



Office of the
Children's Guardian

Review of the *NSW Child Safe Standards for Permanent Care*

Summary of consultation with the Aboriginal OOHC
sector

April 2021

Executive summary

Beginning in October 2020, the Office of the Children's Guardian (OCG) held individual two-hour consultation workshops with Aboriginal out-of-home care providers as well as Aboriginal staff employed in non-Aboriginal agencies, to inform the review of the NSW accreditation criteria for statutory out-of-home care and adoption service providers.

Discussions with agencies focused on three broad questions:

1. what practices are most critical in promoting the safety, welfare and wellbeing of Aboriginal children and young people?
2. how could the OCG improve its assessment and monitoring processes and reduce regulatory burden on agencies?
3. what are some of the sector-wide challenges facing out-of-home care providers?

Aboriginal children and young people continue to represent just over 40% of the out-of-home care population¹ and each agency had unique insights into the challenges of delivering services within a system that has not been specifically designed with the needs of Aboriginal families at its centre.

Discussions with agencies were wide-ranging, however the overwhelming message was that the safety, welfare and wellbeing of Aboriginal children and young people is fundamentally compromised if family and community connections are not maintained. Agencies told us that a deep understanding of culture is central to children and young people's safety and wellbeing, and an understanding of culture can only be truly experienced within family.

While agencies broadly agreed that the content of the *NSW Child Safe Standards for Permanent Care* ('the standards') generally reflect practices that promote safety, welfare and wellbeing for all children and young people, in our discussions it became clear that there are opportunities to strengthen practice requirements with a particular focus on the needs of Aboriginal children and young people.

This paper summarises the key themes that emerged from our discussions with Aboriginal workers and sets out the next steps for the OCG. Throughout this paper we refer to Aboriginal children and young people in recognition that Aboriginal people were the first inhabitants of NSW. However, we also acknowledge that Torres Strait Islander children and young people and their families also come into contact with the NSW child protection and out-of-home care system.

¹ *Department of Communities and Justice Statistical Report 2018-19*;
<https://public.tableau.com/profile/facs.statistics#!/vizhome/ASR2018-19/Coverpage>

Aboriginal agencies and staff were generous in sharing their knowledge and experiences and we specifically thank the following agencies for speaking with us:

- Ngunya Jarjum Aboriginal Corporation
- KARI Ltd
- Illawarra Aboriginal Corporation Myimbarr
- Burrun Dalai Aboriginal Corporation Inc
- Yerin Aboriginal Health Services
- Winanga-Li Aboriginal Child and Family Centre Inc
- Coffs Harbour Aboriginal Family Community Care Centre
- South Coast Medical Service Aboriginal Corporation
- Muloobinba Aboriginal Corporation
- Biripi Aboriginal Corporation Medical Centre
- Narang Bir-rong Aboriginal Corporation
- Wandiyali

Our thanks also go to Aboriginal workers from the following agencies who also shared their perspectives with us:

- Barnardos Australia
- Family Spirit Limited
- Creating Links (NSW) Ltd
- CatholicCare Hunter-Manning (Newcastle)
- Anglicare NSW South NSW West and ACT
- Department of Communities and Justice

We are particularly grateful for the thoughtful, honest and constructive feedback agencies provided regarding the OCG's assessment processes and opportunities to improve the way we engage and work with the sector.

Introduction

The OCG is leading the implementation of the Child Safe Standards developed in response to the findings of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The Royal Commission recommended that child-related organisations be required to implement child safe standards and be accountable for their implementation through independent oversight.

The Child Safe Standards recommended by the Royal Commission are based on international research on the qualities and characteristics of organisations that are effective in keeping children and young people safe from harm. The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child abuse² are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

The Child Safe Standards are principle-based and reflect the common characteristics of child-safe organisations, regardless of the size and type of the organisation or the services the organisation provides to children and young people.

We anticipate the Child Safe Standards will become mandatory for some child-related sectors in mid-2021. However, some sectors have particular statutory obligations and responsibilities to children and young people and in the second half of 2021 we will consult with statutory out-of-home care and adoption service providers regarding options for bringing the sector into the child safe scheme. This will include incorporating the Child Safe Standards into the accreditation criteria.

The OCG is also leading specific projects arising from the *Family is Culture* independent review of Aboriginal children and young people in out-of-home care, chaired by Professor Megan Davis. The Review made extensive recommendations to improve the child protection and out-of-home care system for Aboriginal children and young people and their families.

The findings and recommendations of the *Family is Culture* review will also inform the review of the accreditation criteria.

² Note this is not limited to complaint handling and response for child sexual abuse, as recommended by the Royal Commission. This reflects the broader scope of the Child Safe Standards, which is to prevent, and improve responses and reporting for all forms of child abuse.

Key themes emerging from discussions with agencies

1. Opportunities to strengthen the practice requirements to reflect the specific needs of Aboriginal children and young people and their families

We asked agencies about the practices they most value in promoting the safety and wellbeing of Aboriginal children and young people and how these practices could be reflected in accreditation criteria.

There were a range of views about elements of the standards that could be strengthened and improved, and this feedback will inform the development of revised accreditation criteria. However, several common themes emerged in discussions with Aboriginal workers.

1.1 Supporting meaningful participation of family and community

Agencies told us that proactively engaging with children and young people's families is crucial if children and young people are to receive the cultural care they need.

Aboriginal agencies are uniquely placed to undertake the sensitive casework required to rebuild and nurture family and community connections and to support the people caring for Aboriginal children and young people to provide culturally appropriate care.

Agencies told us about the importance of working sensitively with Aboriginal carers who themselves may not be confident in their own understanding of culture. Workers told us that there is often an assumption that all Aboriginal people have a deep understanding of their own community's culture. This assumption can have a negative effect on carers who may have lost, through Australia's colonial history and their own life experiences, important cultural practices, family, or community connections.

Agencies told us that supporting Aboriginal children and young people requires a genuine commitment to engaging their families and connecting wider community networks in decision making regarding the child or young person's care, because culture is experienced differently by different families.

The importance of family engagement in children and young people's lives is not unique to Aboriginal children, but a failure to support meaningful family participation is particularly harmful to Aboriginal children and young people in the care system, as cultural experiences and understanding are inextricably connected to family. Agencies told us that Aboriginal children and young people in out-of-home care cannot have the depth of cultural experience or support they need if their families are not closely and meaningfully involved in their lives.

Agencies told us that to better-support Aboriginal children and young people the care system – and the standards that we use to regulate the system – must reflect a more sophisticated understanding of the meaning of family in Aboriginal cultures. Aboriginal workers told us that Aboriginal communities have a much broader concept of who is family and that a failure to understand this means family placement options for children and young people may be overlooked.

A narrow concept of who is in a child or young person's family also limits opportunities to identify people who can provide rich cultural experiences. Agencies told us that the accreditation criteria must increase expectations on all agencies who care for Aboriginal children and young people to proactively seek out children and young people's family members beyond Euro-centric notions of family.

1.2 Standards should reflect an understanding that wellbeing and culture are inextricably linked

Some agencies described wellbeing as being culturally strong and that conceptualising culture as just one aspect of wellbeing is limiting.

Agencies told us that it does not make sense to have one practice requirement or standard addressing culture, but rather culture should be the common thread linking all practice requirements and standards together. However, some workers suggested that having standards specifically addressing cultural care and support acknowledges that this is a critical area of out-of-home care practice.

While agencies had different views about how best to reflect the importance of culture in the accreditation criteria, the overwhelming message was that wellbeing cannot be separated from an understanding and experience of culture.

Some agencies spoke about legislative and contractual requirements to have education plans, health plans, cultural support plans and case plans and while understanding the intent of these requirements, felt that this is an artificial way in which to think about wellbeing and risks losing sight of the central role that connection to family and community plays in a child or young person's sense of wellbeing.

Agencies told us that failing to see culture as central to wellbeing means that cultural support and maintaining family connections is often seen as 'another box to tick' and less important than meeting health and educational needs.

Agencies said that what is included in the standards influences practice and there is an opportunity to more explicitly require agencies to take cultural planning and supporting family relationships as seriously as meeting health and educational needs. Some agencies suggested that the standards and any guidance material to support the new accreditation criteria must also emphasise the role that cultural experiences and understanding plays in children and young people's mental health and that the mental health needs of children and young people must be taken as seriously as physical health needs.

1.3 Strengthening requirements regarding cultural care plans

The OCG recognises that real and genuine experiences of culture for children and young people are provided by family. Cultural support plans attempt to create an approximation of the experiences a child or young person would have if they were not in out-of-home care. Cultural support plans can never replace the experiences a child or young person would have in their families, but most agencies agreed that cultural support plans can be meaningful and authentic.

There were a range of views about how the standards regarding cultural support could be strengthened, with some workers suggesting that the standards should be prescribe the steps in preparing a cultural support plan, particularly for non-Aboriginal agencies. Other agencies spoke about children and young people being on their own journey of cultural understanding and that cultural support plans need to reflect this. This requires the OCG and the Department of Communities and Justice (DCJ) to understand that cultural support plans will look different for different children and young people. Agencies explained that cultural support plans become tokenistic if they must all look the same.

There was broad agreement that the *Aboriginal Case Management Policy (ACMP)* developed by AbSec in consultation with Aboriginal communities reflects the principles underpinning sensitive and respectful engagement with Aboriginal families and provides good guidance for agencies in working with families so that children and young people's cultural needs are met.

Agencies pointed to the ACMP as a good guide for non-Aboriginal agencies and suggested that the *principles* underpinning the policy should be built into the accreditation criteria, rather than prescribing the *content* of cultural support plans.

2. Opportunities to improve the OCG's assessment and monitoring practices

Discussions with agencies also included their experiences of OCG assessment and monitoring processes. It was instructive for us to understand the experiences of agencies that have been

delivering services for many years, as well as provisionally accredited agencies delivering services for the first time.

Agencies overwhelmingly indicated that while interactions with the OCG can be frustrating and difficult at times, there is generally a constructive and respectful relationship between agencies and the OCG. All agencies said that independent oversight of the system is important and external review of agencies' practices can promote continuous improvement. Each agency had its own experiences of being regulated by the OCG and individual agencies provided feedback that will inform the development of the assessment framework to support the new accreditation criteria. However, there were some experiences shared by all agencies.

2.1. Assessment of agencies should recognise the unique role Aboriginal agencies have in their communities

Agencies described carrying the weight of expectations of three regulators: the OCG, DCJ and their communities. Aboriginal agencies are held to account by their local communities in ways that non-Aboriginal agencies are not and are constantly balancing community expectations with their statutory responsibilities.

All agencies spoke of the importance of relationships: with children and young people and their families, with their communities and with the OCG as regulator of the system. Agencies overwhelmingly indicated that they value their relationships with the OCG and want us to understand the unique qualities each agency brings to their work, rather than focusing simply on compliance with the standards. Agencies explained that having the same assessors monitor their progress over the course of the accreditation period is helpful, as the assessors understand where the agency has come from and where the agency has changed and improved. It also helps assessors understand the agency better and can strengthen our assessment of the agency's practices.

Agencies also told us their relationships with their communities are vital if children and young people are to be supported to return to their families and that agencies invest significant time and energy into building trust with their community in order to build supportive networks around children and young people. Agencies overwhelmingly reported that this is often not recognised or celebrated by the OCG or DCJ and that the regulatory and contractual system does not recognise that Aboriginal agencies have additional pressures not experienced by non-Aboriginal agencies.

Agencies suggested the OCG can better-understand the unique character of Aboriginal agencies by building into onsite assessment processes attendance at other programs or community events that agencies provide in their communities. Agencies said that reading case files cannot give

assessors a sense of how children and young people and their carers and family members interact with agency staff the way onsite observation can.

2.2 Discussion with staff during onsite assessments is critical

Agencies generally described onsite assessment process that include an element of discussion with agency staff but felt that discussions are less important to assessors than reviewing children and young people's records. Agencies very clearly told us that discussions with staff are more important, or at least just as important, as reviewing documentary evidence.

All agencies agreed that documentation and record keeping is important in order to be accountable for decisions that are made about children and young people's lives, to provide continuity in care when caseworkers change and to help children and young people to make sense of their journey in care. However, agencies reported frustration that documentary evidence of practice is given significantly greater weight than staff describing their practice to assessors.

Agencies reported that their work is predominantly crisis-driven and that documenting decisions often takes place after the crisis has passed. Agencies explained that a brief file note on a child or young person's file describing key events could represent days of intensive work to support a placement. Agencies reported frustration that they can verbally describe in detail how and why a decision was made, but if it is not documented at the time of an onsite assessment it is given little weight.

Agencies indicated that, within reason, our assessment processes should give greater weight to staff's descriptions of their practice and verbal explanations about decisions that have been made for individual children and young people. Agencies generally accepted that assessors need to verify, via assessment of some documentary evidence, that an agency's practices are occurring as described, but that a better balance should be struck between documentary and other forms of evidence.

Agencies also told us that discussions with staff provide opportunities for agencies to share events with assessors that are worth celebrating and can assist in creating an assessment experience that is focused on continuous improvement, rather than an agency's deficits.

2.3 Opportunities to improve communication of feedback following onsite assessments

Most agencies agreed that the written feedback provided following onsite assessments is usually accurate and a fair reflection of the agency's practices. Agencies reported that some feedback can

be overly prescriptive but generally focused on an agency's systems to support children and young people.

Some agencies suggested it would be helpful for verbal and written feedback to be more specific, such as providing examples of individual children and young people to illustrate observations about the effectiveness of an agency's systems.

There were a range of views regarding how helpful written feedback reports are for promoting continuous improvement, however agencies were overwhelmingly positive about the workshop approach to providing feedback. Where agencies have participated in a workshop, there was broad support for this approach to proving feedback to become a routine part of the assessment processes.

2.4 Including the views of children and young people and their carers

The OCG does not currently contact children and young people directly to seek their views regarding the services they receive from an agency, in recognition that children and young people in out-of-home care frequently experience adults coming in and out of their lives and are often required to tell their story of their time in care to people they may have just met.

The OCG has been of the view that the relationship between a child or young person and their caseworker is one of the most critical in terms of promoting safety and wellbeing and it is more important for the OCG to understand how an agency promotes the participation of children and young people. However, agencies indicated that there are opportunities for the OCG to hear directly from children and young people and their carers, without being unnecessarily intrusive.

Several agencies suggested that the OCG could directly survey, with the agency's assistance, older children and young people, and their carers, to seek their views. One agency suggested that for younger children, the OCG could prepare some simple questions that a caseworker could discuss with the child and record the discussion.

Agencies recognised that it is inevitable that some feedback from children and young people and carers would be negative but would provide the OCG with a balanced view of the agency. Agencies indicated that if the OCG approaches engagement with children and young people and their carers in the spirit of promoting continuous improvement (rather than looking at deficits), it could provide valuable feedback for both the agency and the OCG.

2.5 The role of the OCG in assessing cultural care

The OCG recognises that non-Aboriginal assessors cannot bring the same depth of understanding of how best to meet the cultural care needs of Aboriginal children and young people as Aboriginal workers bring to their work. We also acknowledge that for some workers, it can be confronting and uncomfortable to have non-Aboriginal assessors review an agency's approaches to meeting the cultural care needs of the children and young people with whom they work.

In discussions with agencies we asked workers what their views are about the of the OCG and its approaches to assessing the cultural support and care provided to Aboriginal children and young people.

There was overwhelming agreement that agencies must be accountable for the cultural care and support they provide to children and young people and that cultural care planning and support should be taken as seriously and receive the same degree of scrutiny as case planning practices.

While some workers said that it is not appropriate for a non-Aboriginal organisation to assess and ask questions of agencies regarding their practices in relation to cultural care and support, most workers indicated that provided the OCG is informed by the community and respects their expertise, there should be an active interest in the cultural care provided to Aboriginal children and young people and that it is possible for non-Aboriginal assessors to hold agencies to a standard while also respecting the expertise of Aboriginal workers.

There was broad agreement that the appropriate approach for the OCG is to consider whether the *principles* that underpin sensitive casework with children and young people and their families is evident in the development of cultural care plans, rather than scrutinising the content of the plans themselves. Agencies told us that cultural needs are specific to individual children and young people and without a deep understanding of children and young people's family and community, assessors cannot determine whether the content of cultural support plans is appropriate. But agencies also said that we should focus on the *process* of developing a plan, drawing on the ACMP as a guide to good practice in engaging with Aboriginal families.

Some agencies told us that the development of cultural support plans is an artificial exercise that can never truly capture the work an agency undertakes with children and young people and their carers. These agencies indicated that the OCG and DCJ must take a more flexible approach to how it assesses cultural care and understand that 'supporting culture' is not a stand-alone casework exercise, but rather permeates everything the agency does in relation to children and young people.

The OCG recognises that its role in assessing the cultural care provided to Aboriginal children and young people and their families will continue to be a point of respectful discussion and debate with the sector. However, the most critical message arising from these discussions is that as a non-Aboriginal organisation, the OCG must have an open and curious mind, ask agencies about the practices they most value in supporting cultural connections and then look for examples of these practices with children and young people.

3. Sector-wide challenges

The final area of discussion with agencies was about sector-wide challenges, particularly duplication in the oversight roles of the OCG and DCJ.

Two key issues emerged from these discussions:

1. the OCG and DCJ often collect similar information in slightly different ways, creating burdensome administrative tasks for agencies. Every agency referred to the duplication in reporting requirements for non-homebased emergency care – (NHBEC) to the OCG and alternative care arrangements (ACAs) to DCJ – as particularly frustrating
2. that casework decisions and practices are scrutinised by the OCG and DCJ (under contracting arrangements) to a degree not previously experienced.

Agencies reported that they meet regularly with DCJ to discuss case plan goals and decisions for individual children and young people and that the OCG must recognise that when assessors attend onsite assessments, they are often not the first point of external review. Agencies described a sense that they are not trusted experts and that despite meeting the OCG's accreditation requirements, their decisions and actions are regularly questioned and critiqued by the OCG and DCJ.

Agencies provided detailed lists of information they are currently required to report to DCJ regarding individual children and young people and much of this information would be directly relevant to the OCG's assessment of compliance with the standards. The OCG explored in discussions with agencies whether information they provide to DCJ under their reporting requirements could be accessed by the OCG to inform its assessments. Agencies expressed reservations regarding how readily accessible this information would be within DCJ. There was broad agreement that the proposed access agencies to the ChildStory system may relieve some administrative burden and allow the OCG to assess agency practice via access to ChildStory records.

These discussions did not reveal an immediate solution to the duplication between OCG and DCJ oversight of agencies' practices, however it helped us understand the degree of scrutiny of

casework decisions under the Permanency Support Program contracts and where there are opportunities for the OCG to relieve some of the administrative burden on agencies. These discussions will inform the development of the assessment and monitoring framework to support the new accreditation criteria. There are also clearly opportunities for the OCG and DCJ to rationalise some of the duplication of reporting requirements regarding cohorts of children and young people in alternative care arrangements.

Next steps

Based on these discussions, we are developing draft revised accreditation criteria that will be circulated to the sector for feedback. We anticipate the draft accreditation criteria will be available for comment in August 2021.

We will also review our assessment and monitoring approaches based on the feedback from these discussions, including the use of workshops to provide feedback following onsite assessment processes and building in opportunities for more discussions with staff during onsite assessments. Further information will be included in a discussion paper that will be circulated with the draft accreditation criteria.

To address some of the sector-wide issues identified in these discussions a sector advisory group will be established in the second half of 2021 to identify opportunities to streamline the oversight roles of the OCG and DCJ. The OCG will seek expressions of interest from designated agencies and adoption service providers to participate in the advisory group.

The OCG extends its sincere thanks to the many workers who made the time to share their knowledge and experiences.