

Children's Guardian Amendment (Child Safe Scheme) Bill 2021 – Exposure Draft

Consultation summary

The Office of the Children's Guardian (OCG) conducted public consultation on the Exposure Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021 (the Bill) between December 2020 and February 2021. Consultation included a survey, written submissions, and meetings with key government agencies. The OCG received 61 written submissions from a broad range of stakeholders representing the government and non-government sectors expressing strong support for the Child Safe Scheme.

We received 48 responses to the survey which asked respondents to agree or disagree to several statements in relation to the components of the Child Safe Scheme. This included scope, the requirement to implement the Child Safe Standards through systems, policies and processes, Codes of Practice, Child Safe Action Plans (CSAP), strengthened monitoring and enforcement, and penalties for non-compliance with enforcement measures. The majority of respondents (over 50%) supported the different components of the scheme when responding to related statements. Just under half of responses to a statement on flexibility (40%) did not think there was enough flexibility in the Child Safe Scheme for organisations to implement the Child Safe Standards.

This consultation summary provides an overview of the key themes that arose during consultation on the Exposure Draft and how they have been addressed.

Scope of Child Safe Scheme

The Royal Commission into Institutional Response to Child Sexual Abuse (Royal Commission) recommended that state and territory governments require all institutions in their jurisdictions that engage in child-related work to meet the Child Safe Standards. While some organisations that were recommended for inclusion in the scheme are not currently in scope, the Child Safe Standards can be implemented by all child-related organisations and will remain voluntary for organisations outside scope. Capability building and support resources developed by the OCG will be available to all organisations for free. Subject to funding and further consultation, the OCG remains committed to expanding the scope over time.

Many stakeholders in our consultations on the Exposure Draft continued to be supportive of a wider scope consistent with the recommendations of the Royal Commission. A broader scope would include, for example, organisations providing sporting and recreation services. Religious and government stakeholders considered the definition of religious organisation and public authority in Part 4 of the *Children's Guardian Act 2019* (the CG Act) may be too broad noting some of those organisations do not deliver services to children.

The OCG has worked with Parliamentary Counsel's Office (PCO) to amend the Bill and address these concerns by:

- listing child safe organisations in a specific section of the CG Act for clarity. Child safe organisations will reflect the entities currently listed in Schedule 1 of the CG Act but will not include designated agencies or adoption service providers. Designated agencies and adoption service providers are subject to the NSW Child Safe Standards for Permanent Care, which are currently under review. The OCG is continuing to engage and consult with the sector as part of that review to refine how best to regulate these organisations into the future
- including child-related sport and recreation organisations as child safe organisations
- refining the definition of a religious body to focus on organisations that provide services to children or in which adults have contact with children
- excluding public authorities, except local councils which will be listed in the new section of the CG Act
- expanding the scope of the CSAPs to include more NSW Government agencies to leverage their reach and influence.

The Bill has also been amended to enable the expansion of the Child Safe Scheme over-time to include more organisations recommended by the Royal Commission.

Key themes and issues

THEME	KEY ISSUES	OCG RESPONSES
<p>Head of a Child Safe Organisation</p>	<p>Additional clarity was requested about who would be the head of a child safe organisation. For example, we were told there may be some lack of clarity around who the head of a child safe organisation is for certain government agencies.</p>	<p>The OCG has worked with PCO to refine the definition, noting it is not the intention to create multiple levels of responsibility.</p>
<p>Child safe organisation</p>	<p>Some stakeholders felt that the proposed scope of the child safe scheme was not broad enough, particularly in relation to sport and recreation organisations. One stakeholder noted:</p> <p style="padding-left: 40px;">Sporting and leisure organisations can pose considerable risk to children and young people for a range of reasons including: the extent of time spent there, large staff and volunteer numbers, significant employment churn and variable levels of child safe capacity.</p> <p>Further, some faith organisations suggested it was inconsistent for religious bodies to be included in the scheme, in circumstances where sport and recreation organisations were not part of the scheme.</p>	<p>The Bill has been amended to:</p> <ul style="list-style-type: none"> • include child-related sport and recreation organisations under the definition of a ‘child safe organisation’ • clarify that designated agencies will not be included as child safe organisations for the purposes of the Child Safe Scheme. <p>Designated agencies and adoption service providers are subject to existing regulation by the OCG. The NSW Child Safe Standards for Permanent Care (Permanent Standards) are used by the OCG for the accreditation of agencies that provide statutory out-of-home care services and/or adoption services in NSW.</p> <p>The Permanent Standards are currently under review by the OCG. The OCG considers this review should be completed before additional regulatory requirements are placed on these agencies. At this time, designated and adoption agencies will therefore not be part of the new Child Safe Scheme.</p>

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<p>Requirements – policies and procedures</p>	<p>Some consultation feedback suggested a need for increased flexibility to allow organisations to implement the Standards through systems, policies and processes that do not strictly meet those listed in draft section 8BA. We were told organisations should be assessed against the Child Safe Standards, not the policies and procedures listed.</p> <p>Some stakeholders also requested more clarity around expectations of what should be in policies and procedures. There were strong views that template policies and procedures should be developed and disseminated by the OCG to all organisations.</p> <p>We heard there is value in the OCG partnering with key sector representatives and peak bodies to both ‘inform the development of’ and ‘user test’ policy and procedure templates.</p> <p>To encourage continuous quality improvement, it was suggested that the Bill include a requirement or recommendation to review systems, policies, and processes periodically.</p>	<p>The list of policies and procedures in the Bill is intended to set the baseline expectations for systems, policies and processes organisations may use to implement the Child Safe Standards. The Child Safe Standards are principle based and flexible. They can be implemented by organisations in different ways depending on their size, resources, and workforce.</p> <p>An amendment has been made, in response to stakeholder feedback, to provide organisations with additional flexibility to implement the Child Safe Standards through their systems, policies and processes in ways that work for them.</p> <p>The OCG is committed to developing useful templates and guidelines consistent with new legislative obligations. A comprehensive <i>Guide to the Child Safe Standards</i> has been developed, along with a Code of Conduct and other resources. The OCG has also released a guide to inform the participation and empowerment of children in organisations.</p> <p>Additional child safe policies are also under development, including a Risk Management Plan and a Statement of Commitment to Child Safety. The OCG will reach out to key stakeholders to test the suitability of resources under development.</p> <p>The Bill has also been amended to make clear expectations about when systems, policies and processes should be updated in response to legislative</p>

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		change, or monitoring, investigation or enforcement undertaken by the OCG.
Child Safe Standards and National Principles for Child Safe Organisations	Stakeholders that operate across jurisdictions requested clarity in legislation around the relationship between the National Principles for Child Safe Organisations (National Principles) and the Child Safe Standards. Some stakeholders wanted explicit reference to the OCG's endorsement of the National Principles in the Bill.	The National Principles derive from the Royal Commission's Child Safe Standards. Both outline the same elements for child safe practice. We propose approaching regulation in a way that recognises that if organisations are implementing the National Principles, they would be simultaneously implementing the Child Safe Standards.
Participation of children and young people	<p>Several stakeholders thought that children's participation could be strengthened in the legislation by:</p> <ul style="list-style-type: none"> • including feedback from families and children/young people in the service about the organisation's implementation of policies, potentially by a specific requirement for a policy and procedure on children's participation and empowerment • embedding a role for the Advocate for Children and Young People (ACYP) in relation to CSAPs. 	<p>The Bill provides that the Child Safe Standards must be implemented through its systems, policies and procedures. This includes <i>Standard 2: Children participate in decisions affecting them and are taken seriously</i>.</p> <p>The OCG is exploring options with the ACYP to facilitate consideration of the views of children and young people in the development of CSAPs.</p>
Religious Freedom	<p>Strong concerns were raised by religious stakeholders about the potential for the child safe guidelines developed for faith-based organisations to, when read in conjunction with certain legislative provisions in the Bill, restrict religious freedoms.</p> <p>Religious stakeholders sought assurance that any guidelines do not operate to take away the freedom to</p>	<p>The guidelines for faith-based organisations are not mandatory. They provide guidance and support to organisations in their efforts to implement the Child Safe Standards.</p> <p>However, to provide certainty that the scheme does not intend to, and will not, impact religious freedom, proposed sections 8BA(2)(c) (which made specific reference to systems, policies and processes reflecting guidelines issued by the OCG) and 8EA(4) (which</p>

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	<p>disagree on matters, particularly in relation to LGBTIQ+ issues, which may be contrary to their religious beliefs.</p> <p>Section 8EA(4) provided that an organisation, having adopted guidelines issued by the OCG, may rely on that guidance as evidence of appropriate practice. There was a concern that the guidelines could be used as key criteria to measure compliance.</p> <p>We were told that religious bodies and individuals must be given the ability to practice their traditional and conscientiously held beliefs.</p>	<p>reflected reliance on guidelines as evidence of appropriate practice) have been deleted.</p> <p>Additionally, the OCG will no longer use the <i>Guide for Faith-based Organisations</i>. If the sector indicates that such a tool is still required, it will be redeveloped at a later time.</p>
Monitoring, investigation and enforcement	<p>Stakeholders requested the scope of the OCG's investigative powers be better defined, including a plan for assessing and rating how organisations meet the Child Safe Standards and thresholds for compliance action and enforcement. Other suggestions included that the Bill:</p> <ul style="list-style-type: none"> • detail the circumstances when the power to investigate an organisation's implementation of the Child Safe Standards could be used (this is important as the inquiry power under the CG Act includes Royal Commission powers) and what should be in an Investigation Report • clarify that an Enforceable Undertaking will be used when organisations are willing to rectify issues and identify solutions • clarify clearer timeframes for compliance or an option to negotiate a different timeframe if 28 days is unachievable 	<p>The OCG has worked with PCO to amend the Bill to:</p> <ul style="list-style-type: none"> • clarify issues raised by stakeholders regarding monitoring, investigation and enforcement • include a provision that may require the head of an organisation to complete a self-assessment tool to identify how the organisation is implementing the Child Safe Standards and opportunities for improvement, taking a responsive risk-based approach to compliance and enforcement. <p>The OCG will also develop an Enforcement Policy to guide how it will approach monitoring, investigations, and enforcement work.</p>

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	<ul style="list-style-type: none"> • provide greater clarity of terms 'harm' and 'risk of harm' • clarify internal review processes. <p>A stakeholder queried whether there should be a discretion, in limited cases, to not publish an enforcement notice if it is not in the public interest.</p> <p>Stakeholders strongly supported the principle-based nature of the Child Safe Standards. Many stakeholders endorsed the capability building approach as underpinning the scheme, as opposed to a compliance focused, punitive approach to monitoring, investigation, and enforcement.</p> <p>Some stakeholders suggested that it would be useful to include self-assessment measures as a formal part of the scheme which would provide useful guidance for organisations to know how they were tracking with adherence to the Child Safe Standards.</p>	
Executive Liability Offences	Some stakeholders requested that executive liability offences be removed. Alternatively, if they are to be retained, clarity was requested on their application and scope. For example, whether it applies to a manager, director, or head of organisation. Stakeholders suggested offences should only apply in the most serious cases.	<p>Executive liability attaches to serious offences and is consistent with other offences that attract executive liability in the CG Act. Responsibility will rest with persons involved in the management of the organisation.</p> <p>The OCG will also develop an Enforcement Policy to guide how it will approach monitoring, investigations, and enforcement work.</p>

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Child Safe Action Plans	<p>Stakeholders requested further clarity about CSAPs including whether service providers funded by prescribed agencies would be required to develop a distinct CSAP.</p> <p>Stakeholders were also of the view that the definition of 'related bodies' was too broad and needed to be narrowed. A particular issue was raised about a lack of regulatory supervision and management of a prescribed agency's requirement to consult with related bodies and any other entity or individual who, in the agency's opinion is likely to be directly affected by the plan.</p> <p>One government stakeholder suggested that the Bill be amended to clarify that a 'related body' must also meet the definition of a child safe organisation and the timeframe for completing the initial CSAP be extended to 18 months.</p> <p>An issue was raised about why no NGO peak bodies are included in the prescribed list of agencies noting the success of the scheme is dependent on partnerships with critical stakeholders.</p>	<p>Only prescribed agencies are required to develop a CSAP. The scope of the CSAPs has been expanded to include more NSW Government agencies to leverage their reach and influence. The OCG will develop a detailed guide for developing CSAPs.</p> <p>The Bill has also be amended to provide further clarity around the definition of 'related bodies' to ensure they will be those related to prescribed agencies because the prescribed agency provides services to children, funds services to children or regulates others who provide services to children.</p> <p>There is existing provision in the Bill for OCG to approve in writing a longer period for the completion of a CSAP.</p> <p>For the purposes of the regulatory regime, only government agencies will be required to submit CSAPs to the Children's Guardian for review and endorsement. The OCG will continue to work in partnership with peak organisations and other stakeholders to promote awareness and implementation of the Child Safe Standards across child-related organisations.</p>
Codes of Practice	<p>We were told there is potential for codes to cover highly contentious subject matter which could result in religious bodies needing to withdraw from the provision of Out-of-Home Care (OOHC) as they will be unable to comply with mandated guidelines.</p> <p>Some stakeholders noted that many organisations already have established manuals and procedures that guide</p>	<p>Codes of Practice have been removed from the Bill.</p> <p>Designated agencies and adoption service providers will continue to be assessed in accordance with the NSW Standards for Permanent Care, rather than through a Code of Practice that sets out the mandatory</p>

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	<p>practice. Other stakeholders were unclear what the purpose of a Code of Practice was, what it was trying to achieve, and how it would work alongside the Child Safe Scheme.</p> <p>However, other stakeholders were supportive of Codes of Practice and felt they may provide useful information about how an organisation will operationalise the Child Safe Scheme and may standardise approaches to implementation.</p>	<p>approach to the implementation of the Child Safe Standards.</p> <p>The OCG will undertake further consultation with the OOHC and adoption sector to identify how OOHC and adoption services regulation will operate in the context of the broader Child Safe Scheme.</p>
Information sharing	<p>Suggestions for reciprocal information exchange between the OCG and prescribed agencies was raised.</p> <p>Stakeholders requested more guidance around the circumstances when information should be shared, including greater detail on the roles of Commonwealth, state, and territory child safe regulators.</p> <p>Stakeholders supported national consistency and harmonisation of information sharing legislation across jurisdictions.</p>	<p>Reciprocal information sharing between prescribed agencies and the OCG is of value. The Bill has been amended to make arrangements for such information sharing.</p>
Recordkeeping	<p>Some stakeholders requested greater focus on records and recordkeeping obligations, suggesting a greater focus in legislation.</p>	<p>Record keeping is covered under <i>Standard 1: Child safety is embedded in organisational leadership, governance and culture</i>. Guidance material may be developed to support record keeping, maintenance and destruction practices.</p>
Implementation	<p>Stakeholders raised concern about the high cost of implementing the new Scheme, particularly the impact on smaller, less resourced organisations, including small independent churches.</p>	<p>The Child Safe Standards are intended to be flexible for organisations to implement in ways that are meaningful and achievable in their context, depending on their size, resources, and workforce.</p>

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	<p>It was perceived that the current Bill has risk of a supporting prescriptive and rigid approach to regulating compliance with the Child Safe Standards in the future. Some stakeholders supported a more preventative approach.</p>	<p>Over the past two years, over 20,000 people participated in child safe capability building training offered by the OCG, with specific training provided on the Child Safe Standards. In addition, over the past two years, the OCG has worked directly with many organisations to help them embed the Child Safe Standards into their organisation.</p> <p>The OCG will continue to take a strengths-based and capability building approach in regulating the requirement to implement the Child Safe Standards to promote cultural change.</p> <p>As mentioned above, the OCG will develop an Enforcement Policy to provide more detail on the approach to monitoring, investigation and enforcement which is intended to be strengths-based and focussed on outcomes, not prescriptive compliance. Enforcement will not take effect for 12 months from the date of commencement to allow sufficient time for capability building.</p>