5 February 2021

Ms Janet Schorer
NSW Children's Guardian
Office of the Children's Guardian
By email: policyteam@kidsguardian.nsw.gov.au

Dear Ms Schorer,

Exposure Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2020

The Association of Children's Welfare Agencies (ACWA) appreciates the opportunity to comment on the draft Children's Guardian Amendment (Child Safe Scheme) Bill 2020. Thank you for providing an extension of time for us to do so.

In preparing this submission, ACWA has consulted with, and prepared the following observations and comments on behalf of, NCOSS, Youth Action and FAMS.

As leading peak bodies representing NSW non-government community organisations that deliver services to vulnerable children, young people and their families, we strongly support the decision to introduce mandatory Child Safe Standards and the establishment of an associated regulatory scheme.

Overall, our view is that the Bill provides an adequate legislative framework for the scheme's operation but that some minor changes could be made to strengthen particular provisions – our suggestions in this regard are detailed below. While we recognise that the purpose of the current consultation is to elicit feedback on the Bill, we have also taken the opportunity to highlight some key issues that go to the implementation of the legislation, given that this will ultimately determine the scheme's effectiveness.

As I have previously advised, ACWA is committed to working with your organisation, and other stakeholders, in helping to ensure that the rollout and implementation of child safe standards across NSW is effectively and efficiently executed. In particular, we are committed to supporting our member agencies and other sectors in this endeavour, and in particular, to closely collaborating with AbSec in doing so.

1. Relevant entities ('child safe organisations')

We support the definition of 'child safe organisation' in the Bill, noting its application to Schedule 1 entities, public authorities, religious bodies and "an entity, or part of an entity, prescribed by the regulations for this definition." The inclusion of a provision enabling other sectors to be prescribed by regulation is consistent with feedback provided by ACWA in response to your earlier consultation paper on Regulating Child Safe Organisations.

2. Capability building

We support the scheme's primary focus within the first two years of operation on capability building and support. As previously advised, we are very keen to support the OCG in its efforts to build the capacity and readiness of all relevant organisations to implement the child safe regulatory scheme, within the OOHC sector, and more broadly, across the children's services sector.

Division 5 of the Bill provides that the OCG may:

- Develop guidelines for child safe organisations, including templates that can be used by organisations in developing systems, policies and processes that implement the Child Safe Standards (s8EA(1)-(2)).
- Develop guidelines, including templates, to assist prescribed agencies to develop child safe action plans, and assessment criteria for child safe action plans (s8EB(1)).
- Provide training on matters related to the implementation of the Child Safe Standards, and other matters reasonably related to child safety and the functions of the Children's Guardian (s8EC(1).
- Develop and distribute other resources to promote the Child Safe Standards as the Children's Guardian considers appropriate (s8E(d)).

While the above functions are discretionary, we would welcome the OCG proactively exercising these functions given the strong capability building approach that underpins the regulatory scheme. In this regard, we are keen to resume our discussions with the OCG about the scope for development of an industry led, and OCG endorsed, *Child Safe Standards: Compliance and Good Practice Tool*, which would ideally house best practice advice and supporting resources for agencies to comply with the child safe regulatory requirements.

Model policies/procedures

The development of templates that can be used by organisations as part of implementing the Standards will be particularly valuable, especially for smaller organisations with limited resources. For these organisations, the cost and effort required to develop bespoke policy and procedural documents 'from scratch' could divert valuable resources from operational requirements.

In our view, less experienced/resourced organisations should be encouraged to focus their limited resources on implementing and embedding (rather than preparing) policies and procedures within their own operational context. Providing these organisations with templates that contain sufficiently detailed model text that they can appropriately tailor or operationalise would be an effective way of doing this. Over the medium to longer term, this approach would also free up the OCG's resources to focus on monitoring the practical implementation (rather than the development) of policies and procedures.

We note that the OCG has undertaken to develop over the next 12 months a model Statement of Commitment to Child Safety, Code of Conduct, Child Safe Policy, Human

Resources Policy, Complaint Policy and Procedure and a Risk Management Plan.[1] To ensure they complement the Guide to the Child Safe Standards in the most practical, effective way, there would be value in the OCG partnering with key sector representatives and peak bodies to both 'inform the development of' and 'user test' the templates.

Training

In relation to capability building, peak bodies such as ACWA, AbSec, FaMS, NCOSS, Youth Action have an important role to play in providing sector specific training. Given this, we would welcome advice about whether the OCG still intends to develop "A scheme to certify resources to be developed, which incorporates minimum standards to benchmark the quality of child safe training resources being delivered by training providers in NSW".[2]

Child Safe Coordinators

The Exposure Draft Explainer indicates that the OCG's existing capability building activities "are reflected through the work of Child Safe Coordinators, who provide tailored support and training to a number of targeted sectors including: the faith-based sector; the sport and recreation sector; the early childhood sector; schools (Independent and Catholic Schools); Aboriginal agencies; the out-of-home care sector and local government."[3]

Having regard to section 8E(d) of the Bill, it would be useful for the OCG to publish a guidance note or fact sheet that describes the role of the Child Safe Coordinators, with particular reference to the OCG's function to "take action to build the capability of child safe organisations to implement the Child Safe Standards and to prevent harm to children" (s128(1)(a)).

3. Implementation

The success of the regulatory scheme will, in part, be determined by the effectiveness with which it is implemented by the OCG in partnership with other critical stakeholders. It is clear from statements included in the Exposure Draft Explainer and in previous consultation documents published by the OCG, that the regulator intends to do so in a principle based, outcomes focused and collaborative way. While we welcome this commitment, we believe there would be value in the OCG releasing more detailed advice (via a fact sheet or guideline) regarding how this commitment will be met in a practical sense.

Minimising regulatory duplication

[1] Office of the Children's Guardian, *Exposure Draft Explainer*, December 2020, p3.
[2] Office of the Children's Guardian, *Making organisations safer for children: Regulation of child safe standards in NSW – Consultation Report,* July 2019, p14.
[3] Office of the Children's Guardian, *Exposure Draft Explainer*, December 2020, p4.

As you know, ACWA endorsed the co-regulatory approach recommended by the Royal Commission based on our belief that it is necessary to secure the strong multi-sector buy-in and ownership required for this critical reform initiative, and to minimise regulatory burden where an existing regulator is in play.

We note that the co-regulatory approach previously considered by the OCG has been replaced by Child Safe Action Plans "to promote sector wide reform".[4] There would be value in further clarifying how CSAPs will achieve "similar outcomes" as co-regulation.[5] In this regard, when co-regulation was being considered, the OCG described the proposed approach as one in which it would partner with sector regulators, peak bodies and other entities (where appropriate) to reduce regulatory duplication and facilitate consistency with other child safe frameworks. It was also anticipated that clear roles and responsibilities would be articulated in formal arrangements and that the OCG would form partnerships with peak bodies and community-run entities to deliver capability building and support measures as required.[6]

Against this background, we have some concerns that there is no similarly detailed explanation in either the Bill or the Exposure Draft Explainer as to how CSAPs will operate to minimise regulatory duplication. In addition, we note that CSAPs must outline the strategies a prescribed agency will take with 'related bodies' to build community awareness about the importance of child safety in child safe organisations, build the capability of child safe organisations to implement the Standards, and improve the safety of children by implementing the Child Safe Standards. It would appear to be similarly valuable for these prescribed agencies to outline how they too are building awareness and capability regarding the Standards.

The agencies prescribed by the Bill are the Department of Communities and Justice; Ministry of Health; Department of Education; the Office of Sport; and the Office of Local Government; or a NSW government agency prescribed by the regulations.

Agencies that have existing regulatory responsibilities that relate to safeguarding children include:

- the Office of the Children's Guardian (responsible for OOHC accreditation and oversighting the reportable conduct scheme)
- the Department of Education (responsible for regulating early childhood education and OOSH services in accordance with the National Quality Standard)
- the NSW Education Standards Authority (responsible for the registration and accreditation of non-government schools), and
- the NDIS Quality and Safeguarding Commission (responsible for regulating NDIS providers that operate in NSW).

[4] Office of the Children's Guardian, *Exposure Draft Explainer,* December 2020, p1.
[5] Office of the Children's Guardian, *Exposure Draft Explainer,* December 2020, p6.
[6] Office of the Children's Guardian, *Making organisations safer for children: Regulation of child safe standards in NSW – Consultation Report,* July 2019, p11.

Of these agencies, only the Department of Education is currently required to develop a CSAP and it is not clear what mechanisms the OCG plans to use or develop to fulfil the above requirement to communicate and coordinate its regulatory activities with these (or other) regulatory agencies.

In our opinion, it would be inefficient for the OCG to replicate the role of other agencies that already regulate aspects of child safe organisations. For example, NESA is responsible for ensuring that registered non-government schools have in place policies and procedures to ensure they meet their legislative obligations in relation to child protection.

The OCG should also liaise with other regulatory agencies to avoid situations where organisations are subject to conflicting or overly burdensome requirements at the same time. Given its limited resources, it makes sense for the OCG to strategically target its focus on those entities falling within the regulatory scheme that are most in need of capability building and which pose the highest level of risk to children.

Organisations falling within the regulatory scheme, as well as other agencies with existing regulatory responsibilities for these organisations, would benefit from the OCG developing and publishing principle-based guidance that clarifies the approach it will take to:

- Integrating the performance of its regulatory functions (notably those relating to the Child Safe Standards, reportable conduct, and statutory out-home-home care accreditation and monitoring) across its own internal operations.
- Communicating with and where appropriate, coordinating its regulatory activities with other agencies that have relevant regulatory responsibilities for child safe organisations, so as to minimise regulatory duplication and burden.

There would also be value in amending the Bill to include a statement of commitment to implementing a regulatory approach that minimises regulatory duplication.

<u>The role of the NGO sector</u>

It is unclear why there aren't any NGO bodies included in the prescribed list of agencies tasked with building community awareness, given that leading peaks bodies across the various sectors could play a vital role in promoting sector reform with the many thousands of NGOs delivering services to children and young people. In our view, this issue requires further consideration and debate with leaders from the key sectors.

<u>Code of Practice</u>

The Bill provides for the making, by regulation, of codes of practice that set out mandatory approaches to the implementation of the Child Safe Standards.

We supports the OCG's proposal to replace the existing accreditation criteria (that is, the NSW Child Safe Standards for Permanent Care) with a Code of Practice for statutory

out-of-home care and adoption service providers. We understand that the OCG would assess, and may accredit, an agency's compliance with the Child Safe Standards by reviewing an agency's application for accreditation against the Code of Practice.

The development of a Code of Practice provides a welcome opportunity to review and rationalise the content currently reflected in the Standards for Permanent Care, some of which are unnecessarily duplicative in our view.

It will be important to ensure that the Code of Practice for statutory OOHC and adoption service providers (and any other Codes of Practice developed in future) builds on current approaches, experience and expertise in the relevant sectors. We look forward to working constructively with the OCG, and other relevant peak bodies and stakeholders, on the design of the Code of Practice.

4. Monitoring and enforcement

We support the monitoring and enforcement provisions in the Bill. Our support is based on our understanding of the OCG's strong commitment to capacity building and support. It is appropriate that the Bill provides for a staged escalation approach to enforcement, whereby proportionate measures will only be utilised when supportive strategies have not worked.

We note that the OCG has the option of issuing a Compliance Notice or accepting an Enforceable Undertaking. The Exposure Draft Explainer indicates that the latter will be used when organisations are willing to rectify identified issues, and work with the OCG to devise solutions on how they can implement the Child Safe Standards.[7] It would be useful for the Bill itself to clarify this.

Thank you again for the opportunity to provide feedback on the Bill. We looks forward to continuing to work productively with the OCG, our member organisations and other stakeholders to drive the success of the Child Safe Standards regulatory scheme.

Yours sincerely,

Signatories:

Steve Kinmond, OAM, **CEO, ACWA**

Kate Munro, **CEO Youth Action**

Julie Hourigan-Ruse, **CEO FAMS**

Joanna Quilty, **CEO NCOSS**

[7] Office of the Children's Guardian, *Exposure Draft Explainer*, December 2020, p5.