

Our ref: R96/0080-03 SUB-571  
Further contact: Elizabeth Robertson - 02 9242 4028

10 April 2019

Ms Janet Schorer  
Children's Guardian  
c/o Policy Team  
The Office of the Children's Guardian  
Locked Bag 5100  
STRAWBERRY HILLS NSW 2012

Dear Ms Schorer

### **Response to the Regulating Child Safe Organisations Discussion Paper**

Thank you for the opportunity to comment on the Regulating Child Safe Organisations Discussion Paper (the Discussion Paper) which broadly outlines the proposed measures to support, monitor and enforce the implementation of the 10 child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

Local Government NSW (LGNSW) canvassed the views of councils to inform this submission, which remains in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded.

### **The role of local government in children's services and child protection**

Councils in NSW promote, provide and plan for the needs of children and young people through both direct services and infrastructure as well as creating an enabling environment through policy and planning. In June 2017, NSW councils employed 55,900 people across 299 different occupations. Many of these council occupations have direct and indirect contact with children and young people.

### **Key comments of the local government sector to the Discussion Paper**

As leaders in their communities, councils wholeheartedly support child protection and the 10 child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse:

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 promoted and diversity respected;
5. People working with children are suitable and supported;
6. Processes to respond to complaints of child sexual abuse are child focussed;
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 child safe standards is continuously reviewed and improved; and
10. Policies and procedures document how the institution is child safe.

Councils that responded to LGNSW's call for feedback are complimentary of the proposals in the Discussion Paper. Councils provided comments on the ten consultation questions in the Discussion Paper, and these comments are summarised in Attachment 1.

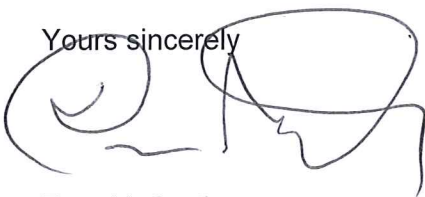
The main issues councils raised regarding implementing the child safe standards are:

- The need for clarity of the parameters of the regulations i.e. where responsibility sits when councils provide a variety of services, including those with contractors, external service providers and volunteers
- Councils will require further staffing and resourcing around child protection in addition to improving the child protection capacity of existing staff
- Some councils may require assistance or longer timeframes to budget for and meet changed regulatory obligations.

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered, and is also willing to further engage with the Office of the Children's Guardian in the development of any local government specific resources

To discuss these comments further, please contact Elizabeth Robertson, Senior Policy Officer on 02 9242 4028 or [elizabeth.robertson@lgnsw.org.au](mailto:elizabeth.robertson@lgnsw.org.au)

Yours sincerely



Tara McCarthy  
**Chief Executive**

## **Attachment 1**

### **Regulating Child Safe Organisations – Discussion Paper for Consultation**

#### **Council feedback on the consultation questions**

#### **1. In what ways is a principle-based approach a good fit for regulating child safe organisations in NSW?**

Councils in NSW generally support a principle-based approach. The principle-based approach encourages councils to reflect on their individual work environments, and the diversity of programs and services they offer, and then identify the ways each of the child safe standards are upheld in these differing circumstances. It is appropriate that, through a principle-based approach, councils can focus on the outcome they are trying to achieve - child safety - rather than through a regulatory-based approach which could lead to regulatory burden.

The principle-based approach is perhaps less clear on how child safe organisations should look in practice, delivery and accountability. It is recommended that the principle-based approach is supported by a set of best practice guidelines, training and development materials to help ensure the child safe standards are embedded in practice and not only in principle.

#### **2. In what ways would a different approach be a better fit for regulating child safe organisations in NSW?**

Refer to response to question 1.



### 3. What types of organisations should be regulated to meet child safe standards in NSW?

#### Definition

Firstly, regulation of the child safe standards should define the age group of a child.

#### Criteria

There are differing views among councils on which organisations should be regulated to meet the child safe standards depending on which of the following contact and supervision criteria apply:

- Organisations where staff have direct and indirect contact with children  
*(Indirect contact could include that by beach lifeguards, event coordinators, librarians and animal shelter staff i.e. situations where children are not the core customers but are present)*
- Organisations where staff have direct contact with children  
*(Direct contact with supervised children could include swimming lessons and storytime i.e. direct involvement in children's development, or programs and projects targeted for children).*
- Organisations where staff have direct contact with children without immediate parental care or supervision only  
*(direct contact with unsupervised children could include vacation care programs, youth services, work experience and child education and care.)*

It is recommended that the Office of the Children's Guardian clarify the criteria used to determine which organisations are *required* to meet the child safe standards and which organisations will be *encouraged* to meet the child safe standards.

#### Council occupations

There are varied child-related services and contexts in councils that may require the implementation of the child safe standards including:

- Child development e.g. children's language delay identification program
- Child protection e.g. child safety officer or child protection team
- Children's health services e.g. immunisation clinics
- Disability services e.g. inclusion support service
- Early education and child care e.g. Council run education and care centres
- Entertainment for children e.g. children's events
- Transport services for children e.g. to/from before and after school care.

Additionally, councils provide other services involving contact with or direct service delivery to children yet these are not currently explicitly represented in the child-related work list in the Discussion Paper. These specific roles or teams are:

- Youth services
- Children's librarian
- Children's programs and engagement
- Schools programs and engagement
- Swim centres
- Sport and recreational services
- Work experience student supervisors
- Investigators of child protection allegations against staff

There are also areas within council which may not traditionally be considered exclusively child-related based on their title, however due to many contributing factors, these areas do provide services to children as part of their overall work with the community. These roles or teams include:

- Community centres
- Arts and culture team
- Environmental sustainability
- Resource recovery
- Events
- Community engagement
- Library staff

Councils may also have relationships with other organisations in their communities that have contact with children. The types of relationships councils may have with other child related roles, teams, services and sectors are:

- Employer of a contractor, supplier or vendor
- Formal partnerships
- Collaboration
- Funder
- Coordinator of multiple external organisations
- Facility or park leaser
- Provider of resources or information
- Consultant
- Facilitator of events, interagency or networking
- Informal contact

## **Relationship to the Working With Children Check**

The Discussion Paper refers to the definition of child-related work from the Working With Children Check (WWCC). It is not recommended that the child safe standards rely on this definition as it is a source of confusion for many councils because it does not specify the degree of contact with, and supervision of, children. Therefore, there have been instances where councils have required all staff and volunteers within an organisation to obtain a WWCC but this over-checking has been discouraged by the Office of the Children's Guardian. There are questions from councils as to whether other organisations which do not fit under the definition of child-related work should implement the standards including those which have staff that do not currently require a WWCC. It is recommended that there is clear messaging on where the child safe standards regulations and the Working with Children Check regulations align and where they differ. The child safe standards regulations should be cross-referenced in the *Child Protection (Working with Children) Act 2012* and *Child Protection (Working with Children) Regulation 2013* for consistency.

## **Divisions within a council**

The Office of the Children's Guardian should also clarify which parts of the organisation will be regulated to meet the child safe standards. For councils, only some divisions or services have contact with children and these would be most appropriate to conduct a self-assessment against the child safe standards. Yet the child safe standards state that the principles of child safety are to be embedded in the leadership of organisations. While the main areas implementing the standards are child-related services, any child safe regulations should be clear as to the level of responsibility for councillors and general managers. It may be helpful to have a model organisational chart which categorises staff on a scale of 1 – 4 as to the level of child safe training and responsibility expected.



#### 4. What types of organisations should not be regulated to meet child safe standards in NSW?

The unique position of councils in their communities means that they are embedded into multiple programs, services and spaces catering to children. Councils may also be involved to differing degrees from direct management of a service, to being only the lessor of a facility. Councils would welcome clarity as to the boundary of their role and responsibility in regulating the child safe standards.

Some cases where councils are seeking clarity as to how the child safe standards are regulated are outlined below:

- Circumstances where council-managed facilities conduct child friendly activities where parental supervision and care is conditional to the activity e.g. storytelling time at the library, Christmas carols, community markets, parks, gardens and beaches. There is an expectation in the community that councils and these spaces/venues would be implementing some child protection measures. In these cases the Office of the Children's Guardian should work to manage the expectations of the community as to the extent the child safe standards can achieve complete child protection.
- Circumstances where council does not have control over the policies, procedures, and training of those delivering the service (for example when leasing out a community hall or providing a grant to a community organisation). Councils recommend avoiding duplicating the regulation of child safe organisations by ensuring that in these circumstances that the organisation to be regulated is the one directly providing the service and that the burden does not fall onto councils to be a co-regulator of these spaces.
- Circumstances where councils do have direct responsibility such as those councils which provide early childhood education and care (ECEC) facilities. In these cases where services are heavily regulated, councils recommend that the child safe standards should not be regulated separately. Instead the child safe standards can be incorporated into the National Quality Framework which ECEC providers are required to meet. Further consideration should be given to the level of councils' responsibility for the child safe standards when facilitating a family day care service.
- Circumstances where councils facilitate volunteer-run activities such as bush care, playgroups and reading groups. The relationship councils have with their volunteers is integral for community services. The regulation of the child safe standards should be cognisant of the already considerable resources required of councils in screening, training and inducting volunteers and therefore any regulation should be supported by resources to continue to encourage the use of volunteers.

It is acknowledged that regulation cannot explicitly provide for every situation and variable however where possible regulation and supporting resources should aim for clarity around roles and responsibilities.

## **5. What sorts of organisations should help to co-regulate child safe standards?**

Most councils do not have the resources to undertake the role of co-regulator for organisations in their communities. However, councils are often the first point of contact for complaints and questions about community safety. Councils will therefore require clear communication channels with the Office of the Children’s Guardian to refer enquiries or may require state-funded positions in councils to facilitate this work in the community.

Councils agree that there are opportunities for organisations other than the Office of the Children’s Guardian to play a role in regulating child safe organisations. One example, as suggested above, is in cases where councils provide education and care. These services are already regulated nationally through the National Quality Agenda administered by the Australian Children's Education & Care Quality Authority (ACECQA). An audit could be conducted on the current child safety compliance requirements for those organisations that currently work with children.

In delivering community services, councils work with a large range of government agencies and industry bodies. Councils provided the following suggestions for co-regulators of the child safe standards:

- Office of the Advocate for Children and Young People
- Department of Family and Community Services
- Office of Sport and Recreation
- NSW Ombudsman
- Child Abuse Prevention Service
- Department of Justice
- NSW Health
- Industry/professional bodies

In the example of the Child Abuse Prevention Service (CAPS), this is a community organisation located in Ashfield, NSW. This organisation could be provided with funding to assist in the co-regulation of child safe standards amongst the inner western suburbs of Sydney. This kind of community organisation could also work on a regional/local level to assist in implementing child safe standards across NSW.



## **6. How should the OCG support organisations to build their capacity to meet the child safe standards?**

Councils are supportive of the standards but have concerns about the resources required to implement the standards. Councils provided numerous suggestions for resources that would assist them in adopting the child safe standards:

### **Materials**

- Example policies and procedures
- Best practice guidelines
- Sample recruitment processes, checklists and staff induction material
- Case studies and examples of the successful implementation of each standard
- Parameters of reasonable actions against each standard
- Implementation manual
- Tools and resources available on the Australian Human Rights Commission website
- Media and communications templates
- Example Child Safe Action Plans, similar to Reconciliation Action Plans
- Resources specific for child safe standards for children with disability

### **Training**

- Free on-site training for staff on what is required and how the standards should be implemented
- Face-to-face workshops, including in regional areas, for staff, families and children
- Webinars

### **Specialised advice and services**

- Resources tailored to different roles in a council (e.g. from those with direct contact with children, to managers, human resources staff, executives, councillors, and risk officers)
- A document review and endorsement service to receive written feedback on implementation plans, policies and procedures
- Grant funding to assist with implementation activities
- Initial site visit with recommendations followed by an inspection
- Leadership training and capacity building, about the importance of child safety, the outcomes of the Royal Commission into Institutional Responses to Child Sexual Abuse and the significance of the Council of Australian Governments' endorsement of National Principles for Child Safe Organisations.

## **Local government resources**

In all of the above suggestions, councils are particularly seeking resources tailored to the unique local government context and examples. Currently councils find that they have to adapt resources designed for community or private organisations (including those from early education and care centres and sporting groups) which do not reflect the role of councils as a level of government and do not reflect the range of services councils provide in the community. Resources tailored to different services and facilities including theatres, community halls, library services, community engagement, public spaces, toilets and events would be useful in changing the perception that child safety affects only education and care services. LGNSW is willing to further engage with the Office of the Children's Guardian in the development of local government specific resources.

## **Approved providers**

If these services and resources are not to be provided by the Office of the Children's Guardian but are instead provided by consultants or training organisations, councils would seek to know which of these are endorsed/approved to provide such advice e.g. a list of recommended agencies.

## **Professional advice**

The Office of the Children's Guardian should additionally offer a telephone advice line. The Child Wellbeing Unit model should be considered which is a NSW Health telephone support service staffed by child protection professionals proficient in the assessment and management of risk to children and young people. Its remit could be expanded to include guidance and advice to organisations about the child safe standards. The service should have the authority to put advice in writing by sending a feedback summary following the consultation. Specific written confirmation of advice is a gap in current child protection oversight services. This will further support councils to seek clarification around the parameters of the child safe standards.

## **Recommendations from the Royal Commission**

Further guidance and support (such as case studies and proposed models) would also be welcomed by councils regarding the following the specific recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse and how it relates to the new child safe standards:

### **Recommendation 6.12**

With support from governments at the national, state and territory levels, local governments should designate child safety officer positions from existing staff profiles to carry out the following functions:

- a. developing child safe messages in local government venues, grounds and facilities
- b. assisting local institutions to access online child safe resources



- c. providing child safety information and support to local institutions on a needs basis
- d. supporting local institutions to work collaboratively with key services to ensure child safe approaches are culturally safe, disability aware and appropriate for children from diverse backgrounds.

One proposed model is that implemented by Cumberland Council which has established a child protection team which represents a cross section of the council divisions. The team meets monthly and takes action around the implementation of child safety throughout Council. This shared approach not only brings a variety of authority and expertise into the room, it also reinforces the idea of shared responsibility with child safety.

## **7. How should the OCG roll out regulation of the child safe standards so that organisations have time to plan and make changes if required**

### **Pilot study**

Within a local government context, the Office of the Children's Guardian should consider piloting implementation of the child safe standards at a minimum of two councils: a metropolitan council and a regional council. The two pilot sites should vary in the scope of their child-related work. This evaluated process will provide learnings and insights around the needs for the roll out. Based on these findings, implementation models can be developed to suit the council setting.

### **Liaison officers for local government**

As the implementation of the standards are adopted more broadly by other councils, the Office of the Children's Guardian should provide a liaison officer who can be a point of contact specifically for council staff. The Office of the Children's Guardian may also like to consider providing grant funding to host this position at LGNSW in a similar way to the NSW Government-funded position created during the implementation of Disability Inclusion Action Plans. Another option is the allocation of staff in the Office of the Children's Guardian according to regional areas.

### **Engagement and awareness**

Any roll out of new standards requires extensive engagement, awareness and education, as recognised in the Discussion Paper. Some suggestions from councils on how this could occur include:



- Targeting both organisations and the general public to announce the new child safe standards and the expected outcomes
- Leading an educational roadshow: a series of workshops throughout NSW providing initial education on the child safe standards. This tool is an opportunity to target leadership within councils for example; executive teams and councillors
- Hosting information sessions in conjunction with co-regulators and relevant industry associations
- Working with local government child and family workers to locally promote the information about the child safe standards, including commencement date, etc.
- Using existing forums, newsletters and other communication tools used by large organisations and peak bodies with a wide reach
- Early launch of the advice telephone service, and appointment of the liaison officers in the Office of the Children's Guardian
- Assisting councils with self-assessment of current child safe procedures against the new standards to identify any gaps and proposed actions
- Partnering with community organisations such as CAPS to educate local communities about child safe standards

### **Timeframes**

Of utmost importance to councils is the timeframe for implementation. The time, effort and process required to develop policy and implement training across numerous council areas is significant and will take expertise and financing. Councils support a minimum 12 month period to implement the child safe standards before the start of any new and or additional monitoring activity. This minimum transition period is required to ensure that councils have opportunity to submit new or amended policies and procedures to their respective council meetings. Due to the variety of services that councils offer to the community, the Office of the Children's Guardian may also like to consider clear phase in periods for different service types, similar to those provided during the introduction of the new WWCC scheme.

### **Evaluation and accreditation**

The implementation of the standards should be continuously improved and reviewed by child safe organisations and the Office of the Children's Guardian. The role of the Office of the Children's Guardian in this phase would be to continue to communicate with organisations, prompt their review and offer evaluation templates.

As the implementation of the child safe standards becomes embedded in the culture of organisations, a child safe accreditation system may assist in recognising best practice organisations and help maintain the momentum of the rollout of the standards by incentivising improvement.

## **8. What powers should the regulator have to monitor the child safe standards?**

Councils understand that monitoring the implementation of the standards across all child safe organisations in NSW is a large undertaking. The introduction of new standards should be accompanied by adequate monitoring and enforcement resources.

For most councils and council-run services, as suggested in the Discussion Paper, monitoring could occur through the requirement to submit self-assessment forms to the Office of the Children's Guardian and include any identified gaps in quality improvement plans. Councils have differing views on whether the self-assessment should occur periodically when asked by the Office of the Children's Guardian or whether self-assessment will be required at set intervals (for example, at the end of each financial year). To ensure this is a smooth process for councils, it is suggested that the Office of the Children's Guardian establish an online portal to upload the self-assessment forms.

For early childhood education and care services that are already heavily regulated, the monitoring of the standards should occur through the assessment and rating process that is already in place.

The public can also assist in monitoring child safe organisations and it is recommended that the Office of the Children's Guardian expand the 'report a concern' service on its website to also include complaints about child safe standards.

Powers to further investigate would need to be legislated in a transparent manner with adequate procedural fairness and notification periods, except in circumstances where there is evidence to suspect immediate risk to a child. Criteria to investigate further may include if the service consistently underperforms in the child safety standards or is not complying with a number of child safety standards after the implementation period.

## **9. What powers should the regulator have to enforce the child safe standards?**

Some councils will have greater resources than others to meet the child safe standards and therefore councils support the 'responsive' approach suggested in the Discussion Paper whereby enforcement powers will only occur after supportive strategies have failed and in proportion to the nature of the risk identified. Additional strategies should be considered where organisations have the willingness however lack the capacity to meet the standards.

If an accreditation model is chosen for monitoring the child safe standards then loss of this accreditation is a penalty, as is the removal of membership to the NSW Government Active Kids or Creative Kids scheme.

Enforcement frameworks for the child safe standards should specify that other legal requirements for the protection of children may still apply over and above the child safe standards and that powers may be exercised by other enforcement agencies.

## **10. How can the OCG support parents, families and communities to encourage organisations to be child safe?**

Refer to materials, training and advice services outlined in the response to question 6.

To discuss these comments further, please contact Elizabeth Robertson, Senior Policy Officer on 02 9242 4028 or [elizabeth.robertson@lgnsw.org.au](mailto:elizabeth.robertson@lgnsw.org.au)