

Special Ministerial Inquiry into the Office of the Children's Guardian

Kate Eastman AM SC

Part 1, Report



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Special Ministerial Inquiry Letter

5 August 2025

The Hon Kate Washington MP
Minister for Families and Communities
Minister for Disability Inclusion
52 Martin Place
SYDNEY NSW 2000

Dear Minister

Special Ministerial Inquiry into the Workplace Culture of the Office of the Children's Guardian

I was appointed on 5 March 2025 to conduct a special ministerial inquiry into the workplace culture of the Office of the Children's Guardian under section 82 of the *Government Sector Employment Act 2013* (NSW) (**GSE Act**).

Pursuant to section 82(9) of the GSE Act, I now present to you the Report of the special ministerial inquiry, comprising two parts. Part 1 contains the open Report, and Part 2 contains the Confidential Annexures.

Yours faithfully



Kate Eastman AM SC

Letter of Appointment

OFFICIAL

The Hon Kate Washington MP

Minister for Families and Communities
Minister for Disability Inclusion



Ms Kate Eastman SC
New Chambers
Level 33 and 35 126 Phillip Street
SYDNEY NSW 2000

Via email: eastman@newchambers.com.au

Dear Ms Eastman SC

I refer to our recent discussion and confirm my intention to establish a Special Ministerial Inquiry (the Inquiry) under Section 82 of the *Government Sector Employment Act 2013* (NSW) into the Office of the Children's Guardian (**OCG**).

I confirm that this Inquiry will be commissioned into workplace culture and related issues within the OCG, in accordance with the published Terms of Reference.

Thank you for agreeing to undertake the Inquiry. Arrangements are being made to provide you with support in undertaking your role and I confirm that these details are presently being settled. I would appreciate it if you could, at your earliest convenience, communicate with staff in the OCG as to your role in the Inquiry and the processes of staff engagement.

I look forward to receiving your formal acceptance of the engagement, which will be at the Attorney General's rates, as at 1 August 2024, namely daily maximum of \$5,217.00 plus GST or \$521.74 plus GST per hour. This rate includes all overheads, secretarial, legal and administrative assistance but not out of pocket disbursements.

I thank you for accepting this role and look forward to receiving your Report arising from the conduct of the Inquiry, which I note is envisaged to be concluded with the issue of the Report, by 30 June 2025.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Washington".

Kate Washington MP
Minister for Families and Communities
Minister for Disability Inclusion

5/3/25

OFFICIAL

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Terms of Reference

Terms of reference - Inquiry into the Office of the Children's Guardian

On 5 March 2025 the NSW Government announced the appointment of Kate Eastman AM SC to conduct a special ministerial inquiry into the workplace culture of the Office of the Children's Guardian.

By direction of the Minister for Families and Communities, and Minister for Disability Inclusion under the authority of the *Government Sector Employment Act 2013*, Kate Eastman AM SC is authorised to conduct a special ministerial inquiry into the workplace culture of the Office of the Children's Guardian and report on:

1. Incidents, conduct and practices contrary to the Office of the Children's Guardian's Code of Ethics and Conduct (2022) (Code) for the period January 2023 to date.
2. The governance and leadership of the Office of the Children's Guardian with respect to:
 - (a) ensuring the workplace culture, practices and systems are consistent with the ethical values in the Code;
 - (b) supporting the right of employees to raise concerns, grievance complaints or allegations about workplace conduct;
 - (c) responding to concerns, grievance complaints or allegations about workplace conduct.
3. The effectiveness of the Office of the Children's Guardian having regard to the need for both independence and oversight of the Office.

The special ministerial inquiry will be an inquisitorial rather than adversarial process. There will be no public hearings.

The conduct of the special ministerial inquiry will be determined by Kate Eastman AM SC and is anticipated to include:

- receiving information about the experiences, concerns and allegations from employees of the Office of the Children's Guardian;
- consulting with or interviewing current and former Office of the Children's Guardian employees, in a manner and form appropriate to the circumstances;
- reviewing relevant documents and information provided to the special ministerial inquiry.

A Report will be provided to the Minister for Families and Communities and Minister for Disability Inclusion by 30 June 2025.

Consideration will be given to confidentiality (and protected addendums separate to the Report) in the content of the Report.

The Report will be tabled before each House of Parliament, and may be subject to restriction to Members of Parliament only as part of the tabling of the Report.

Acknowledgment of Country

The Inquiry acknowledges Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia.

The Inquiry pays its respect to the Elders past, present and emerging of the First Peoples and Traditional Custodians of the lands comprising New South Wales and acknowledges their continuing custodianship of the land, seas and sky.

In the context of this Inquiry, it has been important and necessary to reflect on the continuing impact of policies and practices on Aboriginal and Torres Strait Islander children and their families.

The Inquiry recognised and reflected on the importance of listening, learning and working with Aboriginal and Torres Strait Islander peoples with the aim of improved human rights, economic, social and cultural outcomes.

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Executive Summary

All children and young people have a human right and an expectation that their best interests will be a primary consideration in all actions concerning them, regardless of whether the actions are undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.¹

Governments must implement laws, practices and policies to ensure the child receives such protection and care as is necessary for their wellbeing, taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for them and, to this end, shall take all appropriate legislative and administrative measures.²

The Children's Guardian is an independent NSW public sector agency that plays an important part of ensuring children's human rights are realised. The Office of the Children's Guardian (**OCG**) does this by regulating and monitoring organisations that provide services to children, as set out in the *Children's Guardian Act 2019* (NSW) (**CG Act**). The OCG must ensure out-of-home care (**OOHC**) agencies meet essential standards in relation to the care they provide. The OCG is also responsible for screening individuals who should be prevented from working with children and people with disability. The OCG should be a leading authority on child safety, shaping NSW and Australian policy and practice.

NSW children, young people and their families rely on the OCG to ensure children are safe, particularly in education, when engaged in community activities, working and particularly if children are removed from their families. So, it is vitally important that children, their families and the community have trust and confidence that the OCG can do its work.

For the OCG to be effective, the OCG's employees should have confidence their workplace is psychologically safe, inclusive, consistent and fair. The OCG must adhere to high ethical and governance standards. The Children's Guardian as an independent statutory office holder and leader must be responsible and accountable if those standards are not achieved.

This Inquiry has examined whether the OCG's leadership and governance with respect to its workplace culture, practices and systems are consistent with core ethical values. The Inquiry has found the OCG employees are overwhelmingly committed to the OCG's mission and purpose. They are committed, diligent and compassionate. However, the Inquiry has heard there are aspects of the OCG workplace culture that do not support employees to feel secure, safe and respected at work. For some employees, their experience of the workplace has caused distress, anxiety and fear.

The Inquiry received 97 submissions and listened to the experiences of over 70 current and former OCG employees, as well as their suggestions for change. The Inquiry reviewed a significant number of documents produced to the Inquiry, as well as publicly available reports and reviews.

Findings

The Inquiry has made the following findings:

Number	Reference	Finding
Finding 1	4.10 (Workplace policies of the OCG)	<p>The Inquiry found several gaps in the OCG policy framework, where policies, procedures and action plans are severely deficient or out of date. Specifically:</p> <ul style="list-style-type: none">a. First Nations policies, including the Reconciliation Action Plan and Reconciliation Statement (these findings are set out in Chapter 6);b. Grievance Policy and Procedures (these findings are set out in Chapter 7); and

¹ See Article 3(1) *Convention on the Rights of the Child* 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990) (**CRC**).

² See Article 3(2) **CRC**.

Number	Reference	Finding
		<p>c. Out of date policies: Flexible Work Policy, Guidelines on Internal Information Sharing, Multicultural Plan and Disability Inclusion Action Plan (as addressed at 4.9.1.1).</p> <p>The Inquiry Commissioner found that these OCG policies and action plans are out of date and would benefit from further update to align with current practices and systems.</p> <p>Further, the Inquiry considers that certain policies should be adopted where issues are not covered in the current policy framework, or to address some of the Inquiry's concerns about leadership, governance and workplace culture as set out in Chapter 5.</p>
Finding 2	5.6 (The OCG workplace culture)	The Inquiry Commissioner found the OCG has not responded to or implemented the recommendations of the Cosgrove Report in a systemic and sustainable way.
Finding 3	5.6 (The OCG workplace culture)	<p>The Inquiry Commissioner found:</p> <ul style="list-style-type: none"> a. the OCG workplace is fragile and fractured. It is not a culture that is consistent with the ethical values of the 2022 Code; b. the experience of the OCG workplace culture is not uniform. It was readily accepted some employees considered the OCG to have a happy, functioning and supportive culture. However, there is a silence about the depth and extent to which other employees experienced a workplace culture that lacks psychological safety and for some the experience of vicarious trauma is baked into the culture; and c. the OCG is not a psychologically safe workplace. This creates a significant risk to the health and safety of OCG employees, particularly the risk of psychosocial injury and vicarious trauma. <p>The Inquiry Commissioner found that there is not one person who is the cause of the OCG's workplace culture becoming fragile and fractured. So, in making this finding, it should not be understood as an adverse finding for any one person, be they the Guardian or any member of the ELT. The cause is a combination of the adequacy of the policies, practices, leadership and whether the stated values are reflected in the day-to-day interactions and engagements.</p>
Finding 4	6.6 (The OCG and First Nations employees: respect and recognition)	The OCG does not operate at a level of cultural competence and cultural safety the community as a whole, and First Nations people in particular, should expect.
Finding 5	6.6 (The OCG and First Nations employees: respect and recognition)	The cultural load on First Nations employees is overlooked and poorly understood, creating a risk to their sense of safety, wellbeing and security at work.
Finding 6	6.6 (The OCG and First Nations employees: respect and recognition)	The Inquiry Commissioner finds the delay in recruiting a Deputy or Assistant Aboriginal Children's Guardian concerning. This is a key leadership position that has been vacant for two and half years. This has created a leadership gap which hinders the OCG's effectiveness with respect to its independence, oversight and community confidence. The Deputy or Assistant Aboriginal Children's Guardian should lead the First Nations strategic

Number	Reference	Finding
		initiatives and work to ensure the workplace culture is safe and inclusive of First Nations employees.
Finding 7	7.4 (Concerns, grievances, complaints and allegations)	<p>The Inquiry Commissioner finds that both the OCG policies and the practices have not always supported the right of employees to raise concerns, grievance complaints or allegations about workplace conduct that may be inconsistent with the 2022 Code and now 2024 Code.</p> <p>The Inquiry Commissioner also finds that both the OCG policies and practices have not always responded to concerns, grievance complaints or allegations about workplace conduct appropriately or consistently with the Grievance Policy and Procedures.</p>
Finding 8	7.4 (Concerns, grievances, complaints and allegations)	<p>With respect to the Guardian's personal handling of complaints (as set out at 7.2.2):</p> <ol style="list-style-type: none"> the Inquiry Commissioner makes no adverse finding about the Guardian's actions in intervening in a situation where employees proposed to make complaints about each other. It was open to him to take an informal approach. The risk for the Guardian in addressing a grievance in this way is the risk of being conflicted or drawn into the complaints, if the informal intervention does not resolve respective grievances; and this scenario highlights the importance of a clear and transparent policy to ensure OCG employees know their options and have a right to pursue a complaint if that is their preference.
Finding 9	7.4 (Concerns, grievances, complaints and allegations)	<p>With respect to the baby shower event (as set out at 7.2.3), the Inquiry Commissioner found:</p> <ol style="list-style-type: none"> the anonymous complaint described the distress and discomfort of some attendees, which was consistent with information provided to the Inquiry; some attendees did not experience distress and discomfort; and having regard to all the relevant circumstances, there was no breach of the 2022 Code or misconduct within the meaning of GSE Act or GSE Rules sufficient to justify the termination of employment of any OCG employee who organised or attended the event.
Finding 10	7.4 (Concerns, grievances, complaints and allegations)	<p>With respect to the Guardian's actions in responding to the anonymous complaint (as set out at 7.2.3), the Inquiry Commissioner found the Guardian's response to and handling of the anonymous complaint was inept. The findings are addressed in the Confidential Annexures. In summary, the Guardian:</p> <ol style="list-style-type: none"> failed to act consistently with the 2022 Code; failed to consider and apply any OCG policy with respect to complaints and managing grievances when dealing with the anonymous complaint; failed to meet the most basic standards of proper complaint handling. <p>The Guardian's actions have resulted in some OCG employees feeling their workplace is unsafe with the consequent adverse effect on workplace culture.</p>

Number	Reference	Finding
Finding 11	8.3 (Leadership and governance for the effectiveness of the OCG – Governance arrangements)	The OCG has no documented governance framework and its organisational structure supports the silos between directorates. The initiatives undertaken in 2024 as part of the People Strategy had a focus on workplace culture but failed to examine how the structural and governance arrangements influenced the workplace culture.
Finding 12	8.5 (Leadership and governance for the effectiveness of the OCG – Leadership)	The Inquiry Commissioner found the leadership of the OCG is principally the responsibility of the Children’s Guardian. The Guardian may delegate powers and decide organisational structure. The Children’s Guardian may set up the directorates in a manner required to discharge the statutory responsibilities.
Finding 13	8.5 (Leadership and governance for the effectiveness of the OCG – Leadership)	<p>The Inquiry Commissioner found that there are aspects of the Guardian’s leadership which have directly contributed to the OCG having a poor workplace culture and failing to develop and maintain a psychologically safe workplace environment and eliminating the risks of vicarious trauma. Those aspects concerned the Guardian’s:</p> <ul style="list-style-type: none"> a. lack of knowledge and understanding about psychological safety in the workplace; b. response to the anonymous comments that were critical of him; c. reliance on his executive officers and perceived lack of trust towards some OCG employees; and d. inability or unwillingness to implement the recommendations of Cosgrove Report in a sustainable and systemic way.
Finding 14	8.6.1 (Leadership and governance for the effectiveness of the OCG – The Guardian’s decisions concerning recruitment and positions in the OCG)	<p>The Inquiry Commissioner makes no adverse findings with respect to Mr Moroney AO APM and his conduct. Mr Moroney AO APM expressly sought that the proper processes be followed for his appointment. At all times, he acted appropriately and wanted to ensure the processes and reasons for his employment were consistent with the relevant rules.</p> <p>Mr Moroney AO APM’s employment was undertaken in accordance with the relevant rules including the GSE Rules. However, the Guardian’s communication around the reasons for the special projects position and the work Mr Moroney AO APM would do, was opaque..</p>
Finding 15	8.6.1 (Leadership and governance for the effectiveness of the OCG – The Guardian’s decisions concerning recruitment and positions in the OCG)	The allegation that Mr Moroney AO APM had a conflict of interest is not substantiated.
Finding 16	8.6.1 (Leadership and governance for the effectiveness of the OCG – The Guardian’s decisions concerning recruitment and positions in the OCG)	The Inquiry Commissioner makes no adverse findings with respect to the appointment processes and the appointment of the 5 temporary directors in the Child Safe Organisations directorate. The proper processes were followed for their appointment.

Number	Reference	Finding
Finding 17	8.6.1 (Leadership and governance for the effectiveness of the OCG – The Guardian's decisions concerning recruitment and positions in the OCG)	The Inquiry Commissioner finds that the Guardian's decision to appoint 5 directors in the Child Safe Organisations directorate may have been well-intentioned. However, it was poorly executed and communicated, particularly with the timing of the recruitment following the Cosgrove Report, the absence of a clear documented strategic plan and the budgetary constraints at the time.
Finding 18	8.6.2 (Leadership and governance for the effectiveness of the OCG – Engagement of external lawyers)	The Inquiry Commissioner finds that the only purpose for briefing Senior Counsel was to provide the OCG with legal advice. The claim that it was consulting advice is implausible and disingenuous and does not provide a justification for not comply with Premier's Memorandum.
Finding 19	8.6.3 (Leadership and governance for the effectiveness of the OCG – Conflicts of interest)	The Inquiry Commissioner finds that when the Guardian commenced as the Children's Guardian in January 2023, he did not declare a conflict of interest with respect to Person A. He should have. The Guardian's failure to turn his mind the risk of a conflict when he commenced in January 2023 shows poor judgment and leadership. He did not do enough to ensure, as a statutory officer, that he did not place himself in a position where a potential conflict of interest may arise, which may cause a risk to the integrity and confidence of the organisation they lead.
Finding 20	8.6.3 (Leadership and governance for the effectiveness of the OCG – Conflicts of interest)	The Inquiry Commissioner has made findings about this allegation in the Confidential Annexures. It is enough for this part of the Report to express the Inquiry Commissioner's finding that the Guardian failed to maintain proper and appropriate boundaries with respect to Person B. His engagement with Person B created a real risk of a conflict of interest with respect to a number of the functions he was required to discharge.
Finding 21	8.6.4 (Leadership and governance for the effectiveness of the OCG – Disrespect and discourtesy of the Minister)	The Inquiry Commissioner found with respect to the Guardian's actions of sharing the letter: <ul style="list-style-type: none"> a. his actions may have been perceived as failing to accord the Minister with appropriate respect and courtesy by circulating the letter to all the OCG staff without notifying her of his intention to do so seeking her consent and then failing to share the Minister's response with the OCG employees; b. his contention that the OCG employees had a right or entitlement to receive the letter was not founded in any right contained in statute or in a policy; and c. he neglected or failed to consider the risk of circulating the letter to all the OCG staff.

Recommendations

The Inquiry has made the following recommendations to restore the OCG workforce, community and government's trust and confidence that the OCG has the leadership, governance, policies and practices in place to achieve its mission:

Number	Reference	Recommendation
Recommendation 1	4.10 (Workplace policies of the OCG)	<p>The Inquiry Commissioner recommends the following OCG policies should be updated:</p> <ul style="list-style-type: none"> a. Flexible Work Policy; b. Guidelines on Internal Information Sharing; c. RAP 2019 and Reconciliation Statement; d. Multicultural Plan and DIAP; and e. Grievance Policy and Procedures.
Recommendation 2	4.10 (Workplace policies of the OCG)	<p>The Inquiry Commissioner recommends the OCG should consider implementing policies concerning:</p> <ul style="list-style-type: none"> a. WHS, including in relation to psychosocial hazards; b. the OCG's management and actions in relation to vicarious trauma; c. internal communications; d. conflicts of interest; e. workplace sexual harassment prevention policy; f. workplace adjustments policy; and g. how the OCG upholds and applies the Standards within its own work and workplace.
Recommendation 3	4.10 (Workplace policies of the OCG)	<p>The Inquiry Commissioner recommends the OCG adopt a more rigorous approach accompanied by a clear plan to ensure there is appropriate training for its employees and leaders. This should include:</p> <ul style="list-style-type: none"> a. regular mandatory training for policies including complaints and grievances, First Nations cultural awareness, PIDs, sexual harassment and prevention, vicarious trauma, confidentiality and information security and the applicable Code of Ethics and Conduct; and b. appropriate records or a register of who, when and what training was completed.
Recommendation 4	5.6 (The OCG workplace culture)	<p>OCG employees should have both onsite and remote access to appropriate services in the form of supervision, de-briefing and support to mitigate the risks of OCG employees experiencing trauma and vicarious trauma, including appropriate support for First Nations employees and other employees who live with disability and request reasonable adjustments.</p>
Recommendation 5	5.6 (The OCG workplace culture)	<p>The Director, People and Culture should revisit and review the recommendations in the Cosgrove Report together with the 2023-24 PMES to ascertain:</p> <ul style="list-style-type: none"> a. the recommendations that have been actioned and implemented; b. the recommendations that have not been actioned and implemented, to assess the reason/s why no action has been taken; c. provide a short report to present to the Children's Guardian, the Assistant Guardian (when appointed)

Number	Reference	Recommendation
		<p>and the ARC with recommendations on whether any outstanding recommendations remain appropriate for the OCG, particularly by reference to the 2024 Code; and</p> <p>d. for those recommendations which continue to be relevant, the Children's Guardian take appropriate measures to implement those recommendations within 12 months.</p>
Recommendation 6	5.6 (The OCG workplace culture)	<p>The OCG should establish a workplace culture forum with the aim of bringing together the OCG employees across the agency. A workplace culture forum is not a leadership forum, but should reflect all levels and areas of the OCG. For example, all team members across the OCG can meet. This could be replicated with all team leaders, then all managers and directors. This way the OCG employees have an opportunity to identify what initiatives would enhance psychological safety and better workplace practices.</p> <p>It is important that a forum not be a one-off performative act, but is structured and operates with the aim of being sustainable.</p>
Recommendation 7	5.6 (The OCG workplace culture)	<p>The Children's Guardian, the Assistant Children's Guardian (when appointed), the Director, People and Culture and the Director, Corporate Services should undertake a functional review of the structure of the OCG to identify opportunities for shared functions across all or some directorates, to be completed within 12 months.</p>
Recommendation 8	6.6 (The OCG and First Nations employees: respect and recognition)	<p>The Assistant Children's Guardian role should be a First Nations designated position. The NSW Government should consider if a statutory amendment to the CG Act is required to reflect this commitment, following consultation with First Nations communities.</p>
Recommendation 9	6.6 (The OCG and First Nations employees: respect and recognition)	<p>When appointed, the Assistant Children's Guardian should consider undertaking a review (as they consider appropriate) of the OCG's structure, organisation (leadership and governance) and internal and external communications from a First Nations perspective to identify policies and practices that should be updated, improved and better implemented for the OCG.</p> <p>The Assistant Children's Guardian may give consideration to strengthening the OCG as culturally competent in areas including:</p> <ul style="list-style-type: none"> a. building relationships, understanding and respect through effective and consistent communication and consultation with First Nations communities on the shared concerns arising from the OCG's work; b. ensuring the OCG develops and implements a First Nations framework and policies addressing reconciliation, Acknowledgement of Country and cultural protocols; c. committing to and promoting the opportunities for learning and understanding First Nations connection to the lands, customs and history throughout NSW, based on direct and lived experiences;

Number	Reference	Recommendation
		<ul style="list-style-type: none"> d. involving First Nations peoples in decision-making and have their voices heard in decisions that concern their lives; e. improving the OCG's understanding of the experience and effects of colonialism, disenfranchisement, racism, intergenerational trauma and inequality for First Nations people; f. developing policies, practices and training to develop cultural awareness, culturally safe policies and procedures, enhanced inclusion and representation. This would include awareness of the risks of cultural load on First Nations employees and awareness of their community and cultural responsibilities, including not being placed in circumstances where conflict of interests might arise; g. reviewing the recruitment of First Nations staff, including opportunities for First Nations people to participate in the work of the OCG as interns, cadets or on secondments; h. committing to continuous learning, review, adapting and being aware of best practices in First Nations engagement; and i. being accountable and transparent in engagement with First Nations communities. <p>After such a review, the Assistant Children's Guardian's findings and recommendations should be published internally and on the OCG website, to the extent the Assistant Children's Guardian determines is appropriate.</p>
Recommendation 10	7.4 (Concerns, grievances, complaints and allegations)	Recommendations have been made to review and update policies, including complaints and grievance procedures. However, the application and operation of the policies also requires attention. Any revisions should also examine how anonymous complaints should be addressed, including ensuring a designated and skilled person has the carriage of such complaints. That person should not be the Children's Guardian personally.
Recommendation 11	7.4 (Concerns, grievances, complaints and allegations)	The Inquiry recommends that the OCG considers the appointment of an appropriately qualified person or persons (who may be internal or external to the OCG) for the purpose of addressing any concerns, grievance complaints or allegations about workplace conduct that have been made during the Inquiry Period but not addressed, and any staff complaints now made.
Recommendation 12	7.4 (Concerns, grievances, complaints and allegations)	The Inquiry recommends that the OCG consider the appointment of an appropriately qualified person or persons (who may be internal or external to the OCG) for the purpose of developing a robust, fair and transparent process for managing concerns, grievance complaints or allegations about workplace conduct, in consultation with the OCG staff. The processes must be psychologically safe, trauma informed and timely. A complainant should be consulted about the pathways available to address the complaint, including options for supported mediation.

Number	Reference	Recommendation
Recommendation 13	8.3(Leadership and governance for the effectiveness of the OCG – Governance arrangements)	The Inquiry Commissioner recommends the OCG develop a governance framework based on the guiding principles developed by the NSW Audit Office and outlined in the Governance Lighthouse publication and DCJ Governance Framework. The OCG should focus on developing a framework to support and strengthen the governance arrangements to ensure the OCG's effectiveness, having regard to the impact of governance on workplace culture.
Recommendation 14	8.3 (Leadership and governance for the effectiveness of the OCG – Governance arrangements)	The OCG should ensure a governance framework is a public document and widely disseminated in the OCG.
Recommendation 15	8.5 (Leadership and governance for the effectiveness of the OCG – Leadership)	<p>The Guardian accepted that some oversight and assessment of his performance would be welcomed. The Inquiry Commissioner agrees.</p> <p>The Inquiry Commissioner recommends that there should be a mechanism that respects and protects the independence of the Children's Guardian, but also provides a mechanism for addressing their performance and achieving the reforms required to develop and maintain a psychologically safe workplace environment.</p>
Recommendation 16	8.5 (Leadership and governance for the effectiveness of the OCG – Leadership)	<p>The Inquiry Commissioner notes the Children's Guardian's obligations under section 19 of the WHS Act. As person conducting a business or undertaking, the Children's Guardian must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the OCG. This includes:</p> <ul style="list-style-type: none"> a. the provision and maintenance of a work environment without risks to health and safety; b. the provision and maintenance of safe systems of work; c. the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; d. the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and e. that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking. <p>With these considerations in mind, the Inquiry Commissioner recommends that the Director, People Culture works with the ARC to develop an accountability framework for the Children's Guardian to meet and commit to continuous improvement in discharging the OCG's regulatory functions in promotes and sustains the welfare and wellbeing of staff.</p>

Support

WARNING: This report contains de-identified accounts of the OCG employees' experiences and the adverse effects of their treatment. The Inquiry acknowledges that this Report may raise questions or concerns for some readers.

Please contact:

- the OCG's Employee Assistance Provider (**EAP**) if you are an OCG employee; or
- Beyond Blue on 1300 22 4626 and <https://www.beyondblue.org.au/get-support>; or
- Lifeline Australia on 13 11 14 and <https://www.lifeline.org.au/>.

2

Scope and approach of the Special Ministerial Inquiry

This chapter provides an outline of the scope and approach taken by the Inquiry. It also describes the trauma informed approach that was adopted throughout the process of the Inquiry.

2.1 Inquiry scope and approach

1. On 5 March 2025, Kate Eastman AM SC (**Inquiry Commissioner**) was appointed to conduct a special ministerial inquiry into the workplace culture of the OCG (**Inquiry**). The Inquiry was initiated by the Minister for Families and Communities, and Minister for Disability Inclusion, the Hon Kate Washington MP (**Minister**).
 2. Section 82(1) of the *Government Sector Employment Act 2013* (NSW) (**GSE Act**) provides the Minister with the authority to direct such person as the Minister specifies in the direction to conduct a special inquiry into the matter in the case of any matter relating to a government sector agency or a NSW government agency and to examine and report on a number of terms of reference.
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2.2 Terms of Reference

3. Under the Inquiry's Terms of Reference, the Inquiry Commissioner was required to conduct a special ministerial inquiry into the OCG's workplace culture for the period January 2023 to 5 March 2025 (**Inquiry Period**) and report:
 1. *Incidents, conduct and practices contrary to the Office of the Children's Guardian's Code of Ethics and Conduct (2022) (Code) for the period January 2023 to date.*³
 2. *The governance and leadership of the Office of the Children's Guardian with respect to:*
 - (a) *ensuring the workplace culture, practices and systems are consistent with the ethical values in the Code;*
 - (b) *supporting the right of employees to raise concerns, grievance complaints⁴ or allegations about workplace conduct;*
 - (c) *responding to concerns, grievance complaints or allegations about workplace conduct.*
 3. *The effectiveness of the Office of the Children's Guardian having regard to the need for both independence and oversight of the Office.*
4. The Inquiry was conducted as an inquisitorial rather than an adversarial process. The Inquiry did not conduct public hearings but otherwise conducted the Inquiry with the terms of the GSE Act and the *Royal Commissions Act 1923* (NSW) (**RC Act**) where relevant. Section 82(4) of the GSE Act provides that the person conducting a special inquiry has, for the purposes of the inquiry, the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the RC Act.

³ The Inquiry notes that the OCG updated its Code of Ethics and Conduct in November 2024 (**2024 Code**) but this was not updated on the OCG's website until after the Inquiry had commenced. As a result, the Terms of Reference refer to the Code of Ethics and Conduct 2022 (**2022 Code**) reproduced in Appendix B. Because the Inquiry includes the period since November 2024 and until 5 March 2025, the Inquiry has also taken into account the 2024 Code for conduct occurring during that period, when raised by participants or in submissions and when considering recommendations. The Inquiry has relied on the 2022 Code with respect to specific findings for the purpose of paragraph 1 of the Terms of Reference.

⁴ The Inquiry uses the terms 'grievances' and 'grievance complaints' interchangeably in the Inquiry Report.

5. The provisions of the RC Act (except section 13 and Division 2 of Part 2) apply, with necessary modifications:
 - a. to a special inquiry; and
 - b. to any witness or person summoned by or appearing before the inquiry or providing material to the inquiry.
6. Section 82(8) of the GSE Act provides that a person conducting a special inquiry may, in respect of a matter not dealt with by or under the GSE Act, give directions as to the procedure to be followed at or in connection with the inquiry.
7. The Inquiry was conducted in an inquisitorial manner by:
 - a. reviewing the Terms of Reference and any relevant background documents provided by the NSW Government in relation to the Inquiry and the Terms of Reference;
 - b. receiving written submissions of information from current and former employees of the OCG and any relevant third parties about their experiences, concerns and allegations in relation to the Terms of Reference;
 - c. interviewing current and former employees of the OCG and any relevant third parties about their experiences, concerns and allegations in relation to the Terms of Reference;
 - d. reviewing relevant documents, files, correspondence and reports either publicly available or produced to the Inquiry in relation to the Terms of Reference;
 - e. considering the issues and themes raised in the written submissions of information, consultation interviews and documents produced to the Inquiry; and
 - f. preparing a final written report (**Inquiry Report**) outlining the Inquiry's key findings and recommendations in relation to the workplace culture of the OCG, including a separate confidential Part 2 of the Inquiry Report containing further detail about certain findings and recommendations (**Confidential Annexures**).
8. Overall, the Inquiry Commissioner adopted an approach that sought to identify and address systemic issues and practices arising from the information provided to the Inquiry. While the Inquiry Commissioner heard about a wide and varied range of personal concerns and grievances, it was beyond the scope of this Inquiry to investigate and make findings about each person's individual complaint, particularly those unrelated to the 2022 Code (and 2024 Code where applicable). The Inquiry Commissioner reflected on all the concerns raised and the extent to which they shaped a person's experience of the workplace culture and feeling safe at work. Some specific incidents have been addressed, particularly where the conduct, concern or response was emblematic of the systemic issue concerning the workplace culture, leadership and governance issues in relation to the 2022 Code.
9. The Terms of Reference required the Inquiry Commissioner to report on the three specific matters. It was implicit that a report should address how the Inquiry was conducted and the specific findings. While the Terms of Reference do not expressly ask the Inquiry Commissioner to make recommendations, this Report does include recommendations that arise from the information received by the Inquiry and the general findings in relation to policies, practices and systemic matters.
10. A chronology of the key events is at 2.3 below.
11. The Inquiry Commissioner also committed to adopting a trauma informed approach which is explained further at 2.5 below.
12. In conducting the Inquiry, the Inquiry Commissioner was assisted by a team of three lawyers from MinterEllison. The Inquiry Commissioner acknowledges the diligence, skill, expertise and support of the Inquiry team and thanks them to their administration of the Inquiry.

2.3 Key dates

13. On 6 March 2025, the Inquiry Commissioner sent an all-staff email to current OCG employees about the Inquiry and the Terms of Reference.
14. On 20 March 2025, the Inquiry Commissioner attended an all-staff meeting via Microsoft Teams with current OCG employees to discuss the Inquiry and take questions related to the Inquiry.
15. On 27 March 2025, the Inquiry website was launched. The website contained:
 - a. links to relevant documents including the Terms of Reference, a transcript of the Microsoft Teams meeting on 20 March 2025 and the Inquiry Commissioner's written response to questions asked (via chat) in the Microsoft Teams meeting on 20 March 2025;
 - b. instructions on how to submit information to the Inquiry via a secure form (**Inquiry Portal**) or via email to the Inquiry email address;
 - c. information about confidentiality;
 - d. information about the Inquiry's key dates;
 - e. information about where to seek support; and
 - f. an area for updates in relation to the Inquiry (which was updated throughout the duration of the Inquiry).
16. On 27 March 2025, the Inquiry Portal was launched. The Inquiry Portal enabled current and former employees of the OCG and third parties to submit information to the Inquiry, and/or to indicate if they wished to meet with the Inquiry and/or be consulted.
17. From 27 March 2025 to 11 April 2025, individuals were invited to submit information to the Inquiry via the Inquiry Portal. The Inquiry notes:
 - a. during this period, a number of submissions were received via the Inquiry Portal and via email to the Inquiry email address; and
 - b. several additional submissions were received after 11 April 2025.
18. From 14 April 2025 to 30 May 2025, the Inquiry held consultation interviews. The Inquiry notes:
 - a. due to scheduling, some consultation interviews continued into mid-July 2025; and
 - b. where individuals were required to respond to particular allegations, they were afforded procedural fairness by receiving written notice of the allegations and an opportunity to respond in writing before or after meeting with the Inquiry.
19. During the course of the Inquiry, the Inquiry team reviewed documents produced to the Inquiry through written submissions, in the consultation interviews, or otherwise without request. The Inquiry team also engaged in a document consultation and summons process with individuals to obtain and review documents by way of informal request or summons.
20. The Inquiry Report was scheduled to be provided to the Minister by **30 June 2025**. Due to the additional information provided to the Inquiry after 11 April 2025 and consultation interviews continuing to June 2025, the Inquiry Commissioner was granted an extension to provide the Inquiry Report to the Minister by **31 July 2025**. The Inquiry Commissioner notified current OCG employees of this update via all-staff email and the Inquiry website on 4 June 2025.
21. In the lead up to 31 July 2025, the Inquiry considered some further lines of inquiry. To ensure the Inquiry Commissioner was able to properly explore these matters, the Inquiry Commissioner was granted a further extension to provide the Inquiry Report to the Minister by **5 August 2025**. The Inquiry Commissioner notified current OCG employees of this update via all-staff email and the Inquiry website on 31 July 2025.

2.4 Overview of the information provided to the Inquiry

22. The Inquiry acknowledges and appreciates the assistance that many people provided by completing the Inquiry Portal, submitting information, attending consultation interviews and producing documents and other information. On 15 July 2025, the Inquiry Commissioner issued a direction protecting and reinforcing the confidentiality of the Inquiry process, including information received by the Inquiry, as detailed below.

2.4.1 Inquiry Portal

23. In total, the Inquiry received 118 submissions to the Inquiry Portal. Of these:

- 41 included written submissions only;
- 24 indicated that they would like to attend a consultation interview with the Inquiry only;
- 44 included both written submissions and indicated that they would like to attend a consultation interview with the Inquiry; and
- 9 were blank with no identifying details or written submission.

2.4.2 Written submissions

24. In total, the Inquiry received 98 written submissions. Of these:

- 65 were submitted only via the Inquiry Portal;
- 20 were submitted via the Inquiry Portal and via email (where the submission was too large to be submitted via the Inquiry Portal); and
- 13 were submitted only via the Inquiry email without completing the Inquiry Portal.

25. The written submissions were received from current and former OCG employees, third parties and anonymous submitters. The Inquiry stored all submissions and documents provided to the Inquiry securely and has treated documents confidentially. The submissions will not be published except for where they are referred to in this Report.

2.4.3 Consultation interviews

26. Over the duration of the consultation process, the Inquiry conducted 89 interviews with 76 individuals. Due to timing and/or the Inquiry's need to follow up some individuals for further information, some individuals attended multiple interviews.

27. The individuals who participated in the consultation interviews included the Children's Guardian, current and former OCG employees and relevant third parties. Other than one interview where the participant attended pursuant to a summons, all participants attended and participated in the Inquiry on a voluntary basis.

28. The consultation interviews were conducted with relative informality, either in person or online. The participants were assured that any matter they raised would be treated with respect and would be treated as confidential. The Inquiry Commissioner committed to a trauma informed approach, which meant that the issues discussed were often led by the person with respect to what they wanted to share, so the duration of interviews varied.

29. The majority of consultation interviews were audio recorded (with the permission of the participants and on the understanding the recordings would remain confidential) for the purposes of the Inquiry Commissioner and the Inquiry team being able to refer back to the information shared in the interviews. The recordings have been stored confidentially and securely and only accessed by the Inquiry Commissioner and the Inquiry team where required. No formal transcripts were prepared. Participants were not provided with access to their recordings.

30. As noted in [18], where individuals were required to respond to particular allegations or a proposed adverse finding, they received a written notice of the particular issues concerning

them. They were provided an opportunity to respond in writing before and/or after meeting with the Inquiry Commissioner.

31. The Inquiry Commissioner did not conduct interviews where:

- a. individuals expressed they would like to meet with the Inquiry through the Inquiry Portal, but did not provide their name or contact details;
- b. the Inquiry contacted individuals using the details provided in the Inquiry Portal but did not receive a response or an individual ceased to respond prior to a time for a consultation interview being confirmed; or
- c. individuals withdrew their participation in the Inquiry. If an individual withdrew their participation, any information they provided has not been considered by the Inquiry.

2.4.4 Documents obtained by the Inquiry

32. The Inquiry adopted a streamlined and confidential approach to requesting, receiving and storing documents relevant to the Inquiry, that were not otherwise publicly available.

33. In total, the Inquiry received documents through the following avenues:

- a. documents produced by individuals accompanying their written submissions;
- b. documents produced by individuals in response to informal requests made by the Inquiry;
- c. documents produced by individuals in response to 13 summonses issued by the Inquiry;
- d. documents produced by individuals without specific request by the Inquiry during consultation interviews;
- e. documents produced by individuals without specific request by the Inquiry; and
- f. documents produced by the NSW Government as background relevant to the Terms of Reference.

2.5 Trauma informed approach

34. The Inquiry Commissioner committed to conducting this Inquiry in a trauma informed manner and took a trauma informed approach.

35. A trauma informed approach is based on acknowledging the effects of traumatic events that threaten a person's physical integrity, safety and psychological wellbeing. Traumatic events may be an actual or threatened death, serious injury, or sexual violence, either through direct experience, witnessing, or learning what has happened to a family member or friend. People who have experienced or witnessed a traumatic event may have immediate and long-term physical and emotional responses. They may be triggered by reminders of the traumatic event and its aftermath, resulting in similar feelings to those caused by the actual events. These feelings may continue over time or arise many years after the traumatic event.

36. Some people experience and live with trauma because they have been exposed to repeated, prolonged and cumulative events that undermine their safety and wellbeing.

37. A trauma informed approach also acknowledges:

- a. **intergenerational trauma:** an expression that recognises trauma may be transmitted and experienced by family or a cultural group. In particular, intergenerational trauma has been recognised in the experience of the children and grandchildren of the Stolen Generations survivors of disposition and dislocation from their families;⁵ and

⁵ See the work of the Healing Foundation, a national Aboriginal and Torres Strait Islander organisation that partners with communities to address the ongoing trauma caused by actions like the forced removal of children from their families: www.healingfoundation.org.au.

- b. **vicarious trauma:** an expression used to describe the experience of people who work in settings or have responsibility to treat, care and support individuals who have experienced trauma because of violence, abuse, neglect, exploitation or the deprivation of basic human rights.

38. A person who experiences and lives with trauma may be 'triggered'. A 'trauma trigger' is a stimulus that causes a person to experience certain feelings and sensations – fear, anxiety or feel threatened and insecure. A trigger will be different for every person, for some it is reading or hearing about an event; for some it may be an image or location. In a workplace, an employee's sense of belonging, confidence, feeling safe (both physical and psychological), trusting others, performing tasks or make decisions may be impaired. An employee may feel 'burnt-out', desensitised or hyper-alert. Trauma may impact on how an employee interacts or responds to others or to particular incidents that occur at work.
39. A trauma informed approach in an investigation requires an understanding of how traumatic events affect the way a person who lives with trauma may share information, be able to explain what occurred, why there may be gaps in their memory or their reluctance to trust those undertaking an investigation. It also means being aware of unconscious biases and assumptions about how a person may act or recount their recollection of certain events.
40. A trauma informed approach does not mean direct or difficult questions must be avoided. Rather, care and consideration should be given to the way questions are asked. Further, it does not mean excusing inappropriate behaviour. It means understanding the context in which the behaviour occurs. It means holding people accountable; having clear and consistent boundaries and standards is consistent with a trauma informed approach.
41. The Inquiry Commissioner sought to provide a safe environment for any person who wished to share information with the Inquiry. The Inquiry Commissioner emphasised the Inquiry's commitment to safety, causing no harm and preventing re-traumatisation. All participants were offered the opportunity to participate with a support person, if they wished. The Inquiry team was alert to ensuring their actions did not cause inadvertent stress and re-traumatisation of any person sharing information.
42. The Inquiry adopted and applied a trauma informed approach throughout the investigative process by reference to the five foundational principles: safety, trustworthiness, choice, collaboration and empowerment. In summary, the approach the Inquiry team applied at a practical level with respect to each principle was as follows:
- **Safety:** all interpersonal engagements (from the tone of responses to any inquiries; organising interviews; explaining when, how and where any interview would be conducted; allowing people to remain anonymous; and the way questions were asked) were consciously approached to promote a sense of physical and emotional safety.
 - **Trustworthiness:** the approach with any person providing information was one that aimed to provide transparency. Transparency is a key element to building and maintaining trust in the integrity of an investigation. The Inquiry provided transparency by making it very clear what it had been asked to do by the Minister, and the process it would follow. The Inquiry answered questions about who would have access to personal information and how it proposed to treat their information.
 - **Choice:** any person choosing to engage with the Inquiry had choice about the way they engaged with the Inquiry, including when, for how long they wished to engage, and what information they wished to provide.
 - **Collaboration:** this principle is aimed at reducing power imbalances by shifting to 'collaborative' means of information gathering. When gathering information about personal experiences (which could at times be distressing), the Inquiry was led by the person with respect to what they wanted to share.
 - **Empowerment:** this means there should be a clear focus on an individual's experiences in all aspects of the investigation.
43. During the Inquiry, the OCG provided current employees with enhanced EAP support, including access to trauma informed services as an alternative to standard counselling. Former employees

who requested or required support were also provided with access to the EAP and other supports by the OCG.

2.6 Confidentiality and the use of information obtained during the investigation and in this Report

44. A number of individuals raised concerns about potential victimisation and retribution if they were identified. For this reason, the Inquiry committed to keep the use of the information provided by participants in a manner that preserved their confidentiality and would not identify them.
45. The Inquiry Commissioner issued 3 private directions to specific individuals protecting and reinforcing the confidentiality of the Inquiry process.
46. The Inquiry has adopted a similar approach to confidentiality in relation to the findings in the Report.
47. The Report includes direct quotes from submissions and interviews without identifying the individual, with the following exceptions:
- a. if a person's name and position in the OCG is in the public domain, such as on the OCG website, in an official report or record;
 - b. if a person has been identified in a media report concerning the subject matter of the Inquiry and it has been necessary to record the Inquiry's finding about an allegation that concerns that person; and
 - c. where it has been necessary to refer to the person to ensure the context and circumstances are clear, where an adverse finding has been made.
48. The Inquiry has prepared this Report in a manner so participants are not identified. The exceptions being the Guardian, the former and current members of the OCG leadership team members and some individuals who have been publicly identified in relation to certain allegations. For the majority of individuals who participated, the Inquiry has redacted names and information, used pseudonyms where appropriate and set out sensitive, privileged or confidential findings in the Confidential Annexure.
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2.7 Procedural fairness and natural justice

49. The Inquiry was conducted consistently with the principles of procedural fairness and natural justice. The Inquiry recognised the minimum requirements of natural justice in the context of the Inquiry included that:
- a. the person is fairly appraised of the allegations about them, which may lead the Inquiry Commissioner to make an adverse finding about the person;
 - b. the person is afforded a fair opportunity to bring forward material to correct or dispute any allegation made against them and the opportunity to make submissions; and
 - c. the Inquiry Commissioner will assess the information and reach a decision free from bias.⁶
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2.8 Standard of proof

50. When an inquiry is conducted as an inquisitorial rather than an adversarial process, it is accepted that the task is set by the terms of reference. The inquisitorial process has been described, as follows:

[The Commission] may have to follow leads. It is not bound by rules of evidence. There is no set order in which evidence must be adduced before it. The links in a chain of evidence will

⁶ *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180.

*usually be dealt with separately. Expecting to prove all the links in a suspected chain of events, the Commission or counsel assisting, may nevertheless fail to do so. But if the Commission bona fide seeks to establish a relevant connection between certain facts and the subject matter of the inquiry, it should not be regarded as outside its terms of reference in doing so. This flows from the very nature of the inquiry being undertaken.*⁷

51. The Inquiry was not bound by the rules of evidence.⁸ However, the Inquiry proceeded on the basis that the rules of evidence were a helpful guide when considering and assessing the information provided. For some individuals, the information provided to the Inquiry was given under oath or affirmation. For those who were not required to give an oath or affirmation, the Inquiry worked on the basis that all persons who provided information to the Inquiry did so truthfully and on the basis of their best recollections.
52. The Inquiry applied the civil standard of proof, being the balance of probabilities in making an adverse finding about a person's conduct, where the alleged conduct was not admitted and a proposed finding was contested. This standard required the Inquiry to be comfortably satisfied, in the sense that it felt an actual persuasion of the occurrence or existence of a fact before it could be found. The balance of probabilities has been described as an undemanding standard only requiring a 'preponderance' of evidence.⁹ The Inquiry Commissioner must '*feel an actual persuasion of the relevant fact's occurrence before it is established, and that cannot be reached by a mere mechanical comparison of probabilities [independent] of any belief in its reality.*'¹⁰ The more serious an allegation and the gravity of the consequences flowing from a particular finding affect the level of satisfaction that must be reached before the Inquiry Commissioner could find that the allegation has been proved on the balance of probabilities.
53. When assessing the information provided to the Inquiry, the Inquiry Commissioner was aware that the submissions and the interviews were presented as personal experiences. It reflected their subjective experiences. One of the purposes of this Inquiry was to listen to those experiences, and assure the person who shared their story that they were heard and believed. The Inquiry Commissioner treated their accounts with dignity and respect.
54. Some participants shared their experiences and concerns in a manner that caused them distress, anxiety, fear, insecurities and worry. The Inquiry Commissioner appreciated their honesty, trust in the Inquiry process and willingness to share information with the Inquiry (in many cases information had not been shared before). The Inquiry Commissioner was acutely aware of ensuring this information would be treated as confidential because of a deep concern and anxiety that any disclosure may risk retribution when the Inquiry concluded.
55. When considering all the information provided to the Inquiry, one task was to identify the systemic issues to identify and understand the workplace culture. It was important to understand those experiences.
56. When the Inquiry Commissioner was required to make findings about the conduct or actions of particular individuals, there had to be relevant and reliable evidence to support an adverse finding. As one judge observed in the context of a judicial proceeding where the rules of evidence applied:
- Each witness sees events from his or her own perspective. Over time there is sometimes a degree of rationalisation to fit objective material (documents) as it emerges into the understanding of events. Some witnesses' memories become refined by a strong belief in the rightness of their role, so that objectivity is lost to a degree.*¹¹
57. The Inquiry approached its fact finding by a careful consideration of all the information, considering the weight to be given to the information (particularly when information was based on hearsay accounts, where it was based on opinions and experiences). The Inquiry was assisted

⁷ *Ross v Costigan (No 2)* (1982) 41 ALR 319 at 334 (Ellicott J)

⁸ GSE Act section 82(7).

⁹ *Wolff bht Steven Binetter v Binetter* [2021] NSWSC 1249 at [12].

¹⁰ *Wolff bht Steven Binetter v Binetter* [2021] NSWSC 1249 at [12], quoting *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361.

¹¹ *Poniatowska v Hickinbotham* [2009] FCA 680 at [47] (Mansfield J).

by contemporaneous notes and records of conversations, decisions, action taken and the reasons for taking such action.

2.9 Matters outside the Terms of Reference

58. During the course of the Inquiry a wide range of issues were raised and information provided. Some of the issues raised in submissions concerned events and decisions prior to January 2023 or after March 2025. Where the events and decisions provided some context to matters within the temporal period of this Inquiry, the information was considered in that specific context.
59. The circumstances and decisions made about the recruitment and appointment of Mr Stephen Kinmond OAM (the **Guardian**) to the position of the Children's Guardian were not part of the Terms of Reference. This report makes no findings with respect to the recruitment and appointment of the Guardian.
60. Some issues of concern were raised with the Inquiry Commissioner about events and interactions that arose during the course of the Inquiry. Unless those matters were directly related to events, conduct, allegations or concerns occurring between January 2023 and 5 March 2025 or were directly related to ongoing and systemic concerns about workplace culture, leadership and governance, then no findings have been made about specific events occurring after 5 March 2025.
61. Some information and concerns were outside the scope of the Inquiry with respect to the conduct of third parties, being organisations or individuals who are not current or former employees of the OCG or whose dealings with the OCG were not directed to the particular areas and time periods identified in the Terms of Reference.
62. It was not within the scope of the Inquiry to address a range of day-to-day HR issues which did not engage with the 2022 Code or 2024 Code (collectively, the **Codes**) and were not directed to workplace culture, leadership, governance or the independence of the OCG. The Inquiry's terms of reference did not extend to examining alleged contraventions of the OCG's policies beyond the 2022 Code.
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2.10 Co-operation and assistance with the Inquiry

63. The Inquiry Commissioner and the Inquiry team acknowledges and is grateful for the cooperation and assistance provided by everyone who participated in the Inquiry by providing information, submissions and attending interviews. The Inquiry heard many heartfelt accounts of the participants' commitment and loyalty to the OCG and a mission of protecting children and young people in NSW.
64. Some participants shared their experiences of the OCG being a happy and rewarding working environment and their wish that the OCG be a working environment for everyone, where the OCG employees could thrive, feel confident and have pride in their work.
65. The Inquiry Commissioner has benefitted from listening to the individual and collective experiences of participants in the Inquiry. The breadth of the participants' experiences has assisted in understanding and addressing not only individual concerns but has informed the Inquiry's understanding and appreciation of the systemic issues arising at the OCG and within the OCG's workplace culture.

3

The Office of the Children's Guardian

This chapter provides an outline of the relevant statutory functions and framework of the OCG. It also describes the current structure of the OCG to discharge its responsibilities, including the number of employees, its annual reports and budget. References to legislation are to the *Children's Guardian Act 2019* (NSW) unless otherwise stated.

3.1 Background

66. The OCG was established on 15 December 2000, following recommendations made in the Review of the *Children (Care and Protection) Act 1998* (NSW) and the Wood Royal Commission into the NSW Police Service (1997). At that time, the Children's Guardian was responsible for promoting the best interests and rights of children and young people in OOHC through accreditation and quality improvement of designated agencies.
67. On 3 April 2006 the Children's Guardian and the Commission for Children and Young People merged to form the Office for Children. The separate statutory roles of the Children's Guardian and the Commission for Children and Young People continued but they shared resources.
68. On 1 July 2009 the Office for Children was abolished and the OCG was re-established as a standalone agency under Communities NSW with responsibilities around regulating OOHC and employers seeking to employ children.
69. Over the past 25 years, the responsibilities of the OCG have expanded significantly. Likewise, there have been a number of changes to the OCG structure and operating arrangements of the OCG.
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3.2 Overview of the Children's Guardian's current legislative functions and obligations

3.2.1 Children's Guardian Act

70. The OCG's powers are primarily set out in the CG Act and *Children's Guardian Regulation 2022* (NSW) (**CG Regulation**).
71. The CG Act came into effect on 1 March 2020. The powers and functions of the Children's Guardian under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**Care and Protection Act**) and *Adoption Act 2000* (NSW) (**Adoption Act**) were consolidated into the CG Act.
72. Operationally, the adoption of the CG Act meant the Reportable Conduct Scheme (which was previously within the NSW Ombudsman) became the responsibility of the OCG in March 2020.
73. The objects of the CG Act include:
- a. protecting children by providing for the role and functions of the OCG;
 - b. promoting the quality of organisations and persons providing services to children;
 - c. regulating those organisations and persons providing those services; and
 - d. embedding the Child Safe Standards (**Standards**) as the primary framework guiding child safe practice in NSW.¹²
74. In this respect, in relation to decision-making under the CG Act:
- a. the safety, welfare and wellbeing of children (including protecting children from child abuse) is the paramount consideration in any decision-making; and

¹² The Standards are set out in section 8C of the CG Act.

- b. the Children's Guardian must observe the principles of natural justice and ensure procedural fairness.

3.2.2 The Children's Guardian

- 75. The Children's Guardian is an independent statutory officer appointed under the CG Act.¹³
- 76. The Children's Guardian is appointed by the Governor as an agency head and the Minister for Families and Communities is the responsible Minister under the CG Act.¹⁴
- 77. The Children's Guardian holds office for a term of not more than 5 years as stated in the instrument of appointment. They are eligible for re-appointment but may not be appointed for more than two terms.¹⁵
- 78. Historically, the CG Act provided that the position of Children's Guardian becomes vacant if the holder attains the age of 65 years. This age requirement was repealed in October 2023.

3.2.2.1 Statutory framework

- 79. Part 8 of the CG Act sets out the functions of the Children's Guardian, with additional powers for each main function set out in the following:
 - a. **Part 3A:** Child Safe Scheme;
 - b. **Part 4:** Reportable Conduct Scheme;
 - c. **Part 5:** OOHC;
 - d. **Part 6:** Child Employment;
 - e. **Part 7:** Adoption Service Providers; and
 - f. **Part 9:** Official Community Visitor Scheme.¹⁶
- 80. Other key powers of the Children's Guardian under the CG Act include:
 - a. **Schedule 2:** powers relating to the entry of places and premises, information-obtaining powers and applications for search warrants in relation to child protection and reportable conduct issues; and
 - b. **Schedule 3:** the Children's Guardian may make or hold inquiries in relation to its investigations concerning reportable conduct or reports of Official Community Visitors. In the exercise of this power, the Children's Guardian has the powers, authorities, protections and immunities conferred on a royal commissioner by Division 1 of Part 2 of the RC Act.
- 81. The Children's Guardian may appoint a Deputy Children's Guardian and an Assistant Children's Guardian, who are also statutory office holders.¹⁷ More information about these roles is set out at Chapter 6.
- 82. The Children's Guardian may appoint other staff under the GSE Act to exercise the Children's Guardian's functions, with these forming the OCG.¹⁸

¹³ CG Act section 120.

¹⁴ CG Act section 115(2) and see the *Administrative Arrangements (Minns Ministry — Administration of Acts) Order 2023* (NSW).

¹⁵ CG Act section 116.

¹⁶ Noting however that this scheme is not directly administered by the OCG and is administered by the NSW Ageing and Disability Commission.

¹⁷ CG Act sections 124-125.

¹⁸ CG Act section 127.

3.2.2.2 Principal functions of the Children's Guardian

83. Section 128 of the CG Act provides that the principal functions of the Children's Guardian are:

128 Functions of Children's Guardian

- (a) to take action to build the capability of child safe organisations to implement the Child Safe Standards and to prevent harm to children,
- (a1) to monitor, investigate and enforce the implementation by child safe organisations of the Child Safe Standards,
- (a2) to undertake functions under Part 3A, Division 3 relating to child safe action plans,
- (a3) to exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the *Child Protection (Working with Children) Act 2012*,
- (b) to promote the best interests of all children in out-of-home care,
- (c) to ensure the rights of all children in out-of-home care are safeguarded and promoted,
- (d) to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register,
- (e) to exercise accreditation functions for designated agencies,
- (f) to exercise accreditation functions for adoption service providers,
- (f1) to monitor the exercise of functions under the children's care legislation by designated agencies,
- (f2) to monitor the exercise of functions under the children's care legislation by accredited adoption service providers in relation to the provision of adoption services,
- (f3) to monitor the exercise of functions of the Secretary in relation to the provision of adoption services under the *Adoption Act 2000* and the regulations under that Act,
- (f4) to investigate compliance with the children's care legislation,
- (g) to exercise functions relating to the employment of children, including the making and revoking of exemptions from the requirement to hold an employer's authority,
- (h) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children,
- (i) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children,
- (j) to encourage organisations to develop the organisations' capacity to be safe for children under the Children's Guardian's public awareness and advice functions specified in the *Child Protection (Working with Children) Act 2012*,
- (k) (Repealed)
- (l) to establish and maintain a register for the application and engagement of individuals as residential care workers,
- (m) to administer a reportable conduct scheme and work with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme,
- (n) to educate and provide advice to relevant entities, monitor investigations by relevant entities, make recommendations to relevant entities and investigate reportable allegations or make determinations about convictions considered to be reportable convictions,
- (o) to co-ordinate the Official Community Visitor scheme in relation to Official Community Visitors.

84. The Children's Guardian has additional functions conferred or imposed by any other Act.¹⁹ These functions include those under the following legislation:
- a. Care and Protection Act in relation to children in OOHC;
 - b. *Child Protection (Working with Children) Act 2012* (NSW) (**WWC Act**) in relation to the Working With Children Check (**WWCC**) Scheme;
 - c. *Child Protection (Offenders Registration) Act 2000* (NSW) (**Offenders Registration Act**) in relation to a person's NSW Civil and Administrative Tribunal (**NCAT**) application to be exempted from compliance with reporting obligations;
 - d. *National Disability Insurance Scheme (Worker Checks) Act 2018* (NSW) (**NDIS Worker Check Act**) in relation to administering worker screening clearances to workers delivering supports or services under the National Disability Insurance Scheme (**NDIS**) (**NDIS Worker Check**);
 - e. *Entertainment Industry Act 2013* (NSW) in relation to providing information to child performers;
 - f. *Teacher Accreditation Act 2004* (NSW) in relation to the investigation of matters referred by the NSW Education Standards Authority; and
 - g. *Electoral Act 2017* (NSW) in relation to the investigation of child protection declarations made by candidates.
85. The Children's Guardian and any person acting under the direction of the Children's Guardian are protected from personal liability under the CG Act in relation to things done (or omitted to be done) in good faith when executing their legislative duties.²⁰

3.2.3 The Office of the Children's Guardian

86. The employees of the OCG are subject to the GSE Act. The OCG is an agency²¹ within the Stronger Communities Cluster of the NSW Government, which is led by the Department of Communities and Justice (**DCJ**). The OCG's main office is in Sydney. A small number of employees (less than 30) work remotely for the duration of their work hours.
87. The OCG's organisational structure mirrors the scope of the OCG's responsibilities. The primary operational responsibilities of the OCG are set out in the CG Act and WWC Act. Chapter 8 addresses these matters in the context of the OCG's governance and leadership arrangements.
88. The OCG *Annual Report 2023-24* (**Annual Report 2023-24**) sets out the key areas of operational responsibilities as:
- a. Child Safe Scheme;
 - b. WWCC Scheme;
 - c. Reportable Conduct Scheme;
 - d. Statutory OOHC and adoption;
 - e. Carer and residential worker monitoring;
 - f. Specialised Substitute Residential Care (**SSRC**);
 - g. Children's employment; and
 - h. NDIS Worker Check.

¹⁹ CG Act section 128(2).

²⁰ CG Act section 135.

²¹ The Office of the Children's Guardian is a non-Department Public Service Agency otherwise known as a 'separate [Public Service] agency' as per Schedule 1, Part 3 of the GSE Act.

3.2.3.1 Child Safe Scheme

89. On 1 February 2022, the Child Safe Scheme came into effect in NSW and the OCG became responsible for the implementation of the scheme. The Child Safe Scheme is provided for in Part 3A of the CG Act.
90. Under the Child Safe Scheme, relevant child safe organisations are required to implement the Standards and protect children from harm by having child safe systems, policies and processes based on the Standards.
91. The OCG is responsible for administering the Child Safe Scheme under the CG Act and embedding the Standards across over 30,000 organisations in NSW.

3.2.3.1.1 Child Safe Standards

92. The Standards are a set of 10 principles designed to ensure the safety and wellbeing of children in various organisations. The Standards were recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse in 2017²² and were inserted into the CG Act in 2022.

93. The Standards are set out in section 8C of the CG Act:

8C Meaning of "Child Safe Standards"

1. Child safety is embedded in organisational leadership, governance and culture.
 2. Children participate in decisions affecting them and are taken seriously.
 3. Families and communities are informed and involved.
 4. Equity is upheld, and diverse needs are taken into account.
 5. People working with children are suitable and supported.
 6. Processes to respond to complaints of child abuse are child focused.
 7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
 8. Physical and online environments minimise the opportunity for abuse to occur.
 9. Implementation of the Child Safe Standards is continuously reviewed and improved.
 10. Policies and procedures document how the organisation is child safe.
94. The Standards apply broadly to child-safe organisations and organisations (including government) where adults have contact with children.²³
95. The OCG's role in relation to the Standards is both educative and regulatory.²⁴

3.2.3.1.2 Education and capability building

96. In terms of its educative and capability building function, the OCG engages broadly with child safe organisations in relation to the Standards.
97. The OCG has responsibilities under section 8P of the CG Act to work collaboratively with child safe organisations and the broader community to:
- a. raise awareness about child safety;
 - b. build knowledge of the Standards and skills to implement them in child safe organisations; and
 - c. promote the implementation of the Standards in child safe organisations.

²² See Recommendation 6.5 in the *Recommendations* Volume of Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse in 2017.

²³ CG Act Schedule 1 and Schedule 6.

²⁴ CG Act sections 6(c), 8A(a)-(b), 8P, 8V, 8W and Part 3A, Division 6.

98. To achieve this, the OCG develops guidelines to assist child safe organisations in relation to the Standards, delivers training on the implementation of the Standards and other child safety matters and develops resources to promote the Standards.²⁵
99. The OCG has an ongoing capability building program in which it provides free resources and training to child safe organisations about how to implement the Standards.
100. The Annual Report 2023-24 notes that during 2023-24, the ongoing capability building program had more than 126,000 engagements, including through downloading resources (56,095 downloads), completion of eLearning modules (32,638 participants), face-to-face and online training (305 events with 11,555 participants), and views of videos and recorded webinars (80,191 participants).

3.2.3.1.3 Child safe assessment and monitoring

101. The OCG is empowered to monitor or investigate the operation of child safe organisations to ensure they are implementing the Standards.²⁶
102. As part of this, the OCG has established a Child Safe Monitoring Assessment program, which involves:
- a. reviewing an organisation's child safe systems;
 - b. directing an organisation to complete a Child Safe Self-Assessment;
 - c. requesting that the head of an organisation responds to questions and provides specific information at an assessment interview;
 - d. inspecting an organisation's premises;
 - e. providing an organisation with a detailed monitoring assessment report that sets out findings and recommendations in relation to how the organisation can improve its child safe practices;
 - f. reviewing an organisation's response to these recommendations; and
 - g. undertaking a separate follow up process to determine whether an organisation has effectively implemented the recommendations.
103. In 2023-24, the OCG undertook 5 pilot assessments of organisations with strong child safe practices and initiated 13 monitoring assessments in response to referrals or complaints.
104. In January 2023, the OCG also launched an online Child Safe Self-Assessment so that child safe organisations can assess their implementation of the Standards. Once the self-assessment is completed, the organisation is provided with an Assessment and Action Report that they can implement to improve their child safe practices. The self-assessment results are also provided to the OCG.

3.2.3.1.4 Child Safe Action Plans

105. The OCG is also responsible for reviewing and approving the Child Safe Action Plans (CSAP) of seven prescribed agencies under the CG Act.²⁷
106. A CSAP is a document detailing how the prescribed agency will raise awareness about the importance of child safety, build the capability of child safe organisations to implement the Standards and improve the safety of children in NSW.²⁸
107. Each prescribed agency has developed a CSAP that has been reviewed and approved by the OCG, all of which are available on the OCG website. The OCG has ongoing responsibilities in relation to monitoring these organisations' progress and implementation in relation to their CSAPs.

²⁵ CG Act sections 8Q and 8S-8T.

²⁶ Sections 8U-8X.

²⁷ CG Act Part 3A, Division 3.

²⁸ CG Act section 8F.

3.2.3.2 WWCC

108. From 15 June 2013, following the passage of the WWC Act, the OCG was responsible for administering the WWCC. These responsibilities were previously managed by several NSW government agencies including the Department of Education.
109. A WWCC is a legal requirement for anyone who works or volunteers in child-related work in NSW,²⁹ and is one of the measures administered by the OCG to enhance child safety in organisations providing services to children.
110. Relevant workers must have a valid WWCC application before they commence their work, and once cleared, their WWCC is valid for 5 years.³⁰ If they wish to continue in child-related work, they must apply for a renewal before their WWCC reaches expiry.
111. WWCC applications undergo screening including a national criminal history check through the Australian Criminal Intelligence Commission, checks for workplace investigations reported via the OCG's Reportable Conduct Scheme (see 3.2.3.3 below) and checks for adverse decisions imposed by other state and territory screening agencies. Once cleared, individual WWCCs are continuously monitored by NSW Police and the OCG.
112. Organisations whose employees are required to obtain a WWCC are required to verify the WWCC of their employees through an online portal maintained by the OCG.³¹ This has the effect of 'linking' the employee with the employer so that an employer can be made aware of relevant updates to a person's WWCC status.
113. As at 30 June 2024, 1,922,363 people in NSW held a WWCC clearance.

3.2.3.2.1 OCG responsibilities in relation to WWCC

114. The OCG is responsible for administering the WWCC scheme in NSW in accordance with the WWC Act and *Child Protection (Working With Children) Regulation 2013 (NSW) (WWC Regulation)*. This includes:
- a. processing, screening and assessing WWCC applications, including conducting reviews where a person is not automatically cleared or there are no relevant records;
 - b. conducting risk assessments for persons referred to review – for example, persons who are barred from working with children in any other state or territory;
 - c. providing customer service to applicants and individuals;
 - d. defending applications in relation to WWCC decisions made by the OCG in NCAT and the Supreme Court;
 - e. monitoring any changes in a person's WWCC status through the integrated continuous checking system, which includes continuous monitoring of police and workplace records, and notifies the OCG if a WWCC holder:
 - i. is charged with certain offences in NSW;
 - ii. is the subject of a sustained finding under the Reportable Conduct Scheme;
 - iii. has an adverse outcome imposed on their WWCC clearance in another state or territory;or
 - iv. has an adverse outcome imposed by the NDIS Worker Check.
 - f. monitoring employer compliance against the WWC Act and the WWC Regulation including:
 - i. contacting newly registered employers who have no verified workers;
 - ii. issuing audit notices, conducting audits;

²⁹ WWC Act section 8.

³⁰ WWC Act sections 8 and 22.

³¹ WWC Act section 9A.

- iii. considering Reports of Concern including referrals from other agencies or members of the public;
- iv. conducting investigations into alleged breaches of the WWC Act; and
- v. a pilot targeted investigation program to assess whether barred workers whose WWCCs had not been verified by employers posed a significant risk to children.

3.2.3.3 Reportable Conduct Scheme

115. On 1 March 2020, responsibilities for the Reportable Conduct Scheme transferred from the NSW Ombudsman to the OCG.
116. Part 4 of the CG Act governs the Reportable Conduct Scheme.
117. The OCG oversees how relevant entities including 'Schedule 1 entities', public authorities and religious bodies respond to reportable conduct relating to the treatment of children by their employees and take action to prevent harm to children in their organisation.³²
118. 'Reportable conduct' includes a sexual offence, sexual misconduct, ill-treatment of a child, neglect of a child, an assault against a child, an offence under sections 43B or 316A of the *Crimes Act 1900* (NSW), or behaviour that causes significant emotional or psychological harm to a child.³³
119. Under the Reportable Conduct Scheme, if the head of a relevant entity receives a report or otherwise becomes aware of an allegation or conviction of reportable conduct in relation to one of its employees, the head of the relevant entity must:
- a. give the OCG a written notification about the allegation or conviction of reportable conduct in the form set out in the CG Act. This report must be made within 7 business days of the head of the relevant entity being made aware of the allegation or conviction;³⁴
 - b. investigate, or arrange for an investigator to investigate, the reportable allegation or conviction, unless provided with an exemption by the OCG under section 31 of the CG Act;³⁵
 - c. following the reportable conduct investigation, prepare an investigation report (**Entity Report**) for the OCG;³⁶ and
 - d. provide the Entity Report to the OCG within 30 days of being made aware of the allegation or conviction.³⁷ Exemptions to this timeframe apply if the head of the relevant entity provides the OCG:
 - i. an interim report under section 38 within the 30 days;
 - ii. a reason for not providing the report within the 30 days; or
 - iii. an estimated timeframe for the completion of the Entity Report.
120. The Annual Report 2023-24 states that the single-most notified category of reportable conduct in 2023-24 was assault (30%), followed by allegations of a sexual nature (29%) – consisting of sexual offences (19%) and sexual misconduct (10%).
121. The OCG's powers in relation to the Reportable Conduct Scheme include:
- a. receiving and assessing reportable conduct notifications;
 - b. requiring information from relevant entities about reportable conduct matters, whether in response to a notification, following a complaint or of the OCG's own motion;³⁸

³² CG Act section 9.

³³ CG Act section 20.

³⁴ CG Act section 29(4).

³⁵ CG Act section 34.

³⁶ CG Act section 36(1).

³⁷ CG Act section 36(2).

³⁸ CG Act section 42.

- c. monitoring the progress of reportable conduct investigations conducted by relevant entities into their employees, and providing oversight and guidance;³⁹
- d. conducting investigations and inquiries into reportable allegations and convictions, as well as investigations and inquiries into the response to these matters by relevant entities;⁴⁰
- e. preparing a Children's Guardian Report and any relevant recommendations after completing an investigation or determination. This must be done in consultation with the relevant entity;⁴¹
- f. ensuring appropriate action is taken by relevant entities in relation to reportable conduct, and monitoring a relevant entity's systems for preventing, detecting and dealing with reportable conduct;⁴²
- g. providing advice and education; and
- h. reporting relevant entities' sustained findings of sexual offences, sexual misconduct and serious physical assault to the WWCC directorate.⁴³

3.2.3.4 Statutory OOHC and adoption

122. Parts 5 and 7 of the CG Act provide for the accreditation and monitoring of government and non-government agencies authorised to provide statutory OOHC and adoption services to children and young people in NSW. Under Schedule 2, the OCG has powers to undertake this accreditation and monitoring.

3.2.3.4.1 Accreditation

123. The OCG is responsible for assessing organisations that are seeking accreditation for the first time and/or seeking to renew their accreditation as services providing OOHC and/or adoption. The accreditation process ensures that agencies focus their work on meeting the needs of children and young people and meet standards of good practice.
124. Organisations that have been accredited to provide statutory OOHC in NSW are referred to as 'designated agencies' under the CG Act.⁴⁴ Organisations that have been accredited to provide adoption services in NSW are referred to as 'accredited adoption service providers' under the CG Act.⁴⁵ Only designated agencies and accredited adoption service providers can provide OOHC and adoption services respectively in NSW.
125. Designated agencies and accredited adoption service providers will be accredited by the OCG if they can demonstrate that they meet the requirements in the NSW Child Safe Standards for Permanent Care (**Standards for Permanent Care**). Accreditations are subject to obligations under the CG Act and the Care and Protection Act, and for adoption service providers, additional obligations under the Adoption Act. The OCG is also empowered to impose further conditions on a designated agency or accredited adoption service provider's accreditation.⁴⁶
126. In relation to accreditation, the OCG has powers under the CG Act to:
- a. assess accreditation applications;⁴⁷
 - b. accredit agencies with provisional or full accreditation;⁴⁸

³⁹ CG Act section 43.

⁴⁰ CG Act sections 44-46 and 48.

⁴¹ CG Act section 49-50.

⁴² CG Act sections 54-55.

⁴³ CG Act section 56.

⁴⁴ CG Act section 72 provides that a designated agency is an agency accredited by the Children's Guardian under Schedule 3A.

⁴⁵ CG Act section 110A provides that an accredited adoption service provider means an organisation, or part of an organisation, accredited by the Children's Guardian under Schedule 3B.

⁴⁶ CG Act Schedule 3A cl 12-15 and Schedule 3B cl 12-15.

⁴⁷ CG Act Schedules 3A-3B.

⁴⁸ CG Act Schedules 3A-3B.

- c. assess new providers by visiting the designated agency over the course of their accreditation period to monitor practice and compliance with accreditation criteria;
 - d. issue a Notice of Conditions of Accreditation to each designated agency or accredited adoption service provider, setting out the services the agency can provide and any other requirements the agency must meet;
 - e. impose further conditions on a designated agency or accredited adoption service provider's accreditation;⁴⁹ and
 - f. cancel or shorten a designated agency or accredited adoption service provider's accreditation if it fails to comply with any of the conditions in the Notice of Conditions of Accreditation, or fails to meet accreditation criteria over time.⁵⁰
127. The Annual Report 2023-24 states that at 30 June 2024, there were:
- a. 85 designated agencies accredited by the OCG to provide statutory OOHC in NSW, including non-government providers and the DCJ; and
 - b. 6 non-government designated agencies accredited by the OCG to provide domestic adoption services in NSW as accredited adoption service providers.

3.2.3.4.2 Monitoring designated agencies and accredited adoption service providers

128. The OCG also monitors designated agencies and accredited adoption service providers to ensure these agencies meet their accreditation obligations throughout their accreditation period.⁵¹
129. Each year, the OCG visits designated agencies and accredited adoption service providers to monitor their compliance with the Standards for Permanent Care and provide feedback for areas of improvement. Monitoring assessments include discussions with key staff and a review of documentation, which enables the OCG to assess compliance with child protection requirements, suitability of placements and care environments and authorised carer assessments – depending on the agency, the OCG may visit them several times over a 12-month period to monitor practice improvements. The OCG also undertakes carer and residential worker monitoring to ensure carers and workers are appropriately authorised (see 3.2.3.5 below).
130. Designated agencies and accredited adoption service providers must demonstrate compliance with the Standards for Permanent Care and children's care legislation to achieve and maintain accreditation under the CG Act. Where an agency does not comply with these requirements, the Children's Guardian may decide to:
- a. refuse to grant accreditation;
 - b. defer a decision on an application for accreditation and require an action plan to address non-compliance;
 - c. impose a condition on the accreditation; or
 - d. shorten or cancel the period of accreditation.

3.2.3.5 Carer and residential worker monitoring

131. Under Part 5 of the CG Act, the OCG may be responsible for keeping a register for carers (**Carers Register**) and residential care workers (**Residential Care Workers Register**).⁵² These

⁴⁹ CG Act Schedule 3A cl 12-15 and Schedule 3B cl 12-15.

⁵⁰ CG Act Schedule 3A cl 18-20 and Schedule 3B, cl 19-21.

⁵¹ The conditions for the accreditation of designated agencies are set out in Schedule 3A of the CG Act. The conditions for the accreditation of adoption service providers are set out in Schedule 3B.

⁵² CG Act section 85(1) provides that the Children's Guardian may keep the Carer's Register and Residential Care Workers Register. Section 85(1B) provides that the Carer's Register may keep information about a relevant authorised carer authorised by a designated agency to provide statutory OOHC or supported OOHC in

registers assist in the selection and assessment of carers and residential care workers and inform the OCG's OOHC accreditation and monitoring work.

3.2.3.5.1 Carers Register

132. The Carers Register is a licensing tool that records information about carer applications, authorised carers who provide OOHC and their household members.⁵³ It is used to assist designated agencies in the selection and assessment of carers and is designed so that only individuals who have met minimum mandatory suitability and probity checks are able to provide OOHC to children and young people.

133. In relation to the Carers Register, the OCG is responsible for:

- a. monitoring and compliance to check agencies are meeting Carers Register requirements; and
- b. checking data integrity and undertaking remediation so the information recorded is current and accurate.

3.2.3.5.2 Residential Care Workers Register

134. Since July 2022, the OCG has been required to establish the Residential Care Workers Register.⁵⁴

135. The Residential Care Workers Register is designed to improve the safety of children and young people in OOHC. It records information about individuals who have applied for and are engaged as residential care workers, including those authorised to provide OOHC in a residential setting.⁵⁵ This allows designated agencies to exchange information about an individual where this is relevant to the safety, welfare or wellbeing of children and young people. It also supports agencies to decide if an individual is suitable to provide care to children and young people in residential care.

136. In relation to the Residential Care Workers Register, the OCG is responsible for:

- a. monitoring and compliance to check agencies are meeting Carers Register requirements; and
- b. checking data integrity and undertaking remediation so the information recorded is current and accurate.

3.2.3.6 SSRC

137. Part 5 of the CG Act also provides that the OCG may keep a register for children in SSRC.⁵⁶

138. SSRC is an arrangement between a parent and an organisation for a child to receive care away from their usual home for 3 or more nights in a 7-day period. The care must be for respite, behaviour support, or funded by the NDIS.

139. All entities providing SSRC must comply with the SSRC Code of Practice issued by the OCG, and any new SSRC providers are required to complete the OCG's online Child Safe Assessment. Following completion of the self-assessment, the OCG arranges for the provider to have access to the SSRC Register, in which the provider must record all nights of SSRC that they provide.

a private capacity, as well as persons who were formerly relevant authorised carers, persons who have applied to be relevant authorised carers, persons who reside for more than 21 days on the same property as a relevant authorised carer, and persons prescribed by the regulations. Section 85(1C) provides that the Residential Care Workers Register may include information about a residential worker, as well as persons who were formerly residential care workers, persons who have applied to be residential care workers and have reached an advanced stage in the recruitment process, and persons prescribed by the regulations.

⁵³ CG Act section 85(1B).

⁵⁴ CG Act section 85(1).

⁵⁵ CG Act section 85(1C).

⁵⁶ CG Act section 85(1)(c) provides that the SSRC may include information about a child in SSRC or a person prescribed by the regulations.

140. The Annual Report 2023-24 provides that in 2023-24, there were 383 SSRC providers registered under the SSRC scheme. The OCG is responsible for monitoring these providers and care placements, which includes:
- a. onboarding new providers and outlining their SSRC obligations;
 - b. conducting rapid risk assessments which target specific areas of concern, non-compliance or breaches of the SSRC Code of Practice by conducting full monitoring assessments with high-risk providers, including desktop reviews, site visits, and issuing interim and final monitoring assessment; and
 - c. issuing resources for providers to support them to implement the Standards and meet their obligations under the SSRC Code of Practice.

3.2.3.7 Children's employment

141. Since November 2003, the OCG has had responsibility for regulating children's employment.
142. Part 6 of the CG Act seeks to promote the safety, welfare and wellbeing of children in employment and prevent exploitation and abuse.⁵⁷
143. The OCG is responsible for regulating organisations that employ children in the entertainment, exhibition, still photography, modelling and door-to-door sales industries to ensure children's welfare is protected while they are working.
144. Employers in these industries must not employ children unless they hold an employer's authority issued by the OCG.⁵⁸ The OCG must decide whether to grant the authority within 14 days of receiving the application.⁵⁹
145. Once approved, an employer's authority will be subject to any conditions prescribed by the regulations or the OCG, including the Code of Practice contained in Schedule 6 of the CG Regulation.
146. The employer's authority allows the OCG to monitor the working conditions for young employees, educate employers in relation to their legal obligations, and undertake a range of compliance activities to ensure that employers adhere to the requirements for employing children and young people.
147. In 2023-24, the OCG received 610 applications for an authority to employ children in NSW, which is a 4% increase in applications from 2022-23.
148. In 2023-24, the OCG completed 102 desk-based compliance checks of organisations employing children in NSW. Of these, 15 formal warnings were issued, 36 reminders were issued in relation to breaches of the CG Act, 7 reminders were issued in relation to WWCC obligations, one case was referred to the OCG's investigations team for review and one required no further action.

3.2.3.8 NDIS Worker Check

149. On 1 February 2021, the NDIS Worker Check commenced in NSW. It does not have a specific or exclusive focus on children or child protection.
150. The NDIS is a national scheme established under the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**). The objectives of the NDIS are inter alia to:
- a. support the independence and social and economic participation of people with disability;
 - b. provide reasonable and necessary supports, including early intervention supports, for participants in the NDIS;

⁵⁷ CG Act section 89.

⁵⁸ CG Act sections 92 and 94.

⁵⁹ CG Act section 95.

- c. enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - d. facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability;
 - e. promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and
 - f. protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the NDIS.
151. The NDIS supports over 700,000 Australians with disability to access the services and supports.⁶⁰
152. The NDIS scheme includes the work of the National Disability Insurance Agency (**NDIA**) and the organisations and agencies that provide support. The NDIS Quality and Safeguards Commissioner has a regulatory and safeguarding role. The Commissioner has a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability using NDIS service providers.
153. The NDIS Quality and Safeguards Commissioner oversees the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018 (NDIS Worker Screening Rules)*. The rules set out requirements relating to worker screening. NDIS Worker Checks must be conducted in accordance with the NDIS Act and the NDIS Worker Screening Rules as part of the national quality and safeguarding arrangements for NDIS participants.
154. Section 181Y of the NDIS Act requires the NDIS Quality and Safeguards Commissioner to establish the NDIS worker screening database. The purpose of the database is:
- a. to maintain, for the purposes of the NDIS, an up-to-date record of persons who, under decisions made under NDIS worker screening laws, have been found, in working, or seeking to work, with people with disability not to pose a risk, or to pose a risk, to such people;
 - b. to maintain an up-to-date record of other decisions; and
 - c. to share information in the database with persons or bodies (including employers and potential employers) for the purposes of the NDIS.
155. The NDIS Worker Screening Database is a national register of all NDIS workers who have completed or applied for the NDIS Worker Check. The NDIS Quality and Safeguards Commissioner monitors and updates the register regularly.
156. While the NDIS Quality and Safeguards Commissioner operates a national agency, there is yet to be a national screening agency.
157. As a result of an inter-governmental agreement in 2018 between the Commonwealth, States and Territories, the States and Territories conduct NDIS worker screening.⁶¹ In NSW this occurs under the NDIS Worker Check Act and the *National Disability Insurance Scheme (Worker Checks) Regulation 2020 (NSW) (NDIS Worker Check Regulation)*. State and Territory worker screening units also access the register and update it with cleared and excluded workers as they are assessed.
158. On 18 March 2020, the OCG was appointed as the screening agency for the NDIS Worker Check for the purposes of the NDIS Worker Check Act.⁶²
159. A NDIS Worker Check is valid for 5 years and may be used across Australia with any NDIS employer and in any NDIS role.

⁶⁰ <https://www.ndis.gov.au/understanding/ndis-each-state> (as at 31 March 2025).

⁶¹ See Intergovernmental Agreement On Nationally Consistent Worker Screening For The National Disability Insurance Scheme <https://federation.gov.au/sites/default/files/about/agreements/iga-nat-consistent-worker-screening.pdf>.

⁶² NDIS Worker Check Act section 4 and Schedule 1 cl 7. See also *Government Gazette of the State of New South Wales, Number 58, 27 March 2020*.

160. At 30 June 2024, there were 292,151 people with a NDIS Worker Check in NSW.
161. When the OCG receives a NDIS Worker Check application, it makes an internal assessment of whether the individual should be granted a NDIS Worker Check clearance or should be excluded from receiving a NDIS Worker Check clearance. Where an individual is excluded, they are prohibited from engaging in NDIS work that requires a clearance for 5 years. In these circumstances, applicants may have the opportunity to make an appeal to NCAT for an external review of the OCG's NDIS Worker Check decision.
162. In 2023-24, the OCG received 84,173 applications for a NDIS Worker Check. 79,037 clearances were granted, with 343 exclusions.

3.2.3.9 Additional functions

3.2.3.9.1 Child Sex Offender Counsellor Accreditation Scheme

163. The OCG operated the Child Sex Offender Counsellor Accreditation Scheme until March 2020. The OCG is working with NSW Health and the DCJ to review the Scheme.

3.2.3.9.2 Official Community Visitors Scheme

164. The OCG is responsible for administering the child-related function of the Official Community Visitors Scheme.⁶³ Official Community Visitors visit accommodation services to promote the rights of residents, provide information to residents to access advocacy services, help resolve matters of concern, and inform relevant government agencies of matters affecting residents.
165. The Ageing and Disability Commissioner carries out the role of the OCG in relation to the Official Community Visitors Scheme. Any serious concerns about children in OOHC are referred to the relevant OCG director. Designated residential agencies are required to respond to Official Community Visitor reports, which are reviewed by the OCG as part of its monitoring.

3.3 Leadership and senior management of the OCG

166. On 12 December 2022, the then Minister for Families and Communities and the Minister for Disability Services announced Mr Stephen Kinmond OAM's appointment as the Children's Guardian under the CG Act for a term of five years. He commenced on 16 January 2023.
167. When the Inquiry was announced, the Guardian voluntarily agreed to step aside. Ms Rachael Ward was appointed as the Acting Children's Guardian.
168. The executive leadership team (ELT)⁶⁴ during the Inquiry Period comprised:
- a. Stephen Kinmond, Children's Guardian (February 2023 to 5 March 2025);
 - b. Richard Weston, Acting Children's Guardian (to 15 January 2023) and Deputy Children's Guardian (18 January 2023 to 3 February 2023);
 - c. Larissa Johnson, Director, OOHC Regulation (January 2023 to 5 March 2025);
 - d. Natasha Mewing, Director, Reportable Conduct (January 2023 to 5 March 2025);
 - e. Ricky Hennessey, Director, Reportable Conduct (April 2024 to 5 March 2025);
 - f. Michael Rosmalen, Director, NDIS Worker Check (January 2023 to 5 March 2025);
 - g. Steve Gholab, Director, WWCC (January 2023 to 5 March 2025);
 - h. Sharminie Niles, General Counsel (January 2023 to 5 March 2025);
 - i. Peter Eaton, Director, Corporate Services (January 2023 to December 2023);

⁶³ CG Act section 128(1)(o).

⁶⁴ The ELT is occasionally referred to by the OCG and OCG employees as the Executive Leadership Forum (ELF).

- j. Hardik Patel, Interim Director, Corporate Services (January 2024 to July 2024);
- k. Peter Crimp, Interim Director, Corporate Services (June 2024 to August 2024);
- l. Ada Leung, Director, Corporate Services (August 2024 to 5 March 2025);
- m. Milena Milojevic, Director, People and Culture (April 2024 to November 2024);
- n. Joanne Blackwell, Director, People and Culture (November 2024 to January 2025);
- o. Jill Adams, Director, People and Culture (January 2025 to 5 March 2025);
- p. Louise Coe, Director, Child Safe Organisations (January 2023 to January 2024);
- q. Helen Price, Director, Strategic Projects, Child Safe Organisations (March 2024 to 5 March 2025);
- r. Nadine Woodward, Director, Strategic Projects, Child Safe Organisations (April 2024 to 5 March 2025);
- s. Rosemary Gerardis, Director, Strategic Projects, Child Safe Organisations (April 2024 to 5 March 2025);
- t. Vanessa Ford, Director, Strategic Projects, Child Safe Organisations (April 2024 to 5 March 2025); and
- u. Leanne Kinsella, Director, Strategic Projects, Child Safe Organisations (July 2024 to 5 March 2025).

3.4 Directorates

169. The OCG work is distributed and managed in 8 directorates, including:
- a. Child Safe Organisations, which is responsible for administering the Child Safe Scheme, children's employment and the SSRC;
 - b. OOHC Regulation, which is responsible for accrediting and monitoring statutory OOHC and adoption providers. It is also responsible for the Carers Register and Residential Care Workers Register;
 - c. Reportable Conduct, which is responsible for administering the Reportable Conduct Scheme;
 - d. WWCC, which is responsible for administering the WWCC Scheme;
 - e. NDIS Worker Check, which is responsible for administering the NDIS Worker Check;
 - f. Corporate Services, which is responsible for providing Finance and IT services to the OCG;
 - g. People and Culture, which is responsible for providing HR functions to the OCG, after previously sitting under Corporate Services; and
 - h. General Counsel, which is responsible for legal advice and litigation.
170. Figure 1 below sets out the functional responsibilities of each directorate (from the *OCG Agency Information Guide (November 2024)*, page 6).

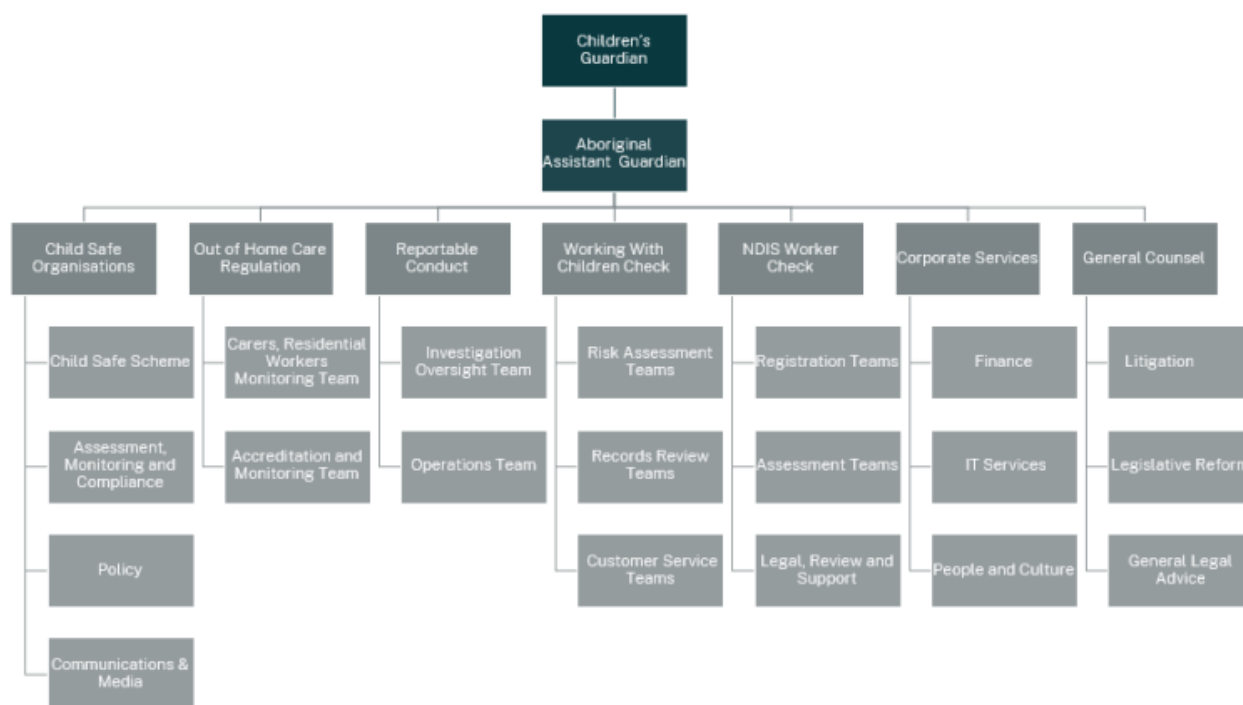


Figure 1: Organisational Chart indicating directorate responsibilities as at November 2024

3.5 OCG workforce

171. As at 30 June 2024, the OCG employed 277 people on a full-time or part-time basis. Figure 2 sets out the number of employees by employment category (from Annual Report 2023-24, page 78).

	30 June 2021	30 June 2022	30 June 2023	30 June 2024
Ongoing	181	205	238	236
Temporary	26	11	15	21
Casual	3	3	3	3
Seconded In			2	4
Senior Executive	9	10	8	13
TOTAL	219	229	266	277

Figure 2: Number of employees by employment category and financial year, 2021-2024

172. When the Inquiry was announced on 5 March 2025, the OCG employed 278 people on a full-time or part-time basis.

173. The staff turnover rate for OCG employees for the period 30 June 2021 to 5 March 2025 was:

- 11.06% at 30 June 2021;
- 11.94% at 30 June 2022;
- 12.47% at 30 June 2023;
- 10.99% at 30 June 2024; and
- 8.83% at 5 March 2025.

3.6 Budget allocation

174. The OCG's budget appropriations for the Inquiry Period are set out below:

Year	2022-23	2023-24	2024-25
Appropriation ⁶⁵	\$31,721,000	\$30,680,075	\$22,783,711
Anticipated expenses	\$58,643,000	\$62,676,851	\$63,643,601
Capital expenditure	\$988,000	\$1,439,000	\$1,439,000

3.7 Oversight and Monitoring

175. The OCG is subject to oversight and monitoring by several committees.

3.7.1 Audit and Risk Committee

176. The OCG has an independent Audit and Risk Committee (**ARC**). The responsibilities of the ARC are outlined in the *NSW Treasury Internal Audit and Risk Management Policy for the General Government Sector (TPP 20-08)*.

177. The ARC meets quarterly and has an advisory role in assisting the OCG with advice on the OCG's governance, risk and control activities and external accountability obligations.

3.7.2 Joint Consultative Committee

178. The Joint Consultative Committee (**JCC**) is a state-wide forum for consultation between the OCG and the Public Service Association (**PSA**).

179. The JCC meets quarterly to discuss workplace issues affecting the OCG.

3.7.3 Annual reports

180. The CG Act requires the OCG to provide an annual report to NSW Parliament within the period of 4 months after 30 June each year.⁶⁶ The report must include a description of the activities and operation of the OCG in relation to its functions, alongside the other matters outlined in section 138 of the CG Act.

181. The OCG's annual reports are published on the OCG's public website.

3.8 External oversight and monitoring

182. When addressing the effectiveness of the OCG having regard for both the independence and oversight of the OCG, the Inquiry considered the particular responsibilities of the Children's Guardian as the head of the agency. The Inquiry considered the OCG's operations within the broader NSW public sector, including its engagement with the Minister for Families and Communities and relevant parliamentary committees.

3.8.1 Children's Guardian and the Minister for Families and Communities

183. The CG Act expressly provides the Children's Guardian is an independent statutory officer.

⁶⁵ The Appropriation and income from other sources are meant to fund the anticipated expenses and capital expenses.

⁶⁶ CG Act section 138.

184. The Children's Guardian is not subject to the control or direction of the Minister for Families and Communities.⁶⁷
185. However, to achieve the objectives of the CG Act there must be a respectful and effective working relationship between the Children's Guardian and the Minister for Families and Communities:
- a. the Minister for Families and Communities may issue guidelines to the Children's Guardian about the way the Children's Guardian is to oversee the implementation of the Standards by and enforce the Standards within child safe organisations, in respect of which the Children's Guardian must act consistently with the CG Act;⁶⁸
 - b. the Children's Guardian must advise the Minister for Families and Communities of any findings or determinations of reportable conduct made by the Children's Guardian;⁶⁹
 - c. if requested by the Minister for Families and Communities, the Children's Guardian must prepare a special report on a matter relating to a function of the Children's Guardian;⁷⁰ and
 - d. the Children's Guardian must inform the Minister for Families and Communities when taking enforcement action in relation to the Official Community Visitor Scheme against a child safe organisation that is a public authority.⁷¹

3.8.2 Parliamentary Committee on Children and Young People

186. The Parliamentary Committee on Children and Young People (PC) was established to oversee, monitor and review the exercise of the OCG's functions and the Advocate for Children and Young People.
187. In particular, the PC monitors the execution of the OCG's functions under the WWC Act in relation to the WWCC, and Parts 3A, 4 and 9A of the CG Act in relation to OOHC.
188. The PC's functions are set out in section 37 of the *Advocate for Children and Young People Act 2014* (NSW) and section 8AC of the CG Act.
189. The Inquiry Commissioner reviewed the public records of the PC's hearings and reports (relevant to the Inquiry Period), including the *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* (Report 1/58 – November 2024) (**PC Report**). The PC Report notes that the PC is the only body with specific oversight of the Children's Guardian.⁷²
190. The PC Report records the PC's concerns about the following issues:
- a. the lack of clarity around the extent to which the PC can examine matters concerning the broader management and operations of the OCG. It notes the structure, strategic planning initiatives, resources, funding available to the OCG are all internal management matters that impact on the effective performance of the office as a whole;⁷³ and
 - b. alleged issues relating to the workplace culture of the OCG, which it notes was of 'considerable concern' to the PC.⁷⁴
191. The PC Report includes 4 recommendations addressed to these particular concerns.⁷⁵

⁶⁷ CG Act section 128(3).

⁶⁸ CG Act sections 8AB(1)-(2).

⁶⁹ CG Act section 51.

⁷⁰ CG Act sections 139-40.

⁷¹ CG Act section 152K.

⁷² PC Report, p 3 [1.10].

⁷³ PC Report, p 2 [1.6].

⁷⁴ PC Report, p 5 [1.20].

⁷⁵ PC Report, p 1 and p 6 .

3.9 Other reviews of the OCG or the OCG's statutory functions

192. The Inquiry notes there have been a number of reviews and reports published that are relevant to the establishment, functions and responsibilities of the OCG. The Inquiry has reviewed and considered these reports to assist in understanding the organisational structure and the OCG's responsibilities, particularly concerning its leadership, governance and independence. These include:
- a. *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008);
 - b. *Independent Review of Out of Home Care in New South Wales* (2016);
 - c. General Purpose Standing Committee No. 2, *Report on the role of the Department of Family and Community Services in relation to child protection* (2017);
 - d. Professor Megan Davis, *Family is Culture, Independent Review of Aboriginal Children and Young People in OOHC in NSW* (2019);
 - e. Urbis, *Reviews of the NSW Child Protection System 2008-2019: An Analysis of Key Findings and Degree of Implementation* (November 2020);
 - f. Australian Childhood Foundation, *Outcomes of the OurSPACE NSW program Changing trajectories for children and young people in out-of-home care in NSW 2018 – 2022* (Australian Childhood Foundation, 2022);
 - g. Office of the Advocate for Children and Young People NSW, *The Voices of Children and Young People in Out-of-Home Care 2021* (2021);
 - h. NSW Parliament, *Child protection and social services system Report 6/57* (Parliament of New South Wales, 2022);
 - i. James Martin Institute, *Supporting children and families to flourish: Putting human relationships at the centre of transformational reform of the child protection and out-of-home care system in NSW* (September 2023); and
 - j. Department of Communities and Justice, *Report on the Statutory Review of the Children's Guardian Act 2019* (December 2024).

4

Workplace policies of the Office of the Children's Guardian

This chapter outlines the workplace policies that operate within the OCG. Some of the policies are those applicable across the NSW public sector, while other policies have been specifically developed for the OCG.

4.1 Code of Ethics and Conduct

193. The Inquiry's Terms of Reference refers to the 2022 Code. The 2022 Code sets out the expected standards of behaviour that OCG employees must meet. It is reproduced in full in Appendix B. The 2022 Code was updated in 2024 and replaced with the 2024 Code.
194. Any incidents, conduct or practices raised in the submissions or information provided to the Inquiry must be considered to determine if such incidents, conduct or practices are contrary to the 2022 Code. Further, the 2022 Code is relevant to examining that the OCG's governance and leadership responsibilities for ensuring the workplace culture, practices and systems are consistent with the ethical values in the 2022 Code.
195. The 2022 Code expressly refers to the Public Service Commission's (PSC) then *Code of Ethics and Conduct for NSW Government employees* and states all OCG employees are required to comply with 'the Code of Ethics and Conduct that applies to all NSW Government sector employees.'
196. The Inquiry understands that the 2022 Code was revised to be more consistent with the NSW Government *Code of Ethics and Conduct for NSW Government Sector Employees (NSW Government Code)* that applied from 1 November 2024. The 2024 Code provides that all OCG employees are required to comply with the NSW Government Code.
197. The NSW Government Code acknowledges that all NSW government sector employees are required and expected to act ethically, lawfully and in the public interest. This can be achieved by adhering to the government sector core values of Integrity, Trust, Accountability and Service.
198. These core values are underpinned by 18 principles. The core values and principles are collectively prescribed by the GSE Act as the Ethical Framework for the government sector (the **Ethical Framework**) and are all of equal importance.
199. The 18 principles of the Ethical Framework are:

Integrity

1. *Consider people equally without prejudice or favour.*
2. *Act professionally with honesty, consistency and impartiality.*
3. *Take responsibility for situations, showing leadership and courage.*
4. *Place the public interest over personal interest.*

Trust

5. *Appreciate difference and welcome learning from others*
6. *Build relationships based on mutual respect.*
7. *Uphold the law, institutions of government and democratic principles.*
8. *Communicate intentions clearly and invite teamwork and collaboration.*
9. *Provide apolitical and non-partisan advice.*

Accountability

10. *Recruit and promote staff on merit.*
11. *Take responsibility for decisions and actions.*
12. *Provide transparency to enable public scrutiny.*
13. *Observe standards for safety.*
14. *Be fiscally responsible and focus on efficient, effective and prudent use of resources.*

Service

15. *Provide services fairly with a focus on customer needs.*

16. *Be flexible, innovative and reliable in service delivery.*

17. *Engage with the not-for-profit and business sectors to develop and implement service solutions.*

18. *Focus on quality while maximising service delivery.*

200. These are described as minimum standards.

201. Section 4 of the GSE Act sets out the following objects:

4 Objects of Act

The objects of this Act are as follows —

(a) to develop a modern high performing government sector —

(i) that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and

(ii) that has effective and fair employment arrangements, management and leadership,

(b) to establish the Public Service as the general service within the government sector,

(c) to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,

(d) to establish an ethical framework for the government sector comprising core values and principles that guide their implementation,

(e) to make provision for the objectives, functions and responsibilities of the Public Service Commissioner.

202. Section 7 of the GSE Act describes the ‘government sector core values’ as follows:

7 Government Sector Core Values

The core values for the government sector and the principles that guide their implementation are as follows:

Integrity

(a) Consider people equally without prejudice or favour.

(b) Act professionally with honesty, consistency and impartiality.

(c) Take responsibility for situations, showing leadership and courage.

(d) Place the public interest over personal interest.

Trust

(a) Appreciate difference and welcome learning from others.

(b) Build relationships based on mutual respect.

(c) Uphold the law, institutions of government and democratic principles.

(d) Communicate intentions clearly and invite teamwork and collaboration.

(e) Provide apolitical and non-partisan advice.

Service

(a) Provide services fairly with a focus on customer needs.

(b) Be flexible, innovative and reliable in service delivery.

(c) Engage with the not-for-profit and business sectors to develop and implement service solutions.

- (d) Focus on quality while maximising service delivery.

Accountability

- (a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.
- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient, effective and prudent use of resources.

203. Section 8(2) provides:

- (2) There is no hierarchy among the core values and each is of equal importance.

204. Section 8A(3) provides:

- (3) Government sector employees must comply with a code adopted under this section.

205. These are legal obligations which apply to all OCG employees. While described in general terms, these obligations reflect the NSW Government's mandate to ensure that people who work in the public service observe uniform, clear and high standards. It is fundamental to the community and those who are regulated by government or rely on government to protect their rights, that the public sector operates with integrity and accountability.

206. These core values have been part of the GSE Act since 2013. They apply to the Children's Guardian and all OCG employees.

207. The PSC hosts an 'ethics hub' on its website. It has also published a guide described as *Behaving Ethically: A guide for NSW government sector employees*, which states:

As a NSW Government employee you must act in ways that are lawful, ethical and build trust in the public sector. It is your responsibility to know, understand and comply with all the ethical and legal obligations that apply to you.

You should also take the time to learn what risks there are – in the context of your own job – to your acting lawfully and ethically. This is especially important if you are new to public sector employment, as there are certain obligations that are different from, or do not exist in, the private and not for-profit sectors.

Remember – your conduct, both inside and outside the workplace, can have a significant impact on your employer, your colleagues and, most importantly, the people of NSW.

208. The 2022 Code includes guidance on OCG employee and manager responsibilities, in addition to standards of behaviour including acting in the public interest, acting lawfully, bullying, unlawful discrimination and harassment, confidentiality, privacy, records management, conflicts of interest, gifts and benefits, lobbying, making public comment, recruitment, risk management, secondary employment, use of public resources, work health and safety (WHS) and reporting wrongdoing.

4.2 Other employment-related policies

209. The 2022 Code and the 2024 Code address the ethics and values which underpin public service. The Codes do not stand alone. Any assessment of workplace culture must also take into account the broader policy framework.

210. The OCG has adopted several policies, procedures, guidelines and action plans which set out its workplace processes and functions. While most policies have been specifically developed for the OCG, some policies apply across the NSW public sector.

211. The following OCG policies and procedures were provided to the Inquiry and identified as relevant to the Inquiry's Terms of Reference. They have been sorted into categories of internal employee policies, policies that relate to the operational remit of the OCG and external regulatory related policies.

212. Internal employee policies, including:
- a. **Bullying and Harassment Free Workplace Policy** (March 2024), which provides that the OCG does not accept workplace bullying, harassment or discrimination in any form, and outlines how the OCG will prevent and respond to these behaviours in accordance with its obligations under WHS and anti-discrimination laws;
 - b. **Employee Use of Social Media Policy** (February 2024), which provides OCG employees with standards of use as they engage in conversations or interactions using digital and social media for official, professional or personal use. This is to be read in conjunction with the applicable Code of Ethics and Conduct, Media Policy and the NSW Government *Social Media Guidelines*;
 - c. **Employment Probation Policy and Procedures** (March 2023), which sets out probation arrangements for the OCG;
 - d. **Flexible Work Policy** (September 2018), which sets out flexible working arrangements for the OCG;
 - e. **Flexible Work Hours Agreement** (November 2024), which sets out the conditions under which flexible working hours operate within the OCG to ensure that appropriate service levels are maintained, and complements the NSW Government *Policy on Flexible Work Arrangements*;
 - f. **Gifts and Benefits Policy** (December 2024), which sets out the requirements for situations in which OCG employees or their associates receive gifts or benefits from suppliers, clients, other persons or organisations;
 - g. **Guidelines on Internal Information Sharing** (December 2020), which summarises the legislative framework and processes for the internal sharing of information between directorates within the OCG;
 - h. **Grievance Policy and Procedures** (June 2017), which sets out the process for addressing OCG employee grievances and complaints;
 - i. **Media Policy** (February 2023), which outlines the coordination of contact between the OCG and the media; and
 - j. **Public Interest Disclosures Policy and Procedures** (November 2024) (**PID Policy**), which sets out the OCG's obligations in relation to reports of serious wrongdoing, or public interest disclosures (**PIDs**), in accordance with the *Public Interest Disclosures Act 2022* (NSW) (**PID Act**) and provides guidance on how an individual can raise a PID.
213. Operational policies, including:
- a. **Aboriginal Applicants and the Working With Children Check Policy Statement** (September 2022) (**Aboriginal Applicants Policy Statement**), which is the OCG's policy statement in relation to working with First Nations WWCC applicants, and ensuring that the OCG will work so that its processes and decisions are informed by evidence and research into the impacts of colonisation, dispossession and First Nations offending; and
 - b. **Compliance and Enforcement Policy** (September 2022), which sets out the OCG's approach in administering and enforcing legislation through education, compliance and administrative and enforcement actions.
214. External policies, including:
- a. **Agency Information Guide** (November 2024), which was published by the OCG in accordance with section 20 of the *Government Information (Public Access) Act 2009* (NSW), and sets out general information about the OCG's structure, functions, arrangements and accessible information;
 - b. **Business Ethics Statement** (November 2024), which sets out the business and ethical requirements of OCG employees and private sector entities and other government agencies supplying goods and providing services to the OCG;

- c. **Complaints Management Policy and Procedures** (December 2023), which provides guidance on the process for making a complaint about the OCG's services, products and/or how it exercises its functions (eg complaints that originate outside the OCG);
 - d. **Fraud and Corruption Control Policy** (March 2025), which sets out the OCG's fraud and corruption control system, establishes the OCG's policy position and ethical framework, establishes clear roles and accountability structures for management of the fraud and corruption control system and response to allegations of fraud and corruption, raises awareness of fraud and corruption risks that could occur at the OCG and provides the requirements and guidance necessary to effectively prevent, detect and respond to events of fraud and corruption;
 - e. **Legislative Compliance Policy** (May 2024), which identifies the legislation for which the OCG has compliance responsibility and sets out a process for reporting on legislative compliance, including where any breach of legislative requirements has occurred;
 - f. **Privacy Management Plan** (May 2024), which informs the OCG's stakeholders, members of the public and employees about how the OCG handles personal and health information in accordance with the PPIP Act and *Health Records and Information Privacy Act 2002* (NSW); and
 - g. **Sponsorship Policy and Guidelines** (August 2022), which specifies the requirements for when the OCG is seeking sponsorship, and the requirements for organisations applying for sponsorship from the OCG.
215. The following NSW Government policy adopted by the OCG was provided to the Inquiry and identified as relevant to the Inquiry's Terms of Reference:
- a. **Aboriginal Procurement Policy** (January 2021), which sets out the NSW Government's strategic economic policy of Growing NSW's First Economy, and providing an opportunity to increase skills and economic participation within NSW's Aboriginal and Torres Strait Islander communities.
216. The following OCG action plans were provided to the Inquiry and identified as relevant to the Inquiry's Terms of Reference:
- a. **Disability Inclusion Action Plan 2018 (DIAP)**, which sets out the OCG's commitment to the inclusion of people with disability and improving access to mainstream services and facilities;
 - b. **Multicultural Plan 2020-2023 (Multicultural Plan)**, which sets out the OCG's commitment to planning for and supporting its multicultural stakeholders and employees;
 - c. **Reconciliation Action Plan 2019-2021 (RAP 2019)**, which sets out the OCG's commitment to reconciliation, and acknowledges that reconciliation between Aboriginal and Torres Strait Islander peoples and other Australians is the responsibility of all Australians; and
 - d. **Reconciliation Statement** (undated), which provides that the OCG's vision for reconciliation is that Aboriginal and Torres Strait Islander people will be restored to a place of equity, dignity and respect.
217. Some of these policies are discussed in detail below, but as noted above, the Inquiry's Terms of Reference do not extend to making findings of incidents, conduct and practices contrary to these policies. The consideration of these policies is relevant to assessing the effectiveness of the OCG having regard to the need for both independence and oversight of the OCG.

4.3 Social media policies

218. The OCG has a policy framework for employees' use of social media.
219. The Employee Use of Social Media Policy sets out the standards of use for OCG employees as they engage in conversations or interactions using digital or social media for official, professional and personal use. It has been adopted in conjunction with the applicable Code of Ethics and Conduct, Media Policy and the NSW Government *Social Media Guidelines*.
220. Some of the standards in relation to OCG social media include that employees should:

- a. always follow relevant policies including the applicable Code of Ethics and Conduct;
 - b. not act unlawfully (such as breaching copyright) when using social media;
 - c. make sure their personal online activities do not interfere with the performance of their job;
 - d. be clear that their personal views are theirs, and not necessarily the views of the OCG; and
 - e. not disclose confidential information obtained through work.
221. Further, OCG employees are banned from accessing TikTok on government-issued devices or on personal devices used to access corporate data.
222. The 2024 Code also provides the following in relation to social media usage:
- a. OCG employees should not make any public comment (eg on social media) on behalf of the OCG or in the course of their work unless authorised to do so. When making an authorised public comment for official duties, employees should only state facts, avoid expressing opinions on government policies or decisions, and only disclose information that is publicly available; and
 - b. OCG employees may participate in public debate on political and social issues in a private capacity, including on social media. However, they should ensure their comments are clearly identified and understood to be their personal views, do not discuss or disclose information concerning their work that is not publicly available, and are lawful.
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4.4 Communications policies

223. The Inquiry was not provided with any internal communications policies.
224. With respect to external communications policies, the Media Policy outlines the coordination of contact between the OCG and the media. It provides that the OCG's Media and Communications team is the point of contact for any media enquiry.
225. Other than the Media and Communications team, no OCG employee is permitted to initiate media contact or respond directly to media enquiries. If non-media employees are contacted directly by the media about the OCG, they must not answer any questions but pass the enquiry to the Media and Communications team.
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4.5 First Nations policies

226. During the course of this Inquiry, some specific issues arose in relation to the OCG and engagement with First Nations employees and the OCG's engagement with First Nations communities in NSW. Chapter 6 of this Report addresses the relevant policies in the context of the First Nations issues that arose.
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4.6 Diversity and inclusion

227. The OCG has adopted the Multicultural Plan and the DIAP as part of its diversity and inclusion framework.
228. The Multicultural Plan addresses the OCG's commitment to planning for and supporting its multicultural stakeholders and employees. However, the Inquiry notes that it is now outdated, and in need of an updated version addressing current issues and strategies. This is discussed further at 4.9.1.1.
229. The DIAP sets out the OCG's commitment to the inclusion of people with disability and improving access to mainstream services and facilities. This is important in the context of where one of the OCG's directorates, NDIS Worker Check, is concentrated on the provision of services to individuals who work in the disability sector. However, as with the Multicultural Plan, the DIAP is well outdated. This is concerning when considering the scope of work of the OCG. Further, it is contrary to section 14 of the *Disability Inclusion Act 2014* (NSW), which requires a public authority

to review its Disability Inclusion Action Plan every 4 years in consultation with people with disability, and remake that plan within 12 months of that review.

4.7 Policies relevant to internal complaints and grievances

230. The OCG has a range of policies that relate to the reporting, management, investigation and resolution of internal complaints made by OCG employees. These include:
- a. Grievance Policy and Procedures;
 - b. Bullying and Harassment Free Workplace Policy; and
 - c. PID Policy.
231. The OCG's complaints and grievances policy framework supports OCG employees' rights to raise grievances and complaints in relation to their employment with the OCG. This is further supported by the Code, which provides that managers have the responsibility to support the right of employees to raise workplace concerns, grievance complaints or allegations of discrimination, harassment and workplace bullying through internal and external processes.
232. The Terms of Reference require the Inquiry to examine employee complaints and grievances in the context of workplace culture. Accordingly, the Inquiry's assessment of these policies and procedures are set out in Chapter 7.
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4.8 Policies relevant to external complaints and grievances

233. The OCG's Complaints Management Policy and Procedures relate to the reporting, management, investigation and resolution of complaints made by parties external to the OCG.
234. The Complaints Management Policy and Procedures provide a three-tiered approach to external complaints handling as recommended by the NSW Ombudsman:
- a. **Informal Resolution**, where employees are empowered to resolve issues early and informally wherever possible, including in relation to a response to correspondence, an inconsistency in policy or procedure, or an error in records. Informal issues can be handled by all levels of OCG employees. At all levels, the employee managing the complaint must log a record of the complaint and resolution in a Complaints Register held by the Director, Corporate Services;
 - b. **Formal Resolution**, where a complaint is lodged and/or referred to the Corporate Services directorate and investigated if an issue remains unresolved after informal discussions. The Complaints Management Policy and Procedures sets out the process by which investigation of formal complaints is to occur. All formal complaints must be recorded by the Corporate Services directorate in a Complaints Register held by the Director, Corporate Services; and
 - c. **External Review**, where the complainant is advised of the outcome and options for further review if their complaint is not resolved satisfactorily. External review options may include the NSW Ombudsman, NSW Procurement Board, Independent Commission Against Corruption (ICAC), the Audit Office of NSW or the Anti-Discrimination Board of NSW.
235. In relation to anonymous complaints, the Complaints Management Policy and Procedures provides:
- While anonymous complaints are not encouraged, they are accepted. They may be lodged either in writing or accepted by an employee as an oral statement. Complainants are encouraged to provide as much information as possible which may be of assistance when assessing the complaint. It should, however, be noted that an anonymous complaint might be more difficult to investigate as, for example, further details of the circumstances relating to the complaint might be difficult to obtain, and it will be difficult to provide feedback on the complaint.*
236. The Director, Corporate Services is responsible for overseeing the complaints handling processes under the Complaints Management Policy and Procedures, ensuring complaints are

dealt with appropriately and ensuring a central Complaints Register is maintained for monitoring and tracking complaints.

237. Managers and employees also have responsibilities under the Complaints Management Policy and Procedures. Managers are responsible for understanding, complying with and managing individual complaints and supporting and empowering employees to resolve complaints promptly and appropriately, while employees are responsible for dealing professionally, promptly and courteously with complainants and providing assistance and information to individuals looking to make a complaint.

4.9 Gaps in OCG policy framework

238. Workplace policies are the written rules that reinforce the organisation's values, mission and standards. The policies generally mirror legal obligations and translate those obligations in a manner that is appropriate to the particular workplace. The policies set the standards of behaviour and engagement expected in a workplace. The policies describe what and when certain behaviours will be unacceptable, amount to misconduct or may justify disciplinary action to be taken. The policies may also describe the workplace procedures for addressing concerns, complaints and grievances, to ensure there is a common understanding about how those matters are addressed.

4.9.1.1 Out of date policies

239. The Inquiry has identified several policies and procedures which are out of date. These include:
- a. **Flexible Work Policy**, which was last updated in September 2018. As the OCG issued the Flexible Work Hours Agreement in 2024, the Inquiry considers it would be of benefit to the OCG to implement an updated Flexible Work Policy that better aligns with the Flexible Work Hours Agreement and reflects current flexible work practices at the OCG, particularly since the COVID-19 pandemic;
 - b. **Guidelines on Internal Information Sharing**, which was last updated in December 2020. The Inquiry understands that extensive internal and external advice has been sought in relation to information sharing across the OCG since this time and that the OCG is preparing updated guidelines for greater clarity of process within the OCG;
 - c. **RAP 2019 and Reconciliation Statement**, which have not been renewed or updated since they were first published. These recommendations are discussed further in Chapter 6;
 - d. **Multicultural Plan and DIAP**, which have not been renewed or updated since they were first published. The Inquiry considers that, as a first step, the OCG would benefit from updating its relevant action plans – not only to comply with relevant legislation, but to demonstrate its commitment to diversity and inclusion across the organisation. Further, the OCG should consider implementing additional policies and guidelines in relation to its diversity and inclusion practices across the organisation. Several written submissions and participants in consultation interviews commented that the OCG's commitment to diversity and inclusion is lacking; and
 - e. **Grievance Policy and Procedures**, which was last updated in June 2017. The Inquiry understands that the People and Culture directorate is updating this policy, however it is yet to be approved and launched – noting that an updated policy was discussed in the September 2024 JCC Meeting. It would be of benefit to the OCG to prepare and issue an updated Grievance Policy and Procedure which more clearly sets out the processes for receiving and responding to employee grievances, the processes for handling anonymous complaints, and the responsibilities of the Children's Guardian, People and Culture directorate and managers/supervisors in managing those grievances. These recommendations are discussed further in Chapter 7.

4.9.1.2 Additional policies and guidance material

240. Chapter 8 addresses the OCG leadership and governance models and effectiveness. As addressed in Chapter 8, the OCG should strengthen its governance framework by ensuring its policies and accompanying guidance material support the OCG operating effectively as an independent agency in the NSW public sector. The policies should be aligned and consistent.
241. In addition to the policies, procedures and action plans set out above, the Inquiry has identified additional gaps in the OCG's policy framework when addressing Term of Reference 3, with respect to the policies, including in relation to:
- a. WHS policies and procedures, including in relation to psychosocial hazards (which are discussed further in Chapter 5). This is necessary for the OCG's compliance with WHS laws, including the *Work Health and Safety Act 2011 (WHS Act)* and the *Work Health and Safety Regulation 2017 (WHS Regulation)*;
 - b. policies on the OCG's management and actions in relation to vicarious trauma, which is discussed further at 5.5.1.2;
 - c. internal communications policy to ensure greater clarity and flow of information and communication channels within the OCG;
 - d. conflict of interest policy;
 - e. a workplace sexual harassment prevention policy which was required to be introduced by 1 March 2024 under the *Public Service Commissioner Direction 1 of 2023*;
 - f. a workplace adjustments policy which is required to be introduced by 1 November 2025 under the *Public Service Commissioner Direction No 1 of 2024*; and
 - g. policies addressing how the OCG upholds and applies the Standards within its own work and workplace. While the Inquiry is aware that the OCG does not engage directly with children in its work, given it is responsible for the implementation of the Standards across child safe organisations, it may be prudent for the OCG to consider how it applies and considers these Standards across its own practice.

4.9.2 Training and implementation of policies

242. While introducing new and updated policies, procedures and action plans is an important step in addressing the gaps in an organisation's policy framework, it is important that employees are trained in relation to the implementation of these workplace policies.
243. Based on the information provided to the Inquiry in submissions and consultation interviews, there should be better communication and enforcement of policies across the OCG, to ensure OCG employees are aware of the policies that apply to them. Participants appeared to have a general lack of awareness in relation to the workplace policies and procedures that apply across the OCG, the relevant people responsible for administering and assisting with policies across the OCG and whether policies were current or outdated. The Inquiry heard from multiple leaders in the OCG that they felt like they had to act as the HR point of contact for the staff that they supervised and had to assist staff in interpreting workplace policies.
244. The Inquiry Commissioner considered the OCG's policy training program for employees and leaders. While the Inquiry has not reviewed the specific contents of the training modules designed for OCG employees, it has been provided with a list of the mandatory onboarding and regular training. The Inquiry Commissioner considers that the OCG's employees should be consulted about any potential changes in relation to the nature of policy training that would best assist and support them. The policies should be accessible and available.
245. While OCG employees are required to complete an Onboarding Learning module (with a separate module for managers and ELT members) which contains a number of compulsory courses covering content that is typical of a NSW government agency, the amount of regular training is far below what is expected. The Inquiry also notes that non-managerial employees do not complete training in relation to PIDs or anything directly related to sexual harassment prevention and response during the Onboarding Learning module. After the completion of mandatory training, OCG employees are only required to complete one training module on the

relevant OCG Code of Ethics and Conduct each year. At present there is no other training that all OCG employees are required to complete after their first year of employment. It is not surprising in these circumstances that employees may not be aware of policies and procedures relevant to their employment.

4.10 Findings and Recommendations

4.10.1 Findings

246. FINDING 1

The Inquiry found several gaps in the OCG policy framework, where policies, procedures and action plans are severely deficient or out of date. Specifically:

- a. First Nations policies, including the RAP 2019 and Reconciliation Statement (these findings are set out in Chapter 6);
- b. Grievance Policy and Procedures (these findings are set out in Chapter 7); and
- c. Out of date policies: Flexible Work Policy, Guidelines on Internal Information Sharing, Multicultural Plan and DIAP (as addressed at 4.9.1.1 above).

The Inquiry Commissioner found that these OCG policies and action plans are out of date and would benefit from further update to align with current practices and systems. Further, the Inquiry considers that certain policies should be adopted where issues are not covered in the current policy framework, or to address some of the Inquiry's concerns about leadership, governance and workplace culture as set out in Chapter 5.

4.10.2 Recommendations

247. RECOMMENDATION 1

The Inquiry Commissioner recommends the following OCG policies should be updated:

- a. Flexible Work Policy;
- b. Guidelines on Internal Information Sharing;
- c. RAP 2019 and Reconciliation Statement;
- d. Multicultural Plan and DIAP; and
- e. Grievance Policy and Procedures.

248. RECOMMENDATION 2

The Inquiry Commissioner recommends the OCG should consider implementing policies concerning:

- a. WHS, including in relation to psychosocial hazards;
- b. the OCG's management and actions in relation to vicarious trauma;
- c. internal communications;
- d. conflicts of interest;
- e. workplace sexual harassment prevention policy;
- f. workplace adjustments policy; and
- g. how the OCG upholds and applies the Standards within its own work and workplace.

249. RECOMMENDATION 3

The Inquiry Commissioner recommends the OCG adopt a more rigorous approach accompanied by a clear plan to ensure there is appropriate training for its employees and leaders. This should include:

- a. regular mandatory training for policies including complaints and grievances, First Nations cultural awareness, PIDs, sexual harassment and prevention, vicarious trauma, confidentiality and information security and the applicable Code of Ethics and Conduct; and
- b. appropriate records or a register of who, when and what training was completed.

5

The OCG workplace culture

This chapter addresses the OCG workplace culture with a focus on the systemic issues arising from the submissions, interviews, consultations and information provided to the Inquiry. The focus on systemic issues is not intended to address individual or specific experiences, but draws on the personal experiences shared with the Inquiry.

5.1 The Inquiry's approach to workplace culture

250. A person-led approach to assessing workplace culture means the experiences shared with the Inquiry were at the centre and relied on to identify common concerns and experiences of OCG employees. The Inquiry heard about a range of experiences, some deeply distressing and some positive.
251. The Terms of Reference required the Inquiry to examine the governance and leadership of the OCG with respect to ensuring the workplace culture, practices and systems are consistent with the ethical values in the 2022 Code (and, by extension, the 2024 Code).
252. The Inquiry's consideration of workplace culture and the context of the OCG's First Nations engagement is separately addressed in Chapter 6.
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5.2 Workplace culture

253. Culture describes a group's patterns of behaviour, traditions, values, customs and beliefs. The expression 'culture' is a shorthand way of describing a collective identity or personality.⁷⁶
254. The expression 'workplace culture' or 'organisational culture' describes the collective behaviour patterns of a group of people who work for a common employer or share a common working environment. A workplace culture generally describes the way people engage with each other at work and when working together, in a way that is taken for granted. The behaviours, engagement and treatment of others in the workplace becomes normalised by the workplace rules (written and unwritten).
255. A workplace culture may evolve over time. A workplace culture may be shaped by the nature of work and the way the work is performed, the physical workplace or it may be based on collective or accepted assumptions or stereotypical beliefs about how a person should or would behave in the workplace. Sometimes, these rules simply reflect what senior leaders want or mirror how they behave.
256. The 'written rules' of a workplace culture are the statutory, contractual and policy obligations imposed on employees. These rules may be readily identified and usually operate in a uniform manner. The OCG's statutory and policy obligations are described in Chapters 3 and 4.
257. However, it is the 'unwritten rules' that often give a workplace culture its character or particular features. The unwritten rules directly influence how a person experiences a workplace culture. The unwritten rules may constrain some behaviours or permit behaviours that appear to be inconsistent with the written rules. How the unwritten rules operate may be the key to whether a person's experience of the workplace culture is positive (happy, ethical, inspiring) or negative (toxic, dangerous or unsafe). Overall, these experiences shape an employee's job satisfaction, sense of security and productivity.
258. The workplace culture might create 'in' and 'out' groups. For those part of the 'in' group, the rules contribute to their sense of belonging and security. For those in the 'out' group, they experience exclusion. They may feel like 'imposters' or isolated. They do not know or cannot meet the unwritten rules.

⁷⁶ Hofmann DA, Jones LM, 'Leadership, Collective Personality, and Performance' (2005) *Journal of Applied Psychology* Vol. 90, No. 3, 509–522 (Copyright 2005 by the American Psychological Association).

259. Any review of workplace culture should consider the written rules alongside the unwritten rules.

5.3 The OCG's workplace culture and the written rules

260. While the OCG is an independent agency, its employees are subject to the GSE Act. This is the statutory framework for NSW government sector employment and workforce management.⁷⁷

261. The GSE Act operates with a number of policies. As set out in 4.1, the NSW Government Code is the relevant government policy in relation to ethics and conduct. Other NSW Government policies include:

- a. *A guide to building a workplace culture* (12 September 2022) (updated 21 July 2023); and
- b. *Behaving Ethically – A guide for NSW government sector employees* (19 August 2022).

262. In addition to the GSE Act, there are duties on both the government and its agencies as employers and employees under the WHS Act and the WHS Regulation. Specifically, a positive and proactive duty to, so far as is reasonably practicable, ensure the health and safety of workers. This includes managing psychosocial risks in the workplace (introduced to the WHS Regulation by the *Work Health and Safety Amendment Regulation 2022* (NSW)). Duty holders must know their responsibilities to manage 'psychosocial hazards' effectively.⁷⁸

5.3.1 The written rules – the OCG's statutory obligations and policies

263. Chapter 4 outlines and describes the OCG's written policies.

264. The Terms of Reference requires the Inquiry to focus on the Inquiry Period. For this reason, the examination of the OCG workplace culture has largely focused on this period and has not traced the historical circumstances that have clearly influenced the internal experience and external perspectives on the OCG workplace culture. In this respect, the current leaders and employees have inherited the culture.

265. The Inquiry considered the statutory provisions and the relevant policies to understand how they were practised within the OCG and the extent to which they influenced the workplace culture, provided a standard of behaviour for employees and their managers and directors, as well as how the most senior leaders understood and modelled behaviour by reference to these standards. The Inquiry's focus was on the patterns and systemic practices.

266. A few participants referred to or relied on policies under the GSE Act, including the NSW Government Code which applied as a matter of law. However, there appeared to be a low level of awareness of the relevance of these standards to the day-to-day work done at OCG.

5.3.2 OCG values

267. Inquiries or reviews into an organisation's workplace culture often search for, and seek to understand, that organisation's values. An individual's values are personal beliefs and guiding principles, shaped by their personal, family and community experiences. These values may be shaped by education, experiences, ethical considerations and unconscious biases. They are inherently personal.

268. During the course of the Inquiry, participants shared their personal values and commitment to the protection and wellbeing of children, and desire to work in a place where their personal values aligned with an organisation that was also committed to the protection of children. Participants had strong and clear personal values in this respect. The employees' experience of

⁷⁷ See also Government Sector Employment Regulation 2014 (NSW) and *Government Sector Employment (General) Rules 2014* (NSW) (**GSE Rules**).

⁷⁸ SafeWork NSW has developed the Code of Practice for Managing psychosocial hazards at work. It is an approved Code of Practice under section 274 of the *Work Health and Safety Act 2011*. The Managing Psychosocial Hazards at Work Code of Practice was issued in May 2021.

the OCG's workplace culture differed for those motivated by advocacy and those motivated by a regulatory model of engagement.

269. Modern workplaces in both the private and public sectors often claim to have 'organisational values.' These are not the collective personal values of employees or determined by a majority of individuals that may share the same values. Rather when used in an organisational setting, the values are generally broad aspirational statements that describe the mission, purpose and expectations of the collective entity. In effect, what an organisation wants its workplace culture to reflect. The values are often used to bring those who work within an organisation together and to communicate with those who do business with the organisation, what to expect from the organisation in their dealings, transactions or engagement.

270. The Harvard Business Review contributors refer to conducting dozens of studies designed to determine how a clear understanding of individual and organisational values can affect decision-making, motivation, relationships, wellbeing, leadership and performance. The contributors report:

What we've discovered in this work is striking: When you align your organization's values with both your strategy and the values of your employees — creating what we call values alignment — you reap all sorts of benefits: higher job satisfaction, lower turnover, better teamwork, more-effective communication, bigger contributions to the organization, more-productive negotiations, and, perhaps surprisingly, more diversity, equity, and inclusion.⁷⁹

271. While the Harvard Business Review contributors reflect a western-centric view of organisational behaviour, the contributors make an important point about an organisations' values versus beliefs:

To think clearly about the alignment of values, it's necessary to understand what values actually are — and are not. They are simply principles of evaluation: They determine whether a perceiver views something as good or bad or important. Values are not beliefs, and they are not strongly related to demographics such as race and gender. Think of values as the ends you pursue, and of beliefs as the paths you perceive as leading to those ends. Consider two people who both value creativity. The first believes that it is achieved through quiet contemplation, and the second believes that it is achieved through interaction with others. They have the same goal but will pursue it very differently.⁸⁰

272. The OCG's values are published on its website. It states:

We are guided by our values of:

Integrity: *We act with honesty and transparency with each other and the individuals and organisations we serve.*

Trust: *We work together as one team for 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.*

Accountability: *We are accountable for our own actions, transparent in our decisions and authentic in our behaviour.*

Respect: *We respect ourselves, each other and the individuals and organisations we serve.*

Empathy: *We listen with care to understand perspectives with each other and the individuals and organisations we serve.*

(OCG Values).

⁷⁹ Ingram P and Chou Y, 'What Does Your Company Really Stand For?' *Harvard Business Review* (November - December 2022) p 41.

⁸⁰ Ibid p 42.

273. These values mirror section 7 of the GSE Act which refer to the way employees should work, with the addition of ‘respect’ and ‘empathy.’ These latter two capture the qualitative aspects about work and engagement that should occur. However, the OCG’s language of being ‘guided by’ the OCG Values is ambiguous because it does not include an express commitment to adhering to the OCG Values and being accountable if the collective organisation fails to work consistently with the OCG Values.
274. It is not enough that the OCG Values sound good, there must be a clear and common understanding of those values, accountability and leadership. This was a matter the Inquiry wanted to understand from the direct and lived experience of OCG employees.
275. Having read the submissions and listened to many submissions, the overwhelming number of OCG employees who participated in the Inquiry understood and agreed with these values. The question for the Inquiry was whether there was a misalignment with the employees’ experience of the workplace culture.

5.3.3 Identifying the unwritten rules

276. The importance of identifying the unwritten rules when reviewing workplace culture is to examine whether the express purpose, objectives, policies and values of an organisation undermine the written rules. This will be particularly apparent when the unwritten rules and day to day behaviour are inconsistent with the written rules and expected behaviours, such as those in the 2022 Code. When this occurs, internally it will appear that the written rules are window dressing and the real culture rewards certain behaviours. The result being fear, ‘group think’ and a reluctance to participate. From both inside and outside the organisation, there may be an unexplained loss of trust, competency and accountability in how an organisation performs.
277. Identifying the unwritten rules is not always easy. They can be identified by listening to the lived and direct experiences of the employees and the leaders, as well as asking about workplace interactions and patterns.
278. The following are a few examples (and nowhere near being exhaustive) that provided some indicators of the OCG culture:
- how or if people greet each other when they arrive or depart the office. The Inquiry heard some directors do not greet or acknowledge the employees they work with. They *‘put their head down and walk past’* them in the office; other directors and managers have inconsistent practices when greeting colleagues, which has been interpreted as favouritism for those who are acknowledged;
 - whether employees prefer to work from home or an office in person. The Inquiry heard that many OCG employees prefer to work at home for a wide range of different reasons, including feeling safer at home and minimising the risk of being bullied; others considered that if people worked in the office it would promote collegiality and a better workplace culture;
 - the level and nature of social interactions between employees. The Inquiry heard some OCG employees gathered at the local pub, which might also be where work related matters were discussed. Some participants did not view such socialising favourably;
 - the preferred mode of communication with each other (in person, email, in writing). The Inquiry heard some directors have little direct contact with employees in their directorates and communications were in writing or by email, leaving the employees with limited opportunity to discuss, learn or receive feedback directly. Other participants commented on the Guardian holding meetings at the coffee shop in the courtyard of the office. The Guardian said, *‘I would frequently be at the coffee shop downstairs because part of my style is discussion with people, you know, in an initial setting’*. Some OCG employees expressed their concern because of the lack of privacy, with the courtyard visible from the office. The Guardian was asked about this. He said *‘people could’ve said to me look Steve I feel uncomfortable, can we meet somewhere else?’*.

5.3.4 OCG's culture and the alignment between the written and unwritten rules

279. A valuable tool for identifying the 'unwritten rules' and the experience of the workplace is the People Matter Employee Survey (PMES) reports. The Inquiry reviewed the People Matter PMES reports, the culture review report prepared by Ms Anne Cosgrove for the OCG and strategic plans to understand how the OCG reports and describes its workplace culture. The Inquiry also heard and reflected on the direct and lived experience of the OCG leaders and employees of the workplace culture.
280. All of this information evidences that the stated OCG Values and strategic priorities do not align with the direct and lived experience of many OCG employees. The values and strategic priorities exist, but do not operate in a direct and meaningful way for everyone who works at the OCG.

5.3.4.1 PMES

281. The OCG participates in the annual PMES. The PMES provides an opportunity for NSW public sector employees to 'have a say' about their workplace on an anonymous basis. The survey asks employees about their experiences with their work, workgroup, managers, and organisation. For the Inquiry Period, PMES experiences are grouped into management practices and reported under four domains:
- a. purpose and direction;
 - b. work environment;
 - c. enabling practices; and
 - d. leadership.
282. The premise of the PMES is that these practices positively contribute towards employee and organisational outcomes, including employee engagement, job satisfaction, wellbeing, and customer service.
283. The PMES reports are published annually and reflect survey scores as a percentage of favourable answers. Scores that are favourable are the sum of 'strongly agree' and 'agree' answers (75-100% favourable), scores that are neutral are the sum of 'neither agree nor disagree' answers (50-74% favourable) and scores that are unfavourable are the sum of 'disagree' and 'strongly disagree' answers (0-49% favourable).
284. The Inquiry understands that agencies also receive confidential PMES reports containing anonymised comments provided by employees in response to short-answer questions.
285. The Inquiry had access to the PMES 2019-20 to PMES 2023-24 for the OCG. For the purpose of the Inquiry, the below review is confined to the review of the OCG PMES reports from January 2023 to March 2025, as these are relevant to the Inquiry Period.

5.3.4.2 PMES 2022-23

286. The PMES 2022-23 covered the period from 21 August 2022 to 15 September 2023.
287. The PMES 2022-23 had 217 survey responses with a response rate of 33%.
288. In relation to key topic areas:
- the highest scoring areas were 'Flexible working' (92% favourable), 'Ethics and values' (83% favourable) and 'Job purpose and enrichment' (79% favourable);
 - the lowest scoring areas were 'Action on survey results' (53% favourable), 'Recruitment' (56% favourable) and 'Senior managers' (58% favourable);
 - the majority of areas received a neutral rating; and
 - no areas received an unfavourable rating.

289. In relation to specific questions and findings, the questions with the highest favourable scores described the following experiences:
- *'I support my organisation's values.'*
 - *'I understand what ethical behaviour means within my workplace.'*
 - *'How satisfied are you with your ability to access and use flexible working arrangements?'*
 - *'My manager supports flexible working in my team.'*
 - *'I am comfortable notifying my manager if I become aware of any risks at work.'*
290. The questions with the lowest favourable scores described the following experiences:
- *'My manager appropriately deals with employees who perform poorly.'*
 - *'I feel burned out by my work.'*
 - *'Change is managed well in my organisation.'*
 - *'Senior managers support the career advancement of all employees.'*
 - *'My organisation makes fair promotion decisions.'*
291. The confidential comments made in the PMES 2022-23 were provided to the then Manager of People and Culture, the Guardian and one of the Guardian's executive officers. These comments addressed the questions, *'what is the best thing about your workplace?'* and *'what is one thing that would make your workplace better?'*.
292. In response to the question *'what is the best thing about your workplace?'*, employees addressed key areas including the impact of their work, flexible work, managers and collaboration. Some comments in this regard include:
- *'Our work is important and over the time I have worked in here, I can see that our work actually does make a difference not only to children and young people in care, who are our primary focus, but also to those working in the sector, who regularly provide feedback and appreciation for the role that we play and the work that we do. My managers are all professional, ethical, competent, approachable, kind and supportive. My colleagues are all very professional in their conduct, they are approachable and make an effort to be helpful and supportive to one another. The above combination makes it a pleasure to work and communicate. I also have a high regard for people who work in other Directorates - I appreciate the way they are so approachable, professional, reliable, competent, helpful and friendly. This makes inter-team work smooth and enjoyable and it gives me great confidence that our organisation as a whole promotes the best interests of children and young people while also projecting a competent and professional ethos. All of the above contributes to why I am proud to work here.'*
 - *'The flexibility of my workplace and the genuine empathy my manager and director have for the need to balance work and life is unmatched. I am still motivated by the dream that we can make real meaningful change to the lives of children and the way child protection is viewed in social and work settings. It does feel like a hill too far though some days without any enforcement / compliance options.'*
 - *'The best thing is that the organisation is focused on protecting children and implementing policies and community engagement to improve this area. Our organisation offers great work from home flexibility and part time work arrangements.'*
 - *'Flexibility, staff and management conduct themselves in a professional manner (it feels like I work in a grown-up organization), I have not witnessed unfair treatment of anyone, I enjoy coming to work, I don't dread coming to work, my colleagues are knowledgeable, management appear committed to making things better for staff.'*
293. The comments in response to the question *'what is one thing that would make your workplace better?'* contained a range of recommendations and frustrations, including in relation to strategy and planning, resources, productivity and KPIs, professional development and opportunities, a First Nations leadership role, accountability of leadership, recruitment, technology and office attendance.

294. The Guardian told the Inquiry that the results illustrated *‘a number of areas that clearly required attention, including but not limited to workforce cultural issues and related staff support and development initiatives; a shared whole-of-office vision and the associated need to bring the whole office together to work on an updated business plan for the OCG; and broader leadership challenges which needed to be met.’*
295. Further, the Inquiry notes that the confidential comments raised serious concerns about the behaviour, leadership, integrity and competence of the leaders. Some comments in this regard include:
- *‘We are working outside our remit in a disordered and chaotic way, trying to do too much, rather than focusing on making our functions work together more effectively.’*
 - *‘We need a calm leader, making good decisions, who doesn’t fly off the handle when things are hard, or when people disagree with him. It isn’t a safe work environment. The irony of his inappropriate behaviour against a backdrop of wanting to work more in the domestic violence space doesn’t go unnoticed.’*
 - *‘The Guardian should be conscious of who they trust as his own direct reports mimic him and talk behind his back. Get rid of them all and bring in new blood. Time for a change at the top!!’*
 - *‘There are 3 Alpha males that believe they rule the place. The Guardian has placed a lot of trust in these alpha males and [sic] do not work on the broader OCG but for their own directorate.’*
 - *‘Alpha Males are ruling the agency!’*
 - *‘Dysfunctional, arrogant, micromanaging, egotistical, bias, racist, discriminatory, incompetent and more.’*
 - *‘The directors behaviours are not aligned with the agency values. They are dysfunctional and do not collaborate, communicate, coordinate.’*
 - *‘New leaders are required. New blood. Clean it up and get rid of the old and bring in new leaders not insecure micromanagers!’*
296. These comments and experiences point to the written and unwritten rules not being aligned.
297. The Guardian said when he read the anonymous comments:
- I was concerned that, while a number of the comments were very constructive and professional in nature, there were comments that did not accord with acceptable professional standards. In fact, in all of my time in the workforce, I have never witnessed comments of this nature.*
298. The Guardian said he was at:
- ‘a loss to understand to what incident, or patterns of incidents, the complainants are referring.’* He added that from his perspective, *‘it would greatly enhance the overall workplace culture of the office, if we could create a safe and effective process where concerns about interactions between colleagues could be constructively dealt with. On this issue, I have found that the constructive feedback which I have received over the years about my work with staff, including feedback from staff at the OCG, has allowed me to adjust my communication style.’*
299. While the Guardian was concerned about the anonymous criticisms of him, he explained that it did not mean that he *‘automatically questioned the motive of an anonymous complainant.’* He said he had *‘done a lot of work with whistleblowers.’* He also acknowledged that *‘in many cases, a complainant may not feel comfortable revealing their identity to the involved agency’*, but expressed a general view that those that had made critical comments about him in the PMES should identify themselves so the allegations could be tested.
300. The Guardian told the Inquiry that he considered that some action needed to be taken to address the confidential concerns raised in the PMES and the results generally.
301. In late 2023, the Guardian relayed to the ELT the *‘nature of some of the comments’* made in the PMES 2022-23. At that time, there were 7 directors who reported directly to the Guardian. There are no specific records of the report, but later one of the Guardian’s executive assistants

informed Ms Cosgrove that the Guardian conveyed the following issues in general terms at the ELT meeting:

- a. comments made about work outside the OCG's remit, that the Guardian is not an appropriate person to be working in the domestic violence area because of his alleged poor temperament, and he is mocked by some of his directors behind his back;
 - b. comments about the 'alpha males'; and
 - c. other comments about the ELT members regarding alleged incompetence and a failure to embody public sector values.
302. The Guardian accepted the '*clear messages delivered from the 2023 PMES process, together with other evidence pointing to the need for workforce cultural change.*' Accordingly, the ELT agreed to undertake a range of initiatives.
303. On 8 November 2023, the ARC discussed the PMES 2022-23 results in the context of an all-staff offsite planning day (see 5.3.4.4.1 below). Item 5 (Governance Update) of the draft ARC minutes states:
- 'The committee discussed PMES and the all-staff off-site planning day. The committee agreed the approach to explore focus areas in each directorate for future business planning. The working group is meeting next week to further plan the day. The committee discussed the potential for a facilitator to facilitate the all-staff day as an independent.'*
304. The Guardian recalled the ARC recommended the appointment of a consultant, Ms Anne Cosgrove, who they highly regarded as an expert in the People and Culture field, and who they believed was very well placed to carry out a robust review of the OCG's environment in this critical area of the OCG's operations.
305. On 20 November 2023, the JCC also discussed the PMES 2022-23 results. The Inquiry has considered the relevant minutes, which note that the PSA was looking at PMES across the public sector and was keen to hear from the OCG about the '*meaningful attention it gives to the survey results and action plans.*' From this, the OCG committed to provide feedback on its action in relation to the PMES 2022-23 results. The JCC also discussed potential options for OCG employees to provide PMES feedback anonymously or in directorate-only sessions run by a neutral or third party, as they may be hesitant to participate and provide feedback when the session is run by directors, managers or senior leaders.
306. On 30 November 2023, the OCG directors were asked to undertake PMES Action Planning for their respective directorates. They were each provided with an action plan guidance document and planning templates. They were asked to complete the Action Plans by mid-January 2024.
307. The Inquiry heard that by 23 January 2024, '*the key issue is that the plans had not been openly communicated across OCG for visibility and accountability. The other issue is that some directorate plans have included actions for Corporate Services but did not engage team members to determine the ability to deliver, resourcing and budget.*'

5.3.4.3 Anne Cosgrove's engagement

308. Sometime in late 2023, the Chair of the OCG's ARC approached Ms Cosgrove and asked her to have a discussion with the Guardian following the issues raised by the OCG employees in the 2022-23 PMES. Ms Cosgrove had previously worked as an executive director in a number of NSW public sector agencies leading cultural transformation.
309. On 21 December 2023, the OCG engaged Ms Cosgrove to work with the OCG for 4 months. Ms Cosgrove's duties were to:
- a. review the culture of the organisation;
 - b. analyse leadership capability within the organisation;
 - c. review the current organisational structure;
 - d. assess the ethos of the organisation from the perspective of the employees;

- e. lead the work on identifying the core values of the organisation;
 - f. develop an underpinning capability framework; and
 - g. provide support and advice to the CEO on all people-related issues.
310. Ms Cosgrove joined as a consultant and was engaged to take *'day to day responsibility for People and Culture.'* She was expected to work with *'the team'* to determine key areas of focus, set the agenda and be a *'key point for escalation.'* She was also engaged to work with the Guardian and the ELT on structure, culture and the PMES matters. Ms Cosgrove's understanding was that a change in culture at the leadership level was critical to the success of any new strategic plan and ultimately the OCG.
311. By 3 January 2024, Ms Cosgrove had prepared a draft position description for a new position of Director, People and Culture. At that time, there was no director, and the HR resources functions were performed by a manager in the Corporate Services directorate.
312. By 12 January 2024, Ms Cosgrove had identified that she would like to do a *'deep dive'* into Corporate Services *'ASAP.'* She liaised with one of the Guardian's executive officers. The Inquiry heard that around the same time Ms Cosgrove was engaged, another person was seconded from another NSW government department to assume the title of Director, Corporate Services. It was intended that secondees would have day to day responsibility for *'Finance, Admin, Governance, IT'*, with Media and Communications reporting to him. However, his *'key focus'* would be Finance. He would not take responsibility for the *'day to day operations of People and Culture.'*
313. In late January 2024, Ms Cosgrove met with the ELT to discuss the PMES 2022-23 results and the relevant actions to be taken. She raised a range of issues with the directors including the approach to defining organisational culture, understanding what works well within an organisational culture and where the challenges exist, and the action the directors could take to address the cultural challenges. Ms Cosgrove impressed on the directors their role to drive a culture shift.
314. The Inquiry also heard that staff from some directorates were asked or told not to participate in the process. However, the Inquiry did not hear any direct evidence from a staff member who had been directed or asked not to participate in Ms Cosgrove's review.
315. Ms Cosgrove gathered qualitative and quantitative data by reviewing material. When she was present in the OCG office, she observed how the OCG was organised and operated. Ms Cosgrove interviewed over 80 OCG employees on a confidential basis. One participant said that Ms Cosgrove did a *'meet and greet'* when she arrived and was *'very active and available in being around.'* The participant said the *'mere fact of her presence was a positive for employees.'*
316. Ms Cosgrove observed the OCG had grown over time with the addition of new responsibilities and teams being brought in. She also observed the siloed nature of the directorates and the employees' experience of these silos.
317. By the time Ms Cosgrove completed her engagement, she considered the level of autonomy in the business units and directorates did not serve the OCG well. She observed that each area of the OCG's *'business'* acts as a standalone business. She gave the example of some directorates having their own lawyers working independently of the General Counsel directorate (which worked across the whole of the OCG), as well as directorates having their own IT systems. The level of integration and working together appeared to be superficial. She considered one reason appeared to be that each of the directors *'liked their own space and they liked making their own decisions.'* She considered the siloed nature resulted in missed opportunities for a *'one OCG'* approach and what Ms Cosgrove described as *'synergies.'*
318. The Inquiry concurs with Ms Cosgrove's observations about the siloed nature of the OCG structure and organisation. It creates a veneer of a *'one OCG.'* This has obvious consequences for the workplace culture, governance and leadership.

5.3.4.4 The Cosgrove Report

319. In April 2024, Ms Cosgrove provided a report titled *Workplace Review, Key Findings and Recommendations* (**Cosgrove Report**) to the Guardian. It was presented in high level summary form and addressed the following areas:
- 'Strategy and Planning';
 - 'Leadership Effectiveness';
 - 'Workforce & Performance Management';
 - 'Employee Engagement and Professional Development'; and
 - 'Operational Efficiencies.'
320. These areas permitted a *'wide ranging overview of the workplace review in assessing the current organisational environment, identifying strengths, challenges and areas for improvements.'*
321. In each of these five areas, Ms Cosgrove includes dot points addressing:
- staff feedback;
 - key findings;
 - risks; and
 - recommendations (with 27 recommendations made in total).
322. Overall, the feedback and key findings were:
- Strategy and planning:** OCG employees gave feedback that they desired clarity in supporting the organisation's strategy and direction, as well as its boundaries and remit. They also wanted to have the ability and resources to reach all community organisations dealing with children, with a focus on First Nations representation. The Cosgrove Report made recommendations to this effect, including a new OCG plan that is a *'living document with evolving divisional business plans'*, coordinated ELT forums focusing on strategy and business plan outcomes and strengthened cross directorate collaboration;
 - Leadership effectiveness:** feedback indicated that OCG employees wanted enhanced leadership capability with a focus on collaboration and role modelling desired behaviours, ensuring expectations and pressures are equally distributed between junior and senior staff, greater financial transparency, executive engagement and refined recruitment and HR practices. In this respect, Ms Cosgrove made recommendations focusing on a culture program for senior leaders, a review of roles to clarify KPIs, knowledge sharing sessions, financial reporting and robust internal control processes, implementing communication channels to address employee concerns and recruiting a Director, People and Culture;
 - Workforce and performance management:** OCG employees provided feedback in relation to clarity and transparency around KPIs, reviewing business needs and resource demands to ensure fair workload distribution and opportunities for employees in long-term acting roles to apply for the substantive role. The Cosgrove Report made recommendations to address this feedback, including the development and implementation of workforce management plans in consultation with directorates, reviewing and adjusting KPIs to reflect role and task complexity and reviewing performance development frameworks;
 - Employee engagement and professional development:** extensive feedback indicated that OCG employees sought training and development (including for new starters), regular feedback to staff, opportunities for internal secondments, fair and transparent recruitment practices, prompt responses from managers when employees seek advice and clear and concise communication across the organisation. To address this feedback, Ms Cosgrove recommended once again the recruitment of a Director, People and Culture. She also recommended that the OCG develop a People and Culture strategy and PMES action plans; and
 - Operational efficiencies:** OCG employees provided feedback in relation to additional tools to do their jobs effectively, ensuring IT systems were fit for purpose, having an onsite HR

presence to support staff needs, reviewing the organisational structure to ensure flexibility and future growth, an office attendance and communication plan, opportunities for more face-to-face interaction and collaboration and opportunities to raise awareness of the OCG. The Cosgrove Report included recommendations addressing this feedback, such as investment in IT infrastructure and other necessary tools and support, daily IT and People and Culture support, an internal and external communication strategy, and a complete review of the OCG's organisational structure.

323. The full set of recommendations in the Cosgrove Report are set out as follows:

Cosgrove Report: Recommendations
Strategy and Planning
1. Ensure the new OCG strategic plan is a living document with evolving divisional business plans to operationalise the strategy.
2. Coordinate quarterly ELT forums focusing on strategy and business plan outcomes, people and culture, sensitive/government priorities.
3. Add structure to the ELT meetings with monthly reports (1 page template) to allow knowledge sharing and decision making.
4. Establish an Office of the Guardian to support Guardian's requirements, strategic media and comms; providing him greater capacity for advocacy work.
5. Strengthen cross directorate collaboration and leadership capability through targeted programs designed by P&C in consultation with ELT and Guardian.
Leadership Effectiveness
1. Design and implement Guardian sponsored culture program for senior leaders covering lived values, leadership drivers, inspiring vision, strategic storytelling, change management, engagement, performance management, trust etc. P&C Director priority.
2. Conduct a review of roles and priorities to clarify KPIs and support workforce management.
3. Implement knowledge sharing sessions to build mutual understanding at all levels.
4. Enhance financial reporting and disclosure practices to improve accountability.
5. Implement robust internal controls and audit procedures to monitor expenditure and ensure funds are spent wisely.
6. Implement regular communication channels (town hall meetings, executive Q&A sessions) to facilitate dialogue and address employee concerns.
7. Recruit People & Culture Director; agree priority remit for assessing HR foundation including recruitment and performance practices, identify gaps and address as part of P&C strategy, include feedback loop to monitor and address issues related to recruitment and HR practices; centralised grievance management.
Workforce & Performance
1. Develop and implement workforce management plans in consultation with directorates (P&C to support ongoing needs in line with strategy and growth); includes additional allocation of resources to high-volume teams.
2. Review and adjust KPIs to reflect role and task complexity.
3. Review current performance development frameworks and practices to ensure they support meaningful discussions and staff needs.

Cosgrove Report: Recommendations
4. Identify single point sensitivities that need to be addressed and prioritise budget.
Employee Engagement and Professional Development
1. Recruit People & Culture Director.
2. Develop and implement P&C strategy which encompasses the entire employee lifecycle, including <ul style="list-style-type: none"> • Recruitment & talent attraction • Onboarding and induction • Organisational development framework • Learning and development opportunities • Performance, talent management and succession planning frameworks and processes • Grievance handling frameworks • Workforce planning • Reward & recognition • Staff communications
3. P&C to lead coordination and reporting of PMES action plans in partnership with ELT - joint responsibility.
Operational Efficiencies
1. Invest in IT infrastructure.
2. Provide necessary tools and support.
3. Daily onsite IT support provided.
4. Daily onsite P&C support provided.
5. Complete review of the current organisational structure (forward focusing).
6. Review all systems and processes to ensure fit for purpose.
7. ELT to agree consistent flexible work arrangements including office attendance.
8. Consider both internal and an external communication strategy to build OCG's profile.

324. The Cosgrove Report also included 'specific feedback from the PMES and discussions' addressing the topics:

- a. identity and what we stand for;
- b. professional development and opportunities;
- c. resources, productivity and KPIs;
- d. transparency (Aboriginal leadership role, accountability, recruitment and HR);
- e. technology;
- f. office attendance/interactions;
- g. communication;
- h. other suggestions to improve support to staff (11 points, which included 'more emotional wellbeing support' and 'making staff wellbeing a key priority'); and
- i. staff comments and direct feedback.

325. The Cosgrove Report is a reliable assessment of the OCG workplace culture in 2023 during the Guardian's first year.
326. Ms Cosgrove's professional experience and expertise indicates she was well aware of the factors that influenced how a workplace culture operates and the alignment of the written and unwritten rules (although she does not use this language). She was attuned to how the functional and operational obligations on the OCG also affected its culture and the wellbeing of its employees. She accomplished and completed a large and complex task within a short period of time.
327. The Cosgrove Report has been invaluable to this Inquiry, particularly in assisting the Inquiry to understand the issues, initiatives and the experiences of OCG employees in 2023 and the early part of 2024.

5.3.4.4.1 JCC

328. On 19 March 2024, the JCC discussed the actions to be taken following Ms Cosgrove's engagement prior to the completion of the Cosgrove Report. The Inquiry has reviewed the relevant minutes, which indicate that the OCG *'engaged a provider for a change management program' and 'brought in a consultant, Anne Cosgrove, to review our PMES which included staff engagement and development on how we can support our people.'* The JCC discussed Ms Cosgrove's approach and a recommendation to employ a Director, People and Culture. The JCC also discussed the upcoming OCG strategy day and was hopeful that the shortlisted director could attend to *'work alongside the plan and do a people and culture strategic plan for the coming 12-18 months.'*

5.3.4.5 Whole of OCG strategy day, 29 March 2024

'Once you have a strategy day and you put some things in place around what you're going to do, you must follow up on it and you must keep telling people what you're doing.'

329. The Guardian told the Inquiry that during the latter period of 2023 and the first quarter of 2024, it also *'became clear to the Executive Team of the benefit in us bringing the whole office together to work on developing a 3-year Corporate Strategy (2024-2027), and an aligned first year Business Plan (2024-25).'* This was one of the initiatives to address the PMES 2022-23 results.
330. On 29 March 2024, a whole of OCG off-site meeting was held. Ms Cosgrove was, at that stage, completing her report. She attended the off-site meeting.
331. The Guardian's hope was by bringing together the *'staff to work on jointly settling our future strategy/direction and related plans, this would not only improve our effectiveness but also enhance our workplace culture in a number of ways, including demonstrating the progress that both the leadership team and staff across the directorates had made, in working together in our service to our community.'*
332. The Guardian said that in order to *'properly land this work'*, he believed that the initial development of a corporate strategy needed to be facilitated by a well credentialed, external body utilising various consultation strategies. He settled on Social Ventures Australia (SVA).
333. The Guardian was also very keen to convey a message to staff that *'we are one OCG, and that we're all committed to working together on developing our strategic blueprint for providing high quality services to our community in the exercise of our legislative responsibilities.'*
334. The Inquiry heard that the strategy day facilitated by SVA was a *'great'* day. They worked on *'a great list of things'* and they agreed on action items. Everyone was *'hyped up.'* The meeting created an expectation that there would be some positive change.
335. The Inquiry heard that during the strategy day, staff collaborated on issues concerning staff collaboration and rotation across the OCG, updating information across the OCG in relation to organisational charts and the intranet, informal information sharing across the OCG and feedback on the OCG structure.

336. However, the Inquiry heard that in the weeks and months following this strategy day, OCG employees did not see any change that reflected the outcomes of the day. One participant said *'afterwards it sort of dribbled off and felt really deflating. Nothing happened from that.'* Another participant said *'but what happened? All that money, all that time and effort. What's going to be achieved? I don't know where that's gone now.'*
337. One participant who reflected on this event, said *'we have these kind of more performative elements where we bring everybody together. So that's at that kind of very superficial level, which is still something. But I think until that real groundwork happens, people are not experiencing that as a genuine kind of commitment and engagement.'*

5.3.4.6 The OCG's response to the Cosgrove Report and the OCG strategy day

338. Armed with ideas from the strategy day and the Cosgrove Report, one of the critical issues for this Inquiry is to understand what happened and examine what actions were taken in response to her recommendations, how effective the response has been and why the systemic issues Ms Cosgrove identified either have not or cannot be rectified.
339. The Guardian said he *'welcomed the findings.'* He did *'see the challenges associated with them.'* He acknowledged the OCG needed to address the findings, saying *'otherwise we would have no credibility and we wouldn't be serving the community and we wouldn't be serving our staff.'*
340. The Guardian said the ELT was *'particularly aware of the need to ensure that the plan which we developed (the Corporate Strategy) was followed up by action – this required a clear implementation plan (i.e. the Business Plan), along with strong downstream evidence of us well executing the Plan.'*
341. At this time, significant changes were occurring in the leadership arrangements at the OCG. There continued to be turnover in the Corporate Services directorates with interim directors; the OCG long standing director of Child Safe left the OCG; 5 new directors were engaged on 12 month contracts to join the Child Safe directorate and the appointment of a new Director of People and Culture, with a new People and Culture team.

5.3.4.6.1 ARC

342. Actions following Ms Cosgrove's engagement and the Cosgrove Report were also discussed on several occasions at the ARC. The Inquiry has reviewed the relevant minutes and sets out a summary of these discussions below.
343. On 18 April 2024, the Guardian acknowledged the ARC's support in relation to the work *'needed to be done to facilitate organisational cultural change'*, and thanked them for their recommendation *'regarding the appointment of a culture and organisational development consultant, Anne Cosgrove.'* As part of this, the Guardian acknowledged the need to appoint a Director, People and Culture and the importance of addressing the employee feedback collected by Ms Cosgrove.
344. On 29 August 2024, the ARC discussed the OCG strategy day held on 29 March 2024, which *'pivoted coming together as an organisation to form OCG's strategy on a page.'* The ARC discussed the OCG's *'strategy on a page'*, including key areas, defined outcomes, current milestones and timelines for execution. The committee also discussed *'ownership'* accountability for the strategic planning phase, confirming that the Guardian's Executive Office would support the monitoring and reporting against each activity, with each directorate having key activities to lead and be accountable for. With respect to the OCG's people strategy, it was noted that *'the strategy has been reviewed to see how it aligns with the agency. The people strategy was presented to staff through several sessions where feedback has been provided, this feeds back into the strategy and the showcase.'*
345. On 24 September 2024, the ARC was informed that the Guardian had an informal appearance at the PC in relation to the Cosgrove Report, in which the PC was provided with a redacted version of the Cosgrove Report. The Guardian did not propose to provide the PC with a copy of the full report due to *'the importance of confidentiality of staff who provided information in confidence to Anne that is reflected in the report.'*

5.3.4.6.2 Distribution of the Cosgrove Report

346. The Inquiry heard that the Cosgrove Report was not broadly shared with OCG employees in the first instance, including those who had engaged with Ms Cosgrove and shared their experiences. Some participants told the Inquiry they did not know if Ms Cosgrove had taken their experiences into account, whether their concerns were acknowledged or suggestions for change were considered. The Inquiry was not provided with any explanation as to why the report was not initially shared.
347. The Inquiry heard a range of views and perceptions about the response to the Cosgrove Report. One participant recalled the work done in response to the Cosgrove Report described as *'doing the fluffy stuff.'* Many participants appeared to have little knowledge of the response or believe nothing was done:
- *'The key findings and recommendations of the review (dated April 2024) were only released to all OCG staff after the review was discussed at a PSA/OCG staff meeting in late 2024.'*
 - *'Unfortunately, I'm not sure what's happened with Anne's report – we don't get updates on it.'*
 - *'She looked across everything as far as I know... I don't know where that's gone now.'*
 - *'A large cost was dedicated to the Workplace Culture Review done by Anne Cosgrove across 2023-24, with clear recommendations that staff were consulted on and agreed with. These recommendations were presented in April 2024 and then largely forgotten about.'*
 - *'There have been two formal reviews into the workplace culture at the organisation (2019 and 2024). Neither of which have resulted in meaningful change. To my knowledge the results of both have been withheld from staff.'*
 - *'The recommendations were partially completed or certain outcomes misrepresented as completed, to suggest accountability.'*

5.3.4.7 Specific actions taken in response to the Cosgrove Report recommendations

348. The Inquiry noted that the OCG's records did not reveal how the specific recommendations made by Ms Cosgrove were addressed and considered by the recently arrived employees who were tasked with developing a plan. There is no document that records or tracks each of the recommendations, to identify whether the recommendation was accepted or rejected, if accepted how the recommendation would be implemented and timeframes for responding to the recommendations.
349. It appears that the focus was on the outcome of the OCG strategy day on 29 March 2024. A *People & Culture Executive Update* (**People and Culture Executive Update**) and the *OCG Mid-year report: OCG business plan 2024-25* (**Business Plan 2024-25**) appears to be the two key pieces of work undertaken. The process for developing these documents was undertaken by the new Director, People and Culture. The Guardian said he also recruited a temporary employee who worked closely with one of his executive officers and various staff from across directorates, to *'help settle the business plan and engender momentum among staff to ensure that we acted on key components of the plan.'*

5.3.4.7.1 People and Culture Executive Update

350. The People and Culture Executive Update, containing a People and Culture strategy for the OCG (**People and Culture Strategy**) was circulated in draft in May 2024. The Inquiry understands that the draft was finalised but was not provided with a final version of this document.
351. The Inquiry recognises that the development of the People and Culture Executive Update and the OCG-wide People and Culture Strategy was an important step in initiating change across the organisation in response to the recommendations of the Cosgrove Report. However, it has several deficiencies which did not enable the OCG to respond to and implement these recommendations in a meaningful way.
352. Overall, the Inquiry's impression of the People and Culture Executive Update is that it:

- a. was built on the aspirational leading statement, *'the OCG is a great place to work, a magnet for talent and a supportive place for all staff'* which does not capture or consider the experiences of OCG employees as set out in the 2022-23 PMES and the Cosgrove Report;
 - b. focused on the *'supporting pillars'* of *'attract, engage, grow, guide'* instead of the OCG Values;
 - c. aspired to *'undertake OCG values co-design to develop practical behavioural framework reinforcing lived values applicable to all staff irrespective of position. One team ethos / shared OCG DNA'*, without a clear plan of what this involves and how it might be achieved;
 - d. was overly ambitious and unrealistic in relation to the timeframe for change across the OCG, outlining three implementation phases without clear direction or process for change;
 - e. was dependent on more policies or frameworks being developed as opposed to the implementation of the policies and frameworks in place at the time;
 - f. did not address the systemic issues in the Cosgrove Report;
 - g. did not consider a functional review across the OCG as recommended by Ms Cosgrove, rather entrenching the siloed structure of the OCG and failing to address the OCG's inability to co-design and effect change in a siloed structure;
 - h. it was not people-led, instead relying heavily on the directors to develop and effect change with limited support and no assessment of their capacity as operational and functional leaders; and
 - i. placed too much responsibility on employees responsible for People and Culture and/or HR without providing additional supports for them, particularly when they were recent arrivals at the OCG.
353. While the Inquiry Commissioner is not critical of the drafters of the People and Culture Executive Update and People and Culture Strategy, it is important to consider how the OCG leadership implemented and supported these initiatives to achieve the objectives and aspirations set out in the People and Culture Strategy and the changes in the leadership team with 5 new temporary directors. These concerns are addressed in more detail in Chapter 8.
354. The Guardian told the Inquiry he had an overall positive view of the People and Culture Strategy developed through the People and Culture Executive Update. He said the *'2024-25 Business Plan identifies a number of 'achievements' relating to one of our critical priority areas under our Corporate Strategy – 'Supporting our People'. In that document, we captured both the expected outcomes and the key achievements to date. While it is important to recognise the importance of the six 'Supporting our People' 'achievements' referred to in the December 2024 Mid-year Business Plan report, one needs to recognise that much more needs to be done to deliver strong results against the 5 desired 'Supporting our People' outcomes referred to in our Strategic Plan.'*
355. The Guardian informed the Inquiry that the relevant aspirations and values set out in the People and Culture Strategy were *'settled together and with significant consultation with staff.'* When asked about the meaning of these aspirations, particularly *'values co-design to develop a practical behavioural framework'*, the Guardian explained that it is *'about making sure that you have the input of all relevant directorates'* and *'practical initiatives outlining the aspiration stages.'* It was not made clear to the Inquiry Commissioner what this practical behavioural framework is.
356. The Inquiry Commissioner asked the Guardian whether the siloed nature of the OCG made it impossible to achieve the People and Culture Strategy's desired *'One team ethos / shared OCG DNA'* due to the lack of shared OCG DNA, based on Ms Cosgrove's observations. The Guardian explained:

This is once again aspirational, and I go back to the interpretation of 'develop practical behavioural framework', is we want to shift the people's attitude. We want to shift the way they behave, so in fact we're reinforcing lived values applicable to all staff... irrespective of their position. In other words, you work for the OCG, these are your values this is what you're seeking to do and regardless of which part of the OCG that you belong to, that's your shared commitment... I guess the practical behavioural framework, interesting use of words, but

essentially what that's seeking to convey is - how do we actually make sure that the theory becomes practice?

357. In relation to the implementation of the People and Culture Strategy, the Guardian informed the Inquiry that *'our people value implementation and I did have a Director of People and Culture and it was their job to do it.'* Instead, the Guardian considered that his leadership role was to *'get briefed on it but not directly deliver.'* The Guardian informed the Inquiry that the rollout of the People and Culture Strategy involved *'related information sessions for staff (and other associated activities'* and that relevant leaders played an important role in *'working with staff to ensure that we were tracking the plan's implementation, and that we were keeping staff apprised of significant developments in this regard.'*

358. The Annual Report 2023-24 records:

In the first half of 2024, the OCG undertook a consultative process with its senior executives and all staff to develop its 3-year OCG Corporate Strategy 2024–2027. This process involved:

- a review of the 2023 People Matter Employment Survey (PMES) results and development of a report outlining key recommended actions and responses to issues raised*
- the development of a People & Culture Strategy, which addresses many of the recommendations in the PMES review report*
- an all staff planning day to develop our strategic priorities for the next 3 years and to celebrate the successes of the past year*
- the development of a 'strategy on a page' which is available on the OCG website*
- the commencement of business planning processes to link the strategic priorities to tangible business activities and KPIs.*

359. While it acknowledges the development of the People and Culture Strategy, the Annual Report 2023-24 does not address its implementation.

5.3.4.7.2 Business Plan 2024-25

360. Towards the end of 2024, the OCG released its Business Plan 2024-25.⁸¹ This was released as two versions, being an external plan and internal OCG Business Plan 2024-25 (**Internal Business Plan 2024-25**).

361. The Business Plan 2024-25 and Internal Business Plan 2024-25 record the following actions and priority areas:

[Priority Area 2] Enhancing collaborative practice

Expected outcomes

- Staff understand our organisation's roles*
- Strong collaborative practice to support business operations*
- Duplication of work is reduced*
- Information exchange across the agency is efficient and effective*

[Priority Area 1] Supporting our people

Expected outcomes

- Enhanced employee wellbeing*
- Career growth and progression*
- Inclusive and supported workplace*
- Strong engagement with our employees*

⁸¹ https://ocg.nsw.gov.au/sites/default/files/2025-01/P_OCG_BusinessPlanReport.pdf (as at 31 July 2025).

- *Embedded People & Culture frameworks*

Key achievements to date

In June 2024, the new People and Culture Strategy was rolled out to all staff and socialised through information sessions.

The inaugural OCG Showcase was held in August with presentations on the Reportable Conduct Scheme, Out-of-home care code of practice and regulatory framework, WWCC Compliance investigations, People and Culture recognition program, and the OCG Strategic Plan. Staff feedback was very positive, presenting an opportunity to learn from colleagues and engage in interactive activities.

The OCG recognition program (ACE Awards) also commenced in August and is being delivered monthly, in addition to End of Year Awards.

myPerformance in myCareer was launched and, together with a series of HR essentials workshops including meaningful conversations and PDPs.

People & Culture have also delivered a range of initiatives including vicarious trauma training, monthly wellbeing, professional supervision, flu shots, fruit boxes, RU OK campaign, IT equipment cleaning. Skin checks and health checks. [sic] Additional programs will be scheduled over the next 6 months.

Directorates have been providing supervision and holding team meetings with staff to discuss learning and development goals, wellbeing and PMES results, with action plans being developed.

362. The Inquiry recognises these initiatives but notes the focus is directed to events and the preparation of strategy plans. While developing strategies is important, the implementation and accountability to achieve the strategic objectives are equally, if not more, important.
363. With respect to awards and events, there is no doubt sharing experiences and team events can contribute to collegiality in the workplace, but when there are one-off events in a culture of a low level of trust and confidence, these events are treated with cynicism and they have a performative character.
364. The Internal Business Plan 2024-25 indicated that for the priority areas:
- Supporting our people:** 0 items were 'completed', 7 were 'on track', 6 had 'some issues' and 3 were 'at risk'; and
 - Enhancing internal collaborative practice:** 1 item was 'completed', 18 were 'on track', 4 had 'some issues' and 2 were 'at risk.'
365. For the items that were 'at risk', this was the rating that was given to actions that were primarily 'on hold until FY25/26' and included embedded workforce management plans, developing talent management and internal mobility pathways.

5.3.4.8 PMES 2023-24

366. The Inquiry Commissioner reviewed the PMES 2023-24 results. They provide a basis to assess whether the plan developed following the Cosgrove Report and actions evidenced any change. They also reveal any changes in the workplace culture or the concerns and experiences of employees.
367. By September 2024, the PMES 2023-24 was underway.
368. The PMES 2023-24 covered the period 19 August 2023 to 13 September 2024.
369. The PMES 2023-24 had 258 survey responses with a response rate of 88%.

370. In relation to key topic areas:

- the highest scoring areas were 'Flexible working' (89% favourable), 'Ethics and values' (84% favourable) and 'Job purpose and enrichment' (75% favourable). These were the same highest scoring areas as the PMES 2022-23;
- the lowest scoring areas were 'Feedback and performance management' (52% favourable), 'Senior executives' (55% favourable) and 'Communication and change management' (58% favourable). The 'feedback and performance management' and 'communication and change management' were new in the lowest scoring areas, while 'senior executives' remained as one of the lowest scoring areas from the PMES 2022-23;
- the majority of areas received a neutral rating; and
- no areas received an unfavourable rating.

371. In relation to specific questions and findings, the questions with the highest favourable scores included the following comments:

- *'I understand what ethical behaviour means within my workplace.'*
- *'I support my organisation's values.'*
- *'I am aware of my obligations under the Code of Ethics and Conduct in my organisation.'*
- *'I am able to adapt when changes occur.'*
- *'How satisfied are you with your ability to access and use flexible working arrangements?'*

372. The questions with the lowest favourable scores included the following comments:

- *'My manager appropriately deals with employees who perform poorly.'*
- *'Change is managed well in my organisation.'*
- *'I feel burned out by my work.'*
- *'I feel my senior executives support my career advancement.'*
- *'I feel mentally exhausted by work on most days.'*

373. The confidential comments made in the PMES 2023-24 addressed the same questions raised in the PMES 2022-23 'what is the best thing about your workplace?' and 'what is one thing that would make your workplace better?'. In response to the question 'what is the best thing about your workplace?', employees addressed key areas including teamwork and collaboration, wellbeing, flexible work and culture and values. Some comments in this regard include the following experiences:

- *'Our organisation is committed to keeping children safe which is absolutely the reason that makes me excited to give my best effort whilst at work and look forward to innovations in the future.'*
- *'The organisation has a clear goal where everyone works towards it. This makes my role much easier to see how it operates within the bigger picture. The flexible work arrangements also support me in having work-life balance, being able to look after my own wellbeing while still completing my work. Having experienced burnout in the past, this work-life balance is incredibly important to me and I appreciate being able to be trusted to complete my work thoroughly while still being able to care for myself.'*
- *'Great team. Our Managers empower us to work to our strengths in the way we work with agencies. Managers are flexible with the accreditation schedule and support flexible working approaches to ensure all team members can have time off when we need it, and the team supports each other in undertaking our work with agencies.'*
- *'The people. We are an organisation of many highly committed and passionate people who live the values of the organisation.'*

374. The comments in response to the question 'what is the one thing that would make your workplace better?' contained a range of recommendations and frustrations, including in relation to resourcing, change management, the ELT structure (including the recruitment of 5 directors in the Child Safe Organisations directorate, which is discussed further at Chapter 8) and complaints and grievance handling. As with the PMES 2022-23, they continued to raise serious concerns about senior leaders. Some comments include the following experiences:
- 'The fundamental problem with our organisation at the moment is the Children's Guardian... who has a fixed view, doesn't listen to reason from others, and is extremely difficult to work with. His approach to work is chaotic and he is often stressed. He shares that stress with staff - which might make him feel better, but it's a contagion - his stress rubs off on all of us. In his first year as CG, he has been reckless in spending - and now crying poor due to his mismanagement of the budget. Because of his chaotic, changing approach to work, projects, reports and reviews have been delayed or stopped. EG the ACA report, WWC Act review, recruitment of the Deputy Guardian. It is very demotivating for staff.'
 - 'Director behaviours and attitude has been a long-term issue at OCG. We promote values but they are not living the values of the organization and it is upsetting to see and experience. The ELF branding needs fixing. OCG is very TOP heavy and they aren't adding any value to the organization. It appears as a one man show ie Children's Guardian. He has two alpha males both arrogant and misogynistic...'
 - 'I believe that the recruitment of 5 [Child Safe] Directors was ill-judged. It would have been better to recruit 2 or 3 at most. Recruiting 5 directors has caused confusion and chaos among all teams. [The Child Safe] Directors are getting involved in management of day to day matters that were previously being managed appropriately by Managers and Team Leaders. The [Child Safe] Directors have great ideas, but they don't have the resources and staff to execute them.'
 - 'Resource change and implement better models of change management. The current rapid top down approach to change is devastating team leaders and managers and greatly reducing productivity. I have been in government over 30 years and never seen change managed this badly. The model of change is having the reverse impact intended, productivity is decreasing as people are in physical and emotional distress. No resources have been allocated to the change.'
 - 'Proper and robust responses to bullying and harassment in the workplace.'
 - '[The Guardian] needs to take responsibility for being complicit by his inaction on a serious workplace grievance that is continuing to impact numerous staff.'
 - 'Greater transparency at all levels of the organisation (these concerns do not relate to this specific directorate). E.g., transparency about significant reviews and how they are undertaken, digested and implemented (such as the [NAME] review. This review has been mentioned on numerous occasions, but no actual information has been given to staff about what was reviewed, the people consulted or the recommendations made. This is concerning given the significantly high cost to the agency in organising the review, and the subsequent changes that may be introduced as a result of the review); or transparency about how HR/Management respond to WHS concerns (such as the changes made/procedures implemented after a staff member received electric shocks from equipment in the office) or bullying concerns (staff have reported complaints about senior management, however there is no transparency about the number of complaints received or any outcomes from those reports - e.g., were management asked to complete further training).'

375. On 2 December 2024, the JCC discussed the results of the PMES 2023-24 and topics including wellbeing, director oversight and complaints and grievances. The Inquiry has reviewed the relevant minutes, in which it is noted that the Guardian highlighted wellbeing and change management as the 'key topics in the PMES results' which 'the OCG will look at.' The JCC also raised concerns about the PMES responses in relation to:
- leadership and the appointment of 5 temporary directors in the Child Safe Organisations directorate, including the lack of oversight of their work;
 - the importance of ensuring employees and leadership adhere to the OCG's Grievance Policy and Procedures, including in relation to differentiating between formal and informal complaints; and
 - dealing with anonymous complaints.
376. The Inquiry heard from many participants who engaged with the PMES over a number of years and their experiences of the PMES 2023-24 process being a vehicle for change:
- *"Employee Voice' was an initiative post PMES that was created by the People & Culture team under the direction from a previous Children's Guardian. This was an avenue for employees the avenue to express their views on various matters if they felt they could not speak directly with their manager or preferred to maintain confidentiality... Under the leadership of the current Children's Guardian, 'Employee Voice' was shut down. This was perceived as 'hushing' employees and taking away their voice'.*
 - *'Staff members have provided feedback consistently for years of burnout throughout the PMES survey, however, the response that was verbally provided by the director was along the line of "we are public servants, and we have high workloads that is just part of the role". '*
 - *'Other grievances and feedback around the PMES (such as lack of equal opportunities and lack of poor management performance) were dismissed as they stated not understanding the feedback or the questions from the survey. Instead, any concerns are dismissed, and they mainly praise each other for doing "an amazing job". This has contributed to the negative work environment where it is not safe to provide any feedback as it is dismissed.'*
 - *'The PMES concerns have been raised many times and other external consultants have attempted to address it. But there has always been a fear of retribution as well as a shift of responsibility onto the individual worker. We raise concerns, we chat to EAPS and we are given information on how we can better manage ourselves and deal with conflicting personalities. The common denominator is the Director.'*
 - *'The OCG 2024 PMES results continued to raise similar concerns. A director informed their directorate that they were 'too tired' to address the issues in late 2024, however in early 2025, commandeered meetings to request feedback. Staff reported feeling unsafe.'*
 - *'The same issues are being raised about people being stretched and grievances not being handled and nothing has changed.'*
 - *'People don't feel like they have anywhere they can go to talk about these things, so things don't get spoken about.'*
 - *'There was no overall OCG PMES Action Plan... The leadership ignored the call for PMES Action Planning.'*
377. These reflections suggest that any proposed changes or action taken had not adequately addressed the Cosgrove Report and recommendations.

5.4 The current experience of the OCG's workplace culture

'I believe OCG is a great place to work, our purpose and contribution to the community is paramount and we have wonderful employees who truly care about this.'

'The workplace environment at the OCG is one of, it not the, worst I have come across.'

378. As set out in Chapter 2, the Inquiry invited submissions and held consultation interviews for any person who wished to meet with the Inquiry. The direct and lived experience of the OCG culture revealed a range of experiences.

379. Some participants shared their commitment to the OCG and their positive experiences, particularly in the context of this Inquiry being announced. For example:

- *'I have had extremely positive cultural experiences here.'*
- *'I have nothing but positive things to say about the workplace culture at the Office of the Children's Guardian (OCG). Since joining the OCG, I have been treated with respect, my opinions have been valued, and I have been given ample opportunities to grow and develop professionally. I am fortunate to work alongside people who are passionate about safeguarding children and who collaborate as a strong team.'*
- *'I was surprised along with most of my colleagues by the focus on culture, as my personal experience has not reflected the concerns raised.'*
- *'I and my colleagues were shocked and distressed, even more so by the subsequent media reports implying that all of us who work at the OCG are part of a poor, inappropriate culture.'*
- *'It is hard to digest the public dissemination of information about an enquiry that is suggestive of a poor organisational culture, when my day to day work involves quite the opposite. Further, to hear about some of the content through the media of the issues raised, which equated to [a] workplace issues that I understand were already being addressed, was highly disappointing.'*
- *'I'm pleased there will be a focus on the operations of the OCG. I hope this inquiry will provide an opportunity to think about structural changes that will promote a better workplace culture as well as better outcomes for children and young people.'*

380. Other participants shared their experience and fears in relation to the Inquiry:

- *'I have feared that we would come under scrutiny under grimmer circumstances due to our decisions which do not place the safety of children as priority.'*
- *'I am scared. My current team is amazing, and I have a lot of responsibilities, I can't afford to lose my job.'*
- *'I worry that if I speak, it might not remain confidential.'*
- *'I am deeply disheartened that the workplace culture has not improved since I left several years ago.'*

381. A number of systemic themes and concerns were revealed in the submissions and during interviews. These are set out below.

5.4.1 High workload and burnout across the OCG

382. The Inquiry heard:

- *'The work culture of the OCG is to burnout their staff. Management staff would ask us for our feedback regarding our current work volume, and then after we give feedback saying we are inundated with work, we are allocated more work.'*
- *'Each year we participate in a PMES survey, and little seems to change regarding the key issues like workplace management, burnout and low morale.'*
- *'I have not been able to manage the workload (despite asking for a reduced load).'*
- *'This has cost me and my team a lot in terms of our stress levels and mental health.'*
- *'Resourcing has been an issue the entire time I've been here. I have raised it with the Guardian continually saying we've got to restructure this or we've got to get more staff.'*
- *'One of the issues that is feeding into workplace culture is workload and perceived inequity in workload across the directorates.'*
- *'Junior staff have to perform 2 or 3 person's duties and hence burn out because it was the case of too many generals and not enough soldiers.'*
- *'There are staff at lower grades who are completely over worked.'*
- *'Working in child protection we are responsible for ensuring the safety, welfare and well-being of vulnerable children and young people. When teams are understaffed, individual workloads increase substantially. Staff are then forced to manage more complex cases, make critical decisions under time constraints and juggle priorities without sufficient support. This pressure contributes to stress, fatigue, emotional exhaustion and increases the risk of burn out. Overtime, staff begin to feel overwhelmed, undervalued and unable to maintain standards.'*
- *'I have often felt unable to access training, career development and team collaboration for fear of not keeping up with the volume of work and the pressure to 'get through' workloads.'*
- *'The culture of an organisation is also determined by support with workload and burnout. Unfortunately it appears that there are certain directorates, such as Legal that do not have enough resources and have faced significant increase in workload and are servicing other directorates where they have had an increase of resources.'*
- *'Burnout significantly affects the mental health of employees and there is little to no support in managing that in our organisation, for e.g., increase in more staff, better management of workload, increase in pay, option to take leave (this is limited where the team is small) or other work-life balance options.'*
- *'Although I have a very positive experience of the culture at the OCG, I rate my wellbeing as being low in the PMES survey each year. The reason for that is solely that we are not properly resourced by government to do our jobs, and in the context of high-risk child protection work, that creates a high level of stress for me.'*
- *'There's a level of burnout and sense of being overwhelmed.'*
- *'A lot of teams have gone far beyond their legislative remit and are doing work that is not only not psychologically safe but also legally risky. We need to strip back to a baseline of work for the organisation.'*
- *'Many work processes can be streamlined but employees are resistant to change.'*
- *'People get really enmeshed with things here... very interconnected and personalised with their work... they very much feel like this is 'my' record or 'my' project [and don't take criticism or suggestions well].'*
- *'I get a very apathetic sense across the organisation. People care, but not too much.'*
- *'Some people are very passionate, other people who have been here for a longer time just see it as a government job and go into whatever position.'*

- *'A mass overtime approach led to employee burnout as it was unsustainable causing employee health and wellbeing concerns. It was a result of lack of forward planning / workforce planning as there were no analytics to manage the workload and resourcing across the agency.'*
- *'Trying to deal with the workload is putting people under pressure.'*
- *'I was drowning.'*
- *'The impact of inadequate staffing not only affects staff morale and well-being, but it also affects organisational integrity due to delays in assessment, investigation and follow up.'*
- *'We are absolutely under resourced. We've got more work than we can handle.'*

5.4.2 Respect and the experience of feeling bullied

383. The Inquiry heard:

- *'Staff are belittled and talked about badly behind their backs.'*
- *'I saw managers bully staff to the point where I became fearful and teary.'*
- *'I have been subject to behaviour that I believe constitutes bullying.'*
- *'I have heard of others who have experienced bullying.'*
- *'Being a person of ethnic minority, I faced a lot of bullying and isolation with an undercurrent of discrimination.'*
- *'I witnessed and/or was subject to racism, bullying, fear and intimidation.'*
- *'I witnessed and was directly subjected to harassment and bullying.'*
- *'Our leadership and culture allows bullying to occur.'*
- *'I believe that I have been the target of 'upward bullying' from some members of my team.'*
- *'[My managers and team leaders] chose to humiliate me and bully me into silence.'*
- *'I was bullied relentlessly.'*

384. A number of other participants wanted to share that they have not experienced bullying or harassment from managers, directors or their team.

5.4.3 Diversity and inclusion

385. The Inquiry heard:

- *'From my working experience in other NSW Government agencies and private sector, OCG is not an inclusive workplace. There are sectors and fractions which is created due to the clique / inner circle that is deeply entrenched at OCG.'*
- *'The Multicultural Action Plan and Disability, Inclusion and Access Plan are both outdated and not in line with legislated requirements for Government agencies.'*
- *'There was a Harmony Day event in 2023... all the executive employees were in attendance at the office but chose not to attend the event in the main kitchen... This has been general behaviour for years where they do not support multicultural / diversity & inclusion events.'*
- *'Diversity and inclusion is not supported by the leaders and as an agency OCG can do better to be inclusive of all employees and their differences.'*

5.4.4 Reflections on OCG leadership and management

386. Some participants shared their observations and experience in relation to working with leaders with the OCG. This included the Guardian, the directors and managers. They said:

- *'The culture has changed dramatically since Steve Kinmond became the Children's Guardian.'*
- *'I have only had positive experiences with my director.'*

- 'I have nothing but the highest regard for the CG, and the Directors, managers and colleagues that I interact with.'
- 'My manager is amazing. Very good, very knowledgeable, no cultural issues.'
- 'Management is demoralising towards staff.'
- 'I am also aware of some colleagues experiencing difficulties with management in relation to how they are spoken with, comments made towards them, feedback provided, workload pressures and lack of support, which has created an unsafe work environment.'
- 'The leadership team [referring to the directors and the ELT] are not a team.'
- 'The executive managers are not committed to People & Culture and other Diversity & Inclusion policies and procedures. This is disappointing to know there is no commitment and accountability to participate and lead by example.'
- 'It was also apparent that there was a level of hostility and toxicity between certain Directors which made it difficult for Directorates to collaborate effectively.'
- 'The executive team did not and continue to not present as a collective supportive and dynamic group. It is openly known that they are disjointed and there are fractions within the group. They work in silos and have been running their own programs of work rather than collaborate for the general benefit and good of the agency and our customers and stakeholders.'
- 'The leadership group are not cohesive at all. They don't collaborate together. I've worked in lots of organisations where managers don't get on but present a united front, but they don't do that here.'
- 'It's difficult to develop trust in leadership when there's so much uncertainty and so little care, support or understanding for what we do.'
- 'Over the past year, I have become increasingly frustrated at what I see as a failure of leadership to meet their responsibilities to lead, guide and plan, and make sure we function operationally as best we can.'
- 'The culture often feels fragmented and lacking in cohesion... there has been a persistent sense of siloing, poor communication from leaders and general lack of transparency around decision making.'

387. Some directors and managers also shared their experiences:

- '[Starting at the OCG] was a significant culture shock.'
- 'There are a lot of people who are very committed, very passionate and just want to do the best job they can do.'
- 'We don't know who we are as a whole organisation. We know who we are as a directorate but there's no narrative for the OCG as an organisation.'
- 'Unfortunately, my desire to build respect across the office was met with some challenges. From time to time, I was advised of unpleasant statements that were made about me which were disappointing to hear.'
- 'Directors are quite protective of their own resources and areas.'
- 'The Executive are not really focused on collaboration at times and can be protective and defensive.'
- 'The Executive leadership meetings have struggled with what the purpose, terms of reference and scope is.'
- 'There is a lack of cohesive organisation and leadership.'

5.4.5 Additional themes and concerns

388. Other systemic themes and concerns include wellbeing, psychological safety and vicarious trauma (see 5.5.1 below), First Nations issues (Chapter 6) and the handling of complaints and grievances (Chapter 7).

5.5 The OCG written and unwritten cultural rules are not aligned

389. The alignment requires an assessment of whether the written rules (legal and policy) are fit for purpose. It then requires a review as to whether the norms, customs and practices that operate on a day-to-day basis are consistent with and operate to promote the written rules.
390. The direct and lived experience of many OCG employees does not align with the OCG's stated OCG Values, strategic priorities and public statements.

5.5.1 Reasons for the misalignment and negative workplace culture

391. The Inquiry's task was to listen to the direct and lived experience of the OCG workforce. It did not speak to or hear from every person who worked for OCG during the Inquiry Period.
392. The Inquiry considered the information provided to it to understand 'why' the OCG workplace culture was positive for some OCG employees but for others was challenging and demoralising. While there are likely to be a range of reasons, two key issues emerged, being psychological safety and the impact of vicarious trauma.

5.5.1.1 Psychological safety

393. The Inquiry considered the relationship between workplace culture and psychological safety at work. In *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth*, Professor Amy Edmondson describes psychological safety as follows:
- ...a climate in which people are comfortable expressing and being themselves. More specifically, when people have psychological safety at work, they feel comfortable sharing concerns and mistakes with fear of embarrassment or retribution. They are confident that they can speak up and won't be humiliated, ignored, or blamed. They know they ask questions when they are unsure about something. They tend to trust and respect their colleagues.⁸²*
394. Psychological safety in a workplace exists when people are not afraid to speak up. They trust that they can share their opinions without retribution, even if those opinions are different from their managers and leaders. Psychological safety exists where a person feels safe to contribute alternative ideas or suggestions and raise any concerns or be transparent if mistakes are discovered. Regardless of the written rules, if the unwritten rules support a culture where there is a fear of speaking up and people are shamed or punished for doing so, there can be no cultural change without addressing psychological safety.
395. However, in workplaces that are organised and operate as a hierarchy, speaking up or challenging a more senior employee is not 'natural' and as Professor Edmondson says '*must be nurtured. When it's not the results can be catastrophic - for people and the bottom line.*' The absence of psychological safety contributes to a culture of silence or looking outside the organisation to raise concerns or grievances.
396. Professor Edmondson emphasises that working in a psychologically safe environment does not mean everyone has to agree or acquiesce. It is not about being 'nice' or ensuring everyone is comfortable or unaccountable. She says the aim is the opposite in the sense that it is honest, open and where the workplace culture supports respectful engagement. The key to psychological safety is that it takes leadership to create the environment for that to occur. This requires consistency, transparency and accountability at every level within the organisation.
397. The Inquiry heard about experiences and approaches to psychological safety at the OCG. One director said:

⁸² Edmondson AC *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth*. 2018 New Jersey, Wiley. See also Edmondson AC "Psychological Safety and Learning Behavior in Work Teams" *Administrative Science Quarterly* 44.2 (1999) 350-383.

I always make it very clear the way our directorate is run, including ensuring that they have the psychological safety to speak up not only about vicarious trauma, for example, but if they've made a mistake. So it is imperative that people are able to say I've made this mistake, so we can jump in quickly and fix it rather than having them hide it in the bottom drawer. The other big thing I focus on, that, and psychological safety is important to this, is asking questions that might seem challenging. Why do you do things this way and why isn't it done this way? That fresh perspective that people bring is really valuable. Psychological safety I think is really important for all of those aspects... I'm also always emphasising that people can come to me directly.

398. This director's approach is encouraging and recognises the relationship between psychological safety and supporting employees. However, this approach was not replicated across all directorates. This is an example of how separate cultures developed in directorates, reinforcing the siloed structure and practices.
399. This was not the general experience across the OCG or in other directorates. One participant said psychological safety was not part of the day-to-day operations of the OCG and it '*certainly didn't feel like it was a psychologically safe place*' and '*it was broken*' and the workplace was '*a very low trust environment, a low trust environment.*' One participant described feeling demoralised when providing a recommendation on a sensitive matter, having spent time carefully reviewing and considering all the information, only to have it returned (unread) because the recommendation exceeded the director's preferred word limit. Other participants had similar reports of having work returned to them 'red penned' because of the style of correspondence they prepared, where the content had been fine. This caused delay in correspondence being sent and added to employees' workload.
400. When the Inquiry reviewed the training records for the OCG for the Inquiry Period, there appears to have been no specific training on the day-to-day practice of psychological safety.

5.5.1.2 Trauma and the risk of vicarious trauma

401. In this Inquiry, the nature and context of the OCG's work is a key consideration. As one participant said, '*99.9% of the people in there work really, really hard. Some of them do an extraordinary job under very, very difficult circumstances. They deserve the care and attention that they should have, especially during the type of work that they do.*'
402. The Inquiry heard about the confronting and at times distressing information that the OCG employees received, reviewed and managed concerning violence, abuse and neglect of children. It is well accepted that individuals who are exposed to working with and serve children, families and communities who have experienced trauma arising from violence, abuse and neglect or are victims of crime can be emotionally affected by their work and may be at risk of experiencing vicarious trauma or secondary traumatic stress. The symptoms of vicarious trauma may be similar to those of the individuals who have experienced direct trauma. The symptoms may include intrusive imagery, avoidant responses, physiological arousal, insomnia and chronic irritability. A person may become de-sensitised with a reduced capacity of, or interest in, being empathetic.
403. For a workplace, there is a risk of psychosocial injury, sadness, fear, being overwhelmed and burnt out. From a WHS perspective, these risks need to be prevented or controlled. This requires proactive and continuous measures to be in place. It was not apparent that within the OCG there was an understanding of these WHS requirements.
404. A safe and robust organisational culture appreciates and acknowledges the negative impact of traumatic work. The lived experience of the culture acknowledges the importance of effective supervision, peer support and trauma training in mitigating risks. Working in an environment where colleagues and peers acknowledge the risk and the need to support those affected is critical.
405. The Inquiry read submissions and listened to many personal experiences of vicarious trauma. Some participants were deeply distressed. They felt that the OCG did not care about their experiences. Some expressed despair. The Inquiry acknowledged the participants' fear to share these experiences and also their courage to share very personal experiences. For some

participants, it was the first time they had spoken about their experiences and the impact on them. The Inquiry recognises the trust those participants have placed in the Inquiry and its processes. They have shared their experience in a genuine hope that the workplace culture can and should improve.

406. In recording some participants' experiences in this Report, the Inquiry Commissioner was alive to and concerned about the risk of re-traumatisation. However, the Inquiry Commissioner considered it was important that the participants know they have been heard, and that those who can or should be responsible for ensuring the workplace culture is safe need to know the depth and extent of the trauma experienced in the OCG workplace.

407. In the participants' words:

- *'Although I have recovered from this burn out, I still sustain physical symptoms to this day such as severe stress I regret that employee wellbeing is just a box that is being ticked by offering fruits and on occasions online seminars about well-being but there is not, from my experience, a genuine intent to care about employee's mental health.'*
- *'Several directors feel quite traumatized by their experience at the OCG and I have observed two of them in tears at various times.'*
- One participant described the feeling of being *'traumatised by the work which hits out of nowhere – there's no thought on how they manage this and manage the work, it's just handed out.'*
- *'I heard some horror stories. Sometimes you hear of some pretty distressing stuff and it's almost a bit overwhelming how do you help.'*
- *'There is no discussion of vicarious trauma – we have a high level of tolerance, but sometimes something is just over the top. There is no support provided – instead we are motivated by numbers and getting the work out.'*
- *'Vicarious trauma was a very real thing.'*
- *'Not many people talk about vicarious trauma.'*
- *'Vicarious trauma is inevitable in the work that we do... We know that the most we can do is put strategies in and support in place to minimise the impacts of vicarious trauma as much as possible that we can be alert to signs that people may be experiencing vicarious trauma and offer support...'*

408. There was also some recognition of the risk and difficulty of debriefing when working from home:

- *'A big part in managing vicarious trauma is debriefs. Somewhere in the office would sometimes be with the person that was sitting beside you... If you needed to debrief in that moment, maybe after a difficult call or after reading a harrowing file, you will turn to the person beside you and you'd have a chat and they'd be available and willing. And it was easy. With everyone at home not knowing, you know, who should I call?'*
- *'If you're not coping, finding it hard to get through the work, feeling the effects of the traumatic material, not feeling connected... you need to come into the office.'*

409. The information provided to the Inquiry revealed there is awareness among current and former OCG employees and leaders of trauma and the risk of vicarious trauma but not how the OCG workplace could support them.

410. The Inquiry heard that clinical support and opportunity to debrief is provided to OCG employees. Participants told the Inquiry that an external firm (which was used by the Reportable Conduct directorate at the NSW Ombudsman) provided counselling and clinical support services to the OCG for several years but then *'pulled out'* due to capacity issues, before another external firm was engaged. One participant said that it is *'mandatory once a year'* for OCG employees to access these clinical support services, however it is not clear to the Inquiry that this occurs in practice. Participants told the Inquiry:

- *'I don't think these supports should be by choice. It should be structured into [employees'] work plan so they have to do this on some sort of basis because you don't realise how something might be affecting you.'*
 - *'We need clinical supervision... every part of the office gets that clinical supervision because they're not all dealing with the really traumatic material.'*
 - *'You can go as much as you like.'*
 - *'At least one session is mandatory.'*
 - *'Unfortunately, the service provider that we had for many years that contract ended maybe 18 months ago and they've got a new provider who I haven't heard anything positive about, so I'm not sure that people are taking that up in the way that they used to.'*
411. It appeared that other participants were not aware that vicarious trauma support was available:
- *'Personally I seek support outside of the organisation through a psychologist, but other than that it's really just each other and the team [who are available to provide support].'*
 - *'I'm not saying it didn't happen, I just didn't see it.'*
412. The Inquiry heard differing opinions from participants in relation to the training provided by the OCG in relation to vicarious trauma. One participant said, *'someone ran vicarious trauma training'* and *'we've had training around supporting staff.'* Another said, *'the organisation ran a session titled Vicarious Trauma about a year ago – a lawyer came in with quite a heavy focus on civil liabilities, changes to work out the safety legislation, and strong obligations on the employer to identify if supports are needed in terms of vicarious trauma.'* However, some participants suggested *'we have no training around trauma.'* The Inquiry was not provided with records of any vicarious trauma training after 2021.

5.5.1.2.1 The Guardian's understanding and practice of psychological safety and vicarious trauma

413. One participant described an incident involving the Guardian's action and response to an anonymous complaint about a workplace event. The participant described the Guardian's actions as *'an utter disregard for the psychological safety and rights of the staff involved, as well as a complete departure from what I understand to be a procedurally fair investigative process.'* The Inquiry investigated the Guardian's handling of an anonymous complaint. The Inquiry Commissioner has made findings which are addressed at 7.4 below and in the accompanying Confidential Annexures to the Report.
414. This issue provided an opportunity to hear from the Guardian about how he understood and practised psychological safety. The Guardian appeared to struggle to understand and identify the concept of psychological safety. He had not done training specific to psychological safety and appeared to confuse psychological safety with vicarious trauma.
415. When the concept (described above) was explained to the Guardian, he said *'it's fundamental to a good workplace.'* When the Inquiry Commissioner asked again how he practised psychological safety in a workplace, he did not provide a clear answer. He said his *'worry is you don't want your managers feeling that they're being undermined, does that make sense, because staff are directly talking to you. We have to aim to develop a consultation model that ensures that we hear more fully the voices of the staff and that I'm seen to be part of that but in a way that doesn't undermine.'*

5.6 Findings and Recommendations

5.6.1 Findings

416. FINDING 2

The Inquiry Commissioner found the OCG has not responded to or implemented the recommendations of the Cosgrove Report in a systemic and sustainable way.

417. FINDING 3

The Inquiry Commissioner found:

- a. the OCG workplace is fragile and fractured. It is not a culture that is consistent with the ethical values of the 2022 Code;
- b. the experience of the OCG workplace culture is not uniform. It was readily accepted some employees considered the OCG to have a happy, functioning and supportive culture. However, there is a silence about the depth and extent to which other employees experienced a workplace culture that lacks psychological safety and for some the experience of vicarious trauma is baked into the culture; and
- c. the OCG is not a psychologically safe workplace. This creates a significant risk to the health and safety of OCG employees, particularly the risk of psychosocial injury and vicarious trauma.

The Inquiry Commissioner found that there is not one person who is the cause of the OCG's workplace culture becoming fragile and fractured. So, in making this finding, it should not be understood as an adverse finding for any one person, be they the Guardian or any member of the ELT. The cause is a combination of the adequacy of the policies, practices, leadership and whether the stated values are reflected in the day-to-day interactions and engagements.

5.6.2 Recommendations

418. RECOMMENDATION 4

OCG employees should have both onsite and remote access to appropriate services in the form of supervision, de-briefing and support to mitigate the risks of OCG employees experiencing trauma and vicarious trauma, including appropriate support for First Nations employees and other employees who live with disability and request reasonable adjustments.

419. RECOMMENDATION 5

The Director, People and Culture should revisit and review the recommendations in the Cosgrove Report together with the 2023-24 PMES to ascertain:

- a. the recommendations that have been actioned and implemented;
- b. the recommendations that have not been actioned and implemented, to assess the reason/s why no action has been taken;
- c. provide a short report to present to the Children's Guardian, the Assistant Guardian (when appointed) and the ARC with recommendations on whether any outstanding recommendations remain appropriate for the OCG, particularly by reference to the 2024 Code; and
- d. for those recommendations which continue to be relevant, the Children's Guardian take appropriate measures to implement those recommendations within 12 months.

420. RECOMMENDATION 6

The OCG should establish a workplace culture forum with the aim of bringing together the OCG employees across the agency. A workplace culture forum is not a leadership forum, but should reflect all levels and areas of the OCG. For example, all team members across the OCG can meet. This could be replicated with all team leaders, then all managers and directors. This way

the OCG employees have an opportunity to identify what initiatives would enhance psychological safety and better workplace practices.

It is important that a forum not be a one-off performative act, but is structured and operates with the aim of being sustainable.

421. RECOMMENDATION 7

The Children's Guardian, the Assistant Children's Guardian (when appointed), the Director, People and Culture and the Director, Corporate Services should undertake a functional review of the structure of the OCG to identify opportunities for shared functions across all or some directorates, to be completed within 12 months.

6

The OCG and First Nations employees: respect and recognition

This chapter considers the OCG's relationship and engagement with its First Nations employees and their experiences working with the OCG. It addresses the extent to which the OCG understands, observes and practises First Nations cultural competence and cultural safety.

'There is no understanding of cultural competence and understanding of cultural safety, colonialism and intergenerational trauma.'

'The OCG is culturally unsafe.'

422. Some aspects of the OCG's work have a direct effect on the lives of many First Nations children and their families.

423. In the *Closing the Gap Annual Data Compilation Report July 2024*, the Productivity Commission reported:

The over-representation of Aboriginal and Torres Strait Islander children in Australia's child protection system and the complex factors that contribute to family violence are interconnected and are also linked to the impact of colonisation, dispossession and cultural dislocation (SNAICC 2017). The child protection system today reflects the same grief, trauma and harm associated with government legislation and policies of assimilation and can be detrimental for Aboriginal and Torres Strait Islander child, family and community wellbeing (Menzies 2019). Fear that their children will be removed is a key reason why some Aboriginal and Torres Strait Islander females do not report family violence (AIHW 2024b).⁸³

424. The Productivity Commission recorded that NSW had the highest number of First Nations children in placement as at July 2024 with 6,312 (45 per cent of all children in OOHC in NSW).

425. In 2019, Professor Megan Davis AC examined the experiences of Aboriginal children and young people, their families and their communities in her report, *Family is Culture Review Report 2019: Independent Review of Aboriginal Children and Young People in Out of Home Care (Family is Culture Review)*. Professor Davis described the child protection system in NSW as 'incredibly complex.'⁸⁴ She examined the interaction of legislation, policies and standard practice procedures and noted 'all of which are difficult to understand without relevant training or experience.'⁸⁵

426. The Family is Culture Review also examined the role of the OCG at that time. Professor Davis noted the OCG was one of many independent statutory agencies that has been established in NSW and around Australia as 'governmental and quasi-governmental activity has become more varied and complex.'⁸⁶

427. Professor Davis identified the lack of transparency about the OCG's regulatory activities with respect to the OOHC sector as an area of concern.⁸⁷ Specifically, Professor Davis found the OCG:

- a. published limited information about its monitoring activities;
- b. appeared to collect, collate and disseminate relevant information about the performance of OOHC agencies to certain actors within the OOHC sector, yet not to the general public;
- c. had commissioned several reports since its inception that did not appear to have been released publicly; and

⁸³ Productivity Commission, *Closing the Gap Annual Data Compilation Report July 2024* (Report, July 2024) p 43.

⁸⁴ Family is Culture Review p 56.

⁸⁵ Ibid p 56.

⁸⁶ Ibid p 121 and p 140.

⁸⁷ Family is Culture Review pp 114-115.

- d. did not proactively reassure the public about steps taken to rectify failures by OOHC agencies to ensure the safety and wellbeing of children.
428. The Family is Culture Review cited concerns about:
- a. the paucity of publicly available information from the OCG about its monitoring activities making it difficult to accurately assess its effectiveness as a regulator in the sector;
 - b. there being ‘*several clear indications*’ that the OCG was not engaging in effective oversight of the child protection sector;⁸⁸
 - c. the impact of criminal history and care history checks on Aboriginal carers and the work of the OCG;⁸⁹ and
 - d. the OCG not being accountable to any other body in relation to the exercise of its OOHC functions.
429. The Family is Culture Review made 126 recommendations directed to making the laws, policies and practices more responsive to the needs of Aboriginal children, families and communities. There were 7 recommendations concerning the OCG’s responsibilities.⁹⁰
430. In July 2020, the NSW Government released its response to the Family is Culture Review.⁹¹ This response identified the following reforms for the OCG:
- a. the creation of a new Deputy Children’s Guardian for Aboriginal Children and Young People within the OCG to elevate the rights and wellbeing of Aboriginal children and young people in care;⁹²
 - b. commissioning independent reviews into matters identified by Professor Davis to be undertaken by the Aboriginal Deputy Children’s Guardian by 30 June 2021; and
 - c. the commencement of the CG Act in March 2020, which consolidated the powers and functions of the OCG, including taking on the Reportable Conduct Scheme from the NSW Ombudsman and coordinating the Official Community Visitors Scheme.
431. The NSW Government wanted the Aboriginal Deputy Children’s Guardian to strengthen the OCG’s oversight and enforcement powers in accrediting OOHC providers and ensure a high standard of practice would be achieved for Aboriginal children and young people in care. There was a clear intention that this would result in a strengthened system of oversight and accountability for Aboriginal children and young people in care. The Aboriginal Deputy Children’s Guardian would drive further change to improve how the OOHC system supports Aboriginal children and families. There was a clear expectation that the Aboriginal Deputy Children’s Guardian would provide leadership within the sector and work with Aboriginal communities to drive a better and more culturally appropriate standard of care.
432. The NSW Government’s initiatives would bring significant changes for the OCG with respect to its regulatory functions, its operating structure and the need to ensure the OCG was a culturally competent organisation.

6.1 Deputy Children’s Guardian and the Special Report

433. As set out in 3.2.2.1, the CG Act permits the Children’s Guardian to appoint a Deputy Children’s Guardian and an Assistant Children’s Guardian, who are also statutory office holders.⁹³
434. The first and only Deputy Children’s Guardian, Mr Richard Weston, commenced at the OCG in January 2021.

⁸⁸ Ibid p 116.

⁸⁹ Ibid pp 294-298.

⁹⁰ See Recommendations 18, 19, 20, 89, 90, 91 and 92.

⁹¹ *NSW Government response to the Family is Culture review report*, 8 July 2020.

⁹² CG Act section 124.

⁹³ CG Act sections 124-125.

435. Mr Weston led the OCG's response to the then Minister for Families, Communities and Disability Services' request that the then Children's Guardian provide a special report in accordance with section 139(2) of the CG Act. The *Special Report under section 139(2) of the Children's Guardian Act 2019: Family is Culture Review* (March 2022) (**Special Report**) responded to recommendations 88, 89, and 92 of the Family is Culture Review.
436. In the Special Report, the Deputy Children's Guardian reported that the OCG had implemented a comprehensive Aboriginal Stakeholder Engagement Strategy aimed at capturing the voices of Aboriginal communities across NSW.⁹⁴ He also reported that the OCG would introduce an Aboriginal engagement strategy. The strategy would be led in a culturally safe way, using a trauma informed approach, with the Deputy Children's Guardian and experienced First Nations OCG staff leading the engagements.⁹⁵
437. Some specific action items arising from the Special Report referred to the OCG undertaking the following initiatives:⁹⁶
- a. continue to implement the First Nations Policy in day-to-day practice and incorporate any key learnings from the recent review of this Policy;
 - b. continue engagements with Aboriginal communities across NSW to assess their community needs in relation to the WWCC and their ability to support applicants;
 - c. have an OCG RAP;
 - d. have an OCG Family is Culture working group; and
 - e. use the Aboriginal Deputy Children's Guardian's role to enhance community engagement.
438. These initiatives required both a clear and strategic commitment to strengthening capacity internally within the OCG and enhancing the trust of the Aboriginal communities in NSW.
-

6.2 The OCG's First Nations policies and strategies

439. The Family is Culture Review and the Special Report have assisted the Inquiry to identify some of the issues relevant to the governance, leadership and effectiveness of the OCG.
440. The Inquiry examined the OCG's First Nations policies and strategies in operation during the Inquiry Period. The Inquiry heard from OCG employees about the relevance of the policies to their work, cultural competence and engagement with First Nations communities. The Inquiry also heard from OCG First Nations employees about their experiences of the OCG workplace culture.
441. The Inquiry heard the following concerns about the OCG's First Nations policies:
- *'With the previous Guardian, we had the reconciliation plan and policies, a lot of work went into that and after the current Guardian joined it dissipated.'*
 - *'We set up cultural competency training for front line workers but [this] became a minor piece of work once the current Guardian joined.'*
 - *'The WWCC Aboriginal policy was a good policy but the implementation was the challenge – there was resistance from within. Some directors kept the pressure on, so it probably needed some improvement but the intent was to roll [out] a similar idea across different functions of the agency.'*
442. The Inquiry identified the following policies and strategies, which are outlined at 4.2:
- a. the OCG's **Reconciliation Statement**, which is undated. It appears to be pre-2017;

⁹⁴ Special Report p 15.

⁹⁵ Ibid p 16.

⁹⁶ Ibid p 52.

- b. the OCG's **RAP 2019** is a comprehensive plan with clear strategic goals and commitments. The Inquiry heard that there has been some interest in updating the RAP but this work has not been completed. One participant said '*the Reconciliation Action Plan is half completed*';
 - c. in January 2021, the OCG adopted the whole of NSW Government **Aboriginal Procurement Policy**; and
 - d. in May 2022, the OCG released the **Aboriginal Applicants Policy Statement** which is relevant to First Nations WWCC applications. The Aboriginal Applicants Policy Statement represents an important policy position for OCG and responds to the Family is Culture Review. However, it is not clear to the Inquiry whether this is accompanied by policies, guidelines and/or training in relation to cultural competency and how these issues are considered and implemented when undertaking WWCC clearances.
443. In June 2023, the ELT approved the *First Nations Program of Work* which was the development of a practical resource for the OCG that sets out the strategic approach to the OCG's First Nations program of work. As part of the briefing note supporting this, an attachment setting out the 13 projects and initiatives related to First Nations outcomes since 2017 was included. These outcomes, and a summary of these outcomes are:
- a. '*Indigenous Cadetship Program*' (discussed further at 6.4 below);
 - b. '*Today Design Customer Journey Mapping: Aboriginal Applicants and the WWCC*' (this occurred in 2018 and the final report was presented in 2019);
 - c. '*WWCC Initial Contact Letter: Aboriginal Applicants at risk assessment*' (this was introduced in response to the Family is Culture Review);
 - d. '*OCG's Reconciliation Action Plan*' (this was noted to be an issue at the time as in 2021 the original RAP project group was put on hold);
 - e. '*Cultural competency training*' (the last available communication on the intranet was noted to be in 2021);
 - f. '*Aboriginal Applicants and the WWCC First Nations Policy and Statement*' (this was developed as an internal document);
 - g. '*Review of NSW Standards for Permanent Care*' (the OCG consulted with the sector in 2020 and 2022 about system design and a proposed Code of Practice);
 - h. '*Curjio Guidance tools for non-Aboriginal Permanency Support Program providers*' (these were developed following the OCG's 2020 consultations with the sector);
 - i. '*WWCC Your Story Guide for Risk Assessment*' (this tool was developed in 2022);
 - j. '*Maranguka Community Centre Agreement*' (this agreement, which commenced in 2022 aimed at improving employment opportunities for First Nations adults and enabling more positive role models for First Nations children and young people);
 - k. '*First Nation specific SAFE Series*' (this was due to be released in mid-2023 but the Inquiry heard from participants that as at 2025 this series was yet to be released);
 - l. '*Recruitment of First Nations staff*' (as at June 2024, 3.1% of staff identify as First Nations); and
 - m. '*Engagement of a Deputy Children's Guardian*' (discussed further at 6.4 below).
444. Between January 2024 and April 2024, Ms Cosgrove's review included the experience of the OCG's First Nations employees. She heard that the OCG should '*be proactive in ensuring First Nations representation.*'
445. When addressing the OCG's workplace culture and the experience of First Nations people, Ms Cosgrove identified the need to develop a targeted recruitment strategy. The Inquiry was

informed that the number of OCG First Nations employees have reduced from 6.4% of the total OCG workforce in 2021- 2022 to 5.5% in 2022-2023 and then to 3.1% in 2023–2024.⁹⁷

446. Ms Cosgrove also identified a risk for potential disconnect with First Nations representation, leading to strained relationships and barriers to effective engagement and partnership.
447. Ms Cosgrove addressed the importance of First Nations leadership in the OCG. She heard there was a desire to better understand plans for senior First Nations leadership within the OCG. In April 2024, Ms Cosgrove observed *‘when the Assistant Guardian is recruited it will send a strong message to the sector.’*
448. As noted at 5.3.4.4 and 5.3.4.7.1, Ms Cosgrove’s recommendations were addressed in the People and Culture Executive Update including the proposed People Strategy. The only reference to First Nations concerns is a record of the staff feedback provided to Ms Cosgrove – *‘Be proactive in ensuring First Nations representation.’* The People Strategy does not recognise or address First Nations employees, identify any strategy or initiatives to support or develop or recruit First Nations people to the OCG.
449. The Annual Report 2023-24 reported:

Workforce and diversity (p 90)

To increase and maintain awareness and engagement with our First Nations peoples and with our community engagement work with our First Nations stakeholders, all employees are required to complete Aboriginal cultural competency training ‘Everyone’s Business’. This has been incorporated into our new employee’s [sic] mandatory training.

We support diversity, equity and inclusion in the workplace through various activities and events through the year, driven by the People and Culture team and the employee-led Diversity and Inclusion Working Group. A range of diversity and inclusion initiatives to promote inclusion and support diversity in 2023–24 included:

- *reviewing the existing First Nations Cadet Program offerings and recommending improvements to strengthen and broaden the program*

....

Throughout the year, OCG has acknowledged and celebrated Diversity and Inclusion initiatives, tied to various community events such as International Women’s Day, Harmony Week, NAIDOC week, Pride Month, Reconciliation Week, RU OK Day. As well, culturally diverse and significant dates such as Chinese New Year, Easter, Diwali, Ramadan were marked. During these periods, learning and development activities were undertaken to increase awareness, engagement, and celebration of the community of NSW and our workforce.

450. It appears that First Nations employment policy is treated as part of the general diversity and inclusion policy at the OCG. The description in the Annual Report 2023-24 appears to provide little or no targeted and culturally specific support for First Nations employees.
451. The Business Plan 2024-25 identifies *‘Improving First Nations outcomes’* as a priority area alongside the following objectives:

Expected outcomes

- *Clear, foundational First Nations strategy*
- *First Nations staff feel culturally safe and well supported working with OCG*
- *Enhanced cultural understanding and competency among non-First Nations staff*
- *First Nations voices genuinely inform OCG approaches*
- *First Nations applicants & organisations receive culturally safe services*

⁹⁷ Annual Report 2023-24 p 95.

Key achievements to date

The OCG has engaged Yamurrah to provide cultural supervision and support for First Nations staff.

Two On Country Cultural Awareness Days were held in September and attended by staff from across the OCG. OOHC have demonstrated significant progress in this area:

- Engaged Curijo to run 2 sessions per year for OOHC staff (the first took place in September 2024).
- Developed guidance material for non-First Nations staff in the core assessment team to support their work with Aboriginal Community Controlled Organisations (ACCOs).
- Working with AbSec on the transition of Aboriginal children to ACCOs, including attending and presenting at AbSec forums.

NDISWC have been holding regular case discussions and Assessment Operations Meetings to ensure that First Nations applicants are contextually considered in risk assessment decision-making, and to minimise burden on applicants.

Reportable Conduct made an onsite visit to ACCO, Burrun Dalai, to provide updated guidance and support to staff in the management of reportable conduct matters. Following the visit, staff provided positive feedback, expressing greater understanding of the requirements of managing a reportable conduct investigative process.

WWCC continue to use the First Nations Policy and Your Story tool to inform WWCC assessment and ensure culturally sensitive practice. Your Story tool was developed and implemented in consultation with Yammurah.

Our First Nations Cadets presented a paper on Cultural Safety to the Children's Guardian and senior executives. Their recommendations were endorsed, which will inform the review of the First Nations Cadets program.

452. The OCG Corporate Strategy 2024-27 (**Corporate Strategy 2024-27**) identifies 'Improving First Nations outcomes' as a priority area. It refers to:

Clear, foundational First Nations strategy: We are committed to developing a well defined strategy where our initiatives are aligned and how we will improve outcomes for First Nations communities is clear.

First Nations staff feel culturally safe and well supported: Creating a culturally safe environment is essential. The OCG is taking action to improve its support to our First Nations staff, to ensure they feel respected, valued, and well-supported while working with the OCG.

Enhanced cultural understanding and competency among non-First Nations staff: We actively encourage, support and create opportunities for all staff members to improve their cultural competency.

First Nations' voices genuinely inform OCG approaches: The OCG is focusing on creating more opportunities for genuine engagement with First Nations people to help guide our decision-making, policies, and practices. First Nations applicants and organisations receive culturally safe services: Our commitment extends to providing services that are culturally safe and meet the unique needs of First Nations applicants and organisations.

453. The Business Plan 2024-25 and the Corporate Strategy 2024-27 make commitments to take action in relation to First Nations outcomes. Based on the information available to the Inquiry, any action taken by the OCG has been slow and generally remains aspirational.

6.3 Deputy Children's Guardian position

454. When Mr Weston served as the Deputy Children's Guardian, the role profile for the Deputy Children's Guardian was a First Nations identified role. When established, 40% of all children in OOHC in NSW were First Nations.⁹⁸
455. The focus of the Deputy Children's Guardian was improving OOHC and other services provided to Aboriginal children. In the OCG Organisational Chart, the Deputy Children's Guardian oversaw the Child Safe Organisations and OOHC directorates.
456. The position of Deputy Children's Guardian has been vacant since February 2023.
457. In May 2023, the Guardian advised the JCC that recruitment for the Deputy Children's Guardian position was on hold until a discussion with the new Minister had occurred. The Guardian reported he had met with various Aboriginal leaders following the Family is Culture Review and needed to understand the new Minister's position before moving ahead with recruitment.
458. In November 2023, a draft position description was drafted for the role of *Executive Director, Aboriginal Policy and Programs (and Assistant Children's Guardian)*. The job description indicates that the OCG considers that being Aboriginal is a genuine occupational qualification for this role under section 14 of the *Anti-Discrimination Act 1977 (NSW)*.
459. Unlike Mr Weston's position, the draft position description used a different title and had different reporting lines in the OCG Organisational Chart. The position description recorded the Assistant Children's Guardian would report to the Guardian. The role was described as '*providing strategic advice to the Children's Guardian.*'
460. At first blush, the position description described a diminution of the previous Deputy Children's Guardian's powers, leadership responsibilities and direct reports.
461. By 19 June 2024, the Aboriginal Child, Family and Community Care State Secretariat (**AbSec**) wrote to the Guardian. It said:
- there was a sense of urgency to recruit and appoint to the role as there is an identified lack of senior Aboriginal leadership within the OCG;
 - the title 'Assistant Guardian' is not sufficient or reflective of the importance of the role; and
 - the role is not a replacement solution for the absence of an independent Commissioner for Aboriginal and Torres Strait Islander Children and Young People.
462. A draft advertisement was prepared with the intention that applications would close Friday 26 July 2024.
463. On 3 July 2024, one of the Guardian's executive officers raised section 133 of the CG Act and Schedule 3 regarding the powers of an Assistant Children's Guardian being greater than that of the Deputy Children's Guardian.
464. On 9 July 2024, the Guardian received legal advice regarding the difference between a Deputy Children's Guardian's powers compared to an Assistant Children's Guardian.
465. On 7 August 2024, the position was advertised as '*Aboriginal Assistant Guardian.*'
466. On 8 August 2024, the Guardian issued a statement on the OCG website announcing that recruitment had begun for a new Aboriginal leadership role at the Office of the Children's Guardian, referring to the '*new Aboriginal Assistant Guardian.*'
467. On 4 September 2024, the OCG had received some applications.
468. On 4 October 2024, interviews for the role occurred.

⁹⁸ Family Matters, SNAICC, University of Melbourne, Griffith University, Monash University, '*Family Matters Report*' (Report, SNAICC, 2020) accessed at: snaicc.org.au/wp-content/uploads/2023/11/201123-Family-Matters-Report-2020.pdf

469. On 17 October 2024, the Guardian said in an email to OCG staff, *'following interviews, the panel decided not to make an appointment to the position at this stage, and instead has recommended we should look at the best ways of identifying suitable people in the market.'*
470. On 1 November 2024, the Guardian wanted to readvertise the position.
471. On 15 November 2024, the Minister wrote to the Guardian about the advertisement setting out concerns about a specific aspect of the role description. In response, the Guardian took action to amend the advertisement.
472. By January 2025, no further developments had occurred in the recruitment process.
473. When this Inquiry commenced in March 2025, the 'Aboriginal Assistant Guardian' position remained vacant.
474. The long delay in appointing a Deputy Children's Guardian or Assistant Children's Guardian was raised by some participants in the Inquiry. The Inquiry heard:
- *'Not filling the Aboriginal Deputy Children's Guardian position has been very disappointing [and had an] effect on culture as many of the staff are outcomes focused, seeing this as an opportunity to help close the gap with the most vulnerable children in the state.'*
 - *'When the Guardian started, he made it very clear to the whole organisation that that was the number one priority for him, he was going to appoint someone immediately and that he basically was super committed to having First Nations leadership across everything that we did... Eventually the conversation shifted – he said community had concerns with role, title, functions. There was confusion because a year prior, we did a statutory review with a chapter on the Deputy Guardian.'*
 - *'The Guardian's perspective was that the Aboriginal leaders were holding things up. This created a culture of 'Aboriginal people can't decide' and people were apprehensive to do anything Aboriginal-related because they thought they wouldn't be able to make decisions.'*
 - *'I don't know whether the Guardian wanted to appoint someone or not, I genuinely don't know what his goal was, but regardless he didn't. The impact of that was that all the Aboriginal issues either got pushed completely to the corner or funnelled directly to him and he was making those calls and those decisions and leaning on the external people.'*
 - *'A lot of work went into creating the position of the Deputy Guardian with the previous Guardian and after the Guardian joined it dissipated. He explained that he was having difficulties identifying the right candidate. His feedback was that people didn't like the word 'guardian' in the role title.'*
 - *'The recruitment process has been opaque and I know that First Nations colleagues have been really frustrated by the lack of transparency around that whole recruitment process... The Guardian kept saying we're consulting and want to do it right, but it felt like the consultation period just kept going until they advertised then said nobody was appropriate... The Guardian said that apparently they had a number of Aboriginal people on a panel together and they recommended to select nobody. I don't know if that's true or not...'*
 - *'The Guardian's story would change each time – community doesn't want deputy etc. Chain of different excuses as to why that didn't happen. Having someone to replace Mr Weston in that space would have been very helpful in that space and would have sent a message to our First Nations staff as well.'*
 - *'There was a significant delay in recruiting for that role and no transparency as to why it was taking so long.'*
 - *'There is a mismatch between dialogue and what was happening. For example, the Guardian said that it was important to have Aboriginal leadership but then saying that the reason why someone hadn't been recruited was because leaders wanted a name change.'*
 - *'As between the Assistant vs Deputy, I think the Deputy has more stand[ing]. The legislation allows the Guardian to appoint an assistant in various roles or various assistance, but the Deputy is what they wanted to embed in the legislation.'*

- *'The delay and the comments attributed to the community was just 'noise' as the Guardian liked being the Guardian and didn't want a Band 2 in the organisation (an ego issue).'*

6.4 Cadets

475. The OCG's Indigenous Cadetship Program (**Cadetship Program**) had been running since November 2017. The program provided an opportunity for three Aboriginal university students to start at the OCG with the aim of providing experiences working in government and to help improve the participation of Aboriginal and Torres Strait Islander peoples in government decision-making. Each year there were three First Nations cadets participating in the 18-month program.
476. The Inquiry heard that when the Cadetship Program commenced, in terms of cultural awareness or cultural sensitivity, the OCG was on a good pathway and it provided the young people with a range of employment opportunities.
477. In 2024, the cadets undertook a project to explore cultural safety and how it is practiced across the OCG. This involved desk-based research as well as a survey with OCG First Nations employees.
478. On 3 July 2024, the cadets produced a paper and made a presentation to the Guardian as well as some ELT members and First Nations employees. The cadets explained that cultural safety is about creating a culturally safe environment for Aboriginal and Torres Strait Islander peoples. This means there will be cultural awareness, competency, capability, responsiveness and security to ensure how the outcomes will be achieved.
479. The cadets found the OCG was lacking in its culturally safe practices. They specifically identified the cultural load often placed on First Nations employees, the lack of identified roles for First Nations employees, the low number of First Nations employees which does not meet NSW Government targets, limited cultural understanding amongst broader OCG employees and the lack of resources and training on cultural safety and awareness. They also raised concerns that key policies within the OCG designed to support cultural safety had not been implemented, such as the RAP 2019.
480. The Inquiry heard the following concerns:
- *'I was really concerned with cultural safety and some of the things that cadets were being exposed to.'*
 - *'The paper presented by the Cadets was taken to the Executives and the Guardian suggested taking it to the network which was not appropriate. It ultimately did not go anywhere.'*
 - *'The OCG needs to be a well-informed agency which would support staff, particularly people carrying their own trauma because that happens a lot (ie Aboriginal cadets had lived experience in OOHHC).'*
 - *'The program itself wasn't supported and while there was as small group on the Executives who did a lot of advocacy, it wasn't relayed to the workers what the executives were doing.'*
481. The Guardian committed to distribute the paper to the ELT for their awareness and action on recommendations.
482. The ELT considered the cadets' paper on 21 August 2024. The following proposals were agreed:

<i>The OCG is lacking resources for cultural safety</i>	<p>Agreed.</p> <p><i>OCG is currently developing resources on cultural safety as part of its Child Safe Standards resources.</i></p>
<i>The OCG needs more cultural training (MyCareer one is not enough).</i>	<p>Agreed.</p> <p><i>OCG has introduced On Country Cultural Awareness Sessions for staff in September 2024.</i></p>

	<i>A review of current cultural awareness training and opportunities across OCG is required followed by the development of a structured approach that reflects the needs of OCG staff and the nature of our work.</i>
<i>From our survey, the First Nation staff currently want/need more cultural safety.</i>	<i>Acknowledged.</i> <i>Led by the First Nations Staff Network OCG has introduced a Cultural Supervision and Support program for First Nations staff which will be reviewed.</i>
<i>We need a definition.</i>	<i>Agreed.</i> <i>ELF supports the First Nations Staff Network who are currently working on a definition of cultural safety for OCG which will be embedded in appropriate policies.</i>
<i>We need more First Nation staff, including identified positions (per RAP).</i>	<i>Agreed.</i> <i>The Aboriginal Assistant Guardian role is an identified role. A review of OCG functions to identify where further identified roles would be appropriate is required.</i>
<i>RAP needs to be achieved.</i>	<i>Agreed.</i> <i>A review of the previous RAP is required and development of a new one to reflect OCG's current strategic priorities.</i>
<i>The Assistant Director (identified) needs to be hired as soon as possible.</i>	<i>Agreed.</i> <i>The advertisement to recruit to the Aboriginal Assistant Guardian role went live on 9 August 2024.</i>

483. A participant told the Inquiry they heard that the ‘responsibility for bringing cultural supervision to OCG which the ELT approved but then found that no money had been allocated to it.’

484. The Inquiry is unaware what action has been taken following the ELT meeting on 21 August 2024 to action each of these agreed initiatives.

485. The Cadetship Program ceased in mid-2024. Notwithstanding the references to the review of the program in the Annual Report 2023-24, the Inquiry is not aware as to if, and when, the Cadetship Program will resume.

6.5 Cultural competence and workplace culture

486. One aspect of workplace culture is cultural safety. Cultural safety is a commitment to creating an environment that is safe for First Nations people.

487. One aspect of examining workplace culture and psychological safety is to examine and understand the extent to which an organisation is culturally competent.

488. A culturally competent organisation is one where the leadership, governance, policies and practices acknowledge diversity and support for its employees, creates a culture of respect and an understanding of the communities the organisation serves. Interpersonal cultural competence is the ability of individuals working within the organisation to develop effective interpersonal and working relationships with those they serve and regulate, and that they engage with each other with awareness and respect of cultural differences.

489. Cultural competency is a practice that builds awareness of unconscious bias concerning race, ethnic origin, language and ethno-religious affiliation.

490. The Inquiry has read and considered the PSC's *Cultural capability guide*.⁹⁹ When considering the OCG's cultural capacity and listening to the experience of OCG employees from First Nations and non-First Nations backgrounds, there is significantly more work to do with respect to cultural competency, understanding cultural load and awareness of cultural safety at the OCG.

6.5.1 Cultural load

491. The Diversity Council Australia describes 'cultural load' as the (often invisible) additional workload borne by Aboriginal and Torres Strait Islander people in the workplace, where they are either the only Indigenous person or one of a small number of Indigenous people.¹⁰⁰
492. This includes extra First Nations-related work demands that non-First Nations colleagues do not have, expectations to educate non-First Nations colleagues about Aboriginal and Torres Strait Islander people and racism and expectations to talk on behalf of all First Nations peoples.
493. An awareness of cultural load is not confined to taking on the First Nations-related activities, but also extends to understanding the responsibilities and obligations of First Nations peoples in their lives, to family and community.
494. Participants described experiences or observations of the cultural load on First Nations employees. These included:
- Being asked to give *'advice about all different things that were outside the scope of people's roles.'*
 - *'[The Guardian] inappropriately relied on junior Aboriginal staff within the organisation to drive First Nations related work across the organisation.'*
 - *'Often First Nations staff are pulled into meetings or other work to provide 'expertise' just because they are First Nations, which puts a cultural load on their shoulders. Further, often people didn't listen to their answers, or after they explain that something was a massive piece of work that required so much input from community, people would minimise and simplify the issues.'*
495. From July 2023 the Guardian established a committee of First Nations staff. The Inquiry was told this committee did not have terms of reference.
496. The Inquiry was told *'one of the staff members had to present on Sorry Day in 2024 because the Guardian had not prepared a speech.'* After making inquiries, the Inquiry was provided with notes prepared for the Guardian to speak on Sorry Day in 2024 (but it is not clear whether the Guardian delivered the speech on the day). The notes record the following dot speaking notes were prepared:
- *'We have also been working in the past few months to ensure that our First Nations staff members are better supported in our work.'*
 - *'Cultural load is a significant issue for First Nations staff in the workplace, which often results in serious and long-term effects that can include a significant increase in workplace and psychological stress.'*
 - *'This cultural load includes extra First Nations related work demands that non-First Nations colleagues do not have, expectations to educate non-First Nations colleagues about Aboriginal and Torres Strait Islander people and racism, and expectations to talk on behalf of all First Nations people.'*
 - *'There will be more information coming about how we will invest in support and supervision for our First Nations colleagues.'*

⁹⁹ NSW Government, 'Cultural capability guide', *Public Service Commission* (Web Page, 2023).

¹⁰⁰ 'Aboriginal and Torres Strait Islander Peoples – Leading Practice', *Diversity Council Australia* (Web Page, undated) ; Australian Government, 'Cultural load, it's a real thing!', *Australian Public Service Commission* (Web Page, 8 August 2023).

497. The Inquiry heard different perspectives and experiences within the OCG, including positive experiences:
- *'The work we did with WWCC and cultural competency was quite transformative – a lot of risk assessors haven't been educated in Australia, so actually getting them across cultural competency is quite important and I thought we did that quite well.'*
 - *'Since June 2024 cultural supervision through an external service has been available which is positive.'*
498. The Inquiry also heard about experiences when awareness and support for First Nations employees generally was lacking:
- *'When I started there was no Acknowledgement of Country at any meetings (including all staff).'*
 - *'There isn't a lot of support for Indigenous people here.'*
 - *'There is no understanding of cultural competence and understanding cultural safety, colonialism and intergenerational trauma. It is not culturally safe.'*
 - *'There needs to be a framework here that is informed by specific research or area experts in particular areas of risk especially for First Nations people - for example, WWCC closes and cancels a lot of Aboriginal applications because they don't respond to requests for information. Obviously they're not going to respond to 5 page legalistic letters with a negative tone etc.'*
 - *'I felt like I was almost putting my cultural integrity into a place where they wanted me to choose between my job and my culture.'*
 - *'In one directorate, there was a lot of finger pointing and humour and laughter around the cultural training activities, lots of rolling their eyes and saying they don't need an Acknowledgment of Country.'*
 - *'I had concerns about the way in which the office has the cultural competence and capacity to actually be really clear on its purpose around First Nations Children.'*
 - *'The engagement with First Nations issues is very performative and not substantive.'*
-

6.6 Findings and Recommendations

6.6.1 Findings

499. FINDING 4

The OCG does not operate at a level of cultural competence and cultural safety the community as a whole, and First Nations people in particular, should expect.

500. FINDING 5

The cultural load on First Nations employees is overlooked and poorly understood, creating a risk to their sense of safety, wellbeing and security at work.

501. FINDING 6

The Inquiry Commissioner finds the delay in recruiting a Deputy or Assistant Aboriginal Children's Guardian concerning. This is a key leadership position that has been vacant for two and half years. This has created a leadership gap which hinders the OCG's effectiveness with respect to its independence, oversight and community confidence. The Deputy or Assistant Aboriginal Children's Guardian should lead the First Nations strategic initiatives and work to ensure the workplace culture is safe and inclusive of First Nations employees.

6.6.2 Recommendations

502. RECOMMENDATION 8

The Assistant Children's Guardian role should be a First Nations designated position. The NSW Government should consider if a statutory amendment to the CG Act is required to reflect this commitment, following consultation with First Nations communities.

503. RECOMMENDATION 9

When appointed, the Assistant Children's Guardian should consider undertaking a review (as they consider appropriate) of the OCG's structure, organisation (leadership and governance) and internal and external communications from a First Nations perspective to identify policies and practices that should be updated, improved and better implemented for the OCG.

The Assistant Children's Guardian may give consideration to strengthening the OCG as culturally competent in areas including:

- a. building relationships, understanding and respect through effective and consistent communication and consultation with First Nations communities on the shared concerns arising from the OCG's work;
- b. ensuring the OCG develops and implements a First Nations framework and policies addressing reconciliation, Acknowledgement of Country and cultural protocols;
- c. committing to and promoting the opportunities for learning and understanding First Nations connection to the lands, customs and history throughout NSW, based on direct and lived experiences;
- d. involving First Nations peoples in decision-making and have their voices heard in decisions that concern their lives;
- e. improving the OCG's understanding of the experience and effects of colonialism, disenfranchisement, racism, intergenerational trauma and inequality for First Nations people;
- f. developing policies, practices and training to develop cultural awareness, culturally safe policies and procedures, enhanced inclusion and representation. This would include awareness of the risks of cultural load on First Nations employees and awareness of their community and cultural responsibilities, including not being placed in circumstances where conflict of interests might arise;
- g. reviewing the recruitment of First Nations staff, including opportunities for First Nations people to participate in the work of the OCG as interns, cadets or on secondments;
- h. committing to continuous learning, review, adapting and being aware of best practices in First Nations engagement; and
- i. being accountable and transparent in engagement with First Nations communities.

After such a review, the Assistant Children's Guardian's findings and recommendations should be published internally and on the OCG website, to the extent the Assistant Children's Guardian determines is appropriate.

7

Concerns, grievance complaints and allegations

This chapter addresses the rights of employees to raise concerns, grievance complaints or allegations about workplace conduct. It also addresses how the OCG responds to concerns, grievance complaints or allegations about workplace conduct and some specific issues of concern.

504. The Terms of Reference required the Inquiry to examine the governance and leadership of the OCG with respect to:
- a. supporting the right of employees to raise concerns, grievance complaints or allegations about workplace conduct; and
 - b. responding to concerns, grievance complaints or allegations about workplace conduct.
505. Chapter 4 (see in particular 4.7) provides a brief overview of the OCG's complaints and grievances policy framework that supports OCG employees' rights to raise grievances and complaints in relation to their employment with the OCG. The Codes further support the right of employees to raise workplace concerns, grievance complaints or allegations of discrimination, harassment and workplace bullying through internal and external processes.
506. Before addressing the OCG specific policies, the Inquiry considered the operation of the GSE Act when an allegation of misconduct is raised. Section 69(1)(b) defines '*misconduct*' as follows:

misconduct extends to the following —

- (a) a contravention of this Act or an instrument made under this Act,
- (b) taking action that constitutes a detrimental action offence,
- (c) taking detrimental action against another person in circumstances where —
 - (i) the person taking the detrimental action suspects, believes or is aware, when taking the action, that any person has made, may have made, may make or proposes to make a disclosure about alleged misconduct by an employee of a government sector agency, and
 - (ii) the suspicion, belief or awareness, whether correct or incorrect, is a contributing factor to the taking of the detrimental action,
- (d) a conviction or finding of guilt for a serious offence.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

507. The GSE Act requires that a person who exercises employer functions in relation to an employee of a government sector agency, and is responsible for dealing with any misconduct by that employee, must do so by following relevant procedural requirements. These procedural requirements are set out in Part 8 of the GSE Rules:
- a. rule 38 is about the initial stage of handling such allegations;
 - b. rule 39 is about findings made by an employer; and
 - c. rule 40 is about records relating to misconduct.

508. As Kirk JA explained in *Azzi v State of New South Wales* [2024] NSWCA 169 at [31]-[34]:

*Rule 38 is about the initial stage of handling such allegations. The person exercising employment functions ('the employer') is required to make an initial assessment as to whether to proceed with a matter. If such a decision is made, the employee is to be advised 'of the details of the allegation of misconduct', and 'of the action that may be taken under section 69(4) of the GSE Act against the employee.'*¹⁰¹ The employee then 'is to be given a

¹⁰¹ GSE Rules r 38(3).

reasonable opportunity to make a statement in relation to the allegation'.¹⁰² The employer may, as a result of any such statement, decide whether to proceed with the matter or not.¹⁰³

Rule 39 empowers the employer to conduct such inquiries as thought appropriate for the purpose of determining whether misconduct has occurred. However, the rule also prohibits the holding of a 'formal hearing' involving legal representation and the examination and cross-examination of witnesses.

Rule 40 provides for the making of findings. It relevantly provides:

40 Findings by employer

(1) The employer may, in dealing with an allegation of misconduct —

(a) make a finding of misconduct by the relevant employee (in which case the employee is to be notified of the finding in writing) ...

(2) The employer may not take any action under section 69(4) of the Act in relation to an employee unless —

(a) the employee is notified of the proposed action to be taken, and

(b) the employee is given a reasonable opportunity to make submissions in relation to the proposed action, and

(c) if any such submissions are made, the employer has taken those submissions into consideration.

The GSE Rules involve a multi-stage process:

(1) an initial assessment stage, where the employer decides whether to proceed with addressing an allegation of misconduct pursuant to the prescribed process;

(2) if a decision has been taken to proceed, an investigation and findings stage involving notification to the employee, giving them a reasonable opportunity to make a statement (after receipt of which the employer may decide to take the matter no further), combined with such other inquiries as the employer considers appropriate, leading then to the making of findings as to whether there has been misconduct; and

(3) if misconduct is found, a penalty stage where the employee is to be notified of any proposed action to be taken under s 69(4) of the GSE Act and given a reasonable opportunity to respond prior to the making of a decision on the appropriate act.

509. The Inquiry has been provided with information about some OCG investigations and actions taken under the GSE Act and GSE Rules. It has also heard the experiences of OCG employees engaged in these processes, reviewed the external investigation reports and noted, in some cases, the lengthy period of time between an allegation of misconduct being raised and a decision being made (if any). The Inquiry Commissioner was not asked to review, or make findings or recommendations, about the OCG's processes under the GSE Act and GSE Rules. Any consideration of these processes has been to consider the context in which the OCG specific policies and procedures operate.

7.1 OCG policies

510. The Inquiry has considered how the following policies are understood and operate at the OCG:

- a. the 2022 Code and the 2024 Code;
- b. the Grievance Policy and Procedures;

¹⁰² GSE Rules r 38(4).

¹⁰³ GSE Rules r 38(5).

- c. the NSW Commission for Children & Young People Harassment & Sexual Harassment in the Workplace Policy (October 2002) (**CCYP Policy**);
 - d. the Bullying and Harassment Free Workplace Policy;
 - e. the Public Interest Disclosure Policy and Procedures (June 2020) (**2020 PID Policy**);
 - f. the PID Policy.
511. The Inquiry also notes the Complaints Management Policy and Procedures (December 2023), which applies to complaints that originate outside the OCG about the OCG's services, product and/or how it executes its functions. This policy is considered at 4.7 above, and expressly excludes staff grievances and PIDs.

7.1.1 Codes

512. The 2022 Code does not set out any procedures to be followed for raising concerns, grievance complaints or allegations. At paragraph 18, the 2022 Code addresses 'how I report behaviour that breaches the Code.' It states:
- It is your responsibility to raise the employee's behaviour with your immediate manager or director or report your concerns to the Manager Corporate and Strategic Coordination or any member of the OCG Executive Leadership Forum.*
- If you know of behaviour that breaches this Code and choose not to report it there may be consequences.*
- If the behaviour also presents a risk/hazard to a safe workplace you (sic) also lodge a work health and safety incident report as soon as possible. The incident report will be escalated for review by management.*
513. In relation to these issues, the 2024 Code states:
- Behaviour contrary to the Code***
- If you are unsure of what is appropriate conduct in a particular situation, you can discuss the matter with your manager, People and Culture, or senior executive to discuss options and also may seek the guidance from the Public Service Commissioner.*
- If you see someone act in ways that are contrary to this Code, you should raise your concerns in accordance with OCG's policy framework for reporting wrongdoing.*
- How to report serious wrongdoing?***
- The Public Interest Disclosure Act 2022 (NSW) (PID Act) establishes a framework to encourage people who work in the public sector to report serious wrongdoing...*
- Actions when allegations of misconduct are made***
- For employees of Public Service agencies, the GSE Act and Government Sector Employment (General) Rules 2014 (GSE Rules) set out how allegations of misconduct are to be dealt with...*

7.1.2 The Grievance Policy and Procedures

514. The Grievance Policy and Procedures has been in operation since 2017. It sets out the procedural steps for informal and formal grievances and complaints raised by OCG employees about matters in relation to their employment with the OCG, including matters raised under the Bullying and Harassment Free Workplace Policy.
515. The 'purpose' of the Grievance Policy and Procedures is described inter alia as recognising the 'rights of an employee to raise concerns about work-related issues and to have these concerns dealt with promptly, appropriately and fairly.' The intention of the policy is to promote and maintain an 'informal' approach to resolving workplace conflict (see Part 4 of the policy).
516. The Guardian also has responsibilities under the Grievance Policy and Procedures to proactively establish management practices to provide a workplace that is free from conflict, support managers/supervisors to deal with employee concerns and monitor the frequency, nature and outcomes of grievances across the OCG.

517. The Grievance Policy and Procedures expressly states it does not apply to:
- *'Appeals that are subject to the NSW Industrial Relations Commission'* (which is not otherwise explained);
 - *'Differences of view and opinions between colleagues as long as they are not discriminatory';*
 - *'Managing unsatisfactory performance and discipline issues';* and
 - *'Union or industrial disputes.'*
518. It also appears to exclude management of performance which is said to be addressed by the OCG's Performance Development Policy.
519. The Grievance Policy and Procedures states it will apply *'where conflict remains unresolved and work is being affected.'*
520. However, some key terms in the Grievance Policy and Procedures are not defined or explained – such as *'conflict'*, *'complaint'*, *'concern'*, *'issues of concern'*, *'unfair or unjust treatment in the workplace'* and *'problems.'* The Inquiry noted the Grievance Policy and Procedures does define:
- *'a grievance'* as *'a clear statement by an employee of a work-related problem, concern or complaint'*; and
 - *'a dispute'* being *'a clear statement by an individual or a group of employees on a question, difficulty or conflict with the interpretation, application or operation of an award or agreement'* (which is referred to as the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009).¹⁰⁴
521. The Grievance Policy and Procedures also refers to OCG's Conflict Management Policy with respect to resolving a complaint informally. The Inquiry was provided with the Conflict Management Policy which was issued in April 2015. The Conflict Management Policy is a policy that *'is intended to assist all OCG staff in dealing with conflict in the workplace using an early intervention focus.'* The Conflict Management Policy refers to a 3-stage process (Early Intervention, Escalation and Formal Complaint Process) with the final stage being where the Grievance Policy and Procedures is engaged.
522. The steps are not dissimilar to the informal resolution steps in the Grievance Policy and Procedures (see [524]). The Early Intervention stage has 7 steps. It primarily places responsibility on the employee who has a concern. That employee is supposed to reflect on their concerns and to engage with the employee who has caused the concern. If this is not successful, a person can escalate it by discussing it informally with their manager, prior to making a formal complaint. Under this policy, the 'usual' person to make a complaint to is the Guardian – this is different to what is contemplated in the Grievance Policy and Procedures where complaints are raised with a manager/supervisor who might then raise it with a relevant director (see [524 (b)(ii)]).
523. The Grievance Policy and Procedures includes a flow chart of what are described as *'informal process'* and *'formal process'* for responding to a concern or grievance. Grievances are to be handled and resolved by the supervisor/manager of the employee who raises the grievance, or the supervisor/manager to whom the grievance is raised. If the grievance is not resolved after formal resolution, it is referred to the next level of management. In this respect, directors are responsible for supporting managers/supervisors to deal with employee concerns in a fair, serious, sensitive, prompt and confidential manner.
524. As a broad overview of the resolution processes under the Grievance Policy and Procedures:
- a. Informal Resolution requires:
 - i. an employee identifying the problem and desired outcome;
 - ii. if possible, the employee attempting to resolve the problem with the person(s) involved;

¹⁰⁴ Part 9 of the Award specifically address grievance and dispute settling procedures.

- iii. the employee seeking assistance from their manager/supervisor, the Grievance Advisor or a union representative. They may also seek support from the OCG's EAP;
- iv. the employee and relevant person(s) reaching informal resolution with the assistance of their manager/supervisor or a Grievance Advisor; and
- v. if the grievance cannot be informally resolved, or the matters are considered to be of a more sensitive or serious nature, moving to a formal resolution process.

b. Formal Resolution requires:

- i. an employee notifying their manager/supervisor or other appropriate person, in writing, of the substance of their grievance;
- ii. the supervisor/manager acknowledging receipt within 2 business days and arranging to meet with the complainant within 5 business days to discuss the grievance;
- iii. the supervisor/manager examining the grievance and either bringing the matter to conclusion without formal investigation, or referring the grievance to the relevant director to arrange investigation by a qualified officer or external contractor;
- iv. where required, proceeding to an investigation;
- v. following investigation, the supervisor/manager finalising the grievance with the complainant and respondent, and determining a relevant outcome. If the recipient of the grievance cannot achieve an agreed outcome, the grievance may be referred to the next level of management for further investigation/consideration until the matter is resolved;
- vi. once the matter has been resolved, the supervisor/manager continuing to monitor the environment in which the grievance or dispute occurred; and
- vii. if a grievance remains unresolved, the Guardian is the final arbiter.

525. If the grievance involves or is about the Guardian, it must be referred to the PSC for direction.

526. The Grievance Policy and Procedures includes a template Grievance Form which must record all aspects of the grievance process and sets out the process by which all records in relation to a grievance must be kept and stored. The Grievance Policy and Procedures provides that, at the conclusion of a grievance matter, the supervisor/manager should forward all relevant information and the completed Grievance Form to the '*Manager, Business Services*.' The Inquiry assumes that this reference to '*Business Services*' is out of date, given that for the duration of the Inquiry Period the OCG has had a Corporate Services directorate and that the OCG introduced a People and Culture directorate in April 2024 (see 3.3 and 3.4).

527. Based on the information provided to the Inquiry, the Inquiry understands that the Grievance Policy and Procedures has not been updated since 2017. There were no identified '*Grievance Advisors*' (defined as a '*suitably qualified human resources representative, generally a HR Consultant from the Public Service Commission or an external consultant engaged to provide specialist advice/to complete an investigation*').

528. The Inquiry notes that the 2023 and 2024 People and Culture Onboarding Learning curriculum and resources make no reference to the Grievance Policy and Procedures.

529. A review of the confidential comments in the PMES 2022-23 and PMES 2023-24 (referred to in Chapter 4) reveals a wide range of concerns and grievances that should, or could, have been addressed if the Grievance Policy and Procedures had been used.

530. While the Cosgrove Report does not specifically address or make recommendations about the Grievance Policy and Procedures, the Inquiry was told the People and Culture team were committed to updating the Grievance Policy and Procedures in response to the PMES 2022-23 results. The People and Culture Executive Update refers to such a review. The Inquiry understands a review was undertaken and a proposed new policy was provided to the PSA for consultation at the September 2024 JCC meeting. The proposed new policy was also shared with the ELT for feedback around this time.

531. In December 2024, the Grievance Policy and Procedures was discussed at the JCC because there had been '*recent feedback from staff and noted the importance and the need for managers*

and staff to follow the grievance policy.' One of the issues raised was about the difference between informal and formal management of issues such as allegations and comments. There was a view that OCG employees need to be told in advance whether a matter is being dealt with informally or formally, in particular when employees are invited to a meeting to discuss a matter, therefore avoiding the potential stress of waiting for the meeting without context. This feedback may relate to how the complaint referred to at 7.2.3 below was handled.

532. The Guardian is recorded as reporting during the JCC that *'some recent matters were dealt with informally and noted the need to define informal vs formal and the differences between an investigative approach vs opportunity for learning.'*
533. In addition, the following concerns were recorded as being raised during the JCC:
- a. the importance of being clear about whether a person can have a support person during an investigation;
 - b. a clear agenda in meetings so the staff member knows the purpose of the meeting; and
 - c. the lack of being able to address anonymous complaints and the importance of dealing with these matters.
534. The Guardian noted to the JCC that *'corrupt conduct or serious misconduct and the anonymous nature of these that need to be tested.'* The JCC minutes record the Guardian noting the *'importance to make sure that issues are correctly dealt with and the seriousness of anonymous complaints without the option to address these. We need a vehicle for these types of comments to be received.'*
535. The outcome of the meeting was an action to define informal vs formal processes when addressing matters or complaints with staff. Based on the information provided to the Inquiry, it was not apparent whether this had been done.
536. As at the date of this Inquiry, a revised policy has not been adopted, so the Inquiry has focussed on the operation of the Grievance Policy and Procedures as it presently operates and has applied to complaints and grievances during the Inquiry Period.

7.1.3 NSW Commission for Children & Young People Harassment & Sexual Harassment in the Workplace Policy (October 2002)

537. The OCG has advised the Inquiry that prior to the Bullying and Harassment Free Workplace Policy being introduced in March 2024 (discussed below at 7.1.4), the CCYP Policy applied. The Inquiry observes that this policy was introduced by a predecessor organisation of the OCG and was first reviewed in June 2001 and last reviewed in October 2002.
538. The CCYP Policy states:
- The Commission has an unconditional commitment to ensure that each and every one of our staff, can carry out their duties in a workplace free of all forms of harassment, including sexual harassment. This commitment also covers clients of the Commission.*
- All management and staff have a responsibility to ensure that our staff and Commission clients are able to operate in a harassment free environment. We will not condone or participate in any behaviour that may harass another person.*
539. The CCYP Policy was outdated and not fit for purpose in 2024. The Inquiry highlights some of the issues below.
540. A substantial portion of the CCYP Policy is made up of definitions of terms such as sexual harassment, harassment (including examples of these) and workplace bullying. Due to the age of the document, some of these definitions were out of date by 2024. An example of this is the definition of workplace bullying:
- Workplace bullying is a form of harassment where an individual uses their status, power or position to threaten or coerce another employee by fear. It does not necessarily involve behaviour against others because of the established "grounds of discrimination" i.e. sex, race, age, etc.*

541. The community's understanding of bullying and the definition of this has significantly changed since 2002. The commonly accepted definition of bullying in 2024 from the *Fair Work Act 2009* (Cth) which has been adopted by SafeWork NSW is *'repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.'*
542. The CCYP Policy also contains guidance for employees that are the subject of harassment that is inconsistent with 2024 understandings of how to appropriately manage workplace risks. The general guidance in the section titled 'If you are Harassed' is:
- A characteristic of harassment and sexual harassment is that it is not likely to stop unless you do something to stop it. If you cannot do this yourself, there are people who can help. You are also able to talk about the situation and get advice on the remedial options available to you. The matter will not be taken out of your hands. No written or oral report will be made or action initiated without your prior consent.*
543. This policy should have been significantly updated in the years between 2002 and 2024.

7.1.4 Bullying and Harassment Free Workplace Policy

544. The Bullying and Harassment Free Workplace Policy (March 2024) states that the OCG does not accept workplace bullying, harassment or discrimination in any form. The policy acknowledges all staff have a right to a workplace that is free from all forms of bullying and harassment. The policy acknowledges the obligations under WHS law and the commitment to *'create and maintain healthy and safe workplaces.'*
545. The policy defines and describes *'workplace bullying'*, *'discrimination'*, *'harassment'* and *'sexual harassment.'*
546. Part 4 of the policy addresses reporting bullying and harassment. It encourages employees who are the subject of, or witnesses to, bullying and harassment to report the behaviour – this includes encouraging employees to be active bystanders. Once behaviour of concern is identified, individuals are able to:
- seek support and advice;
 - report the matter internally to the OCG; or
 - report the matter to an external authority (such as NSW Police, Anti-Discrimination NSW or SafeWork NSW).
547. Part 5 of the policy deals with how internal complaints are managed. While complaints are stated to be managed *'generally in accordance with the OCG's Grievance Policy and Procedure'*, the processes set out in the policy are more up to date and better reflect modern workplace expectations than those in the Grievance Policy and Procedures. This includes People and Culture taking a leading role in managing complaints. For example, once a complaint is made, People and Culture is required to:
- liaise with the person making the allegation;*
 - maintain detailed case notes about the complaint, the person/s against whom complaints are made, witness statements and any outcome or resolution of the matter. These notes should also include the identity of the complainant;*
 - maintain confidentiality about the allegations and outcomes, except for the parties involved and any other person who may need to be consulted in order to affect a resolution of the complaint;*
 - inform the Guardian of any similar complaints against a person and notify them that this might be an ongoing pattern of behaviour that has not been resolved;*
 - arrange if required or requested and as appropriate, external assistance for persons who have been the victim of such behaviour, or for persons alleged to have been involved in such behaviours;*
 - involve the complainant in resolving the issue, if the complainant wishes; and*

- g. *along with the relevant directors, monitor any disciplinary action or other actions which are agreed upon by the Guardian to ensure compliance, and finalise case notes in relation to resolved complaints.*

7.1.5 Anonymous complaints

548. The 2022 Code, 2024 Code, Grievance Policy and Procedures and CCYP Policy do not provide for responding to and managing anonymous grievances and complaints.
549. The Bullying and Harassment Free Workplace Policy states '*incidents can be reported informally, formally, **anonymously** and confidentially*' (emphasis added).

7.2 Concerns and grievances raised during the Inquiry

550. The Terms of Reference for this Inquiry did not require an investigation into specific personal complaints or grievances. In submissions and during interviews, the Inquiry Commissioner heard about the types of concerns, grievance complaints and allegations that arise in relation to workplace conduct. In summary, the concerns and grievances relevant to workplace conduct were about:
- a. **Recruitment:** particularly internal recruitment decisions and opportunities. The Inquiry heard there was no process to raise concerns about how the decisions were made, lack of transparency and perception of favouritism in some of the decisions;
 - b. **Inter-personal interactions and treatment:** concerns about bullying, berating people and disrespectful, dismissive, threatening behaviours – particularly when directors, managers and team leaders engaged with more junior staff; and a failure to call out or hold people accountable for poor behaviour; and
 - c. **Workload and the way work must be performed:** concerns were raised about onerous KPIs, overly prescriptive requirements (such as word limits in reports) and punishments if work was not performed; feeling burnt out; the lack of support and understanding of the impact of exposure to traumatic and confronting information; and feeling undermined.
551. As noted in Chapter 2, the Inquiry's Terms of Reference was confined to incidents and conduct contrary to the 2022 Code. For this reason, it was beyond the scope of this Inquiry to examine every allegation. As the Inquiry Commissioner raised with a number of participants, the focus was on systemic issues.

7.2.1 OCG staff experiences of how the OCG manages concerns and grievances

552. Some OCG employees shared their experiences about seeking to raise complaints and concerns.
553. Some participants in the Inquiry shared positive experiences:
- '*I haven't experienced any grievances that haven't been resolved.*'
 - '*I had an issue with a manager which was resolved very appropriately and respectfully.*'
 - '*There are clear and appropriate channels to raise concerns or issues, and these are treated with seriousness and care. When concerns are raised, they are met with thoughtful discussion and a commitment to finding workable and respectful solutions.*'
554. Some participants, including those in leadership roles were unsure about how the policies and procedures operate:
- '*People in the OCG don't have an understanding of complaint handling. Hardly best practice complaint handling and best practice administrative decision making.*'
 - '*[How to raise a grievance] -I don't think it's been communicated. I don't know that our grievance policy is even a settled one.*'
 - '*Nobody knows how to raise grievances and concerns. They created a team but nobody knows.*'

555. Other participants describing their fear and concerns about retribution, if they raised a complaint, grievance or concern:
- *'It is getting easier to speak up with the protected disclosure provisions, but more could be done.'*
 - *'I don't feel safe raising these issues publicly because the culture makes honest feedback extremely difficult.'*
 - *'So how do we feel comfortable providing feedback and ensure the resolution is an unbiased response?'*
 - *'There are no safe feedback mechanisms.'*
 - *'I am terrified of retribution [for making complaints].'*
 - *'We feared retribution if we raised [complaints]. We felt we had nowhere to go to raise concerns.'*
 - *'There is NO support for the right of employees to raise workplace concerns, grievance complaints or allegations of discrimination, harassment and workplace bullying.'*
 - *'I was not given an opportunity to voice my opinions.'*
 - *'If I was to raise a grievance about [a director], it would be after I've resigned. I have no trust or faith in that process when it comes to [the director], who would come after you and make sure you are torn to shreds.'*
 - *'If you speak up, you're shut down and people don't like you.'*
 - *'I faced another bullying incident at [sic] workplace which I did not have the courage to report due to this past. I just avoid, working away from all of it.'*
556. Some participants identified a lack of confidence in how their concerns and complaints had been addressed:
- *'Most concerning, there was a 'culture of silence'. Employees expressing their concerns were hushed, dismissed and labelled as trouble or the 'wrong fit'. Consequently, their career progression was limited, and they felt pressured to leave the agency after having raised a complaint/s which were not addressed.'*
 - *'I felt like it was the personal responsibility of individuals to raise concerns rather than an expectation that managers will be providing appropriate supervision and support [for example, managers did not keep an eye out for things].'*
 - *One participant who attempted to make a complaint was told they would not 'win' and 'if I draw attention to myself by raising anything they will target me, bully me and they would find a reason to terminate my employment.' She said 'I would be fighting 3 levels of management who support each other and will suffer significant stress and not win.'*
 - *'I raise a complaint I get attacked and criticised and humiliated or my information gets then shared with other people and my privacy gets breached.'*
557. Some participants commented on their experience of the OCG leaders responding to concerns, feedback or complaints:
- *One referred to their manager as 'a great manager and we're all accountable to [the manager]. If I had any issues I would be comfortable to raise them with [the manager].'*
 - *'I provided feedback to a manager regarding the way a supervisor harassed me to submit work when at the time I was already spending a significant amount of time writing a report and I was chased 3 times to submit work... This manager responded however in no way did they address my feelings of stress or harassment and instead the response to me was the manager was enabling this supervisor's behaviour. So how do we feel comfortable providing feedback and ensure the resolution is an unbiased response?'*
 - *'I was ostracised by [a director] [for raising concerns].'*
 - *'I tried reporting [bullying] it to the management, but this was handled inappropriately and this ended in me being subjected to a lot of isolation for 5 months.'*

- *'The way things were handled when I had reported bullying, the persons responsible were informed by the manager what I had said, confidentiality was not maintained, and I was subjected to a lot of ridicule and isolation.'*
558. Some OCG employees are reluctant to raise formal complaints in writing and the Inquiry was told there was a belief that there was a history of inaction, including by managers and the Guardian. As a result, complaints and grievances have been made through informal channels to ensure confidentiality. However, the person to whom the informal concern or grievance was raised often became conflicted in addressing the issues or felt compromised because they had given a commitment to keep the concern confidential. This resulted in no action or an inability to address the substantive matter.
559. The Grievance Policy and Procedures does not provide a clear role for a People and Culture leader or complaint handling specialist to:
- a. be the contact for OCG employees who wish to raise concerns or make complaints; and
 - b. manage those matters, by providing advice and support to managers, maintaining records and monitoring trends.
560. As noted at Chapter 5, following Ms Cosgrove's review, the OCG created a role for the Director, People and Culture. A review of the position description for this role makes it clear that the Director, People and Culture is not responsible for any form of complaint handling, either to provide information, referrals, identify supports, facilitate or manage options for resolution, develop policies or training, keep records or undertake any follow-up work. The Inquiry was told that People and Culture functions within the OCG are directed to operational matters, rather than complaint handling or dispute resolution.
561. The Inquiry was told that management of complaints sits with the Corporate Services directorate. The Inquiry is aware this is a small team that also has responsibility for managing the OCG's budget, finance, IT and other corporate services functions. While making no criticism of the Corporate Services directorate, it was not apparent to the Inquiry that they had the skills, experience or resources to manage the Grievance Policy and Procedures framework.
562. The Inquiry was also made aware that the OCG General Counsel Directorate is not involved in, or responsible for, internal complaints.
563. These deficiencies reflect some of the issues raised with the Inquiry about expectations of a People and Culture role that does exist. Participants said:
- *'There were no HR people on site to readily check in with – scrutiny or the opportunity to raise with an independent person was absent.'*
 - *'In the absence of an effective People and Culture Directorate, the PSA has become the default HR provider to whom staff raise issues. However, it seems that the PSA amplifies rather than resolves the issues being raised.'*
 - *'I was treated very rudely. I was told by my Team Leader at the time "oh well, that's just HR".'*
 - *'I was warned, very sternly, not to complain further and not to expect anything to happen.'*
 - *'I would be very reluctant to raise those concerns [with HR] given my and my team's previous poor treatment.'*
 - *'The People and Culture Team at the OCG is aware of an employee's poor performance and misconduct and has failed to address their behaviour.'*
 - *'I witnessed and was directly subjected to harassment and bullying by a director and managers across forums... I escalated my concerns to the Children's Guardian and HR via email... I also raised concerns about high staff turnover and provided examples of a disintegrating work culture... I received an apology, no follow up action occurred, matters remained unresolved.'*
 - *'We haven't had strong HR support.'*
 - *'HR is woefully underdeveloped. They don't save grievances or complaints, they don't have personnel files and there is a lack of procedures in that place. There is no trust and confidence in the ability of HR, which is a shame.'*

— 'There was something going on with the HR team, it felt like there was a lack of confidence.'

7.2.2 Discouraging complaints

564. Of particular concern to the Inquiry was experiences where people were discouraged from making a complaint.
565. Some submissions to the Inquiry included comments about the Guardian's personal handling of complaints. They included an allegation made in early 2023 involving concerns about bullying and harassment raised to the Guardian and People and Culture directorate which was left unresolved. The Inquiry was not able to obtain information to examine this particular allegation, including any record of such complaint.
566. The Inquiry heard about the experiences of two OCG employees who described that the Guardian discouraged complaints being made. One employee was told not to make a complaint about a more senior employee. The Guardian is reported to have suggested '*this may not be the best way forward.*' The Guardian then informed the more senior employee about the other employee's grievance about them. The senior employee informed the Guardian they were also intending to make a complaint about the employee. In response, the Guardian suggested that '*any formal disciplinary case would detract from the important work they were doing and that should be avoided.*' The senior employee felt they would be at risk if they did make a complaint. The Inquiry understands the Guardian then made some changes within the particular directorate as his way of resolving the potentially competing complaints. The conflict between these employees remained unresolved. Each has continued to allege the other has engaged in bullying.
567. The Inquiry acknowledges that under the Grievance Policy and Procedures, the Guardian could take such an approach. In these circumstances, the Guardian sought to resolve the concerns without the employees making complaints that would then require investigation.

7.2.3 An anonymous complaint about a workplace event in August 2024

568. The Inquiry also examined the Guardian's response to and handling of an anonymous complaint about a social event within one of the OCG directorates. The Inquiry is aware of media reports about the anonymous complaint. The media reports described the event as a 'baby shower' which included games described as sperm-themed and inappropriate. These media reports were published around the time this Inquiry was announced.¹⁰⁵
569. The Guardian was not invited to the event. He did not know the event was being held and he did not attend.
570. On or around 4 September 2024, the Guardian became aware of the baby shower event when the OCG received an anonymous complaint.
571. One of the issues investigated by the Inquiry was the Guardian's response to the anonymous complaint. The Inquiry Commissioner's findings in relation to the Guardian's response to the complaint, his actions to address the conduct, his engagement with a number of OCG employees. Some findings concerning the Guardian's response are set out briefly at 7.4.1 below.
572. The public reporting of this matter has caused significant distress, anxiety and fear, particularly because the Inquiry Commissioner has found some of the colourful allegations reported in the media have not been verified and are not correct. The Inquiry Commissioner committed to keep confidential the identities of the individuals who attended the event. It is not in the public interest or consistent with a trauma informed approach to record the Inquiry Commissioner's findings about this workplace event. For this reason, the detailed findings about this matter are contained in the Confidential Annexures. The Inquiry Commissioner has requested the Minister not publish the Confidential Annexures, noting that the Minister must cause a copy of the Report to be laid before each House of Parliament under section 82(10) of

¹⁰⁵ <https://www.abc.net.au/news/2025-03-01/nsw-childrens-guardian-steps-aside-inquiry-complaints/104998338>;

7.3 PIDs

573. During the Inquiry Period, two policies applied in relation to PIDs. The 2020 PID Policy, and then from November 2024, the PID Policy. The 2020 PID Policy is based on obligations under the *Public Interest Disclosures Act 1994* (NSW) (**1994 PID Act**) and the PID Policy is based on the PID Act which came into force on 1 October 2023.
574. As the 2020 PID Policy was not updated after the PID Act came into force, references in the 2020 PID policy are out of date and not representative of the framework under the PID Act. An example of this is the scope and coverage of the policy which is defined to apply to *'all staff of the OCG, members of committees and those working on behalf of the OCG i.e contractors, consultants and voluntary workers.'*
575. In contrast, the PID Policy reflects the PID Act and applies to all *'OCG officers'*, including staff, statutory officers, persons providing services or exercising functions on behalf of the OCG, or employees, partners or officers of the OCG who provide services under contract or other arrangement on behalf of the OCG.
576. A related and significant issue is that in contrast to the 1994 PID Act, the PID Act has specific requirements about PID policies (see Part 4 sections 42-48). The requirements are set out in section 43 and are lengthy.
577. The Inquiry has not attempted to identify all the ways in which the 2020 PID Policy differs from the PID Policy due to the changes in the legislative regime. What the Inquiry has instead done is to set out the high level principles of the 2020 PID Policy and the PID Policy (collectively, the **PID Policies**).
578. The PID Policies outline the OCG's obligations in relation to dealing with PIDs in accordance with the PID Act. In particular, they set out, in varying degrees of detail:
- a. the responsibilities of the Guardian and other nominated disclosure officers under the 1994 PID Act and the PID Act;
 - b. how individuals can raise a PID;
 - c. the protections that are available to these individuals under the PID Act; and
 - d. how the OCG will support and protect individuals who raise a PID.
579. Unlike the PID Policy, the 2020 PID Policy does not explicitly set out when a report will be considered a PID. It instead sets out the 4 categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money and government information contravention – that are dealt with under the PID Act. Under the 2020 PID Policy, reports of this nature should be made to the Guardian and the Nominated Disclosures Officer.
580. Upon receiving the disclosure, the recipient is required to:
- *Clearly explain to persons making the disclosure what will happen in relation to the information received*
 - *When requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary, away from the workplace)*
 - *Reduce to writing and date disclosures received orally (and have the person making the disclosure sign the document)*
 - *Deal with disclosures impartially*
 - *Assess the disclosure*
 - *Take all necessary action and reasonable steps to ensure the identity of the persons making the disclosure, and the persons subject of the disclosure, are kept confidential; and*

- Support persons who make disclosures and protect them from victimisation, harassment or any other form of reprisal.

581. The 2020 PID Policy contemplated that a Disclosures Co-ordinator would act '*as a clearing house for disclosures*' with duties including to assess each disclosure, consult with the Guardian and the Nominated Disclosures Officer about the appropriate course of action, conduct or coordinate any investigation and to protect the identity of, and support persons who have made disclosures.

582. The PID Policy recognises that individuals may wish to be anonymous when making a report. However, in those circumstances the OCG may not be able to provide appropriate support and it may be difficult for the OCG to take steps to prevent any reprisal action.

583. The PID Policy provides that for a report to be a PID, it must be made to a public official who is authorised to receive PIDs. Under the PID Policy, the authorised individuals include the Guardian, nominated disclosure officers (set out in Appendix 1 of the PID Policy) and managers. These individuals are responsible for receiving disclosures and ensuring they are dealt with appropriately. Further, the PID Policy provides that the Guardian and Director, Corporate Services have the following responsibilities in relation to PIDs:

- a. the **Guardian** is responsible for fostering a workplace culture where reporting is encouraged, receiving disclosures, ensuring there is a system for assessing disclosures, ensuring the OCG complies with the PID Policy and PID Act, and ensuring the OCG has appropriate systems for overseeing compliance with the PID Act, and supporting individuals who make disclosures; and
- b. the **Director Corporate Services** is the Disclosures Co-ordinator and a Disclosure Officer, who is responsible for receiving disclosures, ensuring they are dealt with appropriately, conducting appropriate risk assessments and ensuring there are adequate supports and systems in place to ensure compliance with the PID Act.

584. When responding to a PID, the PID Policy provides that the Guardian, disclosure officers and managers must follow the following process:

- a. acknowledge that the report has been received;
- b. assess whether the report is a PID;
- c. protect the confidentiality of the maker of the PID, and assess and minimise the risk of detrimental action being taken against someone as a result of the disclosure being made;
- d. if the report is assessed as a PID, inform the maker of the PID how they intend to deal with the report – this may include investigating the alleged serious wrongdoing, referring the report to a different agency, or deciding to take no action;
- e. if the PID is investigated, providing the maker of the PID with updates on the investigation at least every 3 months; and
- f. once the investigation is complete, providing the maker of the PID with a description of the results of the investigation and information about any corrective action as a result of the investigations.

585. The PID Policy acknowledges that where a person has made an anonymous report, in many cases they may not be able to be provided with the above information.

586. The Inquiry considered the Guardian's actions in addressing a PID. Prior to the Guardian commencing as the Children's Guardian, a director had made a PID in relation to the conduct of three senior leaders within the OCG. The director followed the appropriate process for making a PID and the Inquiry makes no adverse findings about the making of the PID.

587. When the Guardian became aware of the PID he encouraged the director not to pursue the PID by challenging the director to '*ask ourselves what sorts of leaders we want to be*' and stressing the importance of the ELT working together. The director agreed not to proceed with the PID, but did not retract the allegations. As far as the Inquiry is aware, to this date, the allegations have not been retracted.

588. Two of the individuals (about whom allegations were made) expressed concerns to the Guardian that a failure to formally investigate the allegations raised in the PID did not allow a proper examination of the allegations made against them. The individuals had been made aware of the PID by the Guardian. The Guardian's response was to inform the two individuals that no adverse conclusion or inference would be drawn about anyone's conduct in the matter because it had not been formally investigated. This was not a satisfactory outcome for the two individuals, who remain concerned and worried about the allegations having an adverse impact on their reputations and being denied the opportunity of responding to the allegations.

7.4 Findings and Recommendations

7.4.1 Findings

589. FINDING 7

The Inquiry Commissioner finds that both the OCG policies and the practices have not always supported the right of employees to raise concerns, grievance complaints or allegations about workplace conduct that may be inconsistent with the 2022 Code and now 2024 Code.

The Inquiry Commissioner also finds that both the OCG policies and practices have not always responded to concerns, grievance complaints or allegations about workplace conduct appropriately or consistently with the Grievance Policy and Procedures.

590. FINDING 8

With respect to the Guardian's personal handling of complaints (as set out at 7.2.2 above):

- a. the Inquiry Commissioner makes no adverse finding about the Guardian's actions in intervening in a situation where employees proposed to make complaints about each other. It was open to him to take an informal approach. The risk for the Guardian in addressing a grievance in this way is the risk of being conflicted or drawn into the complaints, if the informal intervention does not resolve respective grievances; and
- b. this scenario highlights the importance of a clear and transparent policy to ensure OCG employees know their options and have a right to pursue a complaint if that is their preference.

591. FINDING 9

With respect to the baby shower event (as set out at 7.2.3 above), the Inquiry Commissioner found:

- a. the anonymous complaint described the distress and discomfort of some attendees, which was consistent with information provided to the Inquiry;
- b. some attendees did not experience distress and discomfort; and
- c. having regard to all the relevant circumstances, there was no breach of the 2022 Code or misconduct within the meaning of GSE Act or GSE Rules sufficient to justify the termination of employment of any OCG employee who organised or attended the event.

592. FINDING 10

With respect to the Guardian's actions in responding to the anonymous complaint (as set out at 7.2.3 above), the Inquiry Commissioner found the Guardian's response to and handling of the anonymous complaint was inept. The findings are addressed in the Confidential Annexures. In summary, the Guardian:

- a. failed to act consistently with the 2022 Code;
- b. failed to consider and apply any OCG policy with respect to complaints and managing grievances when dealing with the anonymous complaint;
- c. failed to meet the most basic standards of proper complaint handling.

The Guardian's actions have resulted in some OCG employees feeling their workplace is unsafe with the consequent adverse effect on workplace culture.

7.4.2 Recommendations

593. RECOMMENDATION 10

Recommendations have been made to review and update policies, including complaints and grievance procedures. However, the application and operation of the policies also requires attention. Any revisions should also examine how anonymous complaints should be addressed, including ensuring a designated and skilled person has the carriage of such complaints. That person should not be the Children's Guardian personally.

594. RECOMMENDATION 11

The Inquiry recommends that the OCG considers the appointment of an appropriately qualified person or persons (who may be internal or external to the OCG) for the purpose of addressing any concerns, grievance complaints or allegations about workplace conduct that have been made during the Inquiry Period but not addressed, and any staff complaints now made.

595. RECOMMENDATION 12

The Inquiry recommends that the OCG consider the appointment of an appropriately qualified person or persons (who may be internal or external to the OCG) for the purpose developing a robust, fair and transparent process for managing concerns, grievance complaints or allegations about workplace conduct, in consultation with the OCG staff. The processes must be psychologically safe, trauma informed and timely. A complainant should be consulted about the pathways available to address the complaint, including options for supported mediation.

8

Leadership and
governance for the
effectiveness of the OCG

This chapter considers the principles and elements of good governance and leadership for the OCG as an independent public sector agency. It examines the OCG governance arrangements in the context of the Children's Guardian's statutory responsibilities and leadership. This chapter also examines the effectiveness of the OCG having regard to the need for both its independence and oversight.

596. The Inquiry examined the governance and leadership of the OCG to assess its effectiveness, specifically with respect to the workplace culture, independence and oversight of the OCG.
597. Given the Inquiry's focus was on workplace culture, the Inquiry Commissioner has not addressed every possible governance issue. For example, the Inquiry did not examine the delegations arrangements, insurance and claims, all aspects of record keeping and archiving, financial matters, information sharing protocols with external agencies, cyber-security and external stakeholder engagement risks in any detail. The Inquiry did not have direct engagement with members of the OCG's ARC or review its charter and operation. These are all important matters but are well beyond the scope of this Inquiry.
598. The Inquiry did hear that the OCG considers itself to be an independent agency with a separate identity. The OCG's stated purpose is 'we work with others to keep children, and people with disability, safe in NSW.' The Children's Guardian is a regulator.
599. Some may say that if the OCG is independent, then it must be free to operate as it sees fit. Such a view is misconceived. Independence is not a reason or justification to depart from well-developed and reliable governance frameworks that hold public sector agencies accountable. In particular, those leading an independent agency must be especially alert to any conflicts of interest, maintain appropriate boundaries and not depart from the specific functions conferred on the agency. The OCG is not an advocacy body and its legislative functions do not extend to the direct care and support of children.
600. The OCG cannot and will not be effective if its leaders and employees transgress professional boundaries or compromise its independence and integrity by undertaking activities outside its remit.

8.1 Governance

601. The Governance Institute of Australia describes 'governance' as follows:

*Governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.*¹⁰⁶

602. The NSW Audit Office describes 'good governance' in the *Governance Lighthouse* publication as follows:

Good governance promotes public confidence in government and its agencies. The better agencies are governed, the better they will perform and the more satisfied the public will be. Sound governance is paramount to service delivery and the economic and efficient use of public money.

Good governance is those high-level processes and behaviours that ensure an organisation performs by achieving its intended purpose, and conforms by complying with all relevant laws, codes and directions while meeting community expectations of probity, accountability and transparency.

Governance should be enduring, not just something done from time to time. It is important to recognise that implementing a set of processes and procedures will not deliver good

¹⁰⁶ <https://www.governanceinstitute.com.au/resources/what-is-governance/>

*governance unless they are accompanied by a good governance culture. The attitudes, values, beliefs, and behaviours of leaders must support good governance.*¹⁰⁷

603. The Governance Lighthouse model has 8 principles and 17 key governance components to achieve and maintain good governance.
604. There is also a relationship between governance and workplace culture. Recent research has identified the impact of ‘dysfunctional governance’ on workplace culture in smaller government agencies.

*Statutory agencies are public bodies, and many have remits or functions that are concerned with integrity, standards, and rules of operation. An assumption might be that they should be exemplars of good governance. Yet the research highlighted that for small statutory agencies, boards and governance are not without their problems, and dysfunctional governance might affect staff more keenly.*¹⁰⁸

605. The Inquiry reviewed governance models and frameworks in the NSW public sector, with a particular focus on the DCJ *Enterprise Governance Framework* published in February 2025 (**DCJ Framework**). The DCJ Framework implements the components of public sector governance outlined in the Governance Lighthouse model.
606. The DCJ Framework is relevant to the OCG as part of the Communities and Justice Agency Portfolio governance. The Communities and Justice Agency Portfolio is based on a federated model, which balances entity autonomy with centralised oversight, collaboration and coordination. The DCJ Framework informs guidelines for the entities and executive agencies within the Agency Portfolio.¹⁰⁹
607. The DCJ Framework describes the DCJ Governance Principles which are underpinned by 6 foundational principles of public sector governance.¹¹⁰ Governance principles set high standards and are central to establishing best practices, good governance and organisational culture:
- **Leadership:** we strive to achieve good governance through committed leadership.
 - **Accountability:** we are responsible for our decisions and having appropriate mechanisms in place to ensure the agency complies with all applicable standards.
 - **Transparency and openness:** we have clear procedures, roles and responsibilities for decision making and exercising power.
 - **Integrity:** we act impartially, ethically and in the public interest.
 - **Efficiency:** we ensure the best use of resources to achieve the goals of the organisation.
 - **Reliability:** we do what we say we will do, deliver results and manage stakeholder expectations.
608. High-level principles provide the foundation and guidance for the organisation to achieve and maintain good governance, and realise the following benefits:
- **Effective performance:** The organisation is true to its purpose; performs as required; generates value for stakeholders; remains in alignment with its policies and relevant stakeholders.
 - **Ethical behaviour:** The organisation demonstrates an ethical culture; accountability through accurate and timely reporting on its performance and stewardship of resources, fairness in the treatment of, and engagement with stakeholders; integrity and transparency in fulfilling its obligations, and commitment; competence and probity in the manner in which it makes decisions.

¹⁰⁷ <https://www.audit.nsw.gov.au/our-work/resources/governance-lighthouse>

¹⁰⁸ Bushnell, Andrew and Patrick Brownlee. *The Purpose of Small Statutory Agencies: Insights on the Functions, Form, and Practices*: ANZSOG Research Insights No. 30. Melbourne: Australia and New Zealand School of Government, November 2023, pp 16 – 17.

¹⁰⁹ Department of Communities and Justice, *Enterprise Governance Framework published in February 2025* (Governance Publication, February 2025) [2.2].

¹¹⁰ Ibid [1.2].

- **Responsible stewardship:** The organisation makes use of resources in a responsible manner; effectively balances positive and negative impacts; considers global context; ensures its contribution to sustainable development; engenders the trust and confidence of the communities within which it operates, and beyond.

609. The DCJ Framework identifies the components of public sector governance.
610. The Inquiry has taken into account the DCJ Framework when addressing the OCG's governance approach.

8.2 Governance arrangements in the OCG

611. The OCG does not have a documented governance framework.
612. The Corporate Strategy 2024-27 describes the OCG's values that 'guide' the OCG's work but they are not expressed as guiding the governance and leadership of the OCG.
613. The OCG Values set out at 5.3.2 are broadly aligned with the DCJ Framework's 6 foundational principles.
614. Chapter 3 of this Report describes the OCG's statutory responsibilities and Chapter 4 addresses the OCG operating policies and procedures.

8.2.1 Organisational structure and distribution of regulatory functions

615. The Guardian oversees the 8 directorates which form the OCG (set out in 3.4 of this Report).
616. Five of those directorates discharge the regulatory functions of the OCG. They operate independently of each other:
- a. the Child Safe Organisations directorate is responsible for administering the Child Safe Scheme, children's employment and the SSRC. During the Inquiry Period, it had 6 directors. 5 of these director positions were one-year temporary positions. There is presently one director;
 - b. the OOHC Regulation directorate has one director. The OOHC Regulation directorate is responsible for accrediting and monitoring statutory OOHC and adoption providers. It is also responsible for the Carers Register and Residential Care Workers Register;
 - c. the Reportable Conduct directorate is responsible for administering the Reportable Conduct Scheme. It has 2 directors (the second commenced in April 2024);
 - d. the WWCC directorate is responsible for administering the WWCC Scheme. It has one director; and
 - e. the NDIS Worker Check is responsible for administering the NDIS Worker Check. It has one director.
617. The Guardian said that soon after he commenced, he was concerned about '*obvious tensions between the leaders of different directorates and an obvious lack of respect by certain leaders towards each other.*' He said his '*desire to build respect across the office was met with some challenges.*'
618. From an operational perspective, the respective directors manage these 5 directorates. Directors are responsible for the organisation of work, achieving goals, productivity, allocating resources, quality assurance and solving immediate problems in a regulatory environment to ensure decisions are made consistently with their delegated powers. The directors are accountable for the work that must be done and so their focus is inwards on their team.
619. There are a number of reasons why the directorates operate differently. One reason is the nature of the work and the statutory requirements that must be followed. A second reason is the growth of the OCG over 20 years, as new and different functions were added to its work. Some directorates had to be built from the ground up. Other directorates, like Reportable Conduct was well established within a different agency and moved as whole to the OCG, in March 2020, shortly before the COVID pandemic and lock downs commenced. These factors have influenced

the specific ways of working and style of management practices differ between the directorates. They each have some unique features of a workplace culture. In the current structure, a director is not involved in another directorate's work. At present, a director's responsibilities for workplace culture is primarily the culture within their own directorate.¹¹¹

620. The remaining 3 directorates (Corporate Services, People and Culture and Office of General Counsel) support the regulatory functions of the OCG and operate across the OCG. While each of these directorates has specific responsibilities, their focus is both inwards and across the whole of the OCG.
621. The Corporate Services directorate is responsible for providing Finance and IT services to the OCG – although, the Inquiry was told that some directorates have their own separate IT systems and IT employees. During the Inquiry Period, the Corporate Services directorate had 2 directors and 2 interim directors.
622. The People and Culture directorate is a relatively new directorate. It was established following the Cosgrove Report (see Chapter 5). It provides HR support to the OCG. Previously, the Corporate Services directorate managed HR. Since April 2024, there have been 3 different directors in the People and Culture directorate.
623. The Office of General Counsel is the OCG's legal unit responsible for legal advice and managing litigation. The Inquiry heard that some regulatory directorates have employed lawyers who are 'in house' for their directorate. These lawyers are not supervised by and do not report to the General Counsel, but report to their particular director of the relevant directorate. It was not clear whether these lawyers held 'unsupervised' or 'supervised' practicing certificates.
624. The Inquiry also heard that the Guardian established a 4-person Executive Office supporting him. He also engaged some short-term consultants, such as Ms Cosgrove and Mr Kenneth Moroney AO APM, a former NSW Police Commissioner who was employed to do special projects for a 12-month period.
625. During the Inquiry Period, 19 directors have served as part of the ELT and at some point reported to the Guardian. These directors are set out at 3.3.
626. For the period 18 January 2023 to 3 February 2023, the Guardian had 14 to 23 direct reports at different times.
627. One participant said:

Having 18 people in ELF [ELT] meetings was not conducive to facilitating clear workplace practice, as there were too many cooks in the kitchen with each cook focused on their own operational requirements. Having an oversubscription of direct reports can also make it difficult for the leader to have strategic oversight over what each direct report is doing – leading to silos.

8.2.1.1 Aboriginal Deputy Children's Guardian and Assistant Children's Guardian

628. Chapter 6 discusses the work of the Mr Weston, the OCG's only Deputy Children's Guardian. He was part of the ELT. The directors of the Child Safe Organisations and OOHG directorates reported to him.
629. As addressed in Chapter 6, the position of Assistant Children's Guardian remains vacant. When an Assistant Children's Guardian is appointed and commences with the OCG, it is likely the organisational structure may change. The recommendations in Chapter 6 address some matters that an Assistant Guardian may address to support and strengthen the OCG's governance and leadership from a First Nations perspective.
630. The Inquiry Commissioner's recommendations in relation to the Deputy Children's Guardian and Assistant Children's Guardian are set out at 6.6.2.

¹¹¹ The Inquiry notes that for part of the Inquiry Period, the Child Safe directorate had 5 directors all focused on that directorate and special projects directly affecting that directorate.

8.2.1.2 Concerns about the OCG's structure and governance

631. The overwhelming concern raised by participants in submissions and consultation interviews was the siloed way the OCG operates and the challenges for coordinating as 'one OCG.' One participant said:

I have noticed not only the significant lack of collaboration and knowledge sharing between teams but also how this leads to a lack of trust of other teams. This means each team (or directorate) seeks to solve problems in isolation so as to not deal with the 'hassle' of developing a solution that best meets the interests of OCG as a whole. One reason for this may be that many teams are operational and working to administer a set piece of legislation. Whilst in this administrative detail, the overall picture can be lost.

The fear of causing a rupture with other teams has led to very strict controls on me whereby interactions with other staff members need to be in writing and approved and sent by my manager. It has also led to inefficiencies whereby emails and ideas are word-smithed too much before collaborating and brainstorming with others can occur.

632. This view is consistent with Ms Cosgrove's findings. The Cosgrove Report identified the OCG structure as an issue to be addressed. In the Cosgrove Report under 'Further Discussion', Ms Cosgrove posed the following questions:

Is our current structure fit for purpose for now and into the future? This needs to include an assessment of our operating model and IT/Technology systems.

Is OCG a Government Agency or an Independent Statutory Body? Does this need to be clarified both internally and externally? Consider the effects of building a stronger public profile e.g., opportunities v threats.

Roll out of an executive leadership program focused on building trust and working collaboratively to enable fulfillment of the new strategy.

Rebuild the support functions (Corporate Services/People and Culture/General Counsel) to ensure appropriate support to the Directorates. Breaking down shadow structures by centralising support functions eliminating duplicated efforts, building centres of excellence, enabling collaboration and enhancing service delivery.

8.2.1.3 Concerns raised about the OCG's operations and governance

633. The following concerns about the OCG's governance practices were raised with the Inquiry in submissions and during consultation interviews:

- financial accountability and management of budgets;
- conflicts of interest;
- recruitment practices and decisions;
- lack of cooperation and response to requests for information relevant to the OCG's reporting obligations, such as PMES action plans;
- record keeping;
- separate IT systems;
- ARC discussions and outcomes are not shared;
- corporate governance and risk management approach is not present or visible across the organisation;
- failure to address psychosocial hazards and complaints regarding workload:
 - refusal to accept advice, input and recommendations of staff when implementing new ways of working; and
 - disregarding good governance and due diligence principles, resulting in psychological injuries; and
- minimal governance knowledge to support OCG needs.

634. These concerns were directed to the whole of the OCG rather than to one or more directorates.

635. One participant suggested:

[The] OCG could benefit from having executive directors (as long as these directors are genuinely collaborative, strategic, competent, helpful and not an extra burden!). They could lead similar sections of the OCG (e.g. WWCC and NDIS Worker Check directorates, compliance teams across child safe and OOHC etc). These executives could form a strong and cohesive Executive Leadership Forum.

636. It may well be that the siloed structure is the best and preferable structure to discharge the OCG's regulatory functions and independence within the budgetary parameters. However, there was no evidence available to the Inquiry that the OCG has undertaken a review from a governance perspective that challenges or tests the existing structure for the overall effectiveness of the OCG, including the implications such a strong siloed structure has on workplace culture.

637. The Inquiry Commissioner recognises this would require a broader functional review, which was not within the scope of this Inquiry.

8.2.1.4 Action taken to address governance and organisational arrangements

638. As discussed in Chapter 4, the PMES 2022-23 results was the catalyst for the Guardian to engage Ms Cosgrove to address workplace culture issues. At the same time, the Guardian and ELT wanted to develop a strategy with a focus on people. Chapter 4 describes that process.

639. These actions were appropriate, but were reactive to the perceived problem revealed in the PMES 2022-23 results.

640. The initiatives taken in 2024 to address workplace culture have not fully addressed the workplace culture and related governance concerns in the OCG. On one view, it is unrealistic to expect embedded workplace culture to change in 12 months. Change takes time. The Inquiry appreciated that the initiatives required time.

641. However, the Inquiry's concern was whether the initiatives have overlooked the matters Ms Cosgrove identified, namely examining the organisational structure that supports and surrounds how employees experience the OCG's workplace culture.

8.2.1.4.1 People and Culture Executive Update

642. The People and Culture Executive Update (including the People Strategy) developed in May 2024 did not review or identify changes to the OCG structure.

643. The People and Culture Executive Update records there was a '*stakeholder engagement summary*', but the stakeholders were confined to the directorates. Each directorate identified their '*priorities*'. The People and Culture Executive Update records the differing approaches and priorities for each directorate. The People and Culture Executive Update assumed and reinforced the siloed structure of the OCG. From a strategic perspective, the questions should be directed at what can be done together, rather than what distinguishes and differentiates the directorates.

644. The result is a misalignment of the People Strategy objective described as '*One team ethos/shared OCG DNA*', as described in the following extract from the People Strategy.

Our people strategy 2024

Supporting our people and being a great place to work



Undertake OCG values co-design to develop practical behavioural framework reinforcing lived values applicable to all staff irrespective of position. One team ethos / shared OCG DNA.

12

Figure 3: People Strategy from People and Culture Executive Update, page 12

645. The description of the ‘supporting pillars’ are premised on the matters described below operating consistently and uniformly in each of the directorates.

Supporting pillars



Figure 4: People Strategy from People and Culture Executive Update, page 13

646. The People Strategy describes an ‘ambitious and doable’ program of work to be undertaken in 2024. The plan is ambitious but does not address the governance or leadership capacity to ‘do’ the detailed program of work.

Plan on a page – proposed program of work to end 2024 (ambitious and doable)



14

Figure 5: People Strategy from People and Culture Executive Update, page 14

Key initiatives & implementation phases to Dec

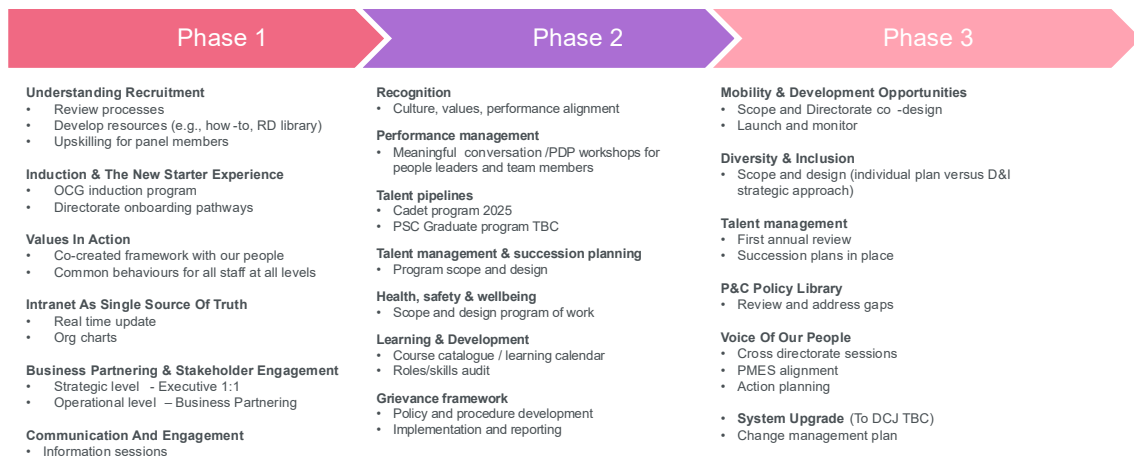


Figure 6: People Strategy from People and Culture Executive Update, page 15

8.2.1.5 Corporate Strategy 2024-27

647. The Inquiry also observes that the Corporate Strategy 2024-27 has a priority area titled 'Supporting our people':

- Enhanced employee wellbeing: We prioritise the physical, mental, and emotional health of our employees to support their overall well-being at work.*
- Career growth and progression: We actively foster opportunities for professional development and advancement, supporting employees in their career journeys.*
- Inclusive and supported workplace: Our goal is to create an environment where everyone feels valued, respected, and included, promoting diversity and belonging.*
- Strong engagement with our employees: We encourage active participation and provide fulfilling tasks, ensuring that employees find purpose and satisfaction in their roles.*
- Embedded People & Culture frameworks: We establish and embed effective systems and processes to support our workforce, enabling seamless operations and growth.*

648. There is no reference to the People Strategy (or any other internal OCG documents) in the priority area of 'Supporting our people.' This is another example of a laudable but wholly aspirational policy.

8.3 Findings and recommendations on governance arrangements

649. FINDING 11

The OCG has no documented governance framework and its organisational structure supports the silos between directorates. The initiatives undertaken in 2024 as part of the People Strategy had a focus on workplace culture but failed to examine how the structural and governance arrangements influenced the workplace culture.

8.3.1 Recommendations

650. RECOMMENDATION 13

The Inquiry Commissioner recommends the OCG develop a governance framework based on the guiding principles developed by the NSW Audit Office and outlined in the Governance Lighthouse publication and DCJ Governance Framework. The OCG should focus on developing a framework to support and strengthen the governance arrangements to ensure the OCG's effectiveness, having regard to the impact of governance on workplace culture.

651. RECOMMENDATION 14

The OCG should ensure a governance framework is a public document and widely disseminated in the OCG.

8.4 Leadership

'As someone who has work in the private, government and non-government sector for about 20 years, I have been surprised on coming to the OCG at, what I would call, immature culture here particularly from the Senior Executive/Directors.'

652. Leadership is a key consideration in assessing the effectiveness of the OCG.

653. The PSC's Leadership Framework (**Leadership Framework**) sets out the key attributes, mindsets and behaviours needed to successfully lead, empower and inspire others and create a productive working environment. It identifies 12 attributes and 5 leadership impact areas that are used together to make it possible to deliver world class public services. The Inquiry reviewed and considered the Leadership Framework.

654. Further, in a recent publication, addressing 'leadership skills for regulators', the authors said:

Effective regulation is vital for the pursuit of good economic, social, and environmental outcomes. Regulators can benefit from developing their leadership skills, particularly (1) building contextual awareness; (2) prioritising the reduction of significant harms; (3) understanding compliance and enforcement options; (4) advancing design of the regulatory response; and (5) communicating for impact.

These skills assist regulators to become more adept at interpreting their operating contexts and the factors that make them dynamic. They can calibrate enforcement practices to the capabilities of those being regulated, and can do much to resolve apparently intractable

*disputes. Put simply, they better understand the system and are able to employ points of leverage within it to deliver improved regulatory outcome.*¹¹²

655. The OCG has no leadership framework of the kind described in the Leadership Framework or otherwise.
656. The Leadership Framework highlights the difference between operational management and leadership. In particular, understanding the differences between managerial and leadership roles is important.
657. As noted above, the OCG's directors are described as leaders, but their responsibilities are essentially managerial. The leader/s cannot take on the day-to-day management of the organisation. The leader/s' role is to see the whole picture. Leadership is working in the 'soft tissue' of an organisation, not front-line delivery of services. The leaders work to align the work, the values, mission and vision of the organisation.
658. Leaders must be organised, consistent, clear and effective when communicating the organisation's values. Those who work in the organisation look to leaders to motivate and inspire them. When the leader is the 'face' of the organisation, they must be aware that their personal actions will reflect on the integrity and reputation of the whole organisation. When a leader says one thing and does the other, trust will be quickly eroded. Leaders must model the behaviours expected of those working in the organisation.
659. Much is expected of a leader, particularly when leading cultural change. They must be emotionally intelligent and mature. This might simply boil down to having insight and awareness about how they as a leader engage within the organisation and externally, when they represent the organisation.

8.4.1 OCG leadership

660. The OCG organisational structure refers to the directors as part of the ELT. As discussed above, the structure is not mandated by the CG Act, but the product of the statutory functions it performs.
661. The CG Act identifies the leaders of the OCG as the Children's Guardian and, when appointed, the Deputy Children's Guardian or Assistant Children's Guardian. The Children's Guardian is ultimately accountable for the OCG.
662. This is recognised in the most recent position description available for the Children's Guardian dated May 2020, the key points being:

The Children's Guardian has the accountability obligations and decision-making capacity of a Chief Executive and as such is responsible for the commercial, legislative, political and business direction and outcomes for the organisation.

The Children's Guardian is fully accountable for the agency, making key decisions relating to the physical, financial and human resources within the limits of the annual budget. The Children's Guardian assumes assigned responsibilities under the GSF Act and the GSE Act.

The Children's Guardian is independent to enable effective use of the agencies oversight function and information to identify and report on systemic issues to the Parliament, and influence change.

The Children's Guardian reports to the Parliamentary Joint Committee. The role has seven direct reports and approximately 200 indirect reports.

663. With respect to OCG policies, Part 6 of the 2022 Code recognises that more senior employees, including those who lead teams or the wider organisation, have greater responsibilities. The 2022 Code refers to 'manager responsibilities.' It provides:

¹¹² Bolton M and Mintrom M 'Leadership skills for regulators' Aust J Pub Admin (2023) 82(1) 4: p 136 https://research.monash.edu/files/502528415/430313341_oa.pdf

Managers are responsible for the fair and effective management of their employees. As a manager, you have additional responsibilities to promote and demonstrate ethical conduct, fairness, equality and lead by good example.

664. Part 6 of the 2022 Code also includes additional responsibilities for the Children's Guardian, Deputy Children's Guardian and directors. They have responsibilities to:

- ensure the general conduct and management of the functions and activities of the OCG or your agency accord with government sector and OCG values;
- oversee the implementation of these values and make improvements to systems, process and culture where necessary;
- fulfil the obligations of the Independent Commission Against Corruption Act 1988 (section 11) and report a complaint about a matter that concerns, or may concern, corrupt conduct.

665. These obligations are replicated in the 2024 Code. In addition, the 2024 Code makes one reference to leadership, stating:

Acting in the public interest requires leadership, courage and innovation to develop practical recommendations and actions that are consistent with the core values.

666. The Cosgrove Report (which is addressed at 5.3.4.4) also addressed 'Leadership Effectiveness' as follows:

Leadership Effectiveness			
Staff Feedback		Office of the Children's Guardian	
Key findings	Risks	Recommendations	
<ul style="list-style-type: none"> • Enhance leadership, capability with a focus on collaboration and role modelling desired behaviours. • Ensure expectations and pressures are equally distributed between junior and senior staff. • Provide greater expenditure transparency. • Greater executive engagement at all levels. • Review and refine all recruitment and HR practices. 	<ul style="list-style-type: none"> • Ongoing attention required to address leadership concerns, ensuring alignment with OCG goals and in fostering a supportive and effective leadership culture. • Priority should be given to promoting a culture that reflects and upholds the values. • Action needed to enhance accountability and transparency in decision-making processes, strengthening trust and confidence among stakeholders. • Immediate intervention necessary to address recruitment and HR practices supporting organisational growth and sustainability. • Reestablish trust with the HR/P&C function to regain credibility as the primary resource for all people matters and support. 	<ul style="list-style-type: none"> • Decline in trust and confidence in leaders minimises collaboration, engagement, satisfaction, psychological safety, innovation, productivity and teamwork. • Diminished trust damages organisational reputation impacting relationships with communities and stakeholders. • Low trust in the HR function can result in reduced engagement and a lack of centralised visibility into people-related matters and management of serious issues, posing risks to culture, compliance and employee wellbeing. • Concern over expenditure transparency erodes trust, leading to reputational damage and diminished confidence in our financial management practices. 	<ol style="list-style-type: none"> 1. Design and implement Guardian sponsored culture program for senior leaders covering lived values, leadership drivers, inspiring vision, strategic storytelling, change management, engagement, performance management, trust etc. P&C Director priority. 2. Conduct a review of roles and priorities to clarify KPI's and support workforce management. 3. Implement knowledge sharing sessions to build mutual understanding at all levels. 4. Enhance financial reporting and disclosure practices to improve accountability. 5. Implement robust internal controls and audit procedures to monitor expenditure and ensure funds are spent wisely. 6. Implement regular communication channels (town hall meetings, executive Q&A sessions) to facilitate dialogue and address employee concerns. 7. Recruit People & Culture Director; agree priority remit for assessing HR foundation including recruitment and performance practices, identify gaps and address as part of P&C strategy, include feedback loop to monitor and address issues related to recruitment and HR practices; centralised grievance management.

Figure 7: Cosgrove Report, page 4

667. Ms Cosgrove's review of leadership focused on the directors. The Cosgrove Report included findings and recommendations about leadership that traverse governance issues. The recommendations point to the directors taking on responsibilities beyond the management of their directorates. Specifically, ELT forums were to be convened to focus on strategy and business plan outcomes.

668. The work done to develop the People Strategy as described in the People and Culture Executive Update does not address leadership.

669. The Corporate Strategy 2024-27 does not address leadership.

8.4.2 The Guardian's leadership

670. As set out at [59], the Inquiry did not investigate the circumstances of the Guardian's appointment. This was not within the scope of this Inquiry.
671. Likewise, the Inquiry's task was not to assess the personalities or the popularity of leaders within the OCG. The Inquiry's task was to hear the employees' experiences of the OCG leadership during the Inquiry Period and the capacity of the leadership to ensure good workplace culture, practices and systems that are consistent with the ethical values in the 2022 Code.
672. When examining these issues, the Inquiry considered how the OCG's directors and employees engaged with the Guardian in addition to some specific incidents and events. The Inquiry also heard the Guardian's experiences and perspectives as the leader of the OCG, working with the ELT and within the OCG structure.
673. When the Guardian described his leadership style and approach at the OCG, he referred to his previous work experience and then also referred to working with or having professional relationships with a range of well-known public figures. He said he was passionate about the protection of children. The Guardian's previous experience includes work as the CEO of a key advocacy body, ACWA (the **Association of Children's Welfare Agencies**) and his time at the NSW Ombudsman.
674. Having read the Guardian's submissions and spent over 3 days in interviews with the Guardian, the Inquiry Commissioner reflected on how the Guardian understood his role as a leader and the type of leader he seeks to be. The Guardian considers himself to be accessible, engaged, passionate and driven to protect children. He understands leadership from the perspective that he can personally influence, address or resolve issues. On a day-to-day basis, his style is reactive, in the sense that he responds to the immediate issue in front of him. While he has big ideas and a vision, this translates into advocacy for causes. These may be laudable qualities, but it assumes and needs a strong operational framework to support a leader of this kind. The operational framework extends to have staff around him to keep records for him and keep up with him.
675. The recommendations made in the Cosgrove Report supported the Inquiry Commissioner's impressions, that the Guardian sees himself more as an advocate than a regulator. Ms Cosgrove recommended:
- providing 'strategic support to the Guardian, enabling effective representation of the OCG mission and objectives in the community, fostering advocacy and support'; and
 - having an executive team to support the Guardian's requirements, strategic media and communications, to provide him greater capacity for advocacy work.
676. Ms Cosgrove's recommendation further suggested that ELT forums were to be convened to focus on strategy and business plan outcomes. This appears to reflect the Inquiry Commissioner's view about the nature of the directors as managers, rather than having the opportunity to have responsibility for a whole of OCG strategic and business focus.

8.4.2.1 Experience of OCG employees of the Guardian's leadership

677. The Inquiry received a wide range of opinions about the Guardian's leadership and the experience of working with him as a leader. Some have described him as passionate, visionary, committed and innovative.
- Steve is very visionary, very strategic, very committed. There was a lot he wanted to do and he wanted to get started right away, and [at] the same time he kn[e]w he couldn't, he was facing a lot of challenges. There are a few people who openly said I will not work with him and from before he even started there was a campaign to get him out.*
678. A large number of participants were critical of the Guardian's management style and engagement. Some described his leadership as a 'chaotic.' Others questioned whether he recognised the distinction between being an advocate and a regulator. A number of OCG employees described his engagement with them as undermining, intimidating and bullying.

679. These experiences revealed that OCG employees did not feel safe or comfortable to raise issues with the Guardian, being fearful as to how the Guardian would react when he was angry or stressed.
680. The Inquiry Commissioner stresses that it is not part of the Inquiry to make findings about the Guardian's personality or whether he is a popular or unpopular leader.
681. It was put to the Guardian that it was open to the Inquiry Commissioner to find that there are aspects of his leadership which have directly contributed to the OCG having a poor workplace culture and which have failed to develop and maintain a psychologically safe workplace.
682. The Inquiry Commissioner has considered the matters set out in the Guardian's submissions in response. In summary, the Guardian:
- a. did not accept the observation that *'I did not appreciate or demonstrate that had the knowledge or skills to practice psychological safety and trauma-informed approaches to the way the OCG functions.'* He referred to his initial submission and his interviews, and argued that he had outlined a very broad range of matters that he took into account and related actions that he took;
 - b. referred to his handling of an event (which is addressed in Confidential Annexure) and argued that he *'attempted to deal with this matter in a way that minimised hurt and distress for all staff who were affected by this matter. In my response, I have also noted that because the complaint was anonymous, I was unable to provide better support to the complainant(s)';*
 - c. relied on his past working experiences to demonstrate his genuine attempts to improve staff morale and enhance the workplace culture. He said *'I have had the pleasure of having a very good relationship with the vast majority of my professional colleagues, based on mutual respect and support for each other. However, in making this observation, it is important for me to stress that it is critical for me and all other leaders, to seek to continually strengthen our knowledge and skills in relation to how we can best support our staff, including in relation their psychological safety';*
 - d. asserted that *'Ms Cosgrove's extensive review 'did not find a failure by me to demonstrate care for the psychological safety and well-being of OCG staff. However, she did recognise that I and my management team needed support in this area, and so her recommendations included that we appoint a Director, People and Culture. He added 'The fact that I was very keen to appoint for the first time a Director, People and Culture, not only reflects my recognition of the importance of staff wellbeing and psychological safety in the OCG workplace, it also shows that I understood that we needed ongoing access to expert advice in this area';*
 - e. referred to *'our substantial business planning and implementation work which includes important People and Culture initiatives';*
 - f. argued that he *'provided significant information'* pertaining to his leadership style by reference to the way a leader engages, sets directions and strategy, establishes and maintains a psychologically safe workplace, adheres to policies and procedures, or develops respect, trust and confidence in building a team; and
 - g. asserted it was *'unclear'* to him how the Inquiry had *'explored this critically important issue.'* He argued the Inquiry didn't *'appear to have been reflected'* on a number of significant initiatives/outcomes that the OCG had delivered in his time as Guardian, including in the Inquiry's observations and proposed findings about his leadership. He claimed, *'my experience has also taught me that the psychological wellbeing of my team is very often inextricably linked to what we are achieving.'*
683. The Inquiry Commissioner has given careful and full consideration to all the matters raised in the Guardian's submissions. These matters have been explored by reference to the objective and contemporaneous available records, together with the many personal and lived experience accounts of the OCG employees who have engaged with him personally, attended meetings with him and have watched him as a leader. The Inquiry's assessment of all this material was to understand the systemic issues and importantly whether the Guardian's actions and engagement with the employees aligned with the values underpinning the 2022 Code.

8.5 Findings and recommendations on leadership

8.5.1 Findings

684. FINDING 12

The Inquiry Commissioner found the leadership of the OCG is principally the responsibility of the Children's Guardian. The Guardian may delegate powers and decide organisational structure. The Children's Guardian may set up the directorates in a manner required to discharge the statutory responsibilities.

685. FINDING 13

The Inquiry Commissioner found that there are aspects of the Guardian's leadership which have directly contributed to the OCG having a poor workplace culture and failing to develop and maintain a psychologically safe workplace environment and eliminating the risks of vicarious trauma. Those aspects concerned the Guardian's:

- a. lack of knowledge and understanding about psychological safety in the workplace;
- b. response to the anonymous comments that were critical of him;
- c. reliance on his executive officers and perceived lack of trust towards some OCG employees; and
- d. inability or unwillingness to implement the recommendations of Cosgrove Report in a sustainable and systemic way.

8.5.2 Recommendations

686. RECOMMENDATION 15

The Guardian accepted that some oversight and assessment of his performance would be welcomed. The Inquiry Commissioner agrees.

The Inquiry Commissioner recommends that there should be a mechanism that respects and protects the independence of the Children's Guardian, but also provides a mechanism for addressing their performance and achieving the reforms required to develop and maintain a psychologically safe workplace environment.

687. RECOMMENDATION 16

The Inquiry Commissioner notes the Children's Guardian's obligations under section 19 of the WHS Act. As person conducting a business or undertaking, the Children's Guardian must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the OCG. This includes:

- a. the provision and maintenance of a work environment without risks to health and safety;
- b. the provision and maintenance of safe systems of work;
- c. the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities;
- d. the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
- e. that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

With these considerations in mind, the Inquiry Commissioner recommends that the Director, People Culture works with the ARC to develop an accountability framework for the Children's Guardian to meet and commit to continuous improvement in discharging the OCG's regulatory functions in promotes and sustains the welfare and wellbeing of staff.

8.6 Specific allegations and incidents raised with the Inquiry concerning governance and leadership

688. The Inquiry received many allegations and a significant information raising allegations concerning a wide range of issues. It was not possible to examine them all. The Report does not document all the allegations investigated as part of the Inquiry.

689. A number of allegations concerned the Guardian's decisions that raised concerns about governance, leadership and the effectiveness of the OCG. Some allegations have been aired in the media, and it is appropriate the Inquiry address those matters.

8.6.1 The Guardian's decisions concerning recruitment and positions in the OCG

690. Recruitment policies and processes for NSW public sector employees are set out in the GSE Act and the GSE Rules. As part of these requirements:

- a. *'any employment decision relating to a role in the Public Service is to be based on an assessment of the capabilities, experience and knowledge of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the relevant Public Service agency'* (GSE Rules section 16); and
- b. *'the decision to employ a person in temporary or term employment for a period of up to 12 months must be based on either a suitability assessment or a comparative assessment'* (GSE Rules section 21(1)).

8.6.1.1 Mr Moroney AO APM

691. The Inquiry heard about concerns that Mr Moroney AO APM's appointment to a special projects position was not merits based and lacked transparency. It was also alleged that Mr Moroney AO APM had undeclared conflict of interests. After Mr Moroney AO APM commenced employment, there were rumours and gossip that the Guardian had placed Mr Moroney AO APM in the role because of a personal friendship.

692. The Inquiry Commissioner reviewed all the available records and spoke to participants directly involved in this matter.

8.6.1.1.1 Findings

693. FINDING 14

The Inquiry Commissioner makes no adverse findings with respect to Mr Moroney AO APM and his conduct. Mr Moroney AO APM expressly sought that the proper processes be followed for his appointment. At all times, he acted appropriately and wanted to ensure the processes and reasons for his employment were consistent with the relevant rules.

Mr Moroney AO APM's employment was undertaken in accordance with the relevant rules including the GSE Rules. However, the Guardian's communication around the reasons for the special projects position and the work Mr Moroney AO APM would do, was opaque.

694. FINDING 15

The allegation that Mr Moroney AO APM had a conflict of interest is not substantiated.

8.6.1.2 Child Safe Directors

695. In late 2023, the OCG received \$2 million to strengthen the implementation and monitoring of the Standards in NSW. Within the OCG, there was an understanding that the funding would support a proposal for additional case officers to conduct monitoring and compliance activities across the Standards and WWCC.

696. The Guardian announced that a substantial portion of this funding would be used to appoint 5 directors in the Child Safe Organisations directorate on 12-month temporary contracts. The

directors would develop strategy and enhance the OCG's capacity for ensuring compliance of the Standards with some key NSW government departments.

697. At the time, many OCG employees provided feedback to the Guardian that this was not a good use of the money. Instead, teams were desperately in need of *'boots on the ground.'* The Guardian did not take this feedback on board and said that the OCG did not have an adequate number of directors.
698. The recruitment of the 5 directors was undertaken by an independent recruiter. There is no allegation that proper recruitment processes were not followed.
699. The Inquiry Commissioner raised the following concerns with the Guardian about the decision to employ 5 directors and the process undertaken to do so. Specifically, whether he:
- a. failed to develop or prepare a business case to consider what each director was required to do and achieve within 12 months;
 - b. failed to consider the impact on the morale and the workplace culture within the Child Safe Organisations directorate before proceeding to recruit and appoint the 5 directors;
 - c. did not engage in adequate consultation with the existing directors within the OCG about the reasons for engaging 5 directors and their particular leadership roles during their tenure. He was not prepared to listen to feedback that disagreed with his plan;
 - d. did not communicate with the OCG employees, particularly those in the Child Safe Organisations directorate, about why the 5 directors were required and what their roles would be; and
 - e. did not provide all 5 directors with a clear plan as to what their respective roles entailed and what they were required to achieve during their temporary employment with the OCG.
700. The Guardian addressed these matters in detailed written submissions. He said that he believed that it was in the public interest to appoint the additional temporary child safe directors. He emphasised that he did not receive negative feedback from the employees in the Child Safe Organisations directorate about the proposal to appoint the temporary directors before the appointments were made. He did not recall receiving advice about any strong opposition to his proposal when he discussed it with the then Director, Child Safe Organisations. The Guardian operated on the belief that if there was strong opposition when the proposal was floated more broadly, he would *'certainly learn of it.'*

8.6.1.2.1 Findings

701. FINDING 16

The Inquiry Commissioner makes no adverse findings with respect to the appointment processes and the appointment of the 5 temporary directors in the Child Safe Organisations directorate. The proper processes were followed for their appointment.

702. FINDING 17

The Inquiry Commissioner finds that the Guardian's decision to appoint 5 directors in the Child Safe Organisations directorate may have been well-intentioned. However, it was poorly executed and communicated, particularly with the timing of the recruitment following the Cosgrove Report, the absence of a clear documented strategic plan and the budgetary constraints at the time.

8.6.2 Engagement of external lawyers

703. The Inquiry was told the OCG received advice from the NSW Crown Solicitor about 'information sharing' across the OCG. The Guardian had concerns about advice. He wanted to seek advice from a Senior Counsel (an external barrister) about information sharing in the OCG. The Guardian said Senior Counsel was engaged by the Director, Corporate Services and not through General Counsel.
704. The Inquiry received information alleging that the engagement of the Senior Counsel did not follow proper processes. The Guardian was asked about the reasons for seeking Senior

Counsel's advice and the process for engaging Senior Counsel. The Guardian was asked why he had not followed the process required in the Premier's memorandum about briefing Senior Counsel for NSW government agency work, C2018-06-Briefing Senior Counsel (**Premier's Memorandum**). This is mandatory requirement for all NSW government agencies. The agencies must follow the guidelines and obtain approval before briefing Senior Counsel.

705. When asked why the Guardian had not complied with the Premier's Memorandum, the Guardian claimed that Senior Counsel was 'engaged as a consultant'. This suggested that the Guardian was aware of the Premier's Memorandum.
706. In his reply submissions, the Guardian maintained his stance, saying '*is untrue that the only purpose for briefing [Senior Counsel] was to provide our office with legal advice.*' He claimed he was '*very keen to tap into their expertise more broadly.*'
707. The Inquiry Commissioner reviewed the advice provided by Senior Counsel and Junior Counsel. On reading the advice, it was patently clear that it is legal advice and this is what Senior Counsel was asked to do. No part of the advice could be characterised as consulting advice. There is nothing to suggest that Senior Counsel was offering 'consulting services.'
708. In his reply submissions, the Guardian acknowledged '*if it is the case that the service [Senior Counsel] and their team provided should properly be characterised as only providing legal advice, then I made an error in my interpretation of the relevant Premier's Memorandum.*'

8.6.2.1.1 Findings

709. FINDING 18

The Inquiry Commissioner finds that the only purpose for briefing Senior Counsel was to provide the OCG with legal advice. The claim that it was consulting advice is implausible and disingenuous and does not provide a justification for not comply with Premier's Memorandum.

8.6.3 Conflicts of interest

710. When exercising the regulator functions as Children's Guardian, the Guardian must be aware and alert to the risk that his personal and professional associations may influence his decision making.
711. A fair-minded observer would expect the Guardian would be open and transparent with respect to any personal and professional association that posed a conflict of interest for him exercising powers and making decisions. A fair-minded observer would reasonably have significant concern with the extent of the private communications that took place between the Guardian and a person with an interest in the decisions he had to make or the individuals/entities' whose conduct he regulates.
712. The OCG's Business Ethics Statement provides at clause 5.2:
- All OCG employees are required to disclose any actual, perceived, or potential conflicts of interest. This includes conflicts of interest that can, or could, arise from personal relationships between our employees and staff of commercial partners and suppliers. This requirement is extended to all commercial partners and suppliers of the OCG.*
713. It is acknowledged that the Guardian is not an employee of the OCG as he is an independent statutory officer. However, on one view, that imposes a higher standard of integrity and awareness of both perceived and actual conflicts of interest. The Inquiry Commissioner proceeded on the basis that the OCG policies and the 2022 Code applied to the Guardian.
714. The following allegations were raised about the Guardian and whether he properly declared any conflicts of interest.

8.6.3.1 Disclosure of the Guardian's relationship with Person A

715. The Inquiry Commissioner asked the Guardian if any issues had arisen with respect to him personally on personal domestic relationships, former professional roles and association and circumstances where you've been privy to confidential information.

716. In a rather roundabout way, the Guardian mentioned his relationship with Person A. Accordingly to open-source information, Person A is a safeguarding specialist and former statutory officer with the NSW Ombudsman's office, where they were involved in administering the reportable conduct scheme. Person A has been described as a specialist consultant with ACWA, a peak body.
717. The Guardian referred to situation in mid-late 2024 and a particular matter being handled by the OCG. He said Person A was advising the entity. He attended a meeting in his official capacity. Person A was also present in a professional capacity. The Guardian said:
- It necessary for me to be involved in an initial tactical discussion which included one of my reportable conduct Directors, [name] (who had the lead in oversighting the matter); the then [person from the entity]; and Person A. At the meeting, I declared the conflict of interest and subsequently directed my Executive Officer, [name], to record my declaration. Furthermore, I also announced at the meeting that beyond this initial tactical discussion, I would play no role in assessing the handling of the reportable conduct investigation (including Person A's work on the matter).*
718. He went to say:
- a. another director would have made the decisions with respect to the entity; and
 - b. *'people within that area know I have a very close relationship [Person A].'*
719. With respect to the matter referred to at [717] above, the Guardian instructed his executive officer to *'record the conflict'* and said *'I have played no role in assessing the handling of the reportable conduct investigation itself.'*
720. The Inquiry Commissioner obtained the written declaration made on 17 December 2024.
721. Of concern to the Inquiry Commissioner was the Guardian's suggestion that *'people knew'* and when asked how people would know, he said *'because we worked together for ages and people know things.'* This caused the Inquiry Commissioner some concern for two reasons. First, the potential conflict had existed since January 2023. Second, asserting that *'people knew'* appeared to a wholly inadequate and inappropriate way to manage a conflict of interest arising from a personal relationship.
722. The Guardian agreed he had not made a conflicts declaration in 2023 when he commenced. It was put to the Guardian he *'should have declared the relationship with Person A when he commenced.'* He rejected the suggestion.
723. His view was any obligation to declare a conflict depended on the issue. He said *if a particular issue arises where conflict will come into play and I fail to declare that, then I should be sacked and I'm not mucking around on that, I should be sacked.'*
724. On 1 July 2025, the Inquiry Commissioner wrote to the Guardian providing him the with opportunity to respond to the proposed finding that:
- a. he failed to declare a perceived or actual conflicts of interest and assumed a general awareness should be sufficient. This shows poor leadership in ensuring a statutory officer does not place themselves in a position where a conflict of interest may arise and cause a risk to the integrity and confidence of the organisation they lead.
725. In his reply submissions, the Guardian referred to OCG's Business Ethics Statement which concerns *'commercial partners and suppliers... doing business'* with the OCG.
726. The Guardian referred to Person A's work and said *'while it is possible that they might deal with matters that have relevance to our child safe scheme and the exercise of our WWCC function, this isn't my understanding of the type of work that they normally undertake.'*
727. The Guardian appeared to be unaware or had not turned his mind to the risk for OCG of the potential for a conflict to arise for the OCG's work.
728. The Inquiry heard from one participant where such a situation arose. The participant was aware of the Guardian's relationship with Person A. When the participant attended a meeting for the OCG, Person A was present for an organisation engaging with the OCG. The Guardian was

not present and would not have known about the meeting. The participant recalled that the Guardian later signed off on a decision that required the organisation to use an external child protection expert. He would not have known if Person A would be the expert, but there signing off on the decision may have given risk to a perception of bias or influence over the decision.

729. The participant expressed their concern that the agency would not have known that Person A and the Guardian were in a close personal relationship.

730. Another circumstance concerned when Person A was nominated as a referee for two candidates who were unsuccessful in their respective applications for senior roles in the OCG. From the information available, the Guardian had no knowledge or direct involvement in the selection of the successful candidate. However, the Inquiry Commissioner considers that the Guardian's relationship with Person A created a risk of a conflict arising.

731. Person A provided and continues to provide consulting services for organisations delivering services to children and young people. Person A may consult with organisations who are regulated by the OCG with respect to reportable conduct or with individuals who require a WWCC. The Inquiry Commissioner makes no adverse findings about Person A. Person A's conduct was not the subject of the Inquiry.

8.6.3.1.1 Findings

732. FINDING 19

The Inquiry Commissioner finds that when the Guardian commenced as the Children's Guardian in January 2023, he did not declare a conflict of interest with respect to Person A. He should have. The Guardian's failure to turn his mind the risk of a conflict when he commenced in January 2023 shows poor judgment and leadership. He did not do enough to ensure, as a statutory officer, that he did not place himself in a position where a potential conflict of interest may arise, which may cause a risk to the integrity and confidence of the organisation they lead.

8.6.3.2 Relationship with Person B

733. Person B was an applicant for a WWCC. Person B's application resulted in an interim bar being imposed. This was a decision made by the WWCC directorate. Person B was provided with the opportunity to make submissions in relation to their application while the interim bar was in place. When it came to making a decision about a WWCC clearance, the Guardian intervened when he received advice from the WWCC directorate that the WWCC should not be granted. The Guardian made the decision to grant the application, against the advice of the WWCC directorate and an OCG lawyer.

734. The Inquiry Commissioner accepts that it is within the Guardian's powers to intervene and to make his own decision, even if contrary to the advice from the relevant OCG officers.

735. However, in this particular case, the Guardian did not disclose his frequent contact with Person B during the period he was making the decision about their WWCC clearance. The Guardian should have disclosed he had a conflict of interest but did not do so.

736. The Inquiry Commissioner makes no adverse findings about Person B. Person B's conduct was not the subject of the Inquiry.

8.6.3.2.1 Findings

737. FINDING 20

The Inquiry Commissioner has made findings about this allegation in the Confidential Annexures. It is enough for this part of the Report to express the Inquiry Commissioner's finding that the Guardian failed to maintain proper and appropriate boundaries with respect to Person B. His engagement with Person B created a real risk of a conflict of interest with respect to a number of the functions he was required to discharge.

8.6.4 Disrespect and discourtesy of the Minister

738. The Children's Guardian is an independent statutory holder. The role of the Children's Guardian is part of the public sector that serves the people of NSW by implementing the government's policies, decisions and programs.
739. The relationship of the Children's Guardian with the responsible Minister is important to ensure the OCG can operate effectively. Notwithstanding the role is independent, the Children's Guardian must understand and respect that the Minister and the Cabinet are responsible for deciding:
- a. policy and are free to accept or reject the advice of agencies; and
 - b. budgets and the funding allocation of agencies.
740. The effectiveness of the OCG depends on a respectful relationship with the Minister and providing the Minister with accurate advice and information when requested.
741. When considering the leadership and effectiveness issue, the Inquiry Commissioner received information about a range of matters concerning the OCG's external engagements with NSW government. One of these issues concerned the engagement with government around budgets and funding.
742. On 10 September 2024, the Guardian wrote to the Minister. In a 9-page letter, the Guardian:
- a. referred to emails exchanged with the Minister's Chief of Staff;
 - b. said the purpose of the letter was to provide the Minister with specific details as to why the OCG was unable to meet the existing demand on its service;
 - c. said *'to meet our existing expenditure limit, it will mean the OCG has to alter its cost structure by reducing staff or operating costs. Given the challenges we already face, we are not in a position to do so';* and
 - d. said *'there will be ongoing unacceptable risks to children if we continue to be under-resourced in this area of our work. In making this observation, I note that we are faced with an insurmountable problem, notwithstanding the substantial improvements in our productivity...'*
743. The letter contained sensitive information about the workings and financial circumstances of the OCG that may not have otherwise been in the public domain or known within the OCG.
744. On 10 September 2024, the Guardian provided a copy of this letter to all OCG employees. He did so without notifying the Minister or her Chief of Staff and/or seeking the Minister's consent to provide the letter to all the OCG employees.
745. The Guardian said the reason for distributing the letter to all OCG employees was because they had an *'entitlement or right to know'*. He was unable to identify any source of this claimed entitlement or right to know. There is no OCG policy that confers such a *'right'*.
746. When the Minister provided a response to the Guardian's letter, it is not apparent that he took steps to provide the response to the OCG employees.
747. On 1 July 2025, the Inquiry Commissioner notified the Guardian of following proposed findings:
- a. he failed to accord the Minister with appropriate respect and courtesy by circulating the letter to all the OCG staff without notifying her of his intention to do so, or seek her consent;
 - b. his contention that the OCG employees had a right or entitlement to receive the letter is misconceived and disingenuous. At best it was careless. At worst, it was a deliberate act to embarrass and place political pressure on the Minister; and
 - c. he neglected or failed to consider the risk of circulating the letter to all the OCG staff, namely that:
 - i. the information contained in the letter about a risk that the OCG employees may lose their jobs if his claims that reducing staff was the consequence, was likely to cause concern and uncertainty for the OCG staff about the security of their employment; and

- ii. the letter may be provided to interested parties outside the OCG, including the relevant union, entities regulated by the OCG or the media.

748. In his reply submissions, the Guardian claimed he had not been given a copy of the letter. The letter was shown to the Guardian during his interviews with the Inquiry. He submitted that the context to the circulation of the letter with the OCG was *'the devastating impact on OCG staff resulting from the budget decision because it fundamentally put at risk our capacity to protect children and people with disability.'*

749. The Guardian noted that:

- a. the PMES results had shown that *'staff burnout and stress from excessive workloads, were factors that adversely impact(ed) on staff wellbeing and overall morale across the OCG'*;
- b. the directors had also made it very clear that the Guardian needed to be much more open and transparent with their staff (and them) on budget-related matters;
- c. anonymous complaints had been lodged suggesting serious financial mismanagement of funds, including that the Guardian had misled the Minister on our budget challenges; and
- d. the ELT's attempt to keep the staff well advised on financial matters was also aimed at building trust with OCG employees by providing them with easy to understand and accurate information on our work in this area. In this regard, it was neither in the OCG's interests, nor fair to the Minister, if disinformation was circulated within, or outside, the OCG about financial matters.

750. The Guardian did not accept that the circulation of the document to all staff reflected a lack of respect and courtesy to the Minister. He said *'if the Minister would wish to be consulted on the circulation of documents of this kind in the future, then I would be very keen to discuss this issue with her. I also note that there was no inappropriate or improper motive on our part in circulating the document to staff.'*

751. The Guardian's submission addressed the budget challenges.

752. As to the risk of providing his correspondence to all the OCG staff, he said:

My staff deal with a vast amount of very sensitive information which could result in enormous damage if it was released to particular stakeholders or to the community at large. The Code of Conduct and Ethics makes it very clear that the unauthorised release of information is unacceptable. Furthermore, I have no doubt that, whether or not staff have familiarised themselves with the Code, they would understand that information of this kind should not be externally released without authorisation. However, as I have already expressed above, I would be happy to discuss with the Minister any concerns that she might have in relation to this issue.

8.6.4.1 Findings

753. FINDING 21

The Inquiry Commissioner found with respect to the Guardian's actions of sharing the letter:

- a. his actions may have been perceived as failing to accord the Minister with appropriate respect and courtesy by circulating the letter to all the OCG staff without notifying her of his intention to do so seeking her consent and then failing to share the Minister's response with the OCG employees;
- b. his contention that the OCG employees had a right or entitlement to receive the letter was not founded in any right contained in statute or in a policy ; and
- c. he neglected or failed to consider the risk of circulating the letter to all the OCG staff.

8.7 The effectiveness of the OCG

754. The Guardian said during his time at the OCG, he has *'worked with my colleagues in seeking to enhance our effectiveness and productivity in the exercise our statutory functions'*. In this regard he cited *'some major business achievements.'* He also referred to people who had contacted him since the Inquiry was announced saying:

A common theme conveyed to me from many of those who have reached out, has been a concern that a failure to recognise the good work carried out by the OCG with a broad range of key stakeholders, might result in a loss of momentum in relation to a number of important practice and system reform initiatives that my office has been pursuing over recent years.

755. As will be apparent from the matters addressed in this Report, the effectiveness of the OCG in terms of its independence and oversight requires more than the business achievements and the good opinions of others. Of course, they are important. But, effectiveness requires good sustainable governance, principled leadership, a safe workplace for its employees, a commitment to the values and the missions and preparedness to adapt and improve.

756. This Report has sought to identify the aspects of the OCG that work well. The Report has also identified the systemic issues that operate as a barrier to it operating as it should. The findings and recommendations are intended to assist the OCG to work towards a more effective agency to protect the children and young people of NSW.

9

Specific incidents,
conduct and practices
contrary to the 2022 Code

This chapter addresses the Inquiry Commissioner's findings on incidents, conduct and practices contrary to the 2022 Code.

757. As noted in Chapter 2, the Inquiry Commissioner received submissions and allegations about incidents in the workplace, including bullying and discrimination. Some of the allegations may have engaged the processes under the Bullying and Harassment Policy or other policies. It was beyond the scope of this Inquiry to examine every allegation.
758. The focus of the Inquiry into the workplace culture has to consider the systemic issues. However, there are a number of incidents that raised serious allegations of conduct contrary to the 2022 Code.
759. The Inquiry has made findings with respect to the following allegations.
760. For the findings described below, the Inquiry Commissioner committed to keep confidential the identities of the individuals and third parties. It is not presently in the public interest or consistent with a trauma informed approach to record the Inquiry Commissioner's findings about Employee X and the matters concerning Person B. For this reason, the detailed findings about these matters are contained in the Confidential Annexures. The Inquiry Commissioner has requested the Minister not publish the Confidential Annexures.
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9.1 Employee X

761. Employee X created and used a Gmail account 'ocginquiry@gmail.com.' The email address was used to disclose confidential official OCG and personal information to third parties. The disclosures were not authorised. The Inquiry Commissioner found Employee X's conduct was contrary to the 2022 Code.
762. The specific factual findings are provided in the Confidential Annexures to this Report.
-

9.2 Guardian's undeclared engagement with Person B

763. Between 4 June 2024 and 15 July 2025, the Guardian was in frequent contact with Person B by text message, telephone, email and on at least one occasion in person.
764. In records provided by the Guardian, there were 357 text messages and 90 outbound telephone calls made by the Guardian to Person B, totalling 6 hours and 22 minutes. Person B had applied for a WWCC and was in contact with the Guardian at the time the application was being considered. Person B also sought and received advice and engaged in discussions with the Guardian about matters and circumstances regulated by the OCG and DCJ. Some contact occurred during ordinary business hours. Other contact occurred in the evenings and weekends.
765. The Guardian's contact with Person B was not disclosed to the OCG. The Guardian did not make a conflict declaration or notify the extent of his engagement with Person B when intervening in the decision making to overturn OCG's assessment of Person B's risk as a part of a WWCC. His conduct was a significant transgression of appropriate and proper boundaries that may be deleterious to Person B's interests and rights and also to the interests, reputation and integrity of OCG.
766. The specific factual findings are provided in the Confidential Annexures to this Report.
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9.3 Anonymous complaint about the Guardian

767. On 20 September 2024, an anonymous complaint (dated 26 August 2024) was sent to NSW politicians and senior public sector emails from an email address 'bullied.and.scared.ocg.staff@gmail.com' (**20 September Complaint**).
768. The author/s of the complaint was not identified. Some allegations were raised in the course of the Inquiry and have been addressed. However, many allegations in the 20 September

Complaint could not be verified, investigated or examined in the absence of information from the complainants. It was unfair for the Guardian to respond to those allegations. The Inquiry Commissioner made no adverse findings with respect to the 20 September Complaint.

10

Appendices

10.1 Appendix A – Abbreviations and Definitions

Abbreviation	Definition
1994 PID Act	<i>Public Interest Disclosures Act 1994 (NSW)</i>
2020 PID Policy	The OCG Public Interest Disclosure Policy and Procedures (June 2020)
2022 Code	The OCG Code of Ethics and Conduct 2022
2024 Code	The OCG Code of Ethics and Conduct 2024
Aboriginal Applicants Policy Statement	The OCG Aboriginal Applicants and the Working With Children Check Policy Statement (September 2022)
AbSec	The Aboriginal Child, Family and Community Care State Secretariat
ACWA	Association of Children's Welfare Agencies
Adoption Act	<i>Adoption Act 2000 (NSW)</i>
Annual Report 2023-24	The OCG <i>Annual Report 2023-24</i>
ARC	Audit and Risk Committee of the OCG
Business Plan 2024-25	The OCG <i>Mid-year report: OCG Business Plan 2024-25</i>
Cadetship Program	The OCG Indigenous Cadetship Program
Care and Protection Act	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>
Carers Register	Register kept for carers under Part 5 of the <i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>
CCYP Policy	NSW Commission for Children & Young People <i>Harassment & Sexual Harassment in the Workplace Policy</i> (October 2002)
CG Act	<i>Children's Guardian Act 2019 (NSW)</i>
CG Regulation	<i>Children's Guardian Regulation 2022 (NSW)</i>
Codes	The OCG Code of Ethics and Conduct 2022 and Code of Ethics and Conduct 2024
COI	Conflict of Interest
Confidential Annexures	The confidential Part 2 of the final written report of the Special Ministerial Inquiry into the Office of the Children's Guardian dated 5 August 2025
COPS	Computerised Operational Policing System
Corporate Strategy 2024-27	The OCG <i>Corporate Strategy 2024-27</i>
Cosgrove Report	Report by Anne Cosgrove titled <i>Workplace Review, Key Findings and Recommendations</i>

Abbreviation	Definition
CRC	Convention on the Rights of the Child 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990)
CSAP	Child Safe Action Plan
DCJ	The Department of Communities and Justice
DCJ Framework	Department of Communities and Justice (DCJ) Enterprise Governance Framework published in February 2025
DIAP	The OCG Disability Inclusion Action Plan 2018
EAP	Employee Assistance Provider
ELF	Executive Leadership Forum of the OCG
ELT	Executive Leadership Team of the OCG
Entity Report	Investigation report to be prepared by a relevant entity after a reportable conduct investigation under section 31 of the <i>Children's Guardian Act 2019</i> (NSW)
Ethical Framework	The 18 principles prescribed by the GSE Act as the Ethical Framework for the government sector
Family is Culture Review	Report by Professor Megan Davis AC, <i>Family is Culture Review Report 2019: Independent Review of Aboriginal Children and Young People in Out of Home Care</i>
GSE Act	<i>Government Sector Employment Act 2013</i> (NSW)
GSE Rules	<i>Government Sector Employment (General) Rules 2014</i> (NSW)
Guardian	Mr Stephen Kinmond OAM
HR	Human resources
ICAC	Independent Commission Against Corruption
Inquiry	Special Ministerial Inquiry into the Office of the Children's Guardian
Inquiry Commissioner	Kate Eastman AM SC
Inquiry Period	January 2023 to 5 March 2025
Inquiry Portal	Secure webform used to submit information to the Special Ministerial Inquiry into the Office of the Children's Guardian
Inquiry Report	Final written report of the Special Ministerial Inquiry into the Office of the Children's Guardian dated 5 August 2025
Internal Business Plan 2024-25	The internal version of the OCG <i>Mid-year report: OCG Business Plan 2024-25</i>
JCC	Joint Consultative Committee
Leadership Framework	NSW Public Service Commission's Leadership Framework

Abbreviation	Definition
Minister	The Hon Kate Washington MP
Multicultural Plan	The OCG Multicultural Plan 2020-2023
NCAT	NSW Civil and Administrative Tribunal
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i> (Cth)
NDIS Worker Check	Worker screening clearances issued to workers delivering services under the National Disability Insurance Scheme
NDIS Worker Check Act	<i>National Disability Insurance Scheme (Worker Checks) Act 2018</i> (NSW)
NDIS Worker Check Regulation	<i>National Disability Insurance Scheme (Worker Checks) Regulation 2020</i> (NSW)
NDIS Worker Screening Rules	<i>National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018</i>
NSW	New South Wales
NSW Government Code	<i>Code of Ethics and Conduct for NSW Government Sector Employees</i>
OCG	Office of the Children's Guardian
OCG Values	OCG's values as published on its website
Offenders Registration Act	<i>Child Protection (Offenders Registration) Act 2000</i> (NSW)
OOHC	Out-of-Home Care
PC	Parliamentary Committee on Children and Young People
PC Report	The Parliamentary Committee on Children and Young People 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 (Report 1/58 – November 2024)
People and Culture Executive Update	The OCG <i>People & Culture Executive Update</i>
People and Culture Strategy	The People and Culture strategy outlined in the OCG <i>People & Culture Executive Update</i>
PID Act	<i>Public Interest Disclosures Act 2022</i> (NSW)
PID Policies	The OCG Public Interest Disclosures Policy and Procedures (November 2024) and the OCG Public Interest Disclosure Policy and Procedures (June 2020)
PID Policy	The OCG Public Interest Disclosures Policy and Procedures (November 2024)
PID	Public Interest Disclosure

Abbreviation	Definition
PMES	People Matter Employee Survey
PSA	Public Service Association
PSC	NSW Public Service Commission
RAP	Reconciliation Action Plan
RAP 2019	The OCG Reconciliation Action Plan 2019-2021
RC Act	<i>Royal Commissions Act 1923 (NSW)</i>
Residential Care Workers Register	Register kept for residential care workers under Part 5 of the <i>Children's Guardian Act 2019 (NSW)</i>
Special Report	The OCG <i>Special Report under section 139(2) of the Children's Guardian Act 2019: Family is Culture Review</i>
SSRC	Specialised Substitute Residential Care
SSRC Register	Register kept for specialised substitute residential care under Part 5 of the <i>Children's Guardian Act 2019 (NSW)</i>
Standards	Child Safe Standards set out in section 8C of the <i>Children's Guardian Act 2019 (NSW)</i>
Standards for Permanent Care	NSW Child Safe Standards for Permanent Care
SVA	Social Ventures Australia
WHS	Work Health and Safety
WHS Act	<i>Work Health and Safety Act 2011 (NSW)</i>
WHS Regulation	<i>Work Health and Safety Regulation 2017 (NSW)</i>
WWCC	Working With Children Check
WWC Act	<i>Child Protection (Working With Children) Act 2012 (NSW)</i>
WWC Regulation	<i>Child Protection (Working With Children) Regulation 2013 (NSW)</i>

10.2 Appendix B – 2022 Code

The Terms of the 2022 Code are reproduced below (any errors from the original have been included).

1. Introduction

The Code of Ethics and Conduct outlines the standards of behaviour expected of employees and those performing work for the Office of Childrens' [sic] Guardian (OCG).

It is the essential guidance informing who we are and how we work. It provides a framework for appropriate behaviour during our interactions with customers, stakeholders and each other, and outlines the standards required to guide our decisions, actions and ethical behaviour in the performance of our duties.

To meet these expectations, we are all responsible for understanding the requirements of the Code of Ethics and Conduct which must be read together with other OCG policies and procedures.

We are all accountable for our actions and behaviours, including any failure to act, where required. You must seek guidance from your manager if you require further clarification, or if you find yourself in a position where you are unsure how to behave or respond.

Each year, we ask our employees to make a declaration to ensure everyone understands and is up to date with the Code of Ethics and Conduct.

In addition to complying with the OCG Code of Ethics and Conduct all employees must also comply with the Code of Ethics and Conduct that applies to all NSW Government sector employees.

2. The Code and its importance

We are all responsible for our own actions. This Code identifies standards of behaviour and direction for all employees and anyone performing work for the OCG, no matter where or how we are working. It supports us to respond appropriately when considering, 'What is the right thing to do?'

The Code is a practical guide, setting out the NSW public sector expectations and your responsibilities and provides crucial information for your day-to-day work.

It is consistent with the values of integrity, trust, service and accountability detailed in Part 2 of the GSE Act which establishes an ethical framework for a merit-based, apolitical and professional government sector, as well as the additional OCG values of Respect and Empathy.

The OCG has adopted the NSW public sector values of Integrity, Trust, Service, Accountability. We have extended the core values to also include Respect and Empathy.



The Code of Ethics and Conduct assists us with building a values-based organisation ensuring it is a great place to work and where we can make a difference.

Are your actions consistent with the ethical framework? Here's a values assessment:

- **Integrity:** Would your colleagues say you have considered the views of all stakeholders and customers and acted in the right way when making decisions, even if it was to your disadvantage?
- **Trust:** Would your actions, if they became public, build confidence in the OCG and the public sector?
- **Service:** Would your customers say that your actions improve the quality of the services they receive?
- **Accountability:** Would the affected public say that your actions are transparent, accurate, impartial, diligent, in the public interest and compliant with the law?
- **Respect:** Would your colleagues say that you genuinely listen and ask open questions for understanding and clarity?
- **Empathy:** Would your colleagues say you are able to genuinely see things from the perspective of others?

Refer to the Strategic Plan and Values support documents to learn more about implementing these values.

Our Statement of Business Ethics provides the ethical standards that apply to our vendors/suppliers and business partners. The Statement sets out the service principles that guide you in all your interactions with customers, whether internal or external.

3. Why must we act in the public interest?

As a public sector employee, you must always act in the public interest. In other words, you are accountable to the public for your decisions and actions.

This means you need to treat everyone you have contact with in your work, including colleagues, equally without prejudice or favour, and with honesty, consistency and impartiality.

We must ensure our decisions:

- place the public and OCG interests above your private interests
- uphold the law, the institutions of government and our democratic principles
- provide apolitical and non-partisan advice

- are transparent and support public scrutiny
- reflect our awareness that unconscious bias may impact our decision making; that we are aware of its presence and affect and are committed to implementing practical strategies to counteract such bias
- follow internal policies and procedures
- are financially responsible and focus on efficient, effective and prudent use of all government resources
- promote our values
- align with our overall organisational objectives.

If you have delegation to make decisions on behalf of the OCG, the decisions must be able to withstand external scrutiny. This includes holding and maintaining adequate records of decisions and actions, including the reasons for those decisions.

4. Who must comply with this Code?

Everyone working for the OCG must comply with this Code.

The Code applies whenever you are representing the OCG, whether in your daily work, or during work-related activities such as conferences, functions, travelling for work or participating in training activities.

It also applies wherever you are working – from home, in another office, in the field or based in the OCG office – or how you are working – on the phone, using Teams or digital tools to communicate with colleagues, customers or stakeholders.

In certain circumstances, the Code may also apply to your activities outside of work, where there is a connection to your role including activity on social media. Refer to the Social Media Policy for further guidance.

Specifically, this Code applies to:

- all Public Service Senior Executives, including the Guardian and Deputy Guardian
- all employees, including managers and supervisors, whether employed on a permanent, temporary, casual, graduate, intern or cadetship basis
- all contractors and agency workers performing work for or on behalf of the OCG
- any employee of another public sector agency on secondment to the OCG
- work experience students and volunteers
- all vendors/suppliers, in addition to the Statement of Business Ethics and the Supplier Code of Conduct where relevant.

5. Employee responsibilities

We must all work ethically. To work ethically means you must:

- treat our colleagues, customers and stakeholders fairly, consistently with dignity and respect and demonstrate high standards of personal behaviour consistent with our values
- behave in a lawful, professional and reasonable manner and always act in the best interest of the OCG
- understand the duties, responsibilities and accountabilities of your role and perform these safely, honestly, courteously and fairly
- declare in writing any and all of your private interests that may be an actual or a perceived conflict of interest with your work

- work in a safe, responsible and effective manner that ensures not only your own safety but the safety of others
- comply with all instructions issued to protect your health and safety or the health and safety of others
- maintain the integrity and security of official documents and information, including when you are working remotely or from home
- not share internal knowledge that has not been made public with anyone
- clearly document reasons for your decisions
- comply with all organisational policies and procedures
- report possible breaches of the GSE Act to your manager or appropriate senior colleague
- always comply with the law and understand how relevant legislation impacts your work.

6. Manager responsibilities

Managers are responsible for the fair and effective management of their employees. As a manager, you have additional responsibilities to promote and demonstrate ethical conduct, fairness and equality, and lead by good example.

In addition to the above responsibilities, all managers and directors must also:

- model ethical, efficient and safe work practices required of all public sector employees
- champion the implementation of the ethical values at work
- recognise and celebrate employee and team conduct that exemplifies these values
- be open, honest, respectful and comprehensive in your communication with all employees, including about standards of conduct and behaviour in the workplace
- ensure our workplace culture, practices and systems (such as recruitment and promotion) are consistent with the ethical values
- promote a workplace that is free from discrimination, bullying, harassment and inappropriate conduct
- support the right of employees to raise workplace concerns, grievance complaints or allegations of discrimination, harassment and workplace bullying through internal and external processes, including the Positive and Productive Workplace Guidelines
- proactively identify situations that may lead to corrupt conduct and ensure these are managed in accordance with relevant policies and procedures
- inform employees of their duties, responsibilities and expected performance standards with adequate information, guidance and feedback so they can undertake them effectively, efficiently and safely
- facilitate a positive workplace environment through open, honest, two-way constructive communication.

In addition to the above responsibilities, the Guardian, Deputy Guardian and directors, have responsibilities to:

- ensure the general conduct and management of the functions and activities of the OCG or your agency accord with the government sector and OCG values
- oversee the implementation of these values and make improvements to systems, processes and culture where necessary
- fulfil the obligations of the *Independent Commission Against Corruption Act 1988* (section 11) and report a complaint about a matter that concerns, or may concern, corrupt conduct.

7. My professional responsibilities

At work, we all expect a high standard of professionalism. To support this, you must:

- obey a lawful and reasonable direction or instruction given to you by a manager with the appropriate delegation
- present for work in a fit state and not attend work while under the influence of alcohol, illicit drugs or performance impacting medication.
- not smoke in any of our work sites or enclosed public spaces managed by the OCG or at any work-related functions
- use the Public Service Commission's Positive and Productive Workplace Guidelines to help resolve workplace grievances
- undertake your personal transactions through the OCG's regular, public channels
- decline or disclose any gifts, benefits and hospitality offered and follow our Gifts and Benefits Policy
- protect any confidential, personal and private data or information by following our information management policies
- make clear records of your work decisions and actions
- comply with the ICT Acceptable Use Policy and understand your information security responsibilities
- practice high standards of health and safety by following our work health and safety processes
- use public resources – money, property, equipment or supplies – efficiently and effectively and never use them for your personal benefit or for an unauthorised purpose
- identify, declare and manage conflicts of interest that arise from your private activities
- manage conflicts of interest in close personal relationships at work
- seek approval from your immediate manager or director for any secondary employment prior to commencing the secondary employment – follow the OCG process for approval of secondary employment, putting request in writing on the prescribed form
- seek approval from the Manager Media and Communications before commenting publicly on the work of the OCG. Ensure any social media comments are made in line with the Social Media Policy
- if you maintain a relationship with someone who has left the OCG, be careful to ensure you do not give them, or appear to give them, favourable treatment or access to OCG information, including and especially customer/client information
- not meet or discuss your work with a person listed on the NSW Register of Third Party Lobbyists without approval of the Guardian
- should you become bankrupt, report it to the Guardian
- should you be issued with a Court Attendance Notice, charged with or convicted of an offence which carries a maximum penalty of 12 months imprisonment or more, report it to your Director
- report corrupt conduct, maladministration, waste and contravention of government information to the Manager Corporate and Strategic Coordination
- make an annual declaration that you commit to working ethically and that you understand and apply this Code of Ethics and Conduct in your work by completing the Commitment and Declaration of Interests form in myCareer

- make a declaration that you apply the Supplier Code of Conduct, Probity and Confidentiality when conducting any procurement within the OCG.
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8. What else does this Code cover?

This Code covers all aspects of our work communications, interactions and working relationships. It applies to communications and interactions with work colleagues outside of usual working hours, and at work functions, events, team lunches, team building activities, offsite training and conferences.

The next section provides information that will help you comply with the Code, understand our processes and find further information.

9. Managing workplace conflict

We all have a responsibility to contribute to a harmonious workplace. Sometimes though, there will be workplace tension. Our Positive and Productive Workplace Guideline provides information on the steps you can take to resolve conflict with colleagues. Remember, it is not always necessary to begin the grievance process to resolve matters.

The OCG offers an Employee Assistance Program, provided by Converge International. Converge provide an eight stream service addressing the key areas in life that are known to cause concern to employees.

Speak to your manager or director, refer to the OCG intranet for resources and information, and contact the OCG People and Culture team if you need to.

10. Intellectual property and copyright

The copyright of material created by any of us in the course of our work belongs to the OCG, even if the material was developed in our own time or at home. You must:

- seek permission from the Guardian or delegate before entering into any arrangements regarding the publication or disclosure of any research, articles, presentations or other materials produced as part of your work
 - not use OCG intellectual property (including copyright) for private purposes.
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11. Conflicts of interest

It is not necessarily wrong or unethical to have a conflict of interest. What is important is that the conflict of interest is identified, declared and managed appropriately.

Outside of work, you have the right to participate in political and community activities and to pursue personal interests, provided that:

- your involvement does not conflict with your responsibilities as a public sector employee to serve the government of the day in a politically neutral manner
- any conflict of interest that arises is dealt with in accordance with this Code and the OCG Conflict of Interest Policy.

There are three different types of conflicts of interests that you need to understand:

1. *Actual* – a real and direct conflict between your current duties and responsibilities and your existing private interests
2. *Potential* – when you have private interests that could conflict with your work duties or responsibilities in the future
3. *Perceived* – where it could be perceived by a third party (such as a customer, vendor/supplier or colleague), that your private interests could improperly influence

the performance of your duties or responsibilities, whether or not this is in fact the case.

All three types of conflicts of interest are serious and you need to declare and manage any interests that may present a conflict for you. You may have complex conflicts of interest because of where you live and/or the nature of your current job, previous jobs or associations, and/or work situations where you deal with people you know outside of work.

Speak with your manager or director about your personal circumstances and ensure that all actual, potential or perceived conflicts are disclosed and managed appropriately.

Our mandatory conflicts of interest training includes scenarios that will help you determine if you have any conflicts of interest and how to manage them. You must:

- complete the conflicts of interest training and complete your conflict of interest declaration when you commence working with the OCG
- update your conflict of interest declaration annually, or earlier if new conflicts arise.

12. Public service senior executives private interests

A senior executive (including an acting senior executive) must make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive.

Where a senior executive has no such private interests to declare, they must declare a “nil return”.

After a senior executive makes an initial declaration, a fresh declaration must be made:

- As soon as practicable, following any relevant change in the senior executive’s private interests
- As soon as practicable, following the senior executive’s assignment to a new role or responsibility
- At least annually.

13. Gifts and benefits

Gifts or benefits between colleagues or that come from external organisations may be perceived as being used to create favourable impressions and gain preferential treatment. You must not ask for gifts, benefits or hospitality for yourself or anyone else in connection with your employment at OCG.

The acceptance of certain gifts and benefits has the potential to compromise current and future impartial decision making. Refer to the Gifts and Benefits Policy.

You must report attempts of bribery, and the offer and acceptance of certain gifts and benefits in accordance with the Gifts and Benefits Policy. You are also responsible for ensuring relevant gifts and benefits, including those that are declined, are declared and recorded on the Gifts and Benefits Register.

14. Private (Secondary) employment

When considering private employment, you must assess whether it may adversely affect the performance of your OCG duties and responsibilities or give rise to a conflict of interest. This applies regardless of whether you are working full time, part time or on a temporary basis.

You must obtain written approval from a delegated officer within OCG before engaging in any form of secondary employment outside of your OCG role. This applies to new employees who, upon joining have outside employment they wish to continue.

Employees involvement in unpaid Union activities or Union activities for which an honorarium is paid is not considered secondary employment.

15. Positive and productive workplaces

The Positive and Productive Workplaces Guideline sets out the principles for addressing incidents of bullying where it occurs.

It focuses on prevention and early intervention, and is based on evidence that bullying is less likely to occur in organisations that have:

- a positive, respectful and productive workplace culture
- strategies for an immediate response to behaviours that are likely to escalate into bullying.

This is based on the evidence that bullying is less likely to occur in organisations that have a positive, respectful and productive workplace culture, coupled with a strategy of immediate response to any symptoms of behaviour likely to escalate into bullying.

Prevention and early response to unreasonable behaviour are more effective in eradicating bullying than lengthy processes after bullying has occurred.

The OCG has adopted the Public Service Commission's Positive and Productive Workplaces Guideline: Respect. Reflect. Reset as the basis for the development of the OCG specific guide.

If it is not addressed, bullying becomes a clear indicator of the standard of behaviours that an organisation's leaders and employees will accept.

Leaders and managers are primarily responsible for creating a positive organisational culture, monitoring the workplace climate and promptly addressing poor behaviour.

16. Criminal conduct

If you are charged or convicted with any offence which may impact on your ability to undertake part or all of the inherent requirements of your role, you must immediately notify your director. You must immediately notify your director if your Working with Children Check clearance is barred or if, for any reason, you cease to hold a valid clearance.

If you are charged or convicted with an offence punishable by imprisonment for 12 months or more (including an offence committed outside NSW that would be an offence so punishable if committed in NSW), you must immediately notify your director.

If there is sound evidence that you have committed a criminal offence at work or related to work, the OCG may take disciplinary action against you as well as notifying the police or other relevant external authority.

17. Use of official resources

Official resources include laptops, telephones, photocopiers, email and the internet.

You are expected to be economical and considerate in the use of management of official resources. Minimal personal use of official resources, is permitted, provided the use does not interfere with the performance of your work and complies with relevant agency policies and procedures.

Reasonable access to and use of official resources by union delegates is permitted in accordance with relevant industrial instruments.

You are responsible and accountable for the security of any official property issued to you during the course of your duties.

You must take reasonable care of all equipment, so that they are safe and reliable for all employee members to use.

18. How I report behaviour that breaches the Code

At any point during your work, or even outside of your work, you may observe, become aware of or suspect another employee is acting contrary to this Code and/or other departmental policies and/or the sector's ethical values.

It is your responsibility to raise the employee's behaviour with your immediate manager or director or report your concerns to the Manager Corporate and Strategic Coordination or any member of the OCG Executive Leadership Forum.

If you know of behaviour that breaches this Code and choose not to report it there may be consequences.

If the behaviour also presents a risk/hazard to a safe workplace you also lodge a work health and safety incident report as soon as possible. The incident report will be escalated for review by management.

19. Protecting yourself when reporting suspected breaches

When you voluntarily report or disclose matters that you consider to be fraudulent or corrupt, you are protected by the *Public Interest Disclosures Act 1994*. Under the Act, it is both a criminal offence and misconduct to make reprisals against an employee who makes a public interest disclosure.

To be protected under the Act, you must make your report as follows:

- internally – to the person or persons nominated in the OCG Fraud and Corruption Control Policy
- externally – through any of the following agencies, depending on the nature of the disclosure:
 - disclosures concerning corruption should be made to the Independent Commission Against Corruption
 - disclosures concerning maladministration should be made to the NSW Ombudsman
 - disclosures concerning serious and substantial waste of public money should be made to the Auditor-General
 - disclosures concerning government information contravention should be made to the NSW Information Commissioner.

If you are unsure about whether you should report a situation or activity or which agency is best to disclose to, speak with our Manager Corporate and Strategic Coordination.

20. Possible consequences of breaching the Code

All breaches of this Code and/or any conduct that is contrary to the NSW Government sector core values will be dealt with appropriately.

If you are found to have breached this Code, an authorised public service agency executive (such as the Guardian, the Deputy Guardian or a director) may take the following actions:

- caution or reprimand you
- commence counselling
- implement a Performance Improvement Plan (PIP)
- assign you to a different role
- reduce your salary
- reduce your classification or grade

- terminate your employment after giving you an opportunity to resign
 - terminate your employment without giving you an opportunity to resign
 - refer matter to other Government Agencies, such as the Police and/or Independent Commission Against Corruption.
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21. Further guidance

This Code builds on the Public Service Commission's Code of Ethics and Conduct for NSW Government employees and is tailored to the OCGs operations.

The NSW Public Service Commission provides many resources for public service employees including *Behaving ethically: A guide for NSW government sector employees*.

You can also seek assistance from the OCGs People and Culture team.

Special Ministerial Inquiry into the workplace culture of the Office of the Children's Guardian
W: <https://www.nsw.gov.au/departments-and-agencies/cabinet-office/resources/special-commissions-of-inquiry/inquiry-into-office-of-childrens-guardian>
