

15 April 2019

Mr Janet Schorer
NSW Children's Guardian,
Office of the Children's Guardian
Locked Bag 5100,
STRAWBERRY HILLS NSW 2012

Via: policyteam@kidsguardian.nsw.gov.au

Dear Ms Schorer,

Re: Regulating Child Safe Organisations - Discussion paper for consultation

Barnardos Australia (Barnardos) thanks the Office of the Children's Guardian (OCG) for the opportunity to participate in discussion of the issues raised in the Regulating Child Safe Organisations Discussion Paper to determine the most effective and practical way of introducing mandatory child safe standards.

Barnardos is a family support and out-of-home care (OOHC) agency, which assists over 14,409 children and their families in New South Wales (NSW) and the Australian Capital Territory (ACT) each year and maintains 1,415 children in NSW and the ACT in foster and kinship care. In our family support work we aim to reach vulnerable children at risk of separation from their families, and we work in areas with significant Aboriginal populations¹ such as Western Sydney, Central West NSW, the South Coast and Inner Sydney.

Barnardos strongly agrees that all children should be supported in an environment that places their safety and wellbeing at the centre of all decision making. In regard to the particular questions you raised, our views are outlined below.

Q1: In what ways is a principle-based approach a good fit for regulating child safe organisations in NSW?

With respect to the approach to regulating child safe organisations:

- Barnardos strongly supports a principle-based regulatory model that encourages all organisations to be safe for children whilst recognising that not all organisations providing services to children are the same.
- We welcome the Discussion Paper's emphasis that organisations should have the flexibility to comply with regulation in ways that make sense in their context. It should not be a one-size-fits-all approach, but rather 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 size of the organisation that provides the regulator with sufficient assurance about children's safe and wellbeing.

¹ Note that we use the term "Aboriginal" throughout our response to reflect that in the NSW and ACT there are only very small numbers of people who report they are of Torres Strait Islander origin.

- Specific sectors are already subject to extensive regulation and mandatory elements via the accreditation scheme for organisations providing statutory out-of-home care (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 need to align at every point with the requirements of the accreditation scheme for statutory OOHC and adoption services, including alignment with NSW Child Safe Standards for Permanent Care.
- Barnardos would welcome the opportunity to work in partnership with the Office of the Children’s Guardian 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.

Q2: In what ways would a different approach be a better fit for regulating child safe organisations in NSW

Barnardos supports the proposed approach for regulating child safe organisations in NSW. A different approach is not required.

Q3 & Q4: What types of organisations should be regulated to meet child safe standards in NSW? What types of organisations should not be regulated to meet child safe standards in NSW?

Barnardos supports the list identified in the Discussion Paper. There should be a provision enabling other sectors to be brought under the proposed regulatory scheme if/when the need arises.

Q5: What sorts of organisations should help to co-regulate child safe standards?

Barnardos supports the role of the Office of the Children’s Guardian as the central regulator for child safe standards. We support 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 makes navigation for people, families, communities and organisations more difficult.

Q6 & Q7: How should the OCG support organisations to build their capacity to meet the child safe standards? How should the OCG roll out regulation of the child safe standards so that organisations have time to plan and make changes if required?

With respect to how the OCG should support organisations to build their capacity:

- Communications from the Commonwealth and State 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 process 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 strong 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. NSW Child Safe Standards for Permanent Care; 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 (OOHC and adoption) need to be explored. This must consider ease of use for organisations and capacity to interface with other systems.

Q8 & Q9: What powers should the regulator have to monitor the child safe standards? What powers should the regulator have to enforce the 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 OCG having power to monitor how organisations are implementing the standards, to initiate investigations, and to make reports to the NSW Parliament.
- Self-assessment can be an appropriate tool if it is tailored to the size and level of risk of the organisation to be regulated.

Q10: How can the OCG support parents, families and communities to encourage organisations to be child safe?

- 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 these important stakeholders can engage with both organisations and the regulatory directly and independently if required.
- The proposed evaluation of the child safe standards and the approach to regulation in five years' time should specifically examine the role and performance of the OCG as the regulator in monitoring and enabling effective compliance, and not just whether objectives and desired outcomes of the new model have been met.
- It is imperative that the evaluation should also consider the outcomes of the new model against the real cost of administration, for both the regulatory and organisations.

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 or rurquhart@barnardos.org.au.

Best regards,



Penny Hood
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Barnardos Australia