

Obj file ref:

The Hon Helen Dalton MLA
Chair, Committee on Children and Young People
NSW Parliament
Macquarie Street SYDNEY NSW 2000

By email: childrenyoungpeople@parliament.nsw.gov.au

19 July 2024

Dear Ms Dalton

2024 Review of the Annual Reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

Thank you for the further opportunity to appear before the Committee on Children and Young People at its recent public hearing on 2 July 2024.

Please find below our responses to questions on notice, and responses to supplementary questions for witnesses.

Questions on notice from the Hon. Natasha Maclaren-Jones

In the report you refer to care applications refused and withdrawn. I wanted to understand the difference between "withdrawn-no concerns" and then "withdrawn- with concerns".

The Carers Register requires a designated agency to record the outcome of an individual's application to be authorised as a carer, including where an individual chooses to withdraw their application to be authorised as a carer.

In circumstances where an individual chooses to withdraw their application, the relevant designated agency must indicate on the Carers Register whether the application has been withdrawn with concerns, or withdrawn with no concerns.

Where an individual chooses to withdraw their application to be authorised as a carer, but the relevant designated agency holds information about the person that may indicate the person is not suitable to be authorised as a carer, the designated agency may record on the Carers Register that the individual has withdrawn their application to be authorised as a carer, 'with concerns'. This alerts any other designated agency that has authorised, or may authorise the individual in future, to contact the original agency and obtain relevant information.

The Carers Register does not currently record the reasons an individual may choose to withdraw their application to be authorised as a carer.

Should a carer wish to challenge an application that's been withdrawn due to concerns raised by one of the providers, is there a mechanism for that? What is the process?

The *Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022* amended section 245 of the *Children and Young Persons (Care and Protection) Act 1998* to provide that a decision not to authorise a person as an authorised carer is reviewable by the NSW Civil and Administrative Tribunal (NCAT).

If there's a timeline for finalising that process?

The OCG does not collect data regarding applications to NCAT made by individuals seeking a review of decisions made in relation to their authorisation as a carer.

Questions on notice from the Hon. Emily Suvaal

In addition to that, in the supplementary answers that you provided, you mentioned a final report with recommendations that have been incorporated into a new people strategy. Is it possible for the Committee to get a copy of that final report?

In January 2024, Anne Cosgrove, an experienced People and Culture Senior Executive, was engaged in response to issues raised by our staff in the 2023 "People Matter Employment Survey" (the PMES). In light of the results of the PMES, and related discussions with staff, we took the view that it was important that we engage an independent expert to carry out this work to strengthen our workplace culture. As part of Anne Cosgrove's review, she interviewed over 80 employees who spoke confidentially to her and shared their perspectives on what we do well, issues and/or concerns and how they can be addressed.

Due to the assurances of confidentiality given as part of the review, we have concerns about providing to the Committee the whole of the report. As a result, we have edited the report to remove direct quotes from staff. We have also edited the report to remove references which identify particular individuals or small groups of staff, which might unfairly single out individual employees. However, it is important for me to note that any comments which relate directly to me have been retained in the attached report.

I also note that OCG staff have been made aware of the broad themes arising from the report, and the actions being taken in response. We would appreciate the Committee treating the report as confidential and not for publication.

Please also find attached our new People & Culture strategy, which was developed in response to Anne Cosgrove's report.

In terms of the review for these senior barristers, the adequacy and effectiveness of the existing arrangements, which would then inform a review of your operations and practice, are you able to provide that to the oversight committee as well?

We note the request to provide a copy of the advice given by Senior Counsel in connection with her review of the key WWCC and NDISWC operational processes, and other issues relevant to the functions of the Children's Guardian. Whilst these legal advices attract legal professional privilege, we are happy to provide the Committee with a copy of these advices to enable a better understanding the issues canvassed. However, before we provide this advice, we seek an assurance that the advice will not be published.

In the meantime, please find below a summary of the legal and operational issues we have received advice on. Issues solely relevant to NDIS Worker Check functions are not summarised below, noting that the NDIS Worker Check function falls outside the remit of the Committee.

Advice from Senior Counsel considered issues relating to a number of key areas including:

- How the principles of procedural fairness apply in the WWCC assessment process.
- The relevant investigative steps that ought to be taken during a WWCC risk assessment. In this regard, judicial criticism of a failure by the Children's Guardian to make certain inquiries was noted in the 2016 matter *Children's Guardian v BRL*.
- The evidentiary rules and thresholds relevant to WWCC assessment decisions, including the way in which criminal allegations are considered in connection with the WWCC risk assessment process (including the way in which regard should be given to the rules of evidence).
- Issues relating to the absence of an embedded legal team within the WWCC Directorate.
- The application of administrative law principles, including the Hardiman Principle, to NCAT proceedings under s27 and s28 of the *Child Protection (Working with Children) Act 2012*.
- The OCG's powers to share personal information obtained in the course of its activities internally, between operational directorates of the OCG.
- The scope of the application of the Reportable Conduct Scheme under Part 4 of *Children's Guardian Act 2019* to certain entities, including organisations providing camps for children; and the trigger for duty of notification under the Reportable Conduct Scheme.

In connection with aspects of Senior Counsel's advice, she has indicated that the advice is preliminary in nature, and requires further operational input. Against this background, we have established governance arrangements which have been determining the priority areas for implementation. A number of reforms have already been implemented, or are in the process of implementation. Due to the nature and impact of some of the issues advised on, further discussion or consultation is required and is being carried out.

Some of the key actions taken in response are set out below:

- The making of further investigative actions in WWCC matters has commenced on a case-by-case basis, and steps are underway to examine the best way to embed the changes into our operations more broadly;
- The WWCC Directorate is being strengthened in terms of its legal capacity, with a number of lawyers set to join the team to work closely with risk assessors carrying out WWCC risk assessments;

- Information is being exchanged between operational areas of our office under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* on a case-by-case basis, with further work underway to embed this reform into our practice across the board;
- Ms Bennett's advice in some areas has prompted further consultation with our key stakeholders. For example:
 - The advice relating to the trigger for a notification under Part 4 of the *Children's Guardian Act* has significant implications for the OCG and our stakeholders, and is the subject of ongoing consultation;
 - The advice relating to the application of the Reportable Conduct Scheme to providers of overnight camps is an issue that will be the subject of consultation with the Sport and Recreation sector, and other relevant sectors.

Supplementary questions for witnesses

1. During the public hearing, you discussed the jurisdictional limitations of your office, particularly the lack of a complaints jurisdiction for carers and young people outside of reportable conduct matters; on need for effective engagement with crossbench representatives and NGO.

a. Please provide a timeline for the work planned or continuing seeking to address jurisdictional limitations, compliance with Child Safe Standards, and enhancing crossbench engagement.

Report in response to DCJ's System review into Out-of-Home Care

As highlighted in my evidence on 2 July 2024, we are close to finalising a report in response to DCJ's System Review into Out-of-Home Care. Within the next week we will provide the draft report to stakeholders. Following consultation taking place on the report, we hope to have it made public within the next 1 to 2 months.

Proposed expansion of the Child Safe Scheme

As mentioned in the handout provided to the Committee, we are advocating for an expansion of the Child Safe Scheme to include additional entities that are contracted by DCJ. We have raised with DCJ the need for legislative change, and secured their commitment to examine the options in this area. As DCJ has taken responsibility for developing the proposal for the expansion of the jurisdiction of the scheme, we are unable to advise the Committee as to when the jurisdiction will be expanded.

Compliance with the Child Safe Standards

We continue to work closely with a range of stakeholders to drive compliance with the Child Safe Standards (CSS). We discuss below a number of relevant initiatives.

'Getting Started' approach to the Child Safe Standards

A key strategic initiative underway is to develop, communicate and implement a 'Getting Started' approach for smaller organisations that are at the early stages of becoming child safe, particularly smaller faith-based organisations, and sport and recreational clubs and providers. This approach involves developing simplified, foundational resources that can be used as the first stage to put in place the ten standards, taking a step-by-step approach to moving towards compliance.

We will take a multi-pronged approach to getting these educational resources and support tools out to organisations under the scheme, through our increased focus on strategic engagement across these two sectors.

For the faith-based sector, which is not under a prescribed agency, a range of strategic initiatives are now underway to significantly increase awareness of the Child Safe Scheme. We have been working with our multi-faith Community of Practice and other community leaders to strengthen our outreach to these organisations and help tailor and disseminate a new 'Getting Started' toolkit and an updated faith-based handbook. In August, an inaugural forum will be held with Jewish faith leaders to work together over the coming year to take a step-by-step approach to embedding the Child Safe Standards in Jewish faith-based settings across NSW and to move towards compliance with the Standards. We have also had initial discussions with Multicultural NSW in relation to working with existing faith-based committees including consulting with the NSW Faith Affairs Council.

Child Safe Prescribed Agency Steering Committee

Over the past few months, we have worked to set up a Child Safe Prescribed Agency (CSPA) Steering Committee - an initiative to support cross sector engagement, as well as implementation, monitoring and reporting on the Child Safe Action Plans developed by each of the prescribed agencies listed in section 8G of the *Children's Guardian Act 2019* (NSW). The CSPA Steering Committee will commence in August 2024.

NSW Health

We are continuing to work with NSW Health to support Local Health Districts, networks and other entities under the Child Safe Scheme. This has involved significant collaboration with NSW Health to provide training and to co-host a Community of Practice to share emerging best practice, develop areas of knowledge and bring in expert speakers. We have been providing expert advice to NSW Health in developing a sector-specific eLearning program to support health entities to embed the standards.

Sport and Recreation

We have been doing a stocktake to better understand the gaps in implementing the Standards across the broad sport and recreation sector to inform our strategies going forward. This includes mapping safeguarding resources that exist across the sector so that we can ensure the OCG's resources are targeted where they are needed the most and complement the many other resources available. It also includes mapping the frameworks that exist for oversight across the sector, including the National Integrity Framework for sporting organisations, so we can identify gaps in oversight and monitoring. Together with the Office of Sport we will then develop a plan to identify where the OCG can have the most impact in embedding and improving compliance with the Scheme. This will include regional workshops with local sports clubs to share the "getting started" message, and build their capability in child safety, as well as using provisions in funding agreements to leverage compliance with the Scheme.

Local Government

We are working in partnership with the Office of Local Government (the OLG) who have recently completed their second awareness survey amongst local councils on the Standards. Early findings from this survey indicate that around 90% of local councils who participated in the survey are now aware of, and taking certain steps designed to implement the Standards. The results of this survey will be used to inform a strategy for the OCG and the OLG to work together on seeking to strengthen compliance with the Child Safe Standards.

DCJ

In late June we participated in a sector conversation led by FaMS and with DCJ to discuss how we can work together to support services funded under Targeted Early Intervention and Family Preservation to implement the Standards. It was agreed that we would establish a sector working group to lead this work and we are currently developing a joint plan for this group's work.

Early Childhood Education and Care Sector

We have been working closely with the Early Childhood Education and Care Regulatory Authority (ECEC RA) over the last two months to develop an effective systemic approach to implementation, monitoring and assurance of the Child Safe Standards in early childhood education and care services across NSW. The approach taken is leveraging the National Quality Framework (NQF) which provides a national approach to regulation, assessment and quality improvement for most education and care services for children around Australia.

To date, ECEC RA has considered what is required under the NQF regulatory scheme and are identifying how they will build into their system awareness of, and compliance with, the Child Safe Standards. We have proposed that a memorandum of understanding (or similar) is put in place for an agreed monitoring and assurance approach to support effective and consistent implementation of the Child Safe Standards. This approach will include establishing agreed mechanisms for resolving individual matters.

We have also been finalising the development of targeted eLearning modules, working closely with ECEC.

Education Sector

Over the last two months, we have been working closely with key stakeholders in the education sector including the NSW Department of Education and NESA, as the prescribed agencies under the scheme, and Catholic Schools NSW, the Association of Independent Schools NSW, and Early Education and Care.

Working closely with the NSW Department of Education, we've developed a systemic approach to strengthen the implementation, monitoring and assurance of the Child Safe Standards in all NSW public schools. With a critical focus on reducing duplication, this utilises analysis by the Department of what they are already required to deliver under existing NESA school registration requirements and departmental monitoring and compliance processes, to identify what additional activities are needed across NSW public schools to comply with the Child Safe Standards.

The Department of Education is now co-ordinating observation visits for the OCG to show how they monitor compliance as a system and how they would meet the OCG's compliance requirements with the Child Safe Scheme. It is anticipated that an annual plan will be agreed between the agencies in support of effective and consistent implementation of the Child Safe Standards, reflected in a memorandum of understanding (or similar). A similar approach has been proposed to Catholic Systemic Schools who are registered as a system with NESA for the purposes of school registration. However, our assessment is that much more needs to be done in the non-government schools sector to develop an effective framework for delivering child safe practice across all non-government schools.

NSW Budget

2. How much did the Office of the Children's Guardian (OCG) receive in the NSW Budget 2023-24?

In terms of our 2023-24 budget, the OCG received appropriations of \$30,680,075 and were allocated an additional \$22.1M from WWCC and NDISWC revenue.

3. How much of the funding in the 2023-24 Budget was recurrent?

Out of the total Appropriations made in the Budget, \$29,241,075 were recurrent. In addition, the OCG was allocated \$22.1M from WWCC and NDISWC revenue.

a. What is the dollar figure breakdown of this funding?

The Recurrent Appropriation was \$29,241,075. As noted above, revenue allocated from WWCC and NDISWC fees was budgeted at \$22.1M.

4. How much of the funding in the 2023-24 Budget was new?

There was a new capital allocation of \$1,250,000 and, of the Recurrent Appropriation of \$29,241,075, a one-off allocation of \$2,642,000 was new.

a. What is the dollar figure breakdown of this funding?

Capital allocation for Residential Care Workers Register \$1,250,000
Child Safe Scheme: \$2,000,000
Reportable Conduct Directorate: \$642,000

5. In relation to the Budget cycle for 2023-24, did the OCG make any requests for additional funding?

Yes, the OCG made requests for additional funding.

a. If so, how much and for what purpose?

We understand that our communications with government relating to additional funding is Cabinet-in-Confidence.

b. Did the OCG receive this funding?

The OCG received:

- Approval to carry-forward \$8M of available funds from other sources to fund ongoing operations
- \$2,000,000 one-off funding for the Child Safe Scheme
- \$642,000 one-off funding for the Reportable Conduct Directorate
- \$1,250,000 of capital grant for a Residential Care Worker Register
- -\$162,000 for a reduction to expenditure items as per an Election Commitment

In addition, during the year, the OCG was granted \$174,500 of Commonwealth funding to support NDIS worker screening, but this was subsequently carried forward to 2024-25.

6. How much did the OCG receive in the NSW Budget 2024-25?

In terms of our 2024-25 budget, the OCG received appropriations of \$22,783,711 and were allocated an additional \$37.8M from WWCC and NDISWC revenue.

7. How much of the funding in the 2024-25 Budget was recurrent?

Recurrent Appropriations of \$22,594,711 were made for the OCG in the State Budget for the year 2024-25. In addition, the OCG was allocated \$37.8M from WWCC and NDISWC revenue.

a. What is the dollar figure breakdown of this funding?

The Recurrent Appropriation was \$22,594,711. As noted above revenue allocated from WWCC and NDISWC fees has been budgeted at \$37.8M.

8. How much of the funding in the 2024-25 Budget was new?

Of the Appropriation of \$22,783,711, a one-off allocation of \$2,174,500 was new, although it was originally to be appropriated in 2023-24 but was deferred to 2024-25.

a. What is the dollar figure breakdown of this funding?

Child Safe Scheme: \$2,000,000

Commonwealth funds to support NDIS worker screening: \$174,500

9. In relation to the Budget cycle for 2024-25, did the OCG make any requests for additional funding?

Yes, the OCG made requests for additional funding.

a. If so, how much and for what purpose?

We understand that our communications with government relating to additional funding is Cabinet-in-Confidence.

b. Did the OCG receive this funding?

During the 2024-25 Budget cycle, a proposal to increase the fees for WWCC and NDISWC was endorsed by Government and was announced on 18 June 2024 in the State Budget papers. The increase took the application fee from \$80 to \$105 (and then indexed by CPI annually thereafter) and is expected to deliver increased revenue of \$9M in 2024-25, and \$46.5M over the four years to 2027-28, to support the activities of the OCG.

However concurrently, the Budget appropriation to the OCG was reduced by \$7M in 2024-25 and by \$33M over the four years to 2027-28.

The OCG received approval to carry forward the Child Safe Scheme one-off funding of \$2,000,000 and the Commonwealth funding of \$174,500 for NDIS, as referred to above.

New Code of Practice for out-of-home care agencies

10. How many consultations were held for the new Code of Practice?

In November 2021 the OCG released a discussion paper seeking feedback from the sector on options for bringing designated agencies and adoption service providers into the new Child Safe Scheme, with additional sector-specific requirements in the form of new accreditation criteria (the Code of Practice)

From September - November 2022, the OCG consulted with the sector again, on what practice requirements should be included in the code of practice. Using the feedback from the submissions received, the OCG worked with the Parliamentary Counsel's Office to prepare a draft Code of Practice for Designated Agencies and Adoption Service Providers ("the Code").

In February – April 2024 a final round of consultation took place on the draft Code. Sector feedback indicated overall, the practice requirements set out in the draft Code are clear and reasonable. However, some common themes emerged regarding additional requirements that should be included, and the OCG has worked with Parliamentary Counsel's Office to incorporate this feedback in the final Code.

11. How many submissions were received?

A total of 32 submissions have been received from designated and adoption service providers, peak bodies and one authorised carer.

The 32 submissions include:

- 15 submissions in response to the OCG's November 2021 discussion paper
- 8 submissions in response to the OCG's September – November 2022 consultation, and
- 9 submissions in response to the OCG's final consultation in February – April 2024.

12. What date will the new Code of Practice be published?

Our intention is for the Code to commence on 1 July 2025, subject to the approval of the Minister and the Governor.

Specialised substitute residential care

13. How many providers are listed with the OCG that provide specialised substitute residential care?

As at 30 June 2024, there were 383 Specialised Substitute Residential Care (SSRC) providers registered and listed with the OCG.

14. Do foster carers caring for children and young people in out-of-home care use specialised substitute residential care?

SSRC is a voluntary arrangement between a parent and an organisation or sole trader for their child to receive care away from their usual home for 3 or more nights in any period of 7 days. The parent remains in control of care decisions and retains parental responsibility. The care must be for the purposes of respite or behaviour support or

funded by the National Disability Insurance Scheme. Providing respite care for children and young people who are in foster care/out-of-home care/statutory care is not considered SSRC.

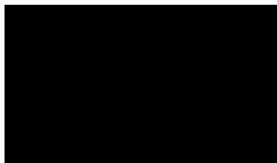
15. What is the maximum stay for 'longer-term residential care'?

In relation to limit on time to be spent in SSRC, under the *Children's Guardian Act 2019* section 8ZA:

- A child must not remain in specialised substitute residential care for more than a total of 90 days in a period of 12 months unless the care is provided or supervised by a designated agency.
- A child may remain in specialised substitute residential care for more than a total of 180 days in a period of 12 months only if the designated agency providing or supervising the care, or the Children's Guardian has ensured there is a plan that addresses the child's needs under the arrangement.

Thank you again for the opportunity to provide information about the important work of the OCG. Please do not hesitate to contact me should you wish to discuss any of the information in this correspondence.

Yours sincerely



Steve Kinmond OAM
NSW Children's Guardian

Our people strategy

Supporting our people and being a great place to work





ATTRACT

A magnet for talented people who connect with our vision and values

- Review talent attraction and recruitment practices including candidate care in each phase of process, how we shortlist, assess and select candidates
- Coach / support hiring managers
- Design onboarding/induction activities that assist staff adjust quickly
- Equip managers with tools to help employees adjust to the social and performance aspects of their jobs
- Workforce review of current and future needs to promote and nurture talent pipelines e.g., cadet program



ENGAGE

A great place to work where people are supported to be and do their best

- Communicate OCG strategic plan outlining a clear vision and direction for where we are is headed with clear expectations on how the Directorates support that direction.
- Leaders guide the journey and set the narrative aligning operational goals and individual roles.
- Leaders walk the talk and create the conditions for their teams to thrive.
- Values led culture, one team ethos.
- Identify common language to build and reinforce kinship and common understanding.
- Adopt growth / strengths mindset and ways of working.



GROW

Invest in and reward people who make a difference in our organisation

- Equip our people with the required skills and information, set plans and review progress on a regular basis.
- Ensure line managers get tools they need to enable meaningful discussion.
- Diversify, enable and grow together by breaking down silos, connecting dots of opportunity.
- Courageously and constructively challenge what isn't working, experiment with new ideas and create opportunities that support positive change for the greater good.
- Nurture leadership at all levels (responsibility, empowerment, accountability and learning).



GUIDE

The right resources, tools and systems to deliver service excellence

- Review operating model through systems, procedures, structure, hierarchy, controls and goals to ensure we are setting ourselves up to achieve our goals and meet future challenges.
- Review P&C systems and frameworks to ensure they can support the desired culture and behaviour.
- Apply human-centred design thinking to create positive employee experiences and deliver value-add services.
- Embed a culture of feedback that promotes meaningful discussion and problem solving.

12-month program of work

ATTRACT

OCG Recruitment enhancement

- Understanding the process
- Hiring Manager practices
- Upskilling panel members
- Role description library
- Resources and toolkits

Elevate new starter experience

- Employee handbook and onboarding checklists for new starters and managers
- OCG induction
- Directorate onboarding pathway
- Up-to-date org charts

Talent pipelines

- Cadet program
- PSC graduate program

Retaining talent

- Mobility at the OCG
- Drive your career workshops

ENGAGE

Communication & Engagement

- Monthly P&C update
- Quarterly showcase
- Quarterly leadership forum
- PMES / Voice of our people
- Comms & Culture champions

OCG Recognition Program

- Informal and formal

Integrated Wellbeing Program

- Health checks and flu shots
- OHS operating practices (offsite)
- Training: vicarious, resilience, accidental counsellor, wellbeing checks, in-house support and debriefing, professional supervision, mental health first aid, defensive tactics

Diversity and Inclusion Program

- First Nations program
- Others to be scoped

GROW

Learning & Development

- Roles/skills/gap audit
- 70/20/10 adoption
- L&D calendar
- Leadership development

Talent management

- Talent framework and annual reviews
- Succession plans

Performance management

- Meaningful performance and feedback conversations
- Meaningful PDP
- myCareer how to

Continuous improvement

- Feedback loops and mechanisms
- X-directorate assessment and working group (employee led innovation and problem solving)

GUIDE

Business Partnering

- Executive level
- Operational level
- Workforce management plans
- Establishment maintenance
- Case management

P&C Intranet

- Single source of truth
- Internal job boards
- Resources and knowledge articles
- Calendar of upcoming events

Policy library

- Review current and currency
- Address gaps

Grievance Management

- Policy and procedure development
- Implementation and reporting

System Upgrades

- Move to DCJ platforms (TBC)