

Submission

No 111

INQUIRY INTO CHILDREN AND YOUNG PEOPLE 9-14 YEARS IN NSW

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NSW OFFICE FOR CHILDREN

**the Children's
Guardian.**

Submission to the

**Parliamentary Joint Committee on Children
and Young People**

**Inquiry into Children and Young People
9-14 Years in NSW**

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1. INTRODUCTION

The Office for Children - Children's Guardian (OCCG) is pleased to make a submission to the Inquiry by the Parliamentary Joint Committee on Children and Young People into children and young people aged between 9 – 14 years.

The submission by the Children's Guardian is in relation to the following Terms of Reference:

- i. the needs of children in the middle years i.e. between about nine and fourteen years of age; and
- ii. the extent to which changing workplace practices have impacted on children and young people in the middle years, including possible changes to workplace practices which have the potential to benefit children and young people in the middle years.

2. THE CHILDREN'S GUARDIAN – OVERVIEW

The Children's Guardian is a statutory office, established by s178 of the *Children and Young Persons (Care and Protection) Act 1998*. Its functions are of a regulatory nature.

2.1 OUT-OF-HOME CARE (OOHC)

The Children's Guardian's principal functions relate to children and young people in OOHC and the designated agencies that make arrangements for the provision of OOHC. These functions make up approximately 70% of the Children's Guardian's workload.

The Children's Guardian's OOHC functions are regulated by the:

- *Children and Young Persons (Care and Protection) Act 1998* ("the Act");
- *Children and Young Persons (Care and Protection) Regulation 2000* ("the Regulation"); and
- *Children and Young Persons (Savings and Transitional) Regulation 2000* ("the Transitional Regulation").

Currently, the main OOHC functions of the Children's Guardian include:

- promoting the best interests of all children and young people in OOHC – s181(1)(b) of the Act;
- ensuring that the rights of all children and young people in OOHC are safeguarded and promoted – s181(1)(c) of the Act;
- developing criteria for the accreditation of designated agencies, for the approval of the Minister – cl 36(2) of the Regulation;

- accrediting designated agencies - s181(1)(e) of the Act and Division 4 of Part 6 of the Regulation;
- administering a Quality Improvement Program to progress designated agencies that were making arrangements for the provision of OOHC before the accreditation scheme commenced (“interim accredited agencies”) to accreditation – s181(1)(e) of the Act and Part 3A of the Transitional Regulation;
- monitoring the responsibilities of designated agencies under the Act and regulations – s181(1)(e) of the Act;
- policy development and making recommendations – see sections 150(4), 149D and 187(2)(c) of the Act.

As part of its monitoring functions the OCCG has established an annual Case File Audit program (CFA) to review the files of children and young people in OOHC.

For the first time, in 2006-2007, the CFA sample was representative of the OOHC population in NSW. The findings of this audit will provide the baseline for measuring improvement in casework practice over time.

The OCCG’s comprehensive 2006-2007 Case File Audit Report is available at www.kidsguardian.nsw.gov.au.

Part 3 of this submission draws on the data collected in the OCCG’s 2006-2007 Case File Audit Report to review the needs of children and young people in OOHC in the 9 to 14 age group.

2.2 CHILDREN’S EMPLOYMENT

The Children’s Guardian also authorises the paid employment of children under the age of 15 in entertainment, exhibition, still photography and door-to-door sales work, and monitoring employer compliance with the child employment provisions of Chapter 13 of the Act and the *Children and Young Persons (Care and Protection – Child Employment) Regulation 2005* (the “2005 Regulation”).

Entertainment and exhibition includes; film and television, commercials and advertising, film/video or stills for the internet, radio and voice-overs, corporate events/launches, live theatre, other live performances (eg shopping centre performances), and catwalk modelling.

Children under 15 years of age cannot be engaged in paid work in regulated industries unless the Children’s Guardian authorises the employer, or the employer is exempt from the requirement to hold an authority. The legislation applies to employment for payment or some other material benefit.

The children’s employment legislation administered by the Children’s Guardian has a beneficial effect on the well-being of children because the regulatory constraints reduce the risk of exploitation and abuse. The legislation:

- addresses children's employment from a child welfare, rather than an industrial relations, perspective, and
- promotes employers, their agents, parents and the Children's Guardian taking shared responsibility for promoting the safety, welfare and well-being of children in prescribed employment.

Employer authorities may be issued for either one month or twelve months. The Children's Guardian may impose additional conditions on an employer's authority.

Both authorised and exempt employers must comply with a Code of Practice, which is Schedule 1 of the 2005 Regulation. It covers matters such as the hours, the number of days and times of work, the supervision of children, parental contact, travel to and from work, and balance of education and work requirements.

The Children's Guardian may approve variations to the Code of Practice. Applications for variations are considered on their merits and are only granted where there is confidence that the welfare of any employed child will not be at risk.

The Code of Practice requires employers to notify the Children's Guardian, and provide information regarding the employment, the child, and the child's role, before each instance of intended child employment. OCCG staff:

- check that the employer's plans are likely to comply with the legislation and the conditions of its authority to employ children;
- consult with employers if specific safety and welfare issues are identified;
- investigate and take appropriate action in response to alleged breaches of legislative requirements; and
- educate employers about the requirements of the children's employment legislation and the needs of children.

Other government agencies such as the Office of Industrial Relations in the NSW Department of Commerce and WorkCover NSW have a role in the regulation of children's employment.

On 22 May 2007, the Full Bench of the Industrial Relations Commission of NSW (IRC) handed down its decision in the Child Employment Principles Case. The IRC found the importance of the regulatory framework under the Act and the 2005 Regulation is apparent and is an important matter to be taken into account by industrial courts. This is the first time the protections of the Code of Practice have been given recognition in industrial law; it is now clear that industrial courts may enforce compliance with the legislation and the Code through their decisions. A copy of the Children's Guardian's submission to the IRC comprises part 4 of this submission.

A draft regulation has been prepared that ensures the provisions of the Code of Practice prevail over general award/industrial conditions, unless those provisions are more beneficial than those in the Code. The draft regulation

also ensures that children who provide paid services, other than under a formal contract of employment, are protected.

3. OCCG CASE FILE AUDIT FINDINGS IN RELATION TO NEEDS OF CHILDREN AGED BETWEEN 9 AND 14 YEARS

The CFA program administered by the OCCG monitors the provision of OOHC by designated agencies by focusing on the extent to which case management and casework practice is compliant with the requirements of the Act and its Regulations and relevant *NSW Out-of- Home Care Standards*.¹ The CFA program focuses on documentation held on case files as the best available indicator of case management and casework practice. It makes sense that there should be a strong correlation between actual practice and documented practice.

In its 2006-2007 CFA the OCCG audited a combined total of 2,335 files belonging to the Department of Community Services, Department of Ageing Disability and Home Care and 49 non government agencies. The sample size was drawn using *iSix Sigma* methodology as recommended by Pricewaterhouse Coopers (PwC). The OCCG utilised a custom-built database developed by PwC to complete this audit.

In keeping with the OCCG's statutory role the CFA program assesses compliance across four key areas:

- File Content and Structure
- Participation
- Plan/review content
- ATSI Placement Principles.

For the purpose of making this submission the OCCG commissioned PwC to reconfigure the 2006-2007 CFA data by segmenting three age profiles, namely, those under 9 years, those aged 9-14 years and those over 14 years. The OCCG has analysed the resulting data recorded against the key statutory areas and the following provides a summary of our findings with respect to health and immunisation, education and participation.

¹ In keeping with the principles of quality improvement, the compliance threshold was set at 80% in 2006-2007. This figure was based on Gore's *National Performance Review: Best Practice in Performance Measurement* (1997)

3.1 HEALTH AND IMMUNISATION

Children and young people in OOHC are more likely than members of the general population to have high levels of acute and chronic health problems and/or developmental issues. The OCCG is of the opinion that it is imperative that health information and progress is monitored and recorded by designated agencies in order to meet the basic health care needs of children and young people in their care.

In this CFA sample it was pleasing that the developmental history on the files of children and young people between 9 and 14 years reached good levels of compliance (95%). However despite this, the following observations were also made:

- A little more than half of the 9-14 age group (58%) had doctors details recorded on their files and 61% had details of known medical problems recorded. The compliance rates for these two items were similarly low for the other two age groups.

Designated agencies are expected to maintain immunisation records for children and young people.

- In the 9-14 year age group, only 31% had immunisations records on file.
- Of the remaining files without immunisation records, only 23% had documentation showing that efforts had been made to locate or review missing immunisation records. In comparison, 48% of those under 9 years old had immunisation records on file but only 20% aged over 14 years had this information.
- Documented efforts to locate missing or review immunisations for the over 14 years was slightly higher (35%) than in the 9-14 year age group, but nonetheless under compliant and disappointing.
- When comparing the findings across the files of Indigenous and non-Indigenous children aged 9-14 years, there was no significant difference between the numbers of files which had immunisation records. However, when looking at efforts made to locate missing records, more effort was documented on files of non-Indigenous children (26%) than Indigenous children (16%).

It is of concern that children and young people appear to be missing out on necessary immunisations. In view of these findings and in line with expert advice², designated agencies must find ways in which to remediate this.

² The National Health & Medical Research Council *Australian Immunisation Handbook 8th Edition*.

Australian research has found that children in care experience significantly poorer mental health outcomes than children who have never been in care and a significant minority of children in care experience complex psychological and behavioural problems.³

In order to meet the mental health needs of children and young people designated agencies are expected to document behaviour management issues and, where appropriate, develop plans and then review these plans, with expert advice if necessary.

- In the 9-14 year age group, 77% of case files showed that behaviour management issues were addressed in current plans/reviews where applicable.

Where applicable only 59% of all children and young people in this age group had the necessary current and relevant psychiatric or psychological report to accompany their reviews. This is significantly below the 80% threshold and does not comply with the guidelines published by the OCCG on this matter.

- Where psychotropic medication was prescribed, only 63% of case files in the 9-14 year age group had the required consent from the person with parental responsibility.
- Evidence of consents and current psychological or psychiatric reports were less likely to be located on the files of Indigenous children compared with non-Indigenous children in the 9-14 year age group.
- Females between the age of 9-14 years were far more likely (85%) to have documented consent arrangements compared to males in this age group (56%).

3.2 EDUCATION

Generally children and young people in OOHC are more likely to perform at levels below that of the general school population. They are also less likely to complete high school.

81% of files belonging to the 9-14 age group showed that educational issues were being addressed in case conferences. However, notwithstanding the above the following observations were also made:

- Less than half (approximately 46%) of the files in the 9-14 year age group showed evidence of having either past or current school reports on file.

³ "Getting the big picture: A synopsis and critique of Australian out-of-home care research" National Child Protection Clearinghouse Issues 26: 2007 Australian Institute of Family Studies.

- The files of Indigenous children in the 9-14 year age group were less likely to contain school reports than non-Indigenous children. Approximately 40% of files of Indigenous children contained either past or recent school reports compared to approximately 49% of files belonging to non Indigenous children.

3.3 PARTICIPATION

One of the key principles that underpins the Act is that children and young people should be given an opportunity to express their views and those views should be taken into account when making significant decisions that affect them.⁴ Furthermore the OCCG expects that designated agencies make reasonable efforts to include all appropriate relevant people in formal decision making processes such as case conferences and reviews.⁵ The participants should have a choice in how they participate – either by attending the case conference, or by having their views obtained and recorded as part of the process.

In aggregate terms, compliance scores with respect to participation in planning/reviewing were significantly lower than any other key audit area. The following observations are worthy to note:

- Just over 70% of files relating to children between 9 and 14 years showed that formally constituted case conferences had occurred in the preceding 12 months, compared to 64% for those under 9 years and 75% for those over 14 years.
- Where case conferences/reviews were evident, 63% of files showed that children in the 9-14 year age group were invited to attend their case review/plan meeting and subsequently nearly half attended.
- Records documenting the reasons why those who were invited but did not attend were poor – only 35% in the 9-14 year age group.
- Only half of the files in the 9-14 year age group recorded the method for obtaining the views of children who were invited but who did not attend.

Indigenous children in the 9-14 year age group were less likely to have been invited to their case conference.

- Only 56% of files of Indigenous children showed that they had been invited compared with 65% of non-Indigenous children.

⁴ Sections 10 and 9(b) of the Act and s162 which provides for a Charter of Rights for children in OOHC.

⁵ The OCCG has issued statutory guidelines relating to s150 of the Act which provides that designated agencies must review the placements of children and young people in out of home care.

- Only 18% of Indigenous children's files documented the reasons why, having been invited to their case conference, they did not attend. This information was found in nearly twice as many files for non-Indigenous children.

A similar pattern was evident in terms of recording the method for obtaining the views of children who did not attend.

- The files of non-Indigenous children were more likely to contain information about how the views of children were obtained than files belonging to Indigenous children, (54% compared to 35%).

Case planning records for children in the 9-14 year age group showed that mothers were more likely to be invited to attend case conferences/reviews than any other family member.

- 68% of mothers were recorded as being invited compared to 56% of fathers. Overall these figures declined as the child got older.

There was also a marked difference between the number of invitations issued to Indigenous parents compared with non-Indigenous parents.

- For example, 72% of non-Indigenous mothers were invited compared to 53% of Indigenous mothers. Similarly 61% of non-Indigenous fathers were invited compared to 42% of Indigenous fathers.

Where parents were invited to attend case conferences/reviews but chose not to or were unable to attend, there was low compliance in terms of documenting the reason for their non-attendance and poor documentation as to how their views were obtained so as to still enable them to participate.

- In the 9-14 year age group approximately two thirds of mothers who had been invited attended. However of those who did not attend just over half of the case files recorded the reasons and only 45% of these files recorded a method by which their views were documented. In addition to this, only 16% of mothers signed the review or the plan.

Compliance rates for the participation of fathers were even lower but followed a similar pattern.

Participation of carers showed the best level of compliance throughout all the age groups. In the 9-14 year age group 92% of files showed carers were invited to case conferences and 90% of those attended.

3.4 OBSERVATIONS

Overall the OCCG CFA program found a general lack of compliance in areas considered crucial to the wellbeing of children and young people. Of particular concern was the non-compliance in relation to health records; immunisation

details; education records; reviewing behaviour management issues; consent arrangements for the use of psychotropic medications; and the participation of children, mothers and fathers in case conferences.

An emerging pattern also shows that non-compliance in these areas is generally greater for Indigenous children than non-Indigenous children.

The issue of non-compliance for 9-14 year olds in these crucial areas has wide implications. Currently there is a belief that children under the age of 11 years are prioritised in terms of service provision. The *Report of the National Youth Commission Inquiry into Youth Homelessness* published in April 2008 points out that child protection systems across the country prioritise young children over adolescents. The report quotes the UnitingCare Burnside submission which stated that "The Department of Community Services is stretched and unable to respond equally to the needs of both children and young people. Younger children under the age of 11 are likely to be prioritised based on their vulnerability" p.129. The findings of the CFA program suggest that even if children under 11 years are being prioritised, it is insufficient in terms of improving compliance outcomes.

The Report of the National Youth Commission Inquiry into Youth Homelessness asserts that those young people who have been in care have a predisposition to becoming homeless because they:

- lack living skills;
- have poor education and hence poor employment opportunities;
- lack support as young adults; and
- have pre-existing mental health issues.p.132.

The findings of the OCCG CFA program show non-compliance in the key areas related to the conditions which are predictive of homelessness.

Where to from here in terms of improving outcomes for children?

1. In light of the Children's Guardian's concerns about satisfactory health planning and management for children and young people in OOHHC, the 2008/09 Case File Audit will focus specifically on practice related to meeting the health needs of children and young people in OOHHC. This will include the health related information recorded on case files, the monitoring of immunisation catch-up programs, the use of psychotropic medication and accompanying behaviour management plans, and the extent to which planning around health needs is incorporated into case planning and review.

The Children's Guardian will also update s150 guidelines to include further information about the consideration of health and immunisation issues in placement reviews.

2. Recent Australian research has found that a high proportion of children and young people in OOHHC have exceptionally poor mental health, resembling "clinic-referred" children and young people in terms of the scope and severity of their problems. In light of the CFA findings, the Children's

Guardian has approached the Royal Australian and New Zealand College of Psychiatry to develop practice guidelines for psychiatrists and mental health professionals working with children in care. The practice guidelines will be released later this year.

3. It is current policy in NSW that residential care is not a suitable model of care for children under the age of 12, unless the child is part of a sibling group in the placement, or has special needs that cannot be adequately met in a family based placement. The Children's Guardian therefore imposes the following standard condition on the accreditation of designated agencies:

"Residential care may only be provided to children and young persons aged 12 years and over."

In those circumstances where a child's needs are best met within a residential care environment, an agency may apply to have this condition varied to permit a specific residential placement. The agency must demonstrate to the Children's Guardian that alternative placement arrangements are not in the child's best interests. The variation lasts for 6 months, which means agencies must provide the Children's Guardian with assessments of the care needs of the child if the variation is to be extended for a further 6 month period. There are currently 22 children under the age of 12 in residential care, whose placement arrangements are being regularly monitored by the Children's Guardian.

4. The Children's Guardian has identified her audit program for the next two years.

In 2008/09, the Children's Guardian will conduct a targeted audit to examine practice related to meeting the health needs of children and young people in OOHC.

In 2009/10, the Children's Guardian will again conduct a full audit across the whole OOHC sector. This will be comparable with the baseline 2006/07 Audit and measure any changes in practice over the intervening period.

By identifying the types of audits that will occur, it is hoped that designated agencies will commence their preparation for them as early as possible. Where agencies do this, it is anticipated that documentation on case files will improve. This in turn should improve practice. Lack of effective record keeping compromises ongoing case management and planning as pertinent information is lost when caseworkers move on and/or children and young people in OOHC transition to other placements. If relevant material is not held on file, it cannot be considered in future case management or planning and will not be available to children and young people who are in, or who have been, in care. These people have a right to

this information⁶ and this right will be undermined where poor care records are kept.

5. The Children's Guardian supports an increased role for non-government agencies in the provision of OOHC services. A reduced service provision role for DoCS should enable it to better manage demand and develop service and funding systems that promote the best interests of children and young people in OOHC.

The non-government sector has a strong ingrained child and family focus, given the influence religious and other charitable institutions have played in developing philosophies of care. They are smaller and often more closely connected to local communities than DoCS can be and they generally have simpler leadership and governance structures that support locally based decision making. As noted above, non-government agencies are also better able to control and plan workload and workforce needs.

The Children's Guardian's 2006/07 Case File Audit also provides clear evidence of the relative strengths of non-government service provision and the level of support non-government agencies are able to provide to children and young people in OOHC. Results of the Case File Audit Program, which is summarised at section 3.7 of Part A of this submission, are discussed throughout this section.

6. The 2006/07 Case File Audit suggests children and young people are likely to benefit from non-government agency case management.

Non-government agencies with case management responsibility were more likely to have case conferences convened to support case planning and review, consider contact arrangements, invite the child or young person and their mother to attend case reviews, have mental health reports and review behaviour management and the use of psychotropic medication, and commenced preparation for leaving care⁷. They were also more likely to identify timeframes for reviews and the completion of tasks, and stipulate the responsibilities of each person or agency.

The current DoCS direction of transferring case management responsibility to non-government agencies, supported by funding through the 2007 EOI process, is endorsed. Further devolution of case management responsibility should free up DoCS resources, which can be allocated to those cases where DoCS is responsible for the placement.

⁶ See Charter of Rights published under s162 of the Act and record maintenance provisions of s160 of the Act.

⁷ It should be noted that DoCS has increased the focus on leaving care and after care support since the 2006/07 Case File Audit, including releasing a service model on Supported Independent Living and funding non-government agencies to provide after care support through the recent EOI process.

4. THE CHILDREN'S GUARDIAN'S SUBMISSION TO THE INDUSTRIAL RELATIONS COMMISSION

This section contains the Children's Guardian's submission to the Industrial Relations Commission in January 2007. It commences on the following page.