

QUESTIONS ON NOTICE – OFFICE OF THE CHILDREN’S GUARDIAN

COMMITTEE ON CHILDREN AND YOUNG PEOPLE – 2021 Review of the annual reports and other matters of the Office of the Children’s Guardian

The Children’s Guardian Act 2019 and resourcing

1. The recent report of the Legislative Council Public Accountability Committee made recommendations to change the budget process for certain oversight agencies.
 - a. Do you have the necessary resources and funding to accommodate the increased workload and organisational change that has accompanied the new Act?
 - b. For the 2020-21 budget cycle, did your office make any requests for additional funding?
 - i. If so, for how much and for what purposes?
 - ii. Did you receive this funding?

ANSWER

A significant component of the OCGs legislated operations are funded from revenue associated with the WWCC. Revenue fluctuates from year to year based on demand and the OCG works with NSW Treasury to carry forward revenue from one year to the next to ensure a consistent funding base to meet operational requirements. The OCG, like all NSW Government funded agencies, is required to meet savings targets and efficiency dividends. Workload has also increased over the last 12 months. These combined factors have impacted on the funding and resources available to meet our legislated functions. The OCG acknowledges that the recent natural disasters and COVID-19 has had a major impact on government funding priorities.

For 2020-21, the OCG sought additional funding of \$1.8 million to meet costs associated with the expanded Reportable Conduct Scheme. The additional funding was not approved. The OCG continues to advise Treasury of the impact of this on our operations.

2. Has the introduction of the Reportable Conduct Scheme, in addition to your existing responsibilities with the Working with Children Check and Child Safe Standards, impacted on the ability of Children’s Guardian to fulfil its functions and objectives set by the various acts?
 - a. Is the current legislative framework adequate for facilitating the Children’s Guardian role and functions in promoting the quality of organisations and persons providing services to children in NSW?

ANSWER

The transfer of the Reportable Conduct Scheme brought a wealth of expertise and experience in oversight, complaint-handling, investigations and child protection to the OCG. The OCG has continued to fulfil all legislative obligations associated with its functions. The transfer did not, however, come with resources to absorb the additional workload associated with changes to the reporting regime.

The *Children’s Guardian Act 2019* introduced a number of changes to the Scheme. It introduced more robust reporting timeframes and requirements. This recognises the importance of relevant entities responding to child protection concerns in a timely manner and having access to expert advice and guidance. Previously, entities were required to make one notification of a reportable allegation within 30 days of becoming aware of it.

They must now make two reports within 30 days – one within 7 days of becoming aware of the reportable allegation and another within 30 days if the investigation is not completed. The objective of the new 7 and 30 reporting requirements is to ensure a more timely and rigorous response to reportable allegations by relevant entities and, thereby, increased protection of children.

The Act also expanded coverage of the Scheme to religious bodies, consistent with a recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse.

The current legislative framework provides adequate powers for the Children’s Guardian to fulfill her existing functions.

Working with Children Check (WWCC)

3. Can you estimate how many cases your Office’s compliance auditing has identified as being at risk of significant harm (Annual Report, pp29-30)?
 - a. How many were referred to police or the Department of Communities and Justice in the reporting period?

ANSWER

By way of clarification, risk of significant harm is a term that is used to describe the threshold for child protection concerns assessed by the Department of Communities and Justice. It is not a term that is used by the OCG. All cases where employers do not verify their workers could potentially pose a risk. The risk is that, while a worker may be initially cleared to work with children, they may subsequently commit an offence causing them to be barred from working with children.

Verification of a worker’s WWCC by the employer provides the OCG with notification that the worker is engaged by the employer. This allows the OCG to notify the employer of the change in clearance status and to remove the worker from child-related work, thereby reducing any risk to children.

In 2019, two matters were referred to the NSW Police Force for further action. One referral resulted in the person of interest being charged and continually monitored. The other matter had been finalised without charge.

4. Noting that there were 11 cases of barred applicants working with children identified through the continuous monitoring process (Annual Report, p30).
 - a. How long is the delay between the Children’s Guardian barring a person from working with children, and their employers being notified of this change in WWCC status?
 - b. Is there any risk that a person can continue working with children due to delays in communicating changes in WWCC status?

ANSWER

A worker is notified immediately after the decision has been made to bar them from working with children.

The OCG notifies employers who have verified the worker within 24 hours of the barring decision. There is little risk of harm to children caused by the time difference between the

decision to bar workers and contact with their employer. The greater risk is that employers haven't verified the worker and the OCG is unable to contact them. For clarification purposes, there were 11 cases where non-verifying employers were identified, contacted, and informed that they were engaging a worker who was barred from working with children. These organisations immediately removed their worker from child-related work. The two cases (as mentioned within page 31 of the Annual Report) referred to the NSW Police Force where a barred worker was engaging in child-related work, were notified to the OCG through the 'Report a Concern' form on the OCG website.

5. How has COVID-19 affected the number of applications for new or renewing Working with Children Checks?
- a. Can you provide the numbers of applications or renewals for WWCC during COVID-19 compared to previous reporting periods?

ANSWER

The Children's Guardian extended, by six months, WWCC clearances that were due to expire from 26 March 2020 to 26 September 2020. In addition, changes were made to allow authorised carers and adult members of carers' households to provide certified copies of their proof of identity documents to their foster care agency as part of the WWCC application process.

The data provided in the tables below compare WWCC application numbers and renewals for the March to December period in 2019 and 2020, by way of comparison.

New Applications	2019	2020	% Difference
March	30280	16643	-45%
April	19586	6174	-68%
May	21307	10072	-53%
June	17506	12695	-27%
July	16882	14247	-16%
August	17996	12732	-29%
September	17240	12560	-27%
October	15873	12093	-24%
November	16582	12721	-23%
December	8607	9634	12%
TOTAL	181859	119571	-34%

Renewal Applications	2019	2020	% Difference
March	20900	13237	-37%
April	14885	2562	-83%
May	18007	2991	-83%
June	15921	3881	-76%
July	14053	5169	-63%
August	14294	6745	-53%
September	13724	10765	-22%

October	12295	16529	34%
November	13288	19366	46%
December	8741	16869	93%
TOTAL	146108	98114	-33%

Total Applications	2019	2020	% Difference
New	181859	119571	-34%
Renewal	146108	98114	-33%
Total	327967	217685	-34%

Trends and changes in services and issues affecting children

6. Noting your Office's inter-jurisdictional work on the National Standards and your ongoing membership of the Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) group, can you update the Committee on your work with other jurisdictions in information sharing and legislative alignment?
- a. Has this collaborative work pointed to any areas of emerging 'best practice' that your Office should pursue, for promoting children's safety and wellbeing?

ANSWER

The Australian and New Zealand Children's Commissioners and Guardians Group (ANZCCG), and other related inter-jurisdictional groups, provide regular opportunities to identify and implement 'emerging' best practice to promote children's safety and wellbeing, including information sharing and legislative alignment. The OCG has Chaired the ANZCCG meetings since the beginning of the COVID-19 pandemic.

The OCG recently provided comments to the Priority Four Child Safety Working Group in relation to the national information sharing scheme. The OCG supports the key principles for a national information sharing scheme. The OCG supports consistent education, training, guidance and safeguards to promote understanding, implementation and confidence in appropriate information sharing, and to prevent inappropriate sharing and other undesirable or unauthorised practices.

The OCG looks for opportunities to support collaboration across jurisdictions particularly to promote consistency across child safe practice. A recent example is the Empowerment and Participation – Guide for Organisations, developed in partnership with the Victorian Children and Young People's Commission and the Australian Centre for Child Protection. This joint resource is a best practice guide in response to the Royal Commission findings that abuse is less likely to happen in organisations where children and young people participate in decisions that affect them and where they feel confident they will be listened to. The OCG also works closely with other jurisdictions operating reportable conduct schemes to align practice as much as possible and share resources.

Child Safe Standards

7. Do you believe it is appropriate for childcare services to be educating three year olds about gender diversity and fluidity?

ANSWER

Organisations are best placed to know and understand their children and young people and the communities they serve. They should consider how they can have regard to the diverse circumstances and needs of all children and young people in their care and implement practices in ways that are consistent with their values and beliefs.

8. Do you believe the Guide to the Child Safe Standards, which uses terminology such as “gender differences, or who are lesbian, gay, bisexual, transgender, intersex or questioning”, is targeted at three year olds or childcare services?
- Should the Guide to the Child Safe Standards be more specific about the targeted age group?

ANSWER

The Guide to the Child Safe Standards was developed to assist the thousands of different organisations that deliver services to children and young people of all ages in NSW. The intention of the guide is to provide basic guidance to support organisations in their efforts to implement the Child Safe Standards. The Guide is principle based and is not prescriptive, to enable organisations to respond to their own context.

9. The Child Safe Standards are not currently mandatory for the provision of Early Childhood Learning and Care services in NSW. Section five of the standards is to ensure that “people working with children are suitable and supported.”
- Have there been any serious incidents within the NSW Early Childhood Learning and Care sector, since 2019, which may have been prevented had section five of these standards currently been mandatory in NSW?
 - If so, how would these standards have better protected children in NSW?

ANSWER

This question should be directed to the Department of Education, which has regulatory responsibility for regulation of the early childhood education and care sector.

10. When will the Child Safe Standards become mandatory for the provision of Early Childhood Learning and Care in NSW?
- How will the Standards become mandatory, through amendments to the Children’s Guardian Act 2019 or through regulation?

ANSWER

The OCG conducted public consultation on the Exposure Draft of the Children’s Guardian Amendment (Child Safe Scheme) Bill 2020 between December 2020 and February 2021. The Child Safe Bill would embed the Child Safe Standards in legislation and create a requirement that certain child-related organisations implement the Child Safe Standards through their systems, policies and procedures. This builds on the existing requirement in section 54 of the *Children’s Guardian Act 2019*.

11. The Children’s Guardian has focused on six sectors for capability building and support using the Child Safe Standards (Annual Report, p18). These sectors

include: faith based, local government, early childhood, Aboriginal agencies, and sports clubs and associations. However, only five of these sectors are expected to be included in the Child Safe Standards scheme.

- a. Which of the aforementioned sectors is not expected to be included in the scheme?
- b. On what basis is the excluded sector not expected to be included in the scheme?
- c. Should not all sectors which are involved with the delivery of support, education, training or care of children be subject to the standards?
 - i. If not, why not?

ANSWER

Many stakeholders in our consultations on the Exposure Draft continued to be supportive of a wider scope consistent with the recommendations of the Royal Commission. A broader scope would include, for example, sport and recreation organisations. Some religious stakeholders also considered the scope of the scheme was too narrow and should include other non-government organisations. Based on this feedback, the OCG will reconsider the scope of the Child Safe Scheme.

While some organisations that were recommended by the Royal Commission for inclusion in the scheme may not be included in scope, the Child Safe Standards can be implemented voluntarily by all child-related organisations. Capability building and support resources developed by the OCG will be available to all organisations for free and there is a current list of resources available on our website.