





NSW OFFICE FOR CHILDREN

**the Children's  
Guardian.**

Mr Michael Evers, AM  
c/o Secretariat  
Review of the Commission for Children and Young People Act  
Communities NSW  
GPO Box 7060  
SYDNEY NSW 2001

Dear Mr Evers

***Children's Guardian submission to the review of the Commission for Children and Young People Act 1998 ("the CCYP Act")***

**1. About the Children's Guardian**

The Children's Guardian is a statutory office, established by s178 of the *Children and Young Persons (Care and Protection) Act 1998* ("the C&YP (C&P) Act").

The Office of the Children's Guardian was for a time merged with the Commission for Children and Young People (CCYP) to form the Office for Children (OFC). The OFC was established to provide shared administrative and financial support to the Children's Guardian and CCYP and its establishment did not affect CCYP and the Children's Guardian in the independent exercise of their statutory functions. The Children's Guardian and CCYP now sit separately within Communities NSW.

The Children's Guardian principal functions under the C&YP (C&P) Act relate to children and young people in out-of-home care (OOHC).

The Children's Guardian accredits designated agencies to provide statutory OOHC (court ordered OOHC) and registers non-designated organisations to provide voluntary OOHC (OOHC arranged by a parent).

The Children's Guardian develops criteria for the accreditation of designated agencies, for the approval of the Minister. Compliance with the NSW OOHC Standards is the principal criterion for accreditation as a designated agency. The OOHC Standards require designated agencies to demonstrate compliance with applicable legislation, including the CCYP Act. In assessing applications for accreditation and reaccreditation, the Children's Guardian assesses whether the agency has systems in place for conducting Working With Children Checks (WWCCs) and for informing CCYP of completed relevant employment proceedings (which feed into the WWCC process).

The Children's Guardian also accredits non-government adoption service providers under the *Adoption Act 2000*. The accreditation criteria for non-government adoption service providers require providers to demonstrate they have systems in place to support WWCCs.

The Children's Guardian also authorises the paid employment of:

- children under the age of 15 in entertainment, exhibition, still photography and door-to-door sales work; and
- children under the age of 16 in modelling work.

There is no overlap of Children's Guardian and CCYP functions or work programs, except for the Children's Guardian's limited compliance monitoring of WWCC requirements at the time organisations seek accreditation as a designated agency or adoption service provider. As outlined at section 15 of this submission, there is potential for the Children's Guardian, acting on behalf of CCYP, to take on a more active role in WWCC compliance monitoring.

## **2. CCYP's policy, advocacy, research and education functions**

The CCYP's advocacy role, underpinned by the participation of children and young people in identifying those issues that are most important for them, is of critical importance. CCYP's policy, research and education functions are necessary to support CCYP effectively advocating for children and young people.

CCYP has produced quality evidence based research, some of which has assisted in the development of the Children's Guardian's regulatory framework. For example, CCYP research on children's employment has informed the development of the Children's Guardian's regulatory framework for the employment of children in the entertainment, exhibition, modelling, still photography and door-to-door sales industries. CCYP research on the participation of children and young people in decisions that affect them has informed the Children's Guardian's approach to monitoring the participation of children and young people in OOHC case planning and review.

When CCYP was established, it was envisaged that it would have a strong focus on the interests and needs of vulnerable children. This is reflected in s12 of the CCYP Act.

Peak organisations such as NCOSS and the Association of Children's Welfare Agencies (ACWA) anticipated that CCYP would focus more attention on vulnerable children in the child protection system, particularly as the 1997 *Royal Commission into the NSW Police Service: Paedophile Inquiry* provided the impetus for CCYP's establishment.

Since CCYP was established, Parliament has given the Ombudsman extensive powers in respect of the child protection system. The Children's

It would be possible, during annual visits to designated agencies, for the Children's Guardian to conduct a simple audit of WWCC systems if CCYP provided a basic audit tool.

The Children's Guardian will be developing an audit program for voluntary OOHC in 2011, although the audit program will not be as detailed, or visits so frequent, for organisations that only provide VOOHC. Nevertheless, the Children's Guardian and CCYP could discuss how WWCC systems might be audited during such a visit.

Whilst the Children's Guardian would support entering into an arrangement with CCYP to conduct compliance audits of WWCC requirements during its visits, the CCYP Act should continue to make it clear that compliance monitoring remains a CCYP responsibility.

Obligations that have, to date, not been well met by CCYP should not be transferred to other organisations. Rather CCYP should be able to negotiate with other organisations for them to conduct compliance monitoring on its behalf.

CCYP would still need to have a compliance monitoring capacity for employers who could not be monitored by funding/regulatory bodies.

Funding bodies/regulators should not take on the burden of educating/training employers about WWCC requirements. CCYP should retain this role and make use of industry networks/conferences to deliver information sessions on WWCC requirements, as well as providing information on its website and conducting targeted campaigns for particular sectors/employers where understanding of requirements or compliance is a concern.

## **16. Information sharing constraints**

Funding bodies/regulators are only likely to be willing to assist CCYP in compliance monitoring if CCYP shares information it holds about non-compliant organisations that they fund/regulate.

CCYP has wanted to be advised of compliance issues identified by the Children's Guardian but has not been willing to commit to informing the Children's Guardian of any WWCC concerns CCYP may have about organisations regulated by the Children's Guardian.

If the OOHC Standards developed by the Children's Guardian are to require compliance with WWCC requirements, which CCYP supports, then the Children's Guardian believes it is reasonable for CCYP to advise it when it becomes aware of a designated agency breaching those requirements.

In previous discussions, CCYP has expressed concern that the Children's Guardian might take inappropriate enforcement action against a designated

agency if advised of a WWCC breach. Whilst the Children's Guardian can impose conditions on an agency that particular breaches are remedied or, in extreme cases, reduce an accreditation period or suspend or cancel accreditation, the Children's Guardian would never take enforcement action in respect of a WWCC matter that was not supported by CCYP.

There is the potential for CCYP to improve compliance with WWCC requirements by requesting that the Children's Guardian consider particular enforcement action in response to an OOH provider's breach of those requirements.

Recent CCYP/Children's Guardian discussions about the Children's Guardian assisting in WWCC compliance monitoring and information exchange have been much more positive, although CCYP has expressed concerns that sharing information about WWCC compliance may be constrained by s48B of the CCYP Act.

It is recommended that the review consider whether s48B does constrain the exchange of such information and, if so, propose a solution that would allow CCYP to exchange information about an employer's compliance with WWCC requirements with any relevant government funding/regulatory bodies.

I hope these comments are of assistance. If you have any queries, please do not hesitate to contact David Hunt of the Children's Guardian on REDACTE  
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Yours sincerely



Kerryn Boland  
 Children's Guardian

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Copy of First & last page of submission only.  
 whole submission can be found at.

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