a consortium of agencies working together to provide all services across the Continuum of Care, Barnardos has had extensive opportunities to observe the effectiveness of information sharing arrangements firsthand. Further to our submission to the Standing Committee on Health, Ageing and Community Services in September 2019, we believe that maximum transparency and accountability is essential, particularly in reference to information sharing provisions in the Children & Young People Act 2008. There are some disconnects in the current information sharing provisions that should be reviewed, including the sharing of health information, knowledge transfers of Child Protection Assessments, and Child Concern Reports. For example, sharing of children's health information, particularly with carers, is highly problematic. Carers are often not provided with information about the interventions about the child they care for or their health needs. There is a lack of understanding among some health professionals about what information can be shared with carers and under what authority this occurs. Insufficient information limits the capacity of carers, staff and organisations to provide OOHC services in accordance with Child Safe Standards.

We would welcome the opportunity to discuss any aspect of our submission. Please feel free to contact Dr Robert Urquhart, Head of Knowledge, Outcomes and Research on (02) 9218 2392 and urquhart@barnardos.org.au.