



Homelessness NSW

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REGULATING CHILD SAFE ORGANISATIONS – SUBMISSION IN RESPONSE TO DISCUSSION PAPER

The three peaks (Domestic Violence NSW, Yfoundations and Homelessness NSW) welcome the opportunity to respond to the Office of the Children's Guardian's (OCG's) *Regulating Child Safe Organisations* discussion paper and proposed child safe standards ('the child safe standards').

This submission contains the following recommendations:

Recommendation 1: The OCG should map the overlapping child protection regulatory frameworks that apply to NGOs in NSW with a view to streamlining these frameworks to:

- minimise unnecessary duplication
- eliminate conflicting obligations
- determine which regulatory scheme is most appropriate to each sector
- ensure adequate child protection safeguards are in place across all NGOs interacting with children and young people.

Recommendation 2:

- a) The OCG should review HYAP and other services provided by Specialist Homelessness Services (SHSs) to unaccompanied, under-18 year-olds to ensure these take account of young people's developmental stage, their legislated rights and their rights under the United Nations Declaration on the Convention of the Rights of the Child (UNCRC). All other services provided to this cohort of children and young people should also be subject to this review process.
- b) As part of the review process noted in (a) above, the OCG should identify who has the authority to make decisions on behalf of children and young people in homelessness services to ensure these children are kept safe and the services are not exposed to legal liability.

Recommendation 3: The OCG and the NSW Department of Family and Community Services (FACS) should work with SHS providers to identify the most appropriate regulatory and service delivery framework for unaccompanied children in SHSs, before implementing the child safe standards. This work should focus on implementing regulation and oversight that provides accreditation of all services working with unaccompanied children (i.e., statutory Out of Home Care (OOHC), Voluntary Out of Home Care (VOOHC), SHS and Homeless Youth Assistance Program (HYAP) providers) to a nationally-consistent, minimum standard.

Recommendation 4: The OCG should take account of existing Australian Service Excellence Standards (ASES) accreditation requirements on SHS providers. More specifically, it should:

- analyse how the child safe standards would fit together with the ASES accreditation requirements
- determine whether the child safe standards are appropriately tailored to ensuring child safety within the SHS sector, in the context of ASES accreditation requirements
- consider whether, for SHS providers, the content of the child safe standards might be better incorporated within the ASES accreditation program than in separate standards.

Recommendation 5: If making separate child safe standards mandatory for SHS providers, the OCG should ensure that these are aligned with ASES accreditation requirements and expressed to be part of those accreditation requirements.

Recommendation 6: The OCG should take account of the current development of accreditation and regulatory schemes that apply to Domestic and Family Violence (DFV) services. More specifically, it should:

- analyse how the child safe standards would fit together with these existing requirements
- determine whether the child safe standards are appropriately tailored to ensuring child safety within the DFV sector, in the context of these existing requirements
- consider whether, for DFV services, the content of the child safe standards might be better incorporated within the ASES accreditation requirements and/or DFV Service Quality Standards than in separate standards.

Recommendation 7: If making separate child safe standards mandatory for DFV providers, the OCG should ensure that these standards form an integrated regulatory framework with the SHS ASES accreditation standards and DVF Service Quality Standards.

Recommendation 8: To implement this integrated regulatory framework, the OCG should establish a regulation working group for the DFV sector comprised, at a minimum, of representatives from FACS Housing, Women's NSW, Victim Services, NSW Corrective Services, NSW Health, NSW Health Education Centre Against Violence (ECAV) and related peak organisations. This working group should focus on:

- designing the integrated regulatory framework
- ensuring cross-government responsibility for the design and governance of the regulatory framework
- identifying the key components and activities within each stage of the framework to ensure alignment of key messaging, sector capacity building strategies and any associated learning and development frameworks.

Recommendation 9: If the child safe standards are made mandatory for the SHS sector, the OCG's capacity building for this sector should ensure:

- capacity building initiatives for the child safe standards and the SHS ASES accreditation program are co-ordinated, aligned in terms of key messaging and, wherever possible, delivered simultaneously
- funding is made available to tailor child safe standard capacity building to SHS ASES accreditation program requirements.

Recommendation 10: If the child safe standards are made mandatory for DFV services, the OCG's capacity building for this sector should ensure:

- capacity building for the child safe standards and the DFV Service Quality Standards are co-ordinated, aligned in terms of key messaging and, wherever possible, delivered simultaneously

- funding is made available to tailor child safe standard capacity building to DFV Service Quality Standard requirements.

Our reasoning in support of each of these recommendations is set out below.

SECTION ONE – LACK OF COORDINATION OF MULTIPLE REGULATORY SCHEMES IMPOSING CHILD PROTECTION SAFEGUARDS

The three peaks note that multiple regulatory schemes, imposing child protection safeguards, already apply to non-government-organisations (NGOs) that have contact with children in NSW. This has become problematic due to a lack of coordination and strategic thinking concerning how these schemes overlap and interact. There has also been a lack of analysis regarding which regulatory scheme is best tailored to which NGO environment and to protecting children within that environment.

The multiple regulatory schemes that may apply to NGOs include:

- Statutory Out of Home Care (OOHC)
- Voluntary Out of Home Care (VOOHC)
- National Regulatory System for Community Housing
- Australian Service Excellence Standards (ASES) accreditation for Specialist Homelessness Services (SHSs)
- Domestic and Family Violence (DFV) Service Quality Standards
- National Standards for Disability Services
- Regulatory provisions specifically applicable to health providers (for example, Chapter 9 of the *Children and Young Person’s Care and Protection Act 1998* (NSW) regarding medical examinations and treatment).

We consider that, in such a complex and uncoordinated regulatory environment, imposing the child safe standards risks creating an additional administrative burden on NGOs that is potentially unnecessary. Many NGOs already face resource challenges in their efforts to meet existing regulatory requirements. Further, the child safe standards may not be the most appropriate regulatory response for all NGOs, which operate across different sectors and contexts. For example, it is unclear that these standards would be the regulatory mechanism best tailored to implementing child protection safeguards in the homelessness sector.

The three peaks note that some of the existing regulatory schemes may, in fact, offer broader protections to children than the child safe standards. Since they were formulated in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the OCG’s child safe standards have a specific focus on protecting children from abuse that is sexual in

nature. Some existing regulatory obligations may be capable of providing more comprehensive protections that also encompass other forms of child abuse and neglect.

Recommendation – regulatory schemes:

1. The OCG should map the overlapping child protection regulatory frameworks that apply to NGOs in NSW with a view to streamlining these frameworks to:

- **minimise unnecessary duplication**
- **eliminate conflicting obligations**
- **determine which regulatory scheme is most appropriate to each sector**
- **ensure adequate child protection safeguards are in place across all NGOs interacting with children and young people.**

SECTION TWO – UNACCOMPANIED CHILDREN IN SPECIALIST HOMELESSNESS SERVICES

For more than a decade, concerns have been raised about child safety and the adequacy of service support for homeless and at-risk children and young people in NSW. The 2009 *Keep Them Safe* reforms¹ introduced substantial changes to the system for reporting child safety and welfare concerns. However, the 2014 NSW Ombudsman review of these reforms found that, within their first 11 months, 50% fewer Risk Of Significant Harm (ROSH) reports received a face-to-face assessment, despite a drop in demand on the Child Protection Helpline. Further, a number of those ROSH reports were closed due to ‘competing priorities’².

FACS funds some SHSs, across NSW, to deliver the Homeless Youth Assistance Program (HYAP). HYAP provides a package of support services to unaccompanied young people, aged 12 to 15 years, who are homeless or at risk of homelessness. These services provide support, brokerage, and accommodation and support young people to:

- rebuild family and community connections
- successfully transition into independence
- engage in education, training, or employment
- access health and mental health care
- develop living skills, and/or
- transition into longer-term supported accommodation.

However, since HYAP was introduced, HYAP providers have identified a lack of policy guidance and multiple barriers to ensuring this vulnerable cohort has adequate child safeguards in place.

The NSW Ombudsman’s report, *More than Shelter – addressing the legal and policy gaps for homeless children* (June 2018), identified a range of concerns related to the HYAP, many of which were initially raised by SHSs themselves. Perhaps the most serious concern raised is that, where a child or young person accesses HYAP but they do not fall within the child protection system (that is,

¹ NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, March 2009. See: http://www.keepthemsafe.nsw.gov.au/__data/assets/pdf_file/0004/57145/Keep_Them_Safe.pdf.

² NSW Ombudsman, *Review of the NSW Child Protection System: are things improving?*, April 2014. See: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/15691/Review-of-the-NSW-child-protection-system-Are-things-improving-SRP-April-2014.pdf.

they are not in statutory OOHC), regulations to protect the safety of that child and guarantee the quality of the services they receive are largely absent. There are significant regulatory, funding and service delivery requirements in statutory OOHC³, to protect children. However, despite the vulnerability of homeless children, similar requirements are not yet in place to protect children residing in SHS or HYAP services. Homeless children and young people require adequate regulatory safeguards of a similar standard to those that apply to children in statutory OOHC.

Article 18 of the United Nations Declaration and Convention on the Rights of the Child (UNCRC) states that 'parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of their child'. Problematically, children and young people residing in HYAP services are not under the Care of the Minister, nor residing with legal guardians. Therefore, HYAP providers are placed in a precarious legal position that inhibits their ability to respond to the needs of children and young people. HYAP providers are concerned they are being used as an alternative to OOHC without the same funding or legal safeguards.

HYAP providers have identified 'parental consent' and 'lack of decision-making authority' as the biggest barriers to working with children and young people in HYAP. They have been asking for clarity regarding who has legal authority to make decisions on behalf of children and young people living in their services. Necessary decisions include, for example, those related to medical care and school enrolment, where consent has not been obtained from a parent or legal guardian.

Changes to the child protection system, OOHC, VOOHC, and SHS systems have led to changing roles and responsibilities for government and NGOs. However, there is little consistency in the regulation and oversight of OOHC, VOOHC, and SHSs. Service providers working with the most vulnerable children and young people need to be held to a consistent standard to ensure organisations provide a safe and supportive environment.

The child safe standards will not adequately address these issues and they further highlight the regulatory gap in ensuring the safety of unaccompanied children in SHSs. Therefore, the three peaks recommend that the OCG and FACS work alongside SHS providers to identify the most appropriate regulatory framework, rather than applying yet another layer of regulation that will not address these issues. This may require the OCG and FACS to consider reconfiguring service delivery models for this cohort.

The homelessness sector recognises the importance of consistent minimum standards to protect children and young people. However, the multiple regulatory schemes and safeguards that currently exist are becoming arduous, creating unnecessary, additional administrative burden on homelessness services endeavouring to meet the full range of regulatory requirements. The homelessness sector has raised concerns about competing and overlapping regulation and standards, as many SHS and HYAP providers are also statutory OOHC and VOOHC providers.

Homelessness service providers recognise the value of accreditation in ensuring the quality and continuum of care for children and young people, but there must be a limit to the excessive 'red tape'. Any new regulatory requirements should focus on quality of service and avoid unnecessary administrative burden.

In addition, the UNCRC should be central to any policy framework when working with vulnerable children and young people. The UNCRC defines a child as 'a human being below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier'⁴. This instrument was

³ See Chapter 8 of the *Children and Young Person's Care and Protection Act 1998* (NSW).

⁴ Article 1 of the UNCRC. See: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

ratified by 192 of 194 UN member countries, including Australia. Therefore, all services working with under-18 year-olds in Australia should adhere to the same definition of 'child'.

HYAP providers and other homelessness services are aware that socially and excluded and vulnerable 16 to 18 year-olds often fall through service gaps. These older children are often expected to live independently as a result of homelessness service support declining during the final years of adolescence. This is something that is not considered 'normal' outside of the homelessness sector (it is considered unacceptable in the child protection sector). The three peaks consider that it is essential for FACS to invest funding into holistic support and accommodation for homeless and at-risk 16 to 18 years-olds to ensure that they also receive ongoing support.

Recommendations – unaccompanied children in SHSs:

- 2. (a) The OCG should review HYAP and other services provided by Specialist Homelessness Services (SHSs) to unaccompanied, under-18 year-olds to ensure these take account of young people's developmental stage, their legislated rights and their rights under the United Nations Declaration on the Convention of the Rights of the Child (UNCRC). All other services provided to this cohort of children and young people should also be subject to this review process.**
 - (b) As part of the review process noted in (a) above, the OCG should identify who has the authority to make decisions on behalf of children and young people in homelessness services to ensure these children are kept safe and the services are not exposed to legal liability.**
- 3. The OCG and the NSW Department of Family and Community Services (FACS) should work with SHS providers to identify the most appropriate regulatory and service delivery framework for unaccompanied children in SHSs, before implementing the child safe standards. This work should focus on implementing regulation and oversight that provides accreditation of all services working with unaccompanied children (i.e., statutory Out of Home Care (OOHC), Voluntary Out of Home Care (VOOHC), SHS and Homeless Youth Assistance Program (HYAP) providers) to a nationally-consistent, minimum standard.**

SECTION THREE – COORDINATING THE CHILD SAFE STANDARDS WITH EXISTING SHS ACCREDITATION

In the homelessness sector, an Australian Service Excellence Standards (ASES) accreditation program is becoming applicable to all SHS providers. The ASES is a national set of standards and a quality improvement program that aims to assist non-government organisations to improve their business systems, management practices and service delivery. The NSW Department of Family and Community Services (FACS) decided to adopt an ASES accreditation certificate for all SHS providers in April 2018. The ASES will be implemented across the SHS sector over the next few years, with all FACS-funded SHS providers to be accredited against these standards by 30 June 2023.

The ASES are the mandatory community service standards in South Australia, owned and administered by the South Australian Government. Hundreds of NGOs across Australia are ASES certified, and the NSW SHS sector's transition will result in more than 100 new certifications. ASES has been thoroughly cross-mapped against most other relevant standards.

The three peaks strongly recommend that, before imposing the child safe standards on SHS providers, some analysis should be undertaken of how these would interact with the obligations being implemented through the ASES accreditation program. ASES accreditation requirements could potentially be a better mechanism for imposing child protection safeguards on SHS providers than separate child safe standards. Even if this is not the case, elements of existing child protection regulatory schemes, together with ASES accreditation requirements, may be the best means of implementing child protections in the SHS sector.

If the OCG determines that the child safe standards should be mandatory for SHS providers, and that these should be implemented separately to the ASES accreditation program, the three peaks recommend that these standards be as closely aligned to ASES accreditation requirements as is possible. This means ensuring consistency with ASES accreditation requirements and identifying the standards as being part of those requirements. This is necessary to avoid undue confusion for SHS providers, which will find themselves subject to more than one regulatory scheme.

Recommendations – coordination with SHS sector accreditation:

4. The OCG should take account of existing ASES accreditation requirements on SHS providers. More specifically, it should:

- analyse how the child safe standards would fit together with the ASES accreditation requirements
- determine whether the child safe standards are appropriately tailored to ensuring child safety within the SHS sector, in the context of ASES accreditation requirements
- consider whether, for SHS providers, the content of the child safe standards might be better incorporated within the ASES accreditation program than in separate standards

5. If making separate child safe standards mandatory for SHS providers, the OCG should ensure that these are aligned with ASES accreditation requirements and expressed to be part of those accreditation requirements.

Coordinating the child safe standards with DFV sector standards and accreditation requirements

Some organisations receive government funding to provide both SHS and DVF services. A DVNSW review indicated that 55% of the DFV services that comprise its membership are also SHS providers. These organisations are required to meet the regulatory and accreditation requirements applicable to SHS providers as well as those that apply to DFV services. The rest of DVNSW's members, which are not SHS providers, are subject only to DFV service regulatory requirements.

In November 2018, Women's NSW announced that it would develop and implement Service Quality Standards for the DFV sector. These are intended to provide an overarching framework encompassing existing DVF guidelines and standards, as well as common risk assessment and training requirements.

There is already significant duplication between the SHS ASES accreditation requirements and the current requirements on DFV services. DVNSW undertook a mapping exercise that showed only 22 per cent of ASES accreditation requirements were outside the guidance provided by the DVNSW Good Practice Guidelines.

Making the child safe standards mandatory for DFV services would add yet another layer of regulation for DFV services. This has the potential to be a significant resource burden for the poorly-funded DFV sector.

The three peaks consider it is critical to minimise any unnecessary regulatory burden on DFV services. We believe this can be done through ensuring consistency between the different regulatory and accreditation schemes that apply to these services and removing any duplication.

Consistency could be achieved through incorporating relevant child safe standard requirements into the ASES accreditation requirements and the DFV Service Quality Standards. However, if the OCG decides to implement the child safe standards as separate standards, the three peaks recommend that the child safe standards be aligned as closely as possible to the existing standards.

Alignment and consistency should be achieved through a staged approach to implementing the child safe standards. DVNSW has already proposed a staged approach to accreditation for its members. This approach involves:

- Stage 1 – Those organisations funded only as SHS providers are required to meet SHS ASES accreditation program requirements only.
- Stage 2 – Those organisations funded as providers of both SHS and DFV services must meet ASES accreditation program requirements and also any additional DFV-specific standards.

The three peaks propose that the child safe standards could be made mandatory by adding a third stage to this regulatory approach. Stage 3 would require DVV services to meet any additional requirements, imposed by the child safe standards, which they are not required to meet under Stages 1 and 2. This would create an integrated framework comprised of the SHS ASES accreditation standards, the DVV Service Quality Standards and the child safe standards. The discussion paper emphasizes that the child safe standards will be applied flexibly, depending on organisational context, and this should allow for such an integrated regulatory framework that encompasses existing regulatory and accreditation requirements.

To implement an integrated regulatory framework for DFV services, the three peaks recommend that the OCG establish a regulation working group for the DFV sector. At a minimum, this working group should include representatives from FACS Housing, Women's NSW and related peak organisations. This working group should focus on:

- designing the integrated regulatory framework
- ensuring cross-government responsibility for the design and governance of the regulatory framework
- identifying the key components and activities within each stage of the framework to ensure alignment of key messaging, sector capacity building strategies and any associated learning and development frameworks.

Recommendations – coordination with DFV sector standards and accreditation:

- 6. The OCG should take account of the current development of accreditation and regulatory schemes that apply to DFV services. More specifically, it should:**
 - analyse how the child safe standards would fit together with these existing requirements
 - determine whether the child safe standards are appropriately tailored to ensuring child safety within the DFV sector, in the context of these existing requirements
 - consider whether, for DFV services, the content of the child safe standards might be better incorporated within the ASES accreditation requirements and/or DFV Service Quality Standards than in separate standards.

- 7. If making separate child safe standards mandatory for DFV providers, the OCG should ensure that these standards form an integrated regulatory framework with the SHS ASES accreditation standards and DVF Service Quality Standards.**

- 8. To implement this integrated regulatory framework, the OCG should establish a regulation working group for the DFV sector comprised, at a minimum, of representatives from FACS Housing, Women’s NSW, Victim Services, NSW Corrective Services, NSW Health, NSW Health Education Centre Against Violence (ECAV) and related peak organisations. This working group should focus on:**
 - designing the integrated regulatory framework
 - ensuring cross-government responsibility for the design and governance of the regulatory framework
 - identifying the key components and activities within each stage of the framework to ensure alignment of key messaging, sector capacity building strategies and any associated learning and development frameworks.

Supporting SHS and DFV sector capacity to meet the child safe standards

The discussion paper asks how the OCG should build the capacity of organisations to meet the child safe standards. It proposes that the OCG will provide training and advice to organisations to support them to meet these standards.

If the child safe standards are made mandatory for the SHS sector, the three peaks consider that capacity building for this sector must ensure that the child safe standards are implemented in a way that is aligned with the ASES accreditation requirements for SHS providers. Any inconsistency between ASES accreditation program and child safe standard capacity building initiatives will only create confusion for SHS providers. Therefore, these capacity building initiatives should be co-ordinated and, ideally, delivered simultaneously. The three peaks recommend that funding be made available to tailor child safe standard capacity building to the ASES accreditation program requirements.

If the child safe standards are made mandatory for DFV services, the three peaks recommend that capacity building for the DFV sector ensures that the child safe standards are implemented in a way

that is also aligned with the DFV Service Quality Standards. Again, funding should be made available to tailor child safe standard capacity building to DFV standards and accreditation requirements.

Recommendations – capacity building:

9. If the child safe standards are made mandatory for the SHS sector, the OCG’s capacity building for this sector should ensure:

- **capacity building initiatives for the child safe standards and the SHS ASES accreditation program are co-ordinated, aligned in terms of key messaging and, wherever possible, delivered simultaneously**
- **funding is made available to tailor child safe standard capacity building to SHS ASES accreditation program requirements.**

10. If the child safe standards are made mandatory for DFV services, the OCG’s capacity building for this sector should ensure:

- **capacity building for the child safe standards and the DFV Service Quality Standards are co-ordinated, aligned in terms of key messaging and, wherever possible, delivered simultaneously**
- **funding is made available to tailor child safe standard capacity building to DFV Service Quality Standard requirements.**