



Office of the
Children's Guardian

Regulating Child Safe Organisations

Discussion paper for consultation

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Foreword from the Children's Guardian

We are very fortunate to have passionate, skilled and caring adults in organisations all over NSW that create opportunities for kids that would otherwise not be available to them. For many of these children and young people, this allows them to learn new skills, build resilience, develop healthy connections with society and prepare for a productive and happy life.

The most rewarding aspect of my role as the Children's Guardian is supporting these organisations to meet both the needs of children and community expectations, with the safety and wellbeing of children and young people as the central focus.

Current regulation in NSW includes mandatory elements based around the Working with Children Check, along with additional elements for specific sectors such as the Reportable Conduct Scheme and the accreditation scheme for organisations providing Out-of-Home Care.

As the regulator of these organisations, my office is charged with ensuring all organisations adhere to these minimum requirements. Enforcement options, while available, are always the last resort. Instead, our team works tirelessly to equip organisations with the understanding and practical resources they need to be child safe.

We want organisations to work with us to help them understand how they can make themselves safer for children and young people in their care. This includes identifying and responding to the risks facing children and young people and developing a culture of continuous improvement.

The NSW Government has accepted the majority of the recommendations of the Royal Commission, including the introduction of mandatory child safe standards. To be effective, regulation of the standards needs to be developed in conjunction with the organisations they will apply to. This will make sure they are both robust and pragmatic, delivering the optimal level of safety for children and young people.

This discussion paper seeks to leverage the expertise of child related organisations and hear their views on the most effective and practical way of introducing mandatory child safe standards in NSW.

We want to ensure all organisations are committed to the principles of keeping children safe, and have the knowledge and resources to put those principles into practice, supported by effective policies, procedures and behaviours to create positive childhood experiences.

I look forward to hearing your thoughts and views on how we can work together to create organisations that champion the vast potential of children and young people in an environment that places their safety and wellbeing at the centre of all decision making.

Janet Schorer

Janet Schorer
NSW Children's Guardian

Introduction

The NSW Government is committed to working with organisations across NSW to support them to make their environments 'child safe'. We will do this by building on best practice to drive child safe culture, build strong leadership, and enhance organisational practice so that child safety is at the centre of organisations that work with kids.

Why are we consulting now?

In June 2018, the NSW Government accepted the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse to regulate the child safe standards in NSW. The Office of the Children's Guardian (OCG) is consulting on how this should be done. We are consulting with and would like to hear from experts, organisations and sectors, children and young people and their families, and the public on key questions, such as:

- which organisations should be regulated
- how we should help organisations to be child safe
- what sort of monitoring and enforcement powers should be available
- how parents can help to encourage organisations to be child safe.

This discussion paper presents those questions.

Who are we?

The OCG works to improve the safety and wellbeing of children in NSW by helping organisations, employers and individuals understand the meaning, importance and benefits of being child safe. More information about what we do is available on our website: www.kidsguardian.nsw.gov.au.

How can you have your say?

Public consultation will be open until 29 March 2019. You can contribute to this important public conversation by:

- filling in an online survey here: <https://www.nsw.gov.au/improving-nsw/have-your-say>
- sending a submission by email to policyteam@kidsguardian.nsw.gov.au, or by mail to the Office of the Children's Guardian, Locked Bag 5100, Strawberry Hills NSW 2012.

Who can you contact if you need help?

If you or anyone you know needs help, you can contact one of the services below:

- [Lifeline](http://lifeline.org.au) – 13 11 14
- ReachOut.com
- [Survivors & Mates Support Network \(SAMSN\) Helpline](http://www.samsn.org.au) – 1800 472 676
- [Youthbeyondblue](http://youthbeyondblue.org.au) – 1300 224 636
- [Child Protection Helpline](http://www.childprotectionhelpline.org.au) – 132 111
- [Kids Helpline](http://www.kidshelpline.com.au) – 1800 551 800
- [Headspace](http://www.headspace.org.au) – 1800 650 890

The NSW Government encourages survivors of child sexual or physical assault to access confidential, free and unlimited counselling available through the Victims Support Scheme. To access these services you can contact the [Victims Access Line](http://www.victimsaccessline.org.au) on 1800 633 063.

Context for this consultation

What are the child safe standards?

The Royal Commission recommended 10 child safe standards, drawing on its findings and extensive research and consultation about what makes institutions child safe:

1. Child safety is embedded in institutional 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 in to account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual 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 institution is child safe.

Each standard is principle-based and focused on the outcome that the organisation is seeking to achieve by implementing child safe strategies. This focus on outcomes allows flexibility in how the standards are applied in different organisational contexts. The standards work together to emphasise the importance of adopting multiple strategies to address child safety and avoiding an over-reliance on any one strategy.

The child safe standards encompass existing child safety requirements for individuals and organisations such as the Working with Children Check, the Reportable Conduct Scheme and requirements to report information to police and to the Department of Family and Community Services. Providing support for organisations to understand how any existing requirements work together to support child safety will be an important element of regulating the child safe standards.

The aim of the child safe standards is to achieve and maintain a genuine commitment to child safe culture and practice through incremental and continuous improvement over time.

The Royal Commission developed *core components* of each standard to help organisations understand what it means to meet the standard. A brief introduction to each standard and its core components is at Appendix A.

You can learn more about the Royal Commission's findings and recommendations for making organisations child safe in [Volume 6](#) of the [Final Report](#).



What did the Royal Commission recommend?

The Royal Commission recommended that state and territory governments introduce legislation to require organisations that engage in child-related work to meet the child safe standards. The Royal Commission recommended that an independent oversight body be responsible for ensuring that organisations meet the standards, including by providing support to build the capacity of organisations to be child safe.

What will this mean for NSW?

The changes proposed in this paper would make it compulsory rather than voluntary for many organisations in NSW to meet the child safe standards. Many organisations already work in ways that are consistent with standards, but making the standards mandatory sends a strong message to organisations, parents, and the community, about the importance of child safety.

The way we introduce the standards, and support organisations to meet them, will recognise and respond to the many different types, sizes, and resources of organisations that provide services to children and young people. Any new regulatory response will be responsive to the risk of harm, and to the nature of the organisation being regulated.

Approach to regulating child safe organisations

What do we mean by regulation?

When people think about regulation, they often think about traditional ‘control and command’ approaches to regulation. These regulatory models often have strict rules and requirements that dictate how rules are applied, measure compliance with those rules, and issue penalties when the rules are broken.

Regulation can also be ‘principle-based’. These regulatory models have clearly defined principles but allow regulated entities or organisations the flexibility to comply with regulation in ways that make sense in their context. A principle-based approach to regulating child safe standards was recommended by the Royal Commission because not all organisations providing services to children are the same.

Organisations that provide services to children exist across a diverse range of sectors including education, health, disability, community, child protection and commercial services. They range in size from small, volunteer run organisations to large companies and government departments. Despite their differences, we expect that all organisations will provide a safe and supportive environment for children.

Q1: In what ways is a principle-based approach a good fit for regulating child safe organisations in NSW?

Q2: In what ways would a different approach be a better fit for regulating child safe organisations in NSW?



Which organisations should be regulated?

We support and encourage all organisations to be safe for children and to continuously work to implement the child safe standards. However some organisations, including those that have more responsibility for, or contact with, children, will be required to meet the child safe standards.

This is consistent with the Royal Commission's recommendation that certain sectors be required to meet the child safe standards. The sectors recommended by the Royal Commission broadly mirror those described in the definition of 'child-related work' for the purposes of the Working with Children Check. These include:

- Child development
- Child protection
- Health services
- Clubs or other bodies
- Disability services
- Early education and child care
- Education
- Entertainment
- Justice services
- Religious services
- Residential services
- Transport services

Q3: What types of organisations should be regulated to meet child safe standards in NSW?

Q4: What types of organisations should not be regulated to meet child safe standards in NSW?



Who will be the regulator?

The NSW Government has committed to implementing child safe standards with independent oversight by the OCG. This will complement our existing regulatory functions and role in promoting child safe organisations through training and support. As the central regulator for child safe standards we will support organisations to build their capacity to meet the standards through a genuine commitment to child safe culture and practice.

We understand some child related sectors are already regulated. This may present opportunities for 'co-regulation'. This is where organisations other than the central regulator play a role in regulating child safe organisations. Partnerships between the central regulator and existing sector regulators, funding agencies, peak bodies and sector leaders, as well as the public, can be forms of co-regulation.

Co-regulation can minimise regulatory burden by reducing duplication where an existing regulator is in play. The body responsible for registering schools in NSW, for example, may be able to work with the Department of Education and with OCG to ensure that schools meet the child safe standards as a condition of registration. Similar examples may exist in other sectors such as early childhood and disability services. In co-regulatory models, responsibility for supporting and monitoring organisations to be safe for children is shared.

We propose that the model for NSW allow the central regulator, the OCG, the flexibility to delegate some regulatory functions to a co-regulator. The OCG may also choose to enter into special agreements that set out how it will work with a particular type of organisation when the OCG is satisfied that these organisations have met an acceptable standard.

Q5: What sorts of organisations should help to co-regulate child safe standards?

How should the OCG support organisations to meet the standards?

Capacity building and support is the foundation of the regulatory model we are proposing. The OCG will work with organisations to help them identify and understand what the standards mean, and to translate and apply them to their particular organisation. Resources, including training and advice, are available to organisations to support them to meet the standards, and we will continue to develop and enhance these with the introduction of compulsory standards.

At the commencement of the regulatory scheme, we will ask organisations to complete a self-assessment by reflecting on how well they think their organisation meets the child safe standards. This information will help organisations to understand where their strengths lie, as well as identifying areas for development. It will help us, as the regulator, to understand potential risk areas, and will inform how we target capacity building and support for organisations and sectors.

We recognise that any new regulation will mean that some organisations need time to adjust and prepare. Introducing the child safe standards requires thought and collaboration, and we want to ensure that organisations are supported to be ready for roll out. By focusing on education and capacity building in the early stages, before imposing sanctions, the OCG will help organisations to prepare for, and start implementing, the standards. However, delaying the introduction of sanctions for too long may mean that some organisations delay meeting the child safe standards. We need to find the right balance between encouraging organisations to meet the child safe standards quickly, and supporting organisations to meet the child safe standards.

Q6: How should the OCG support organisations to build their capacity to meet the child safe standards?

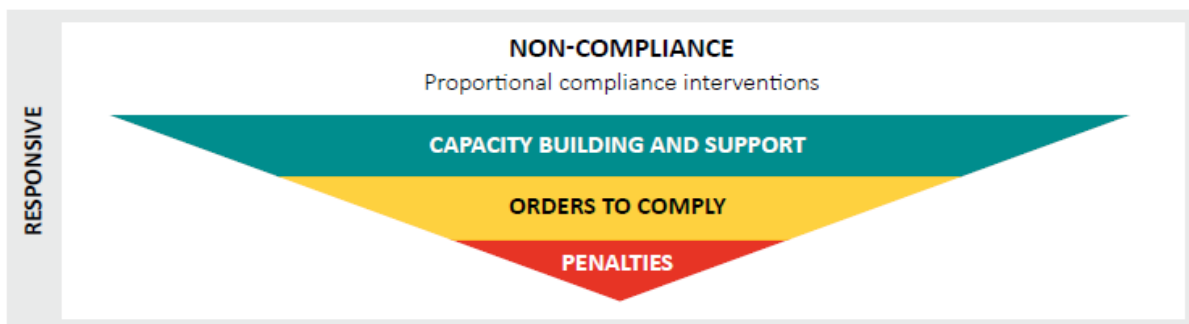
Q7: How should the OCG roll out regulation of the child safe standards so that organisations have time to plan and make changes if required?



How should the OCG monitor and enforce the standards?

We will work with organisations and any co-regulators to develop ongoing relationships to encourage organisations to take responsibility for improving child safe culture and practice. We want to ensure that we can monitor that organisations are working toward meeting the child safe standards and identify where organisations may require additional support. Where organisations refuse to work toward meeting the child safe standards we want to be able to take appropriate action to support the safety and wellbeing of children.

We are proposing a 'responsive' approach to regulating the child safe standards. Under this approach, we would have a choice of strategies available to us. These would range from less coercive strategies such as providing education and advice, through to more coercive strategies such as sanctions that may include informing the public about risks, imposing penalties, and issuing formal orders to comply. The use of any enforcement powers will only occur after supportive strategies have failed, and will be proportionate to the nature of the risk identified. This is consistent with the approach recommended by the Royal Commission, which is illustrated in the figure below.



Source: *Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Making Institutions Child Safe (Volume 6), pg. 327*

To help us understand how organisations are implementing the standards, we propose having monitoring powers. These powers may include requiring organisations and people to provide information like self-assessments and reports, conducting audits or investigations, and entering premises. The way we monitor how an organisation is implementing the child safe standards may be informed by other sources, for example, with information from the Working with Children Check and Reportable Conduct Scheme.

We also propose having powers to initiate our own investigations, and to make reports to the NSW Parliament. In these cases, we may publish information about our investigation so that parents and the community can make informed decisions about the organisations they trust to provide services to children and young people.

Q8: What powers should the regulator have to monitor the child safe standards?

Q9: What powers should the regulator have to enforce the child safe standards?

How should parents and others support child safe organisations?

Parents, families and other members of the community also have an important role in supporting organisations to be child safe. We encourage parents and caregivers to seek information about the organisations that offer services to children and choose services that are child safe. By asking questions about an organisation's practices you can play a role in emphasising the importance of being child safe. The OCG currently provides resources and tools for parents on its website.

Q10: How can the OCG support parents, families and communities to encourage organisations to be child safe?

How will the OCG evaluate the child safe standards?

We propose to review the child safe standards and the approach to regulation in five years. This will give us an opportunity to reflect on its implementation and to identify opportunities for improvement.



How we will use your feedback

Thank you for taking the time to think about this discussion paper. We encourage you to have your say about the regulation of child safe standards in NSW.

We will use your feedback to design an approach to regulating the child safe standards that responds to the recommendations of the Royal Commission and is appropriate for NSW.

All submissions and comments received through the consultation process will be treated as public, unless you request that your comments be kept confidential. This means we may publish extracts or whole submissions unless you ask us not to do so.

What happens next?

The consultation will be open until **29 March 2019**.

Further information about child safe standards in NSW will be provided on the OCG's website: www.kidsguardian.nsw.gov.au.

How to make a submission

You can contribute to this important public conversation by:

- filling in an online survey here: <https://www.nsw.gov.au/improving-nsw/have-your-say>
- sending a written submission by email to policyteam@kidsguardian.nsw.gov.au, or by mail to the Office of the Children's Guardian, Locked Bag 5100, Strawberry Hills NSW 2012.

Submissions close **29 March 2019**.

Appendix A

This summary is extracted from an appendix to Volume 6 of the Royal Commission's Final Report. You can find the original document [here](#).

Standard 1: Child safety is embedded in institutional leadership, governance and culture

A child safe institution is committed to child safety. This commitment should be supported at all levels of the institution and be embedded in an institution's leadership, governance and culture, and all aspects of the institution's business and practice.

Institutional culture consists of the collective values and practices that guide the attitudes and behaviour of staff and volunteers. It guides the way things are done and the way issues are managed, dealt with and responded to. A positive, child-focused culture could help to protect children from sexual abuse and facilitate the identification of and proper response to child sexual abuse.

We consider the core components of leadership, governance and culture in a child safe institution to be the following:

- a. The institution publicly commits to child safety and leaders champion a child safe culture.
- b. Child safety is a shared responsibility at all levels of the institution.
- c. Risk management strategies focus on preventing, identifying and mitigating risks to children.
- d. Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children.
- e. Staff and volunteers understand their obligations on information sharing and recordkeeping.

Standard 2: Children participate in decisions affecting them and are taken seriously

Children are safer when institutions acknowledge and teach them about their rights to be heard, listened to and taken seriously. Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) details the rights of a child to express their views and participate in decisions that affect their lives. Enabling children and young people to understand, identify and raise their safety concerns with a trusted adult and to feel safe within the institution is important.

A child safe institution is one that seeks the views of children and considers their age, development, maturity, understanding, abilities and the different formats and means of communication they may use. It provides children with formal and informal opportunities to share their views on institutional issues. Children can access sexual abuse prevention programs and information, and feel confident to complain, for example, by using helplines. Staff are aware of signs of harm, including unexplained changes in behaviour, and routinely check children's wellbeing.

We consider the core components of children's participation and empowerment within an institution to be the following:

- a. Children are able to express their views and are provided opportunities to participate in decisions that affect their lives.
- b. The importance of friendships is recognised and support from peers is encouraged, helping children feel safe and be less isolated.
- c. Children can access sexual abuse prevention programs and information.
- d. Staff and volunteers are attuned to signs of harm and facilitate child-friendly ways for children to communicate and raise their concerns.

Standard 3: Families and communities are informed and involved

A child safe institution observes Article 18 of the UNCRC, which states that parents, carers or significant others with caring responsibilities have the primary responsibility for the upbringing and development of their child. Families and caregivers are engaged with the child safe institution's practices and are involved in decisions affecting their children. Families and caregivers are recognised as playing an important role in monitoring children's wellbeing and helping children to disclose any complaints.

A child safe institution engages with the broader community to better protect the children in its care. Institutions are more likely to foster a child safe culture if the surrounding community values children, respects their rights, and ensures that their rights are fulfilled.

We consider the core components of family and community involvement in a child safe institution to be the following:

- a. Families have the primary responsibility for the upbringing and development of their child and participate in decisions affecting their child.
- b. The institution engages in open, two-way communication with families and communities about its child safety approach and relevant information is accessible.
- c. Families and communities have a say in the institution's policies and practices.
- d. Families and communities are informed about the institution's operations and governance.

Standard 4: Equity is upheld, and diverse needs are taken in to account

Equity and non-discrimination are central tenets of the UNCRC. Article 2 emphasises non-discrimination and a commitment to fulfil children's rights 'irrespective of ... [their] race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. Just as the safety of children should not depend on where they live, their right to safety should not depend on their social or economic position, their cultural context or their abilities and impairments.

A child safe institution pays attention to equity by taking into account children's diverse circumstances. It recognises that some children are more vulnerable to sexual abuse than others, or find it harder to speak up and be heard, and makes the necessary adjustments to equally protect all children. A child safe institution would tailor standard procedures to ensure these children have fair access to the relationships, skills, knowledge and resources they need to be safe, in equal measure with their peers.

We consider the core components of upholding equity and meeting diverse needs of children in an institution to be the following:

- a. The institution actively anticipates children's diverse circumstances and backgrounds and responds effectively to those with additional vulnerabilities.

- b. All children have access to information, support and complaints processes.
- c. The institution pays particular attention to the needs of Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds.

Standard 5: People working with children are suitable and supported

Human resource management, through screening, recruitment and ongoing performance review, can play an important role in protecting children from harm.

Child-focused human resource practices help screen out people unsuitable for working with children or discourage their application. Such practices make sure child safety is prioritised in advertising, recruiting, employment screening, and selecting and managing staff and volunteers. During induction processes, all staff and volunteers should be given clear conduct and behavioural guidelines, such as a code of conduct. Child safe institutions recognise that Working With Children Checks can detect only a subset of people who are unsuitable to work with children, and that these checks should be part of a suite of screening practices.

We consider the core components of human resource management in a child safe institution to be the following:

- a. Recruitment, including advertising and screening, emphasises child safety.
- b. Relevant staff and volunteers have Working With Children Checks.
- c. All staff and volunteers receive an appropriate induction and are aware of their child safety responsibilities, including reporting obligations.
- d. Supervision and people management have a child safety focus.

Standard 6: Processes to respond to complaints of child sexual abuse are child focused

A child-focused complaints process is an important strategy for helping children and others in institutions to make complaints. Child safe institutions respond to complaints by immediately protecting children at risk and addressing complaints promptly, thoroughly and fairly.

A child safe institution has clear and detailed policies and procedures about how to respond to complaints. Staff and volunteers understand their responsibility for making a complaint promptly if they become aware of concerning behaviours, as well as their reporting obligations to external authorities. Complaint processes specify steps that need to be taken to comply with requirements of procedural fairness for affected parties, have review mechanisms, and ensure any disciplinary action that is taken withstands external scrutiny in accordance with relevant employment law and other employer responsibilities.

We consider the core components of complaint handling in a child safe institution to be the following:

- a. The institution has a child-focused complaint-handling system that is understood by children, staff, volunteers and families.
- b. The institution has an effective complaint-handling policy and procedure which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report.
- c. Complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training

A child safe institution promotes and provides regular ongoing development opportunities for its staff and volunteers through education and training, beginning with induction. Child safe institutions are 'learning institutions', where staff and volunteers at all levels are continually building their ability and capacity to protect children from harm.

This standard is premised on all staff and volunteers receiving comprehensive and regular training, including induction on the institution's child safe strategies and practices, as well as broader training on child protection.

We consider the core components of staff education and training in a child safe institution to be the following:

- a. Relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse.
- b. Staff and volunteers receive training on the institution's child safe practices and child protection.
- c. Relevant staff and volunteers are supported to develop practical skills in protecting children and responding to disclosures.

Standard 8: Physical and online environments minimise the opportunity for abuse to occur

Certain physical and online environments can pose a risk to children. Institutions seeking to be child safe could improve safety by analysing and addressing these risks, reducing opportunities for harm and increasing the likelihood that perpetrators would be caught.

A child safe institution designs and adapts its physical environment to minimise opportunities for abuse to occur. The institution finds a balance between visibility and children's privacy and their capacity to engage in creative play and other activities. It consults children about physical environments and what makes them feel safe.

Child safe institutions address the potential risks posed in an online environment, educating children and adults about how to avoid harm and how to detect signs of online grooming. The institution articulates clear boundaries for online conduct, and monitors and responds to any breaches of these policies.

We consider the core components of a child safe physical and online environment to be the following:

- a. Risks in the online and physical environment are identified and mitigated without compromising a child's right to privacy and healthy development.
- b. The online environment is used in accordance with the institution's code of conduct and relevant policies.

Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved

Child safe institutions know it is a significant challenge to maintain a safe environment for children in a dynamic organisation. The institution's leadership maintains vigilance by putting in place systems to frequently monitor and improve performance against the Child Safe Standards. An open culture encourages people to discuss difficult issues and identify and learn from mistakes. Complaints are an opportunity to identify the root cause of a problem and improve policies and

practices to reduce the risk of harm to children. Where appropriate, the institution seeks advice from independent specialist agencies to investigate failures and recommend improvements.

We consider the core components of continuous review and improvement of child safe practices to be the following:

- a. The institution regularly reviews and improves child safe practices.
- b. The institution analyses complaints to identify causes and systemic failures to inform continuous improvement.

Standard 10: Policies and procedures document how the institution is child safe

A child safe institution has localised policies and procedures that set out how it maintains a safe environment for children. Policies and procedures should address all aspects of the Child Safe Standards. The implementation of child safe policies and procedures is a crucial aspect of facilitating an institution's commitment to them.

We consider the core components of policies and procedures in a child safe institution to be the following:

- a. Policies and procedures address all Child Safe Standards.
- b. Policies and procedures are accessible and easy to understand.
- c. Best practice models and stakeholder consultation inform the development of policies and procedures.
- d. Leaders champion and model compliance with policies and procedures.
- e. Staff understand and implement the policies and procedures.