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The Hon Matthew Mason-Cox MLC  
Chair  
Committee on Children and Young People  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Via email: [childrenyoungpeople@parliament.nsw.gov.au](mailto:childrenyoungpeople@parliament.nsw.gov.au)

Dear Mr Mason-Cox

### **Children's Guardian's progress report – July 2020**

As requested on 3 June 2020, I am pleased to provide the Committee with an update on work under way in my Office. Our progress report is attached for your review.

Since I appeared before the Committee in March 2020, and despite the COVID-19 pandemic, the intervening four months have been a productive time for the Office of the Children's Guardian (OCG).

We have developed a new strategic plan - which sets a clear vision for the next three years as an agency. Our new strategy provides a roadmap for us to be a more externally focused organisation. It will guide the way we work with stakeholders and the community, but also our transparency and accountability as an organisation. My report outlines how we will support organisations to implement child safe practices, and how we will administer the regulatory and oversight scheme.

We have continued our work to integrate the Reportable Conduct Scheme alongside our other statutory functions. We have engaged experts in their field to work with my Office on creating a robust decision making and evidence framework, and how to make better use of our information holdings while maintaining strict information sharing protocols.

We are implementing the recommendations of the independent reviews conducted last year in response to allegations raised in the media. This includes change management planning to support employees through the necessary change processes under way now and into the future, as well as refining WWCC processes and corporate support arrangements.

Since I appeared before the Committee, Professor Megan Davis handed down her report - the *Family is Culture: Independent Review into Aboriginal Out-of-Home Care in NSW*. I welcome the findings of that significant review. As a result, my Office will implement a number of reforms over the next 12 months to better meet the needs of Aboriginal children and young people.

Earlier this month the Minister for Families, Communities and Disability Services announced the creation of the new position of Aboriginal Deputy Children's Guardian as part of the NSW Government's response to the review. I am pleased to report I am working with an Aboriginal organisation to recruit a suitably qualified candidate to that important new position in my Office.



Over the course of the next financial year, our work will focus on implementing our new strategic plan towards achieving our vision for the children of NSW. I would welcome the opportunity to discuss my report in more detail with the Committee in person.

If you would like to discuss any aspect of this report in further detail, please don't hesitate to contact me on [REDACTED] [REDACTED] [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Janet Schorer', written in a cursive style.

**Janet Schorer PSM**  
**Children's Guardian**

23 July 2020



# Report to the Committee on Children and Young People

Progress update: a new vision for the OCG

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With the introduction of the *Children's Guardian Act 2019* in March 2020, the OCG Board has developed a new vision and strategic plan to deliver for children in NSW with a broader set of powers and responsibilities.

## Child safe: a new vision

Since 1 March 2020 the OCG administers its own standalone legislation, the *Children's Guardian Act 2019* (the Act). The new Act expanded our responsibilities in relation to the additional oversight of approximately 12,000 organisations delivering services to children.

The Act incorporated the Reportable Conduct Scheme into the OCG, placing it alongside the delivery of the Working With Children Check (WWCC), and the regulation of the Out-of-Home Care and other sectors.

As I briefed the Committee in March 2020, over the last year our focus has been on developing our new legislation and continuing our work with organisations to make them safe for children.

The OCG Board is implementing a significant change management program to position us well to bring the organisations we regulate and oversight with us on the path to create safe spaces for children in NSW.

Since I appeared before you, the OCG Board has focussed on integrating the Reportable Conduct Scheme and ensuring it complements our regulatory functions.

We have developed a new vision, updated our values and set a three-year strategic plan. This vision and plan will guide us to engage with and influence the large and diverse range of organisations in NSW, which need to make safe spaces for children.

We are implementing the recommendations of the reviews conducted by Mark Robinson SC and Grisard Consulting in relation to the WWCC and are providing further guidance across the organisation in terms of our risk tolerance levels and decision-making thresholds.

With the new Act and the change in oversight of the OCG to the Parliament, more is expected of us to be as transparent and accountable as we can be for our decisions. As the main body with oversight of the systems and people working with children, we are actively involved in influencing and shaping the discussion about what is needed to protect children's rights and safety across all sectors.

With our vision and purpose firmly in mind, we are reengineering our business processes to make us a more integrated, efficient and effective regulatory and oversight body.

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Our vision: we influence and lead change by building capability in organisations  
to be child-safe

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## Updated OCG values

There are high expectations of us in the community. We must be a values-based organisation to retain the respect and good will in the organisations that we regulate, oversee and educate.

We want the OCG to be known and recognised as a sector leader, which embraces diversity of thought, experience, culture and community.

Our values of integrity, trust, service, accountability, respect and empathy shape the way we do things in the OCG. They signify how we behave towards and engage with our customers and each other, as colleagues.

Our values are reinforced by the OCG Code of Ethics and Conduct. They underpin the new OCG Strategic Plan (at **Tab A**) and are a critical part of 'how' we will achieve our vision and demonstrate commitment to our values

We have identified what our values mean in action for all employees. This will help us hold each other to account, to acknowledge and reinforce behaviour that aligns with our values and call out behaviour that is not tolerated in the OCG.

In the second half of 2020 we will work to bring these values to life by integrating them in processes across the OCG, such as the Performance Development Planning process for our employees. More information is provided below under 'Next steps for our new vision' as part of the work on our fourth strategic priority.

### Our values

- Integrity
- Trust
- Service
- Accountability
- Respect
- Empathy

## A new strategic plan

We have taken the opportunity presented by the new Act to recast our strategic direction. We finalised our new strategic plan in July 2020.

It sets our forward agenda to 2023 for:

- Our purpose
- What we deliver
- Whom we work with
- How we work with stakeholders
- Our internal processes and systems
- Our people and culture.

### Our strategic priorities

1. Foster child safe practices
2. Strengthen relationships
3. Integrate our systems
4. Great place to work

It identifies our four strategic priorities to foster quality child safe practices, build strong stakeholder relationships, integrate our systems, and create a thriving workplace culture. Our strategic priorities are designed to channel our energy and effort to deliver our vision. More information about the work to progress these priorities is provided below under 'Next steps for our new vision'.

It includes indicative performance indicators to measure how well we're doing in realising our vision and achieving our priorities. Directorates will work to refine and develop these in their operational plans, as part of the business planning process this year.

## Our future agenda

As part of our strategic plan, we have identified five significant outcomes to help focus our performance. By 2023 we aim to have achieved these outcomes:

1. Integrated functions with a holistic approach to uphold children's and young people's right to be safe.
2. Influencer and trusted authority that takes a partnership approach and clear communication to influence and lead change.
3. Transformational, diverse and resilient workforce
4. Network of a broad range of government agencies, community organisations, other jurisdictions and national agencies.
5. Integrated processes and systems embracing a continuous improvement focus.

## Strategic plan implementation and timelines

The OCG has a layered business planning approach to develop, implement, track and monitor outcomes and achieve our vision and purpose.



Under our new Act the OCG continues to implement responses to the Royal Commission into Institutional Responses to Child Sexual Abuse. The first step was the NSW Government's decision to transfer the reportable conduct scheme and the Official Community Visitor scheme to the OCG, and to improve the scheme providing independent oversight of responses to child abuse and neglect. Framed under the Child Safe Standards, our work now is to influence the NSW child protection system overall with the aim of preventing abuse, and to identify any gaps in protecting the safety and wellbeing of children in NSW.

## Work in progress

### Implementing our Act and working towards our vision

The OCG Board is positioning the organisation to work in a more integrated, customer centric and risk-based way.

Consultants, Publicis Sapient (Third Horizon) have been working with the OCG Board and employees to identify opportunities to achieve this.

In all our interactions with our stakeholders, we strive to be easy to engage with, act with empathy and be accountable. We know our stakeholder relationships and our reputation rely on us doing this well.

Under the new strategic plan, we will seek feedback from the organisations and individuals on the timeliness and quality of our interactions to better understand the impact of our regulatory and oversight activities on them, and adjust, where necessary.

We have revisited our risk appetite and are reviewing our frameworks for the assessment of evidence, decision making and escalation points, so we can more effectively tailor our response in proportion to assessed risk.

Taking a risk-based approach to regulation and oversight means we:

- enhance consistency in decision-making because our response is dictated by the relative level of risk
- maximise efficiency by allocating resources to areas of highest risk
- increase compliance by focusing on areas where the compliance risk is greatest
- reduce compliance burden by minimising intervention where the risks are relatively low.

### Implementing the Reportable Conduct Scheme

The Parliamentary debate of the *Children's Guardian Bill* and of the Committee in March 2020 considered the issue of potential conflicts of interest raised by the transfer of the reportable conduct scheme.

My earlier report to the Committee highlighted work under way to streamline our operational activities. It aimed to identify how and when different functions can better collaborate and communicate to achieve our legislative object, whilst maintaining objectivity, transparency and fairness to organisations and individuals.



This work to develop a robust decision making and evidence framework and to make better use of our information holdings has continued with the assistance of consultants with expertise in these areas. More detail is provided below.

As my earlier report to the Committee also noted, we have continued to maintain separate management structures and decision-making delegations between our different statutory functions, particularly the Reportable Conduct, WWCC, and Accreditation and Monitoring of out-of-home care functions. Our organisational structure, policies and processes continue to support robust decision making and to avoid conflicts of interest or the appearance of conflict of interest arising from the administration of the Reportable Conduct Scheme and our regulatory functions.

The Information Sharing Guidelines published in March 2020 are being reviewed and updated. As the Committee noted in March 2020, the first iteration is a high-level document developed without having any of these functions operating in the same organisation. The update reflects that with the benefit of operating these functions together, we now have a deeper understanding of how to manage some of those risks, whether actual or perceived, in how information from different sources interacts with our functions and decision making.

Following the discussion of the scope of the Reportable Conduct Scheme at the hearing in March, the enforceable provisions of the Act came into effect in June. We continue to work with the religious sector to support their understanding of and capacity to comply with the Act.

Given restrictions on consultation with the COVID-19 pandemic, we will move to formally test the scope of the Reportable Conduct Scheme when we review the legislation at the end of 2021. At that time, we can consult more widely on whether other sectors should be added to the Scheme.

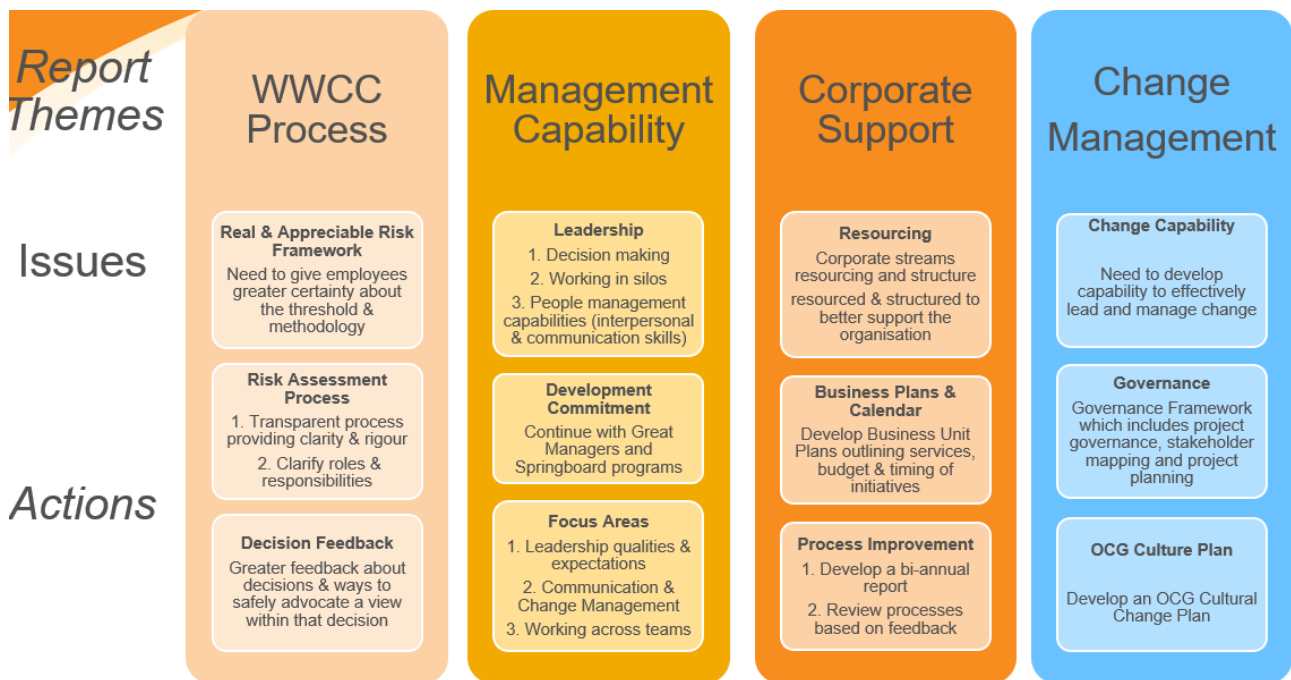
Operationally the Reportable Conduct Scheme has transitioned well into the OCG, albeit at the time of COVID19 impacting the work environment. The most significant changes have been to the reporting requirements for entities, with 7-day initial reports and a 30-day progress report now in place. These were available electronically from transition and has been a welcome addition to the scheme. The 7-day report provides the opportunity for an early conversation with an entity about the matter, an important educative and protective step in managing allegations. There has been engagement with sectors already in the scheme to provide support and guidance during transition.

## Implementing WWCC-related review recommendations

As the Committee is aware, independent reviews were commissioned in 2019 in response to allegations aired in the media of inappropriate granting of WWCC clearances and a bullying culture in the OCG.

As a result of these reviews, the OCG is undertaking several initiatives under four themes, as set out in the diagram below:

1. WWCC process
2. Management capability
3. Corporate support
4. Change management.



## WWCC process improvements

Considering the review findings, the WWCC directorate committed to a range of process improvements to strengthen the WWCC following three core principles:

1. Enhancing transparency of decision making
2. Enabling diversity of perspectives in decisions
3. Creating clear mechanisms for resolving disputes.

We have brought these principles into our work in the WWCC in the following ways:

### 1. Enhancing transparency of WWCC decisions

The transparency of the rationale for decisions was recognised as an issue at all levels of the decision-making process. In order to address this, WWCC employees were briefed on privacy and information handling obligations by a privacy expert.

A Recordkeeping Practice Note was developed and introduced for all WWCC employees. An Interim Bar Business Rule was developed and introduced. This includes information review timelines to determine promptly if the Interim Bar should be maintained or revoked.

The WWCC quality assurance program was expanded to cover all WWCC functions and ensure transparency and consistency. This includes developing a comprehensive guide to WWCC decision making, which will align with the 'Structured Risk Assessment Guide' (outlined below).

The WWCC Quality Assurance Officer works actively with WWCC employees to identify enhancements that support best practice.

### 2. Enabling diversity of perspectives

There are a number of changes and initiatives underway to promote diversity of perspectives within the WWCC.

**Changes to the Directors Case Review Meeting (DCRM)** aim to provide more transparency and accountability for the Director's decisions. DCRM Guidelines were updated covering referrals, documentation, escalation and participation. A Register of matters reviewed by DCRM was created, to enhance transparency and reporting, and help future analysis of system/process/practice. The Risk Assessment Team is notified in advance of the applications to

be discussed. Risk Assessment Officers can attend either as observer or participant. The Risk Assessment Team and other DCRM attendees (policy and legal employees) get a weekly summary of DCRM outcomes and key learnings.

**Communication initiatives** aim to create the opportunity for Risk Assessment Officers to express their views and discuss case outcomes, including through monthly supervision with Team Leaders, informal case discussions and for Team Leaders, a formal peer review process. The Leadership Team circulates high level updates to all WWCC employees following their fortnightly meeting to ensure employees are up to date with changes and activities. Team leaders now have tools to support and guide these conversations with staff.

Risk Assessors are also encouraged to work alongside staff from the Compliance Team in facilitating workshops with community organisations about the WWCC. Being out in the community talking to services brings a different perspective to our work, especially when asked to explain the risk assessment process to a group of employers. This has been a great opportunity for Risk Assessors, and it will continue once we are able to do so.

**WWCC Team culture change initiatives** have been focused on creating an environment where staff feel safe, can raise questions or concerns and are reminded to monitor and support their psychological wellbeing given the nature of the work.

The WWCC staff have participated in interactive discussions, which focused on OCG values, how these come to life in day to day work and what was important to the WWCC team. There are new tools and support available to enable these discussions within teams. These have been facilitated by Dr Sandra Heriot (see Dr Heriot's report at **Tab B**).

The OCG has engaged LSC Psychology to deliver up to six external, individual clinical supervision sessions per year to the Risk Assessment Team, to support employee wellbeing and manage potential vicarious trauma. The same service is in place for staff in the Reportable Conduct Directorate and is available to other staff, but it is not mandated.

### **Initiatives to better engage Aboriginal WWCC applicants**

In 2018, the OCG commenced a program of work to explore the impact of the WWCC for Aboriginal applicants. This was to enable us to improve the experience for applicants particularly through risk assessment, to improve the specific evidence and research underpinning decision making for Aboriginal applicants, in particular the protective factors within culture and community. We also wanted to work closely with communities to enable better information earlier for applicants. A number of initiatives are already underway, further work continues particularly as we act on the recommendations from the Family is Culture report. Our actions to date include:

- Streamlined the risk assessment process for Aboriginal applicants - all customers identified as Aboriginal receive an initial telephone call and an initial contact letter encouraging them to make contact prior to the start of the risk assessment process, so they can receive additional information about how to participate.
- Developed the 'Your Story' tool to assist Risk Assessment Officers to conduct culturally appropriate telephone conversations with Aboriginal customers to generate relevant information in a culturally appropriate way.
- Collaborating with the First Nations agencies and communities to create protocols for meaningful participation in WWCC processes, including site visits to Dubbo and Bourke.
- Cultural competency training will be provided for employees when working with First Nations communities, families and individuals.

### **3. Creating a WWCC dispute resolution mechanism**

When approaching the question of how best to resolve areas of dispute in decision making, our approach was to talk to Risk Assessment Team members and workshop how to manage different views and avenues for escalation as WWCC applications progress.

This led to the development of a comprehensive resource to support decision making practice and process, in conjunction with the development of the Structured Assessment Guide. The resource aims to provide context, clarity and instruction to new and current employees, and the public about how decisions are made in the WWCC.

It is practise that all contentious or highly complex matters are escalated to the Children's Guardian for determination where appropriate.

In addition, the OCG created an anonymous employee portal for staff to raise concerns or issues. Called 'Employee Voice', this is available through the OCG intranet as is anonymous, or there are sealed mailboxes in both OCG offices for staff to submit written material. This was implemented based on a recommendation made in the Grisard Report.

## **Improving our management capability and corporate support**

We are making broader changes impacting the whole organisation in response to the review recommendations. The opportunity to address clarity in decision making and promote collaboration is best taken with a new strategic plan.

Several the changes related to leadership in decision making, and working better across teams, are outlined below and in Dr Heriot's report.

The work to re-engineer business processes within the OCG has taken into account a desire to enable transparency and collaboration. The introduction of the Research and Analytics Hub, covered later in this report, is a critical component of that objective. IT has also meant a change to our corporate governance structures, our delegations and to our business processes to put shared services into a centralised location. A good example of this is the shift of training and education functions into one location, to enable us to be more efficient in our delivery of training and to maximise out impact.

We continue to invest in people leaders and, in particular, those stepping into leadership. In 2019 the OCG completed a cohort each of the Greats Managers program (targeted at Grade 11/12 Managers) and the Springboard into Management Program (for Grade 9/10 or emerging leaders). We have another cohort of staff in the Springboard program in 2019.

As mentioned elsewhere in the report, our values statement for the OCG speaks specifically to the leadership brand and expectations. These values for leaders were derived from the insights offered by staff through the People Matters Survey results, through the various reviews and in our internal surveys and feedback. These values form the basis for all Performance Agreements across the organisation.

## **Managing change**

We have developed a Change Management Framework for the OCG.

The Framework articulates expectations about engagement of staff and stakeholders in any change process. It provides a range of tools and processes to be used when change inevitably happens in our organisation. The framework creates expectations around how all employees should be engaged in the decisions that affect them and sets out how we go about employee engagement.

## Building on what we have learned

As an organisation, the OCG has learned a great deal through the process of the reviews in 2019 and through the input of views from staff. With the new legislation, it is now time to build on what we have learned and to go further.

There are three aspects to this ongoing work within the OCG:

- Each independent function has clear guidance about its administration, delegations are appropriately set, and staff have the specific tools and support to do their work;
- Each activity that operates across those functions is clearly articulated and there is a common understanding of how those activities are exercised within a function, such as monitoring, assessment, enforcement, use of evidence, investigation;
- Staff have clarity about their own role, what they are accountable for, who makes different types of decisions and how they have input.

## Implementing the WWCC Structured Risk Assessment Guide

Sandra Heriot Consulting was engaged in late 2019 to support the strengthening of the WWCC decision making process. Dr Heriot's report on her work is appended at **Tab B**.

In 2018 - 2019 the OCG developed a framework to define and explore the concept of 'real and appreciable risk'. Dr Heriot has worked with OCG employees to modify and improve the old framework, which is now called the 'Structured Risk Assessment Guide'. WWCC employees were supported and encouraged to put their views forward during this process.

The Guide is intended to support consistency in decision making, transparency and accountability. In the second half of 2020, Dr Heriot will support implementation of the Guide, including training, and facilitated case discussions.

The user experience of the Guide will be assessed between August and October 2020 to identify any gaps in processes, training or support materials, as well as identify any potential Quality Assurance improvements. Information about the Guide for the general public will be published on the OCG website.

The definition of 'real and appreciable risk' is being implemented within the structured guide and will be bedded down in practice in the second half of 2020.

## Setting a clear risk framework

The OCG Enterprise Risk Management Policy and OCG Enterprise Risk Management Framework (at **Tab C**) provide the structure for the OCG to effectively manage risk. Risk management in the OCG is overseen by our Audit and Risk Committee, which is made up of independent members. The Committee's objective is to provide independent assistance to the Children's Guardian by monitoring, reviewing and providing advice on the OCG's governance processes, risk management and control frameworks, and its external accountability obligations.

In March 2020 the OCG settled its Risk Appetite Statement under the Enterprise Risk management policy framework. Risk appetite refers to the amount and type of risk that the OCG is comfortable to accept to achieve our objectives. Our appetite for risk varies according to the activity undertaken.

The Risk Appetite Statement balances the benefits of change or innovation with the threats that the change may bring and helps to find the balance between risk taking and risk avoidance.

Risk registers are used to document the risks. Employees are responsible for managing the risk environment. This includes having appropriate controls in place and monitoring their effectiveness.

Since March 2020 the OCG has commissioned an independent consultant to review the OCG's Enterprise Risk Management Framework and ensure it is contemporary and fit for purpose. As a part of this work, directorates are settling their risk profiles this year.

## Developing a robust decision making and evidence framework

As evidence is used across and within functions for different purposes, a common framework for use of evidence in decision making is necessary.

Mark Tedeschi QC has been commissioned to develop an overarching evidence framework to be applied across the functions of the OCG. This will ensure consistency in assessing and weighing evidence used in decision making. We are setting clear decision-making thresholds in line with our risk tolerance statements and our enterprise risk management framework.

## Making better use of our information holdings

Publicis Sapient (Third Horizon) is working with us to design a Research and Analytics hub.

It is intended the Hub will leverage information from internal and external sources to conduct analysis and inform how we best use our data holdings to guide our decision making and compliance work.

How we use the information holdings of the OCG is governed by privacy laws and in accordance with our legislated functions. The Hub will have a role in quality assurance and reporting on our own holdings, providing insights to Directorates to inform continuous improvement.

This work, which will settle roles and responsibilities, processes and system requirements for the new Hub is due in August.

## Responding to the *Family Is Culture* review

Professor Megan Davis' report, *Family Is Culture*, made 125 recommendations to the NSW Government based on a review of 1,144 children and young people who entered care in 2015 - 2016. We welcome the findings of this review and will release our response (at **Tab D**) by the end of July 2020.

Over the next 12 months we will implement a number of reforms to better meet the needs of Aboriginal children and young people, who come into contact with the child protection and out-of-home care system. Commencing in August 2020 we will undertake a review of the accreditation criteria for statutory out-of-home care providers. Consultation will commence with Aboriginal organisations delivering statutory out-of-home care, to identify practices that promote the safety, welfare and wellbeing of Aboriginal children and young people. The review of accreditation criteria will also incorporate the Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse, in order to create a safer out-of-home care system.

## A new Aboriginal Deputy Children's Guardian

An important part of the NSW Government's response to the *Family Is Culture* report announced by the Minister for Families, Communities and Disability Services earlier this month was the creation of the new targeted position of Aboriginal Deputy Children's Guardian. This new position speaks to the context for our work, the contribution my Office makes to the sector, and the opportunity we have as an independent agency to show leadership.

Having the opportunity to create the first Aboriginal Deputy Guardian position and shape a different conversation for the OCG with Aboriginal communities is the start of an exciting new chapter. It is important to me that the new Deputy Guardian, as an Aboriginal person, has responsibility for all children, not just Aboriginal children. It is important our community sees and experiences an Aboriginal person speaking about the rights and safety of all children.

The position will have oversight of the Child Safe and Accreditation and Monitoring Directorates. The Deputy Guardian will coordinate the program of work to respond to the *Family Is Culture* report. I am working with an Aboriginal organisation to design the framework for this role and its recruitment, so we do everything we can to make it a success.

## Adjusting our approach and operations in a pandemic

Since March 2020, we have responded to the unforeseen COVID-19 restrictions across NSW by increasing our digital service delivery capacity and reducing the requirement for face to face contact in our programs. We extended WWCC clearances for six months, that would otherwise have been due for renewal. This avoided WWCC clearance holders having to attend Service NSW customer service centres in person to provide proof of identity and pay the renewal fee.

We also amended regulations to enable carers and adult household members to complete proof of identity requirements for the WWCC through a direct link to us, via the OOOH agencies. This enabled carers and family to be mobilised more readily to support children, should carers be required to isolate or become unwell.

We have delivered a significant number of online child safe webinars in preference to face to face sessions. The take up from local services for education and training in this period has been overwhelming, and we are running regular forums for sporting and other sectors of over 500 participants. We have also rapidly produced additional digital content to assist the community to adapt to online service delivery while at the same time remaining vigilant to new and emerging risks to children.

Our employees have largely moved to working from home arrangements and have made greater use of collaboration technology, to remain in contact with each other and external stakeholders.

We are systematically working to identify which of these unplanned changes have resulted in operational improvements and efficiencies, that we should retain, as restrictions ease.

With the COVID-19 pandemic impacting the organisations and individuals we regulate and monitor, as well as our own operations, we have had a period of significant change since March 2020. These changes were partly anticipated with our new legislation, and partly unanticipated, as we have all had to adjust to the unfolding global health and economic crisis.

## Next steps for our new vision

### The challenge now is to implement our new vision and plan to make organisations in NSW safe for children

The OCG's purpose is to regulate and oversight organisations to uphold children's and young people's right to be safe.

Our vision is to influence and lead change by building capability in organisations to be child safe.

We seek significant change across NSW through our role as a regulator and oversight agency. This includes collaborating and cultivating relationships with child-related organisations, including peak bodies, funders, the private sector, paid and voluntary employees, and ultimately, with the community.

## Implementing the Child Safe Standards

The NSW Government accepted, or accepted in principle, all 24 recommendations to make organisations safer for children in the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse. This included implementing the Royal Commission's Child Safe Standards.

The NSW Government also accepted, in principle, the recommendations that organisations engaging in child-related work should be required to meet Child Safe Standards and be held accountable for their implementation through independent oversight.

The Child Safe Standards provide a framework for organisations to create and maintain child safe spaces. They form ten priority areas that will guide the development of child safe practices, behaviours and cultures. They encourage organisations to proactively manage or mitigate the risk of harm to children and demonstrate progress on this.

There is no 'one size fits all' approach to implementing the Child Safe Standards. Organisations can implement the Standards flexibly and apply them in ways that make sense in their context, considering their size, the nature of their interactions with children, and resources available to them. This is because they are principle-based and focussed on outcomes, representing a move away from prescriptive compliance.

### Child safe implementation timeline

The OCG is working towards a legislated mandatory child safe scheme, for consultation with stakeholders over the second half of 2020.

This will build on our extensive consultation undertaken with stakeholders in 2019. The mandatory scheme would formally commence in mid-2021, subject to the passage of legislation through Parliament.

The OCG will continue its capability building and support work – using the Child Safe Standards as the foundation for that work. This will help prepare the sectors and organisations for the introduction of the Child Safe Standards.

A detailed [Guide to the Child Safe Standards](#) was released in June 2020. The Guide provides an overview on how organisations can implement the Child Safe Standards and respond more appropriately to child abuse.

## Focusing on our strategic priorities

While we continue to deliver our core services, we will implement our new vision and strategic plan, and refocus how we promote, monitor and act to create child safe spaces across NSW. We are guided by our values: integrity; accountability; trust; respect; service; and empathy.

Implementation of our four strategic priorities over the next three years will primarily occur through the annual directorate business planning process.

### 1. Regulating child safe practices

Our first priority is to provide oversight to promote child safe practices, identify gaps in protection, monitor performance and trends, and detect and act on non-compliance. It is critical we continue to enable organisations to prevent harm to children and young people through risk identification and management.

Some of the actions to progress this priority include:

- Asserting the role of the OCG in building capability towards behaviour and culture change. A clear and engaging approach to capability building is at the core of our effectiveness as a regulator, where the rights and safety of children is our paramount consideration.
- Requiring service providers to use the child safe standards in their organisations. Organisations will be provided with guidance in a way that fosters positive change.



- Reviewing the Permanency Standards for OOHC. The five-year review of the standards is due in 2020. It is our intention to design the process and review of these standards first with the Aboriginal community sector. We want to acknowledge that culture is central to the wellbeing of Aboriginal children, indeed for all children. The standards and how they are regulated should reflect the importance of culture across all domains, not limited to a plan. It is also our intention that the Child Safe standards will be the organising framework, as a single, evidence-based set of standards with a common language, and to reduce agencies' regulatory burden.
- Operate a single training and education team through the Child Safe Directorate to better coordinate sector engagement and relationships.

## 2. Strengthening our stakeholder relationships

Our second priority is building strong, outcomes-oriented stakeholder relationships. In alignment with the NSW Government's Customer Commitments, we will seek to enhance the experience of the individuals and organisations that interact with us. In all our interactions with our stakeholders, we strive to be easy to engage with, act with empathy and be accountable so our interactions enhance our reputation and highlight our commitment to creating child-safe organisations.

Some of the actions to progress this priority include:

- The release of the OCG Communications Strategy, which outlines how we will communicate consistently, professionally and strategically, in a customer-focussed way, avoiding siloed communication by different directorates with stakeholders.
- Finalising a stakeholder tool to help us to better navigate those relationships consistently.
- Use of existing IT platforms to have a common system for stakeholder relationship management.
- Developing a Customer Service Charter which will outline expected behaviours by OCG employees when interacting with the public.

## 3. Integrating our systems

Our third priority is to ensure we are an integrated child-safe authority supported by and harnessing the power of contemporary systems. As we continue to grow with expanded functions and information gathering provisions, our systems and employees need to have the capability and capacity to fulfil our mandate, including more effectively collaborating across Directorates and utilising data to gain insights and intelligence.

We have been working with Publicis Sapient (Third Horizon) since January to understand what approach we need to operate effectively and efficiently, retain independence of decision making in and between functions, be consistent in our decisions, and support intelligence and business improvement.

We have also been working with the Crown Solicitor's Office and other experts to seek a different perspective on how we enable our systems to work within our legislation.

Some of the actions to progress this priority include:

- Continue business process reengineering to reshape our operating model as outlined earlier in this report.
- Establishing a Research and Analytics Hub to gather information across the OCG functions, provide quality assurance and governance for information sharing, and analysis to turn our information into system insights and share it with the stakeholders.
- Reshaping the Legal Services Directorate to become an Office of the General Counsel to advise and support the diverse functions within the OCG
- Reshaping the Business and Executive Services Directorate to manage governance and risk for the OCG in a new operating context, and to monitor and deliver on our strategic plan.

## 4. Making OCG a great place to work

Our fourth priority is to make the OCG a great place to work and make a difference. We want the OCG to be known and recognised as a sector leader in being values driven, embracing of diversity of thought, experience, culture and community. We have enviable People Matter Employee Survey results, that reflect an engaged group of employees, who want to contribute to our vision and purpose.

But we have more work to do. I want the culture of the OCG to reflect the active and meaningful engagement of employees, a safe environment to represent diverse perspectives, personal accountability for living our values, and a commitment to service excellence.

Our values spell out what attitude and behaviour leaders should exhibit. They will be reflected in how we recruit and manage performance. We want to be and attract leaders who have social intelligence. Our role descriptions and performance conversations will reflect this emphasis.

Some of the actions to progress this priority include:

- Embedding our values in our day to day work.
  - Leaders will be provided with tools to lead conversations in team meetings, workshops, forums and in PDP discussions.
  - Dedicated Intranet page, newsletters and activities that build awareness.
- Introducing a cultural training program, so all employees understand our nation's history, our First Nations people and culture, and are aware of our own biases and beliefs.
  - All staff will be required to do a three-hour cultural competency program. All current staff will complete this by the end of 2020. It will then form part of OCG mandatory induction training.
  - Specific roles and teams will be required to complete a ten-hour program and reflective learning as a core requirement.
- Continuing to deliver outcomes under the Disability Inclusion Action Plan, and the Reconciliation Action Plan.
- Developing the Multicultural Action Plan to foster the benefits of our own diverse perspectives and provide better service to the diverse communities that we serve.
- Launching our People and Culture Strategic Plan, which includes performance development and succession planning initiatives, health and wellness programs, and a focus on building organisational capability.

## Conclusion

The commencement of the *Children's Guardian Act* has provided the OCG with a clear mandate on how we will operate a cohesive regulatory and oversight regime to create safe spaces for the children and young people of NSW.

Significant work has been undertaken to provide robust frameworks in how we fulfil our functions. Our new strategic plan sets out our vision, purpose and objectives and the dedicated employees of the OCG will bring this vision to reality.

The opportunity to appoint a Deputy Guardian, who is an Aboriginal person, will give a cultural perspective and leadership to the execution of our functions, and provide further opportunities to improve service delivery.

The coming year will see further strengthening of our regulatory and oversight capability with the proposed introduction of the Child Safe Standards. We have built a solid base upon which to leverage our expanded activities and we look forward to delivering on our strategic objectives.

## Attachments

Tab A: Our strategic approach: OCG Strategic Plan 2020-2023

Tab B: WWCC Expert Program Support – Sandra Heriot Consulting report

Tab C: OCG Enterprise Risk Management Framework

Tab D: OCG response to Family Is Culture: Independent Review of Aboriginal Children and Young People in OOHC in NSW report

## Purpose

We regulate and oversight organisations to uphold children and young people's right to be safe

## Vision

We influence and lead change by building capability in organisations to be child-safe

## Our Strategic Priorities

01



Regulate, monitor and foster capability in quality child safe practices

The OCG will provide integrated oversight for promoting child safe practices, identifying gaps in protection, monitoring performance and trends, detecting and acting on non-compliance

It will be critical for us to continue to enable organisations to take action to prevent harm to children and young people through risk identification and management. This encompasses:

- Asserting the role of OCG in building capability
- Requiring service providers to use the child safe standards to implement child safe practice within their organisations. Organisations will be provided with guidance on how to implement the standards and will be expected to demonstrate how they create and maintain cultures where children's interest and rights are prioritised
- Utilising relevant risk based enforcement powers available across OCG functions
- Connecting the service system for greater impact such as capitalising on child safe champions
- Employing data more effectively to inform the service system

### Indicative Performance Indicators

- Training and support (online and offline)
- Number of Child Safety Action Plans developed and implemented by NSW Government agencies and action taken by organisations
- Improvement in organisational compliance

*(Additional indicators awaiting finalisation of the national evaluation framework).*

02



Strong outcomes-oriented stakeholder relationships

In alignment with NSW government's Customer Commitment, we seek to enhance the experience of the Individuals and organisations that interact with us.

In everything we do from stakeholder consultation, how we communicate and activities within the OCG and externally, we strive to be easy to engage with, act with empathy and be accountable so our interactions enhance our reputation and highlight our commitment to creating child-safe organisations.

### Indicative Performance Indicators

- Average days to finalise matters and make determinations
- Number and type of customer complaints and compliments
- Evaluations following key oversight and training activities

03



An integrated child-safe authority supported by contemporary systems

As we continue to grow with expanded functions and information gathering provisions, our systems and employees need to have the capability and capacity to fulfill our mandate, including more effectively collaborating across Directorates and utilising data to gain insights and intelligence.

We will continue to invest in contemporary systems that facilitate information gathering and collaboration, strengthen stakeholder engagement and enable greater flexibility in our resourcing and ways of working.

### Indicative Performance Indicators

- Achievement against initiative milestones

04



A great place to work and make a difference

We want the culture of the OCG to be known and recognised as a sector leader in being values driven, embracing of diversity of thought, experience, culture and community.

The culture of the OCG will reflect the active and meaningful engagement of employees, a safe environment to represent diverse perspectives, personal accountability for living our values and a commitment to service excellence. We want:

- Our people to have the skills, tools, resources and clarity in their roles to deliver robust, transparent and accountable services
- A workplace where employees feel equipped to do their jobs with excellence and try new things with confidence
- Our brand of leadership to be authentic, confident in tackling tough issues, transparent, visionary, enabling and engaging

### Indicative Performance Indicators

- People Matter Survey - employee engagement

## Values

- Integrity
- Trust

- Service
- Accountability

- Respect
- Empathy

## Our Future Agenda - 2023

### What we “deliver”

An agency encompassing integrated functions with a holistic approach to uphold children and young people's right to be safe



### Whom we work with

Broader range of government agencies, community organisations, other jurisdictions and national agencies



### How we work with stakeholders / How we are perceived

Influencer and trusted authority that takes a partnership approach and consistent communication to influence and lead change



### Our internal processes and systems

Integrated processes and systems and embracing a continuous improvement focus



### Our people and culture

Transformational, diverse and resilient workforce



## Our Values



### Integrity

We act with honesty and transparency with each other and the individuals and organisations we serve



### Accountability

We are accountable for our own actions, transparent in our decisions and authentic in our behaviour



### Trust

We work together as one team for each other and the individuals and organisations we serve



### Respect

We respect ourselves, each other and the individuals and organisations we serve



### Service

We are easy to engage with for each other and the individuals and organisations we interact with in creating child-safe organisations



### Empathy

We listen with care to understand perspectives with each other and the individuals and organisations we serve



# Working With Children Check (WWCC) – Expert Program Support

Sandra Heriot Consulting

23 June 2020

## Context

Sandra Heriot Consulting (SHC) was contracted to provide services to the Office of the Children's Guardian (OCG) in November 2019. A short capability statement is provided in **Appendix A**.

At the time SHC was contracted, significant cultural and process review changes had occurred at the OCG over the previous two years; it is understood that these changes had been welcomed by staff. In mid-2019, claims were published in media reports of inappropriate granting of WWCC clearances and criticism of the OCG workplace culture. These claims were examined under an independent review. The process changes had begun before the recent media reports appeared and were established to examine the decision-making process for determining WWCC applications.

## Scope

The consultancy was in response to the above claims and the review process. The work focussed on supporting implementation of transparent structures for robust decision-making in WWCC and supporting staff psychological safety and positive culture change. All work aligned with and supported the OCG priorities and WWCC Operations Business Plan and Quality Assurance Program.

The initial key objective of the consultancy was to:

- provide expert advice, support and process input to the WWCC team and the OCG.

The initial scope of the work was extended and included:

- progress development and implementation of the Real and Appreciable Risk Framework (currently known as Structured Risk Assessment Guide).

SHC will continue to support Phase 2 of the Structured Risk Assessment project through to December 2020.

## Core Activities

### Process improvements

Significant work had been undertaken by the WWCC team following the independent review to improve operational processes especially around decision-making. It was noted that all improvement processes conducted by WWCC staff were collaborative in nature, seeking input and feedback from all levels of staff and other business units when required. It was also observed that WWCC staff involved in the risk assessment and decision-making processes performed their roles with integrity and worked hard to meet their administrative responsibilities.

SHC worked closely with the Quality Assurance Officer to review documentation (e.g. Risk Assessment Procedures, Interim Bar Business Rules, Supervisor Procedures, Decision Pathways) and provide expert advice on key processes and business rules as part of the existing Quality Assurance program.

Key actions on decision-making focused around:

- enhancing transparency in decision making
- enabling diversity of perspective in decisions
- creating clear mechanisms for progressing applications and resolving disputes.

Attendance at the Directors Case Review Meetings (DCRM) allowed for a good understanding of some of the complex matters assessed by the WWCC, as well staff interactions and decision-making processes. DCRM guidelines were updated to better support the process and the staff involved in bringing matters to the meeting.

## Staff workshops and support resources

### Workshops

An important part of the work conducted by SHC was to develop and support psychological safety and introduce processes that would enhance staff wellbeing and confidence.

Two 2.5-hour workshops were planned for 2020. The first workshop, “*Who we are and how we work together*” raised the media issues from the previous year, how staff can speak up safely and work together and perform well in a supportive environment. Team Leaders and Managers were briefed and provided with resources before and after the session so that they could continue the conversation with their staff and support ongoing development. Staff were also encouraged to provide any feedback and raise any concerns.

A second workshop, “*Reflective practice-10/20 hindsight in 2020*” had been scheduled for mid-March but has been postponed until later in the year, due to Covid-19 restrictions. This workshop was to build on the first and introduce staff to the use of reflective practice.

### Peer consultation

In addition to the supervisory arrangements for staff, ad hoc and informal case reviews and peer support were common in the WWCC. To support a more formalised approach and reciprocal learning relationships between staff, Peer Consultation Guidelines were developed. The guidelines can be applied to individual (i.e. peer-to-peer) or group approaches. They provide information on the key features, principles and benefits of peer consultation, expected outcomes and the process to establish and run successful meetings.

## Structured Risk Assessment Guide (Guide)

### Background

Legislative changes to the *Child Protection (Working with Children) Act 2012 No 51* (the Act) in June 2018 included the addition of the phrase ‘real and appreciable risk’. The OCG determined that the concept of ‘real and appreciable risk’ needed to be defined and explored further through a more detailed framework that included dynamic risk factors. The WWCC risk assessment process at the time did not involve the use of actuarial or structured decision-making tools.

Significant work was undertaken from November 2018-2019 by WWCC Operations and Legal Services staff to design a tool to help assess the probative value of evidence, and the potential risk an applicant poses through identifying stable, dynamic, and protective factors present in the case. The proposed tool was intended to assist with risk assessment practice through an approach that was consistent and transparent and used evidence-based risk factors.

The first draft of the Guide (then known as Real and Appreciable Framework) was applied to trial matters, primarily involving historical sexual abuse matters. The Expert Advisory Panel also provided input into the development of the Guide and review of the trial matters.

### Recent work (February-June 2020)

A project plan was developed outlining key activities to help progress development of the Guide through to a broader rollout. The Working Group (WWCC Operations, Legal Services and other OCG business unit representatives) was re-established to support this work. Further testing with different types of cases and ‘live’ cases, review and feedback of the Guide occurred during February-April 2020.

Based on the strong feedback from the EAP and additional consultation with Records Review, the Assessment Risk Matrix was updated and ‘uncoupled’ from the risk assessment process. It is now known as the Preliminary Assessment Matrix (‘PAM’). It is now a separate workflow tool used by the Records Review Team. It supports a consistent approach to forming a preliminary assessment of risk in relation to applications that are the subject of an ‘assessment requirement’.



The current draft Guide outlines:

- How the Act informs risk assessment
- The standard of proof relevant to risk assessment
- The High Court's Decision in *M v M* as a structure for evaluating allegations that did not result in a finding
- Steps in risk assessment:
  - Identify and gather relevant information
  - Establish facts and make findings (includes agreed facts, contest facts, material and relevant facts)
  - Propose outcome.

It also contains information on weighting evidence, evaluating expert information, risk and protective factors, relevant child protection information and considerations for outcomes.

In the development process, the Guide has moved away from being an actuarial tool to a more consensus-based assessment process. This approach is based on feedback from the initial testing, Expert Advisory Panel review and consideration of how the 'tool' is intended to be used in practice.

The current draft is being finalised with the addition of cultural and policy considerations and Expert Advisory Panel review. Weekly team meetings with Risk Assessment Officers and Team Leaders during June has provided a platform to discuss cases and apply the Guide and support training around key concepts.

Although a quick Guide is being developed for everyday use (i.e. one-page cheat sheet), the full Guide is not intended to be a standalone or static 'tool'. It will be incorporated into the WWCC Decision-Making Practice and Procedure resource which provides a broader context around decision making, roles and responsibilities and details all the relevant decision-making processes that support the Children's Guardian (and delegates) in meeting the statutory obligations in administering the WWCC.

It is intended that ongoing feedback by users, as well as any additional policy and legal positions, will be incorporated into further refinements of the Guide as part of the Project Phase 2.

### Planned work (July-December 2020)

A project plan is being finalised for Phase 2. Key activities during the initial part of this phase will involve implementation support. This includes organising and providing training and case discussions for the Risk Assessment Officers, Team Leaders and Managers as well as other relevant OCG business units. Masterclasses for the WWCC Leadership team have already commenced and will be held during July. This will ensure they are able to support their staff in the uptake and use of the Guide. A presentation to the OCG on the Guide is planned for mid-July. Ongoing support will be provided as required up until the end of the year.

An online staff survey will be conducted August-October to assess the Guide and user experience and identify any gaps in the process and requirements for training and support materials. Cases and documents will be reviewed to assess the use of the Guide and alignment of outcomes and to identify any Quality Assurance improvements.

An important part of the work on the Guide is to support consistency in decision making, transparency and accountability. Materials about the Guide will be developed for the general public and placed on the external OCG website.

# Appendix A – Sandra Heriot Consulting Capability Statement



## SANDRA HERIOT CONSULTING

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### BUSINESS INFORMATION

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- Sandra Heriot Consulting
- Established February 2018
- Based in New South Wales, Australia
- ABN: 64 505 918 919
- Postal Address: P.O. Box 176, Rozelle, NSW 2039
- Email: sheriot@bigpond.com
- Phone: 0427 640 447

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### SERVICES

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Provision of consultancy services and high-level advice to health and human services in NSW government and nongovernment organisations.

- Evidence, program and practice reviews
- Service/agency reviews
- Service delivery and implementation support
- Strategic planning and policy development
- Stakeholder management and consultation
- Program design

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### ABOUT SANDRA HERIOT

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Sandra Heriot Consulting is a sole trader business. The Principal, Dr Sandra Heriot, has had 19 years' experience working in University and government settings in NSW. Sandra has a broad range of experience and expertise in clinical, research, academic, public administration and executive areas. She holds an Executive Master of Public Administration. Sandra is also a registered psychologist with an approved area of practice in clinical psychology and has a PhD and postgraduate degrees in psychology. Sandra has extensive research publications and conference/community presentations and training. This includes 25 peer-reviewed research and review papers, 3 books/chapters, 3 competitive grants, 29 conference papers, 17 workshops and 1 autism program. Sandra is a member of the Board with the non-government organisation, OzChild.

Prior to consulting, Sandra's most recent positions were in the NSW Department of Family and Community Services (FACS) (now known as Department of Communities and Justice) including:

- Director, Service System Reform - contributing to delivering on reform pillars of NSW Government's *Their Futures Matter* reform and leading design, commissioning and implementation of reform-funded evidence-based programs and services

- Director, Families and Place - program management of \$150M community and early intervention programs and delivering on the NSW government's *Targeted Earlier Intervention (TEI) Program* reform
- Director, Psychological Services - strategic oversight, service delivery and service improvement.

Sandra has also worked in mental health and prior to moving to FACS was Director MH-Kids, NSW Health, responsible for statewide leadership and expert advice in high level risk management, strategic planning, partnership building, information sharing, coordination and facilitation of initiatives, workforce development, education and training, service delivery, prevention/early intervention approaches and monitoring of mental health services for children, adolescents and families.

### **Professional Profile**

- Highly regarded results-oriented and values-driven leader working in human services
- Focused on using robust data analysis, research, evaluation and evidence based-decision making to inform policy, service design and local planning
- Excellent strategic thinker, inspiring purpose and vision in staff and stakeholders
- Major strengths in genuine engagement and effective collaboration with clients, staff, colleagues, and government and non-government stakeholders
- Well respected for calm leadership, sound decision making and delivering results.

### **Recent Relevant experience - examples**

- Reviewed the NSW Health Aboriginal Ear Health Program Guidelines including the development of a literature review to support a revised framework.
- Conducted a literature review on the orthoptist workforce to inform NSW Health workforce planning.
- Providing expert advice, support and process input to the Office of the Children's Guardian.
- Undertaking the Stronger Families, Better Communities project which includes conducting the design evaluation methodology and process and outcome evaluation for the Functional Family Therapy, funded as part of Domestic and Family Violence Innovation Fund Round Two.
- Conducted the NSW Health Seclusion and Restraint Policy project which aimed to produce a single simplified, principles-based policy that works towards the elimination of seclusion and restraint (PD2020\_004).
- Led the Mental Health Training Needs Analysis project. The project methodology included online surveys and consultations (primarily focus groups) to establish training needs and priorities for each of the target cohorts. Project phases included planning and preparation, information gathering, analysis and development of findings and report writing.
- Undertook the program review of a child protection and out of home care service for the Department of Communities and Justice.
- Provided expert support to Systems Monitoring and Review Team for the Mental Health Commission of NSW which included providing advice, support and project leadership.
- Co-developed an Early Intervention Strategy for the ACT Human Services Cluster. The project consisted of using information from the previous stage of work and stakeholder input through wide consultation across the human services sector, engaging at various levels within organisations as well as with service users and non-users, specifically focusing on Aboriginal and Torres Strait Islander people.

# Enterprise Risk Management Framework

The Framework outlines the OCG's risk methodology and processes to support a consistent approach to managing risk. It sets out the procedures and guidelines for implementing the principles outlined in the Enterprise Risk Management Policy.

<b>Policy/Procedure Document Title</b>	Enterprise Risk Management Framework
<b>Summary</b>	The Framework outlines the OCG's risk methodology and sets out the procedures and guidelines for risk management.
<b>Status</b>	Draft
<b>Policy/Procedure Number</b>	
<b>Version Number</b>	V1.0
<b>File Reference</b>	fA818699
<b>Compliance Level</b>	Mandatory
<b>Compliance Detail</b>	
<b>Category</b>	Governance
<b>Related Policies</b>	TBA
<b>Superseded Policy Ref</b>	N/A
<b>Public Availability</b>	
<b>Feedback</b>	Feedback should be provided to the Director Business and Executive Services
<b>Date Issued</b>	March 2020
<b>Review Date</b>	March 2020

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Risk is the chance of something going wrong. We manage risk in our operating environment to achieve better outcomes for our customers. Risk management facilitates continuous improvement by linking risk to organisational planning and performance reporting.

## 1. Introduction

Risk is the effect of an event and the likelihood of it occurring. It is the chance of something happening that will have an impact on the achievement of our objectives. This impact may be positive or negative, meaning that risks may present an opportunity or a threat. Minimising the effect of negative risks or threats protects value. Taking considered risks to enhance growth, transformation and innovations enhances value.

Where risks are proactively identified and effectively managed there is potential for making the most of new opportunities.

Effective risk management supports the OCG to achieve our strategic and operational objectives. It is an essential part of good governance and helps to:

- Drive a culture where everyone takes responsibility for risk
- Empower our people to make informed decisions
- Enhance performance and organisational resilience

The Enterprise Risk Management Policy (the Policy) is the core document that affirms our commitment to building a robust and ethical risk management culture. The Policy is endorsed by the Audit and Risk Management Committee and approved and mandated by the OCG Executive Board. The Enterprise Risk Management Framework (the Framework) sets out the procedures and guidelines for implementing the principles outlined in the Policy.

## 2. Risk Management Principles

Our risk management approach and processes are based on the following principles:

### **Risk Management Governance and Culture**

The OCG's risk management governance and culture are founded on our vision, mission, values, objectives, strategies and policies. Our risk management governance framework aims to:

- Set the tone for our approach to risk
- Reinforce the importance to take responsibility for risk
- Empower our people to take responsibility for risk
- Foster a balanced risk culture

The goal of risk management is to support the achievement of our desired outcomes. Our risk governance and culture are based on:

- The risk management tone set by the OCG Executive Board and its governance committees
- A values-based approach to risk that embeds risk management and decision making into everything we do
- Our people committing to our core values and principles by proactively managing risk
- Attracting, developing and retaining people who are committed to delivering higher risk-adjusted performance in accordance with our risk appetite.

## Strategy and Objective Setting

The OCG integrates enterprise risk management, strategy and objective setting in the strategic planning process. We establish and align our risk appetite with strategy and organisational objectives, turning strategy into practice while serving as a basis for identifying, assessing and responding to risk.

## Performance

We have defined performance measures that help us achieve our strategic objectives. Our business plans are created and implemented based on these measures. Risks are uncertain events – be they opportunities or threats – that impact on our performance. The process for forecasting the potential risks, assessing their impact, and putting in place measures to manage that impact is essential to our operations.

## Review and Revision

We are committed to improving processes in all that we do. We will periodically review risk management processes to identify opportunities for improvement and increase risk management maturity.

## Information, Communication and Reporting

Good communication is essential to effective risk management. It involves constant sharing of information sourced from both inside and outside the OCG. A timely, considered and targeted approach to informing key stakeholders helps to foster a stronger risk management culture and informs risk responses.

# 3. Enterprise Risk Management Framework

The OCG's Enterprise Risk Management Framework applies to the whole OCG and our operations. It:

- Aims to influence our culture to better manage risk and opportunity. The Framework considers our economic, social, regulatory, political environment in alignment with our strategic objectives.
- Recognises the influence and expectations of our external stakeholders. Through enterprise and operational risk management and the internal audit program, the Framework connects those expectations with what we do.
- Includes the following documents
  - **Enterprise Risk Management Policy:** The Policy sets out the purpose, scope, risk principles, risk culture, approach and roles and responsibilities for enterprise risk management across the OCG
  - **Enterprise Risk Management Framework:** The Framework outlines our risk appetite statements and risk methodology and processes. It helps us to take a consistent approach to managing risk and sets out the procedures and guidelines for implementing the Policy. The Framework ensures that significant risks are assessed, escalated and managed using the risk enterprise risk category criteria. The Framework is intended to direct and assist staff to better understand the principles of risk management and use consistent guidelines and processes for risk management.
  - **Risk Appetite Statement:** The Risk Appetite Statement is an essential component of the Framework and provides the details of the appetite and type of risk that the OCG is willing to pursue, retain, accept or tolerate in pursuit of our strategic and operational objectives. The Risk Appetite Statement is approved by the OCG Executive Board.
  - **OCG Risk Registers:** These are central registers of risk that have been identified across the OCG. They are used to profile risks, monitor controls and prioritise how we treat risks. The risk registers help to report risk in a standard way, consistent with our



governance framework. The OCG Executive Board approves the Corporate Risk Register. The Audit and Risk Committee is responsible for assessing the effectiveness of the OCG risk management system and the various sources of assurance of their overall effectiveness.

Several discipline specific frameworks exist across the OCG with each having their own district criteria and processes. They support, rather than override or replace the Framework. Examples include:

- Health, Safety and Wellbeing
- Information Technology
- Corporate Management and Compliance

## 4. Risk Categories

We can most effectively manage risks when they are clearly identified, and their impact can be measured. To help us identify and manage risks consistently, they are grouped together in enterprise-level categories and sub-categories.

Risk categories and sub-risk categories are based on the type of risk, its sources and how it will be managed. Grouping risk in categories enables:

- A consistent way to identify, measure and manage risk
- Linking key components of the Framework to a risk category, which provides a clear view of how these interact with the risk appetite
- Risk to be grouped so that they do not overlap with multiple risk types
- A consistent way to report across the OCG so that they can be easily reviewed to provide feedback and guidance.

In working towards our strategic and operational objectives, we assess and manage risks in alignment with the Risk Appetite Statement.

For each risk category, sub-risk categories may be added. Sub-risk categories may fall within one or more enterprise risk category. For example, damage to physical assets could have an operational and financial component.

The table below outlines our risk categories and sub-categories.

Risk Categories	Sub-Categories	Descriptions
<p><b>Strategic Risk</b></p> <p>Potential events or circumstances that affect or are created by the OCG’s strategic vision, priorities and goals.</p> <p>These circumstances may impact the OCG positively or negatively.</p> <p>Strategic activities are essential to meet our objectives of change, transformation and innovation. We acknowledge</p>	<b>Reputation</b>	Activities or circumstances that impact the OCG’s image or the trust placed in us by our stakeholders. This may occur as a result of factors such as performance, strategy execution, or an activity, action or stance taken by the OCG and/or individuals aligned with the OCG.
	<b>Information Sharing</b>	
	<b>Organisational Change</b>	
	TBA	

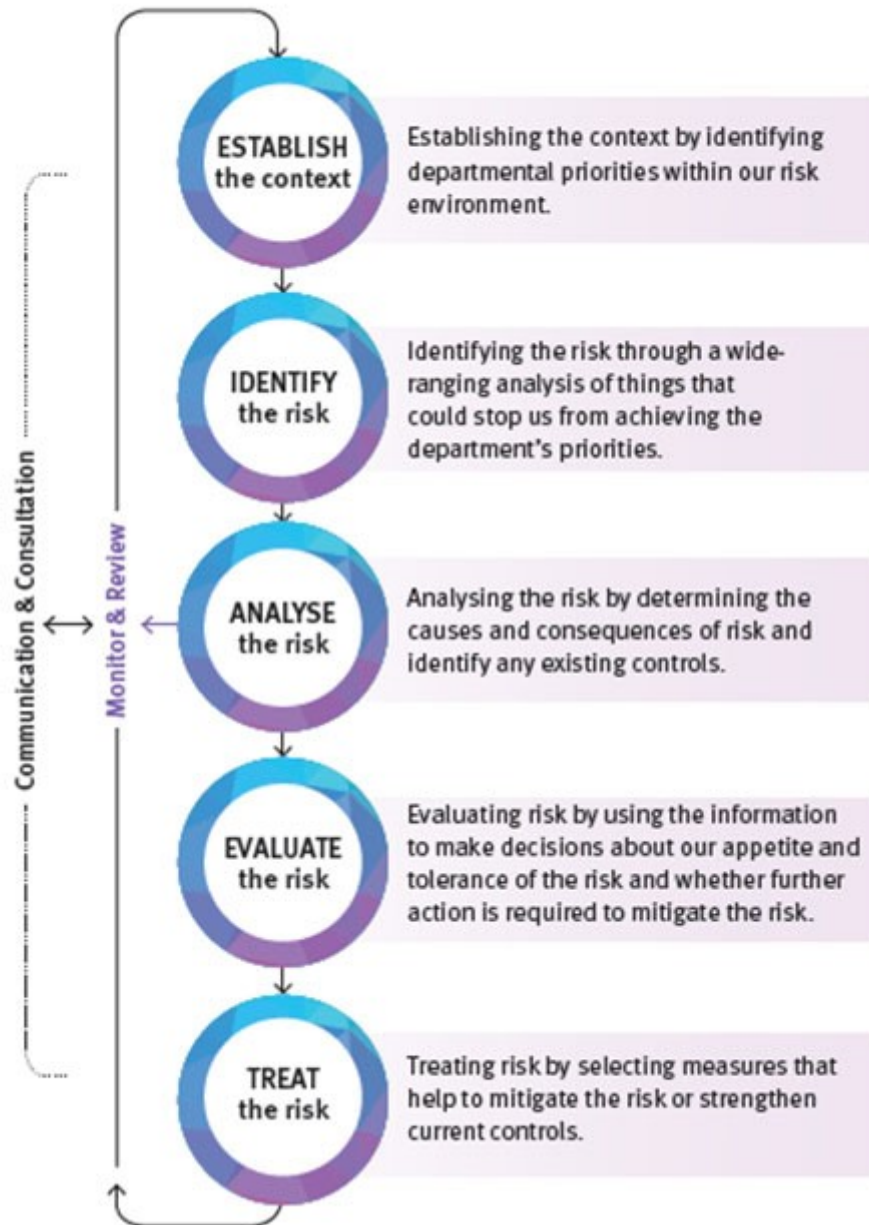
<p>that change activities may carry higher risk that needs to be managed according to best practice.</p>		
<p><b>Operational Risk</b></p> <p>Activities carried out or circumstances relating to the day to day business of the OCG. They may be associated with structure, systems, people, services or processes.</p> <p>Managing operational risk protects value by avoiding adverse impacts. It also creates value by optimising positive outcomes</p>	<p><b>Business Disruption and System Failure</b></p>	<p>Activities or circumstances that impact the continuity of business systems and operations such as access to enterprise level critical systems or information.</p>
	<p><b>Physical Assets</b></p>	<p>Activities or circumstances that impact our physical assets such as facilities, buildings and infrastructure, such as:</p> <ul style="list-style-type: none"> <li>● Natural events</li> <li>● Security</li> <li>● Utilisation of facilities</li> <li>● Maintenance</li> </ul>
	<p><b>People and Culture</b></p>	<p>Activities or circumstances that impact our people, such as:</p> <ul style="list-style-type: none"> <li>● Attraction, recruitment and retention</li> <li>● Managing, motivating and developing our people</li> <li>● Organisational culture</li> </ul>
	<p><b>Fraud (Internal and External)</b></p>	<p>Activities or circumstances that impact our integrity, such as:</p> <ul style="list-style-type: none"> <li>● Unethical behaviour</li> <li>● Corruption</li> <li>● Theft</li> <li>● Bribery</li> </ul>
	<p><b>Information Technology/Cyber Security</b></p>	<p>Activities or circumstances that impact our technology and cyber security, such as:</p> <ul style="list-style-type: none"> <li>● Adequate systems and processes that protect</li> </ul>

		<p>critical and sensitive data</p> <ul style="list-style-type: none"> <li>• Adequate IT resources</li> </ul>
	<p><b>Health Safety and Wellbeing</b></p>	<p>Activities or circumstances that impact the health, safety and wellbeing of our staff and visitors, such as:</p> <ul style="list-style-type: none"> <li>• Maintaining a safe, healthy and secure environment for staff, contractors and visitors</li> <li>• Providing resources to support mental health</li> <li>• A strong safety culture</li> <li>• Maintenance of physical buildings and facilities</li> </ul>
<p><b>Financial Risk</b></p>	<p>N/A</p>	<p>Activities carried out or circumstances related to physical assets or financial resources, such as government funding, budget, accounting, reporting and disclosure, including internal control requirements, capital and cash management, insurance, audit and financial management decisions.</p>
<p><b>Legal Compliance and Regulatory Risk</b></p>	<p>N/A</p>	<p>Activities carried out, or circumstances related to compliance with laws and regulators. Conversely activities or circumstances that do not comply with laws and regulations that result in adverse impacts such as fines, reputational damage, material financial loss, sanctions, penalties, stakeholder risk, loss of operating mandate, civil claims or liability, criminal prosecution or inability to enforce contracts etc.</p>

## 5. The Risk Management Process

Risk management is an important part of the OCG decision-making. It supports our activities and ensures operational plans align with strategic goals. The OCG applies the ISO 31000 Standard to manage risk as outlined below. (See Annexure A)

### Risk management process



## 6. Roles and Responsibilities

The Enterprise Risk Management Policy outlines the roles and responsibilities for enterprise risk management across the OCG.

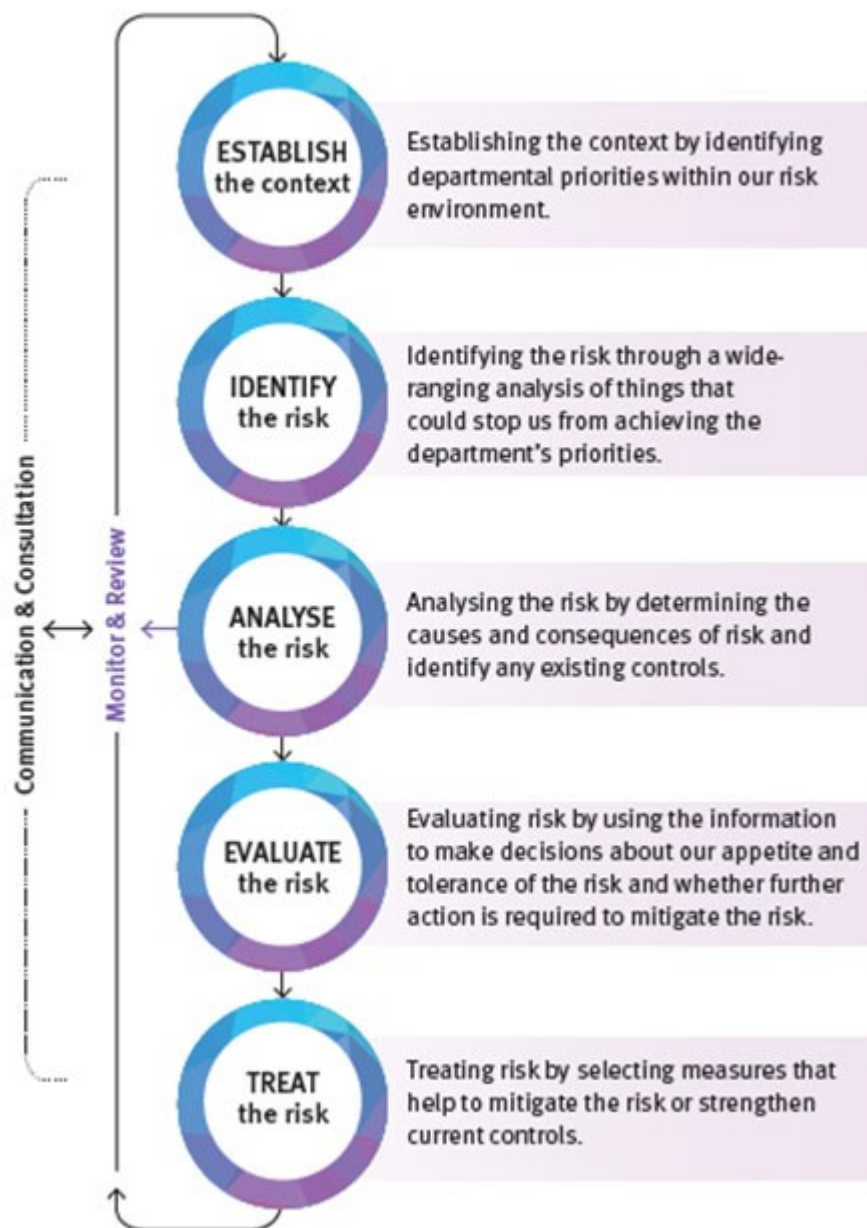
## 7. Risk Management Activity Plan

How we approach and conduct the risk management activities within an annual cycle is documented in the Enterprise Risk Management Activity Plan (**See Annexure B**). Oversight of the plan is the responsibility of the Director Business and Executive Services.

## 8. Enterprise Risk Management Framework Review

Our risk management capability and risk environment are constantly changing and evolving. The Framework is reviewed at least every two years to identify opportunities for improvement and to enhance our risk management maturity.

## Risk management process



### Step 1: Establish the Context

**Establish the context by identifying the objectives of the activity or circumstances and then consider the internal and external parameters within which the risk must be managed.**

Understanding the external and internal environment is the first step in the risk management process. It considers challenges and opportunities in the context of our vision and objectives, operating environment and key stakeholders.

## Process:

- **Set the scope** for the risk assessment by clearly identifying what you are assessing – for example, is it a new partnership, program, project or perhaps an event?
- **Define the broad objectives.** Identify the reason for the risk assessment – perhaps a legislative change, a request from a regulator, alignment with strategic performance, implementing best practice or an operational change or review.
- **Identify the relevant stakeholders.** Aim for an appropriately inclusive process from the outset. Identify the areas that are, or might be, impacted and seek their input.
- **Gather background information.** Having proper information is important. Ask the right people and identify the information that is available. Sometimes it is useful to identify information that is not available (immediately) but may be necessary. Consider:
  - Strategic and business plans
  - Previous events, investigations or reports
  - Surveys, questionnaires and checklists
  - Insurance claims reports
  - Local or international experience
  - Expert judgements (either internal or external expertise)
  - Structured Interviews
  - Focus group discussion.

Where possible, consider both the strategic context and operational context, so you have a complete picture of the situation.

**Establishing the context** sets the framework for undertaking the risk assessment, makes clear the reasons for carrying out the risk assessment and provides the backdrop of circumstances against which you can identify and assess risk.

The next three steps – Identify, Analyse and Evaluate the risk for the **Risk Assessment** phase of the risk management process.

## Risk Registers

The Risk Register (See Appendix 1) has been designed to capture risks and facilitate management and reporting of risk across the OCG.

We use the risk register to:

- Records risk
- Facilitate risk management
- Monitor and review risks
- Generate risk reports based on standardised templates

By using the register individual areas will, over time, build and maintain their risk profile. The OCG will also be able to generate reports for individual committees, auditors and external stakeholders seeking assurance that risks are being managed.

## Appendix 1: The Risk Register Template

## Step 2: Identify the Risks/Opportunities

**Identify the risks and /or opportunities that might have an impact on the objectives of the OCG.**

Identify the sources of the risk, areas of impact (including changes in circumstances) and their causes and potential consequences. Describe those factors that may create, enhance, prevent, degrade, accelerate or delay the achievement of your objectives. You should also aim to identify the issues associated with not pursuing an opportunity – that is, the risk of doing nothing and missing an opportunity.

In identifying the risk, consider these kinds of questions:

- **What could happen?** What are the potential outcomes, intended and unintended, both positive and negative? What might go wrong, or what might prevent the achievement of the relevant goals? What events or occurrences could threaten the intended outcomes?
- **How could it happen?** Is the risk likely to occur at all or happen again? If so, what could cause the risk to recur or contribute to it happening again? Where could it happen? Is the risk likely to occur anywhere or in any environment or place? Or is it a risk dependent on the location, physical area or activity?
- **Why might it happen?** What factors would need to be present for the risk to happen or occur again? Understanding why a risk might occur or be repeated is important if the risk is to be managed.
- **What might be the impact?** If the risk were to eventuate, what impactor consequences would, or might this have? Will the impact be felt in one area or will it impact the whole OCG? Areas of impact to consider include human impact, service delivery, financial consequences, legal or contract compliance, impact on reputation and impact on achieving our strategic objectives.
- **Who does or can influence this activity?** How much is within the OCG control or influence? Make sure that those with delegations, control, influence, resources and budgets are at least informed if not actively involved.

Wherever possible, provide quantitative and/or qualitative data to describe the risk or support the risk rating. Sources of information may include past records, staff expertise, industry practice, literature and expert opinion.

## Step 3: Assess/Analyse the Risks

### Develop a detailed understanding of the risk.

This step is important for separating minor risks from major ones. Once the risk has been identified and the context, causes, contributing factors and consequences have been described, look at the strengths and weaknesses of existing systems and processes designed to help control the risk. Knowing what controls are already in place and whether they are effective helps to identify what – if any – further action is needed.

### Process

- Start with **Inherent Risk**, which is the risk that an activity or event would pose if no controls or other mitigating factors were in place.
- **Assess the likelihood** (See Appendix 2). The likelihood of the risk occurring is described as rare, unlikely, possible, likely, or almost certain to occur.
- **Assess the consequences** (See Appendix 3). The consequences or potential impact if the risk event occurred are described as insignificant, minor, moderate, major or catastrophic. The assessment of likelihood and consequence is mostly subjective, but can be informed by data or information collected, audits, inspections, personal experience, institutional memory of previous events, insurance claims, surveys and a range of other available internal and external information.
- **Rate the level of inherent risk** by using the OCG Risk Matrix (See Appendix 4) to assess the likelihood and consequence levels. The risk matrix will determine whether the risk rating is low, medium, high or extreme.
- **Identify and record the controls that are in place to mitigate the inherent risk.** Controls may include legislation, policies or processes/procedures, staff training, segregation of duties, personal protective measures and equipment, and structural or physical barriers.
- **Rate the Residual Risk** which is the risk that remains after controls are considered (i.e. the net risk or risk after controls). Once the controls have been identified and assessment is again made of the likelihood and the consequence of the risk occurring. This produces an



accurate, albeit subjective assessment of the residual level of risk – or risk rating – and helps in the next step to determine whether risks are acceptable or need further treatment.

- **Evaluate the effectiveness of existing controls** (See Appendix 4). Determine what controls are already in place to mitigate the impact of the risk. Controls may be strong or weak and can be measurable and repeatable.
- **The escalation protocol** (See Appendix 5). Identifies the management action required for the various risk ratings. The expectation is that any 'High' or 'Extreme' risks should be escalated appropriately for consideration.

Appendix 2: The Likelihood Table

Appendix 3: The Consequences Tables

Appendix 4: The Risk Matrix and Control Effectiveness Table

Appendix 5: The Response/Treatment Table

## Step 4: Evaluate the Risks

**Decide whether the residual risk is acceptable or unacceptable. The Risk Appetite Statement will inform the level of tolerance that is acceptable and whether the risk is outside our appetite.**

Whether a risk is acceptable or unacceptable relates to a willingness to tolerate the risk – that is, the willingness to bear the risk after it is assessed in order to achieve the desired objectives.

### Process:

- Decide on the **Target Residual Risk Rating** in the Risk Register which is the desired level of risk after the assessment of residual risk
- If the residual risk is not acceptable or tolerable or if the desired target risk rating is different to the residual risk then the risk should be treated (in accordance with the next step, Step 5 'Treat the Risk')
- If the risk is acceptable or tolerable then no further action is needed. A risk could be acceptable even in the following circumstances:
  - No treatment is available
  - Treatment costs are prohibitive (particularly relevant with lower ranked risks)
  - The level of risk is low and does not warrant using resources to treat
  - The opportunities involved significantly outweigh the threats.

## Step 5: Treat the Risk

**Ensure that effective treatment plans are in place to minimise the frequency and severity of the identified risk. Develop actions and implement treatments that aim to control the risk and achieve the desired target rating.**

### Process:

- **Work out what kind of treatment is desirable for this risk.** Determine what the goal is in treating this particular risk. For example, it could be to:
  - **Mitigate** the risk with further controls – the mitigation actions can be further dissected into four different types of controls:
    - **Preventative controls** – designed to stop, discourage, pre-empt or limit the possibility of an undesirable event before it occurs. Preventative controls are proactive e.g. processing a requisition only after it has been properly approved.

- **corrective controls** – designed to correct errors or undesirable events which have occurred and will prevent further occurrences e.g. automatic removal of malicious code by antivirus software.
- **Directive controls** – designed to encourage a desirable event e.g. written procedures and policies or training in the accomplishment of area goals and objectives
- **Detective controls** – designed to search for and identify errors or undesirable events after they have occurred so that corrective actions can be taken. As they are “after the fact/event” controls, they are only appropriate when it is possible to accept the loss or damage incurred e.g. reviewing the monthly statement of account for activity in your area’s general ledger.
  - **Transfer the risk** – e.g. to someone else such as an insurer or contractor
  - **Avoid/terminate** it completely – e.g. drop the project.
  - **Accept the level of risk** based on existing information – e.g. take the opportunity

The type of risk treatment chosen will often depend on the nature of the risk and the tolerance for that risk.

- **Document the risk treatment plan.** Once the treatment options have been identified, a risk treatment plan should be prepared. Treatment plans should identify responsibilities for action, time frame for implementation, budget requirements or resource implications and review process where appropriate.
- **Implement agreed treatments.** Once any options requiring authorisation for resourcing, funding or other actions have been approved, treatments should be implemented. The person assigned with the primary responsibility for the risk, is ultimately accountable for the treatment of the risk.

## Step 6: Monitor and Review the Risk

**Monitor changes to the source and context of risks, the tolerance for certain risks, and the adequacy of controls. Ensure processes are in place to review and report on risks regularly.**

To ensure structured reviews and regular reporting, we encourage you to identify a process that allows key risks in your area to be monitored.

Given the diverse and dynamic nature of our environment, it is important to be alert to emerging risks as well as monitoring known risks.

### Process

- **Continuous monitoring.** Once risks have been identified, recorded, analysed and agreed treatments implemented, an appropriate monitoring and reporting regime should be established to keep track of how effective the treatment is in controlling the risk. Some risk treatments will become embedded into daily practices and methods of work.
- **Directorate review.** Managers need to ensure there is a process for reviewing risk profiles and activities in their area of responsibility. Wherever possible, risk management should become an agenda item on management meetings or committees rather than a separate process.

The aim of reviewing regularly is to identify when new risks arise and monitor existing risks to ensure that treatment of risks are still effective and appropriate. How frequently a review process and reporting cycle occurs will depend on the risk appetite and level of risk tolerance.

- **Risk reporting.** The Director Business and Executive Services is responsible for facilitating the analysis and aggregation of risk reporting to the OCG Board. The format and structure of the risk report may vary, but in principle includes:

- A summary of the most significant risks the OCG faces, including any changes in risk profile
- Updates on treatment plans for all significant risks
- The OCG's performance against tolerance
- Systemic/risk themes identified
- New and emerging risks and changes to the previous risk profile.

## Step 7: Communicate and Consult

Effective communication and consultation enhance risk management. It is essential for all parties to understand each other's perspectives and, where appropriate, be actively involved in decision-making.

### Enterprise Risk Management Framework

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Office of the  
Children's Guardian

Phone (02) 8219 3600

Email [ocg@kidsguardian.nsw.gov.au](mailto:ocg@kidsguardian.nsw.gov.au)

Website [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

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Children's Guardian

Response to the *Family is Culture*  
independent review into Aboriginal  
out-of-home care in NSW

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## Introduction

The Office of the Children's Guardian ('OCG') welcomes the opportunity to provide a response to the independent review into Aboriginal out-of-home care ('OOHC') in NSW ('the Review'). The OCG acknowledges the work of the Review team in providing the first independent, systematic and comprehensive review of the experiences of Aboriginal children and young people in the NSW child protection system, led by Aboriginal people.

This submission sets out the OCG's response to the observations and recommendations relating to the Children's Guardian's functions.

The Review makes a number of observations of the accreditation and monitoring of OOHC providers in NSW, based on an analysis of publicly-available information regarding the activities of the OCG. The Review's observations, therefore, are made from the point of view of individuals external to the OOHC system. This provides useful insights for the OCG regarding how it could better communicate with the community regarding its work. However, it does not fully capture the breadth of the work of the OCG, nor the complexities of regulating the provision of human services.

This submission provides some context to a number of criticisms of the existing oversight arrangements as well as actions the OCG is already undertaking to address some of these concerns.

## Accreditation and monitoring of statutory OOHC providers

The *Children's Guardian Act 2019* ('the Children's Guardian Act') makes provision for the Children's Guardian to grant 'full' accreditation or 'provisional' accreditation<sup>1</sup>. Provisional accreditation is granted in circumstances where an OOHC provider has not provided OOHC services in the 12 months prior to the application for accreditation. Provisional accreditation applies to new agencies providing OOHC services for the first time, or former providers re-entering the OOHC system where the provider has not been delivering OOHC services for more than 12 months.

In order to be granted provisional accreditation, an OOHC provider must submit policies and procedures to the OCG for assessment. Policies and procedures must set out how the agency intends to deliver OOHC services in accordance with the NSW Child Safe Standards for Permanent Care ('the Standards'). The Standards are developed in consultation with the OOHC sector and approved by the Minister for Families, Communities and Disability Services on the

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<sup>1</sup> Children and Young Persons (Care and Protection) Regulation 2012, cl49.

advice of the Children's Guardian. The Standards are reviewed every five years and the OCG will commence a review of the current Standards, in consultation with the OOHC sector, in 2020.

An agency with provisional accreditation must notify the Children's Guardian as soon as it commences delivery of OOHC services and participate in a monitoring program in which the agency must demonstrate, over the course of its three-year accreditation, that its practices meet the requirements of the Standards. The Review implies that provisionally-accredited agencies are permitted to operate non-compliant services. This is incorrect. The OCG conducts onsite assessments of provisionally accredited agencies every three to four months to monitor practice against the Standards and where non-compliance is identified, regulatory mechanisms are used to address practice concerns.

The OCG has a number of approaches to monitoring designated agencies' provision of OOHC services, including:

- onsite assessments of practice to determine an agency's application to renew its accreditation;
- onsite assessments of practice in response to identified concerns regarding practice;
- onsite assessments of practice to monitor an agency's implementation of practice improvements plans;
- review of children and young people's circumstances via access to ChildStory;
- three-monthly onsite assessments of new providers' (provisionally accredited agencies) delivery of OOHC services;
- assessments of agencies' policies and procedures;
- analysis of notifications regarding allegations of abuse in care, deaths in care and placements of children and young people in emergency care arrangements;
- review of the OCG's holdings regarding compliance with the Working With Children Check ('WWCC') and the Carers Register requirements;
- review of the OCG's holdings regarding reportable conduct matters; and
- analysis of information provided by other bodies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* ('Care and Protection Act').

## Regulatory responses to non-compliance

The Review correctly notes that the OCG adopts a responsive, risk-based approach to regulation of the OOHC sector, only imposing formal sanctions where less intrusive approaches have not been successful in addressing non-compliance. The Children's Guardian routinely uses a range of regulatory approaches to address non-compliance, including:

- imposing conditions on an agency's accreditation to manage specific risks or require an agency to undertake certain actions; and/or
- imposing conditions to prevent an agency from accepting further referrals of children and young people, or particular cohorts of children and young people until practice concerns are addressed; and/or
- requiring an agency to engage external experts to oversight its service delivery; and/or
- requiring an agency to implement an action plan to address specific concerns, with regular monitoring by OCG assessors; and/or
- deferring a decision regarding an agency's accreditation; and/or
- issuing a notice of intention to suspend or cancel accreditation; and/or
- referring individual matters of concern to the Department of Communities and Justice (DCJ); and/or
- requesting DCJ undertake an assessment of the safety, welfare and wellbeing of children and young people placed with an agency; and/or
- referring matters of concern to other regulators (where relevant), such as the Australian Charities and Not for Profit Commission.

The accreditation status and conditions of accreditation for all designated agencies is publicly available, on the OCG's website.

In addition to the regulatory approaches set out above the Children's Guardian has, in fact, exercised her power to suspend or cancel an agency's accreditation or registration, in respect of both statutory and voluntary OOHC providers.

In all instances where non-compliance is identified and regardless of the regulatory mechanism used to address concerns, the OCG increases the frequency of its onsite monitoring of practice. The OCG notes the Review's concerns regarding the Children's Guardian's use of the provision to defer a decision regarding an agency's application to renew accreditation. While an agency is permitted to continue to provide OOHC services whilst a decision is deferred, risks are managed through the imposition of specific conditions and increased monitoring by the OCG. Accreditation decisions are often deferred where an agency's practice is largely meeting the Standards, but where a particular area of practice requires further consolidation.

In exercising her regulatory powers, the Children's Guardian must consider the impact on children and young people, their carers and families. The ultimate sanction, cancelling an agency's accreditation, can have a significant impact on children and young people. Where an agency is no longer permitted to provide statutory OOHC services, the responsibility for these placements must transfer back to DCJ, or to another accredited non-government provider. In a sector where there is



not an abundance of providers with capacity to scale-up service delivery at short notice, the Children's Guardian must consider whether the risks to children and young people within an agency outweigh the possible disruption to their care arrangements and whether less intrusive approaches will address risks to children and young people, without unduly disrupting their care.

These considerations are particularly relevant in relation to the OOHC services provided by DCJ. NSW is unusual in that the government provider is required to meet the same standards of care as non-government providers. The purpose of having universal standards of care for government and non-government providers is to try to prevent a two-tier OOHC system emerging.

This poses a significant regulatory challenge however, where the government is the provider of first instance and last resort. The NSW child protection system relies on DCJ having the capacity to provide OOHC services and there are a number of circumstances in which DCJ's capacity to provide OOHC must be assured, regardless of its accreditation status:

- DCJ is the largest single provider of supported OOHC and this cohort of children and young people makes up a significant proportion of all children and young people in OOHC;
- DCJ manages the entry of children and young people into OOHC under Chapter 5 of the Care and Protection Act;
- the Secretary has a responsibility to supervise the placement of a child or young person if a designated agency is unable to fulfil its obligations in respect of the child or young person<sup>2</sup>, for instance if the Children's Guardian suspends or cancels an agency's accreditation; and
- the Minister for Families, Communities and Disability Services is responsible for the provision of accommodation for any child or young person for whom the Minister has sole parental responsibility or parental responsibility for residence<sup>3</sup>.

In order to balance the need to ensure the government provider meets the same standards of care as the non-government sector, while also ensuring that DCJ can meet its statutory obligations under the Care and Protection Act, the OCG has accredited individual districts and programs within DCJ, for example the Central Access Unit. This provides for one district within DCJ to oversee the OOHC service delivery of another district if a district or program is not meeting the requirements of the Standards. The OCG routinely monitors DCJ's delivery of OOHC services and has remote access to the ChildStory system. Matters of concern regarding individual children and young people are raised directly with DCJ.

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<sup>2</sup> *Children and Young Persons (Care and Protection) Act 1998* s.141

<sup>3</sup> *Children and Young Persons (Care and Protection) Act 1998* s.164

The accreditation system is not intended to be punitive and the OCG is firmly of the view that the interests of children and young people are best-served by a regulatory system that focuses on capacity building and continuous quality improvement.

The Review recommends legislative amendments to remove the Children's Guardian's capacity to defer an accreditation decision, or to accredit only those agencies that 'wholly' meet accreditation criteria. While acknowledging the rationale for this recommendation the OCG is concerned that this could have a disproportionate impact on Aboriginal agencies and reduce the number of Aboriginal agencies working with Aboriginal children and young people. In all instances where an agency is not wholly compliant with accreditation criteria, but working towards full compliance, the OCG increases its monitoring of these agencies.

### Planned review of the OOHC Standards and assessment framework

The last comprehensive review of the OOHC Standards and assessment framework was in 2010. The Standards were updated in 2015 and the OCG has undertaken to review the Standards and assessment framework again in 2020.

While many of the systemic issues identified in the report sit in the child protection sphere, there is an urgent need to improve the capacity of the OOHC sector to better meet the needs of Aboriginal children and young people as the single largest cohort of children in the OOHC system. The OCG intends to use the opportunity provided by the review of the Standards to more explicitly set out mandatory practice requirements to support culturally-appropriate care to Aboriginal children and young people, particularly those placed in the care of non – Aboriginal agencies.

To better understand practices that would create a more culturally safe OOHC system, the OCG will consult on the new accreditation criteria and assessment methodology with Aboriginal OOHC providers first. The discussions will particularly focus on practice requirements in relation to the Aboriginal Child Placement Principles, children and young people's wellbeing and cultural planning and support. Once practice requirements have been discussed with NSW Child, Family and Community Peak Aboriginal Corporation ('AbSec') and Aboriginal agencies, they will then be circulated in the wider OOHC and adoption sector for comment.

Discussions with the Aboriginal OOHC sector will also include identifying opportunities for the OCG to improve its approach to the assessment of Aboriginal service providers, particularly different approaches agencies can take to demonstrate how their practices meet the requirements of the Standards.

The OCG intends to commence these discussions in August 2020.

## Public reporting

The OCG notes the criticisms of its current approaches to public reporting regarding its activities in relation to accreditation and monitoring of OOHC providers.

While the OCG makes all information about agencies' accreditation status and conditions placed on their accreditation public, it has not, to date, made its feedback reports to agencies public. This is largely because the purpose of feedback reports is to assist agencies to address non-compliant practice.

The OCG does, however, acknowledge the importance of transparency in decision making for the public to have confidence in the OOHC system and the OCG is committed to improving its reporting on the activities of the Office and the performance of the OOHC sector. The OCG also acknowledges that some of the observations of this Review, regarding a regulatory system that appears to permit non-compliant providers to continue to operate without sanction, are in part the result of a lack of clear public reporting regarding the degree of proactive monitoring that takes place in the OOHC sector.

The OCG will include options for improved public reporting as part of the five-year review of the Standards.

## For-profit providers

The OCG notes recommendations regarding legislative amendments to provide that only a charitable or non-profit organisation may apply to the Children's Guardian for accreditation, similar to the provisions for the accreditation of adoption service providers.

The OCG acknowledges the Review's concerns regarding perverse financial incentives associated with for-profit providers. However, for-profit providers are required to meet the same standards of care as not-for-profit providers. Further consideration of the appropriateness of for-profit providers is underway.

## Expansion of the functions of the OCG

The Review notes that the functions of the OCG have expanded significantly over recent years. The OCG does not agree that this has resulted in a lack of focus on the OOHC sector. To the contrary, the OCG now has greater access to a range of information regarding the safety of children and young people in OOHC which allows the office to better-prioritise its work.

The OCG's monitoring of the OOHC sector has not diminished, however the OCG acknowledges that the Review's observations regarding the OCG's reporting of its activities may contribute to this perception.

## Oversight of the OCG

The Children's Guardian Act, introduced on 1 March 2020, expands the functions of the Joint Parliamentary Committee on Children and Young People, to oversee the WWCC and reportable conduct functions of the OCG. The Act also provides for decisions of the OCG, in relation to OOHC accreditation, to be reviewed by the NSW Civil and Administrative Tribunal. The OCG welcomes recommendations to expand parliamentary committee oversight to include the Children's Guardian's OOHC functions.

## Working With Children Check

The OCG acknowledges that the WWCC can be a barrier to Aboriginal people being authorised to care for children and young people. The WWCC system is significantly oversubscribed by organisations using the WWCC as a risk management strategy. The OCG devotes significant resources to educating the community regarding who does and does not require a WWCC, in order to minimise delays for individuals who do require a Check. The OCG has also entered into a Memorandum of Understanding with DCJ and the Children's Court to assist in prioritising WWCC risk assessments for potential carers, where a matter is before the Court.

The WWCC application process does not currently require applicants to indicate their cultural background, however records gathered during the application process may contain this information. The OCG has conducted internal reviews of risk assessment decisions in relation to Aboriginal applicants in order to better understand any systemic barriers to people persevering through the WWCC process.

As a result of these quality assurance processes the OCG identified that some Aboriginal applicants disengage from the WWCC risk assessment process, even where it was likely that they would be granted a clearance. The OCG has reviewed its correspondence and fact sheets to better-utilise less bureaucratic language. The OCG has also implemented changes to the risk assessment process and now rely more heavily on telephone discussions with applicants rather than relying entirely on written information.

The records review process has also been reviewed in acknowledgement that Aboriginal people are overrepresented in the criminal justice system and that criminal history checks may overestimate the risk an individual poses to children and young people. Where an applicant is

identified as Aboriginal, a further assessment is conducted to determine whether a risk assessment is warranted.

In June 2019, the OCG's WWCC Directorate began discussions with representatives from Maranguka, the operational arm of the Bourke Tribal Council. Discussions were focused on the consideration and endorsement of a collaboration agreement aimed at helping guide and improve the working relationship between the Bourke Aboriginal community and the OCG.

In alignment with Maranguka's guiding principles, the collaboration agreement specifically aims to facilitate increased access to and engagement with WWCC processes from the Bourke Aboriginal community. The collaboration agreement aims to promote self-determination and community governance by encouraging community participation and responsibility in decision making.

The OCG, Maranguka and the Bourke Tribal Council will work collaboratively to support Aboriginal applicants to increase engagement in WWCC processes. An increase in engagement with the WWCC will promote the importance of child safety and increase child related employment opportunities for individuals.

The OCG is also working with organisations such as Legal Aid to address systemic issues facing Aboriginal people in child-related work and children and young people leaving care, who require a WWCC.

# Recommendation to establish a Child Protection Commission

The OCG notes the Review's recommendation to establish a new independent statutory body, combining some of the oversight functions of the Children's Guardian and the NSW Ombudsman.

The Children's Guardian Act commenced on 1 March 2020 and makes a number of key provisions:

- consolidates the existing powers and functions of the Children's Guardian into one Act;
- transfers the oversight of the Official Community Visitors scheme (in relation to children) from the Ombudsman's office to the OCG;
- transfers the reportable conduct scheme from the Ombudsman's office to the OCG;
- implements recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding reportable conduct schemes;
- establishes a register of residential care workers;
- strengthens the Children's Guardian's powers to share information with other bodies including Commonwealth investigative and enforcement agencies in relation to the NDIS;
- provides for the reportable conduct functions to be oversighted by the Joint Parliamentary Committee on Children and Young people;
- provides for decisions of the Children's Guardian to be reviewed by NSW Civil and Administrative Tribunal;
- provides for the Children's Guardian to appoint a Deputy or Assistant Children's Guardian; and
- enshrines the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in the guiding principles of the Children's Guardian Act.

## Appointment of an Aboriginal Deputy Children's Guardian

The OCG welcomes the appointment of an Aboriginal Deputy Children's Guardian. This position will have visibility of the systems and practice issues across the sector and the platform to lead and influence change.

It is anticipated that the Deputy Children's Guardian will have responsibilities regarding implementation of Child Safe Standards and accreditation criteria in OOHC. Importantly, this will draw on the Family is Culture report and other reviews highlighting the changes needed in child protection overall.

The Review provides the OCG with an understanding of how the regulatory system is viewed and understood by people outside of the OOHC system. The OCG will use these observations and recommendations to improve upon the way we communicate to the public regarding our work.

Most importantly, however, the OCG will use the lessons learned from the review of individual children and young people, as well as the observations of the broader child protection system, to inform the review of the OOHC Standards and practice requirements to better-meet the needs of Aboriginal children and young people in OOHC.