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Ms Gillian Calvert  
Commissioner  
Commission for Children and Young People  
Level 2, 407 Elizabeth Street  
Surry Hills NSW 2010

Dear Commissioner

Thank you for your advice of 28 June 2007, concerning various OCCG administrative and regulatory reform proposals. Your advice has greatly assisted in OCCG streamlining regulatory reform proposals associated with assessing the suitability of persons to be authorised as carers.

The following outlines the OCCG response to the issues you have raised.

#### **Risk management strategies other than background checking**

You note that the proposals often focus on background checking to the exclusion of other approaches which may be more appropriate and effective. That is because the draft paper provided to CCYP for comment focuses on regulatory change to clause 20 of the *Children and Young Persons (Care and Protection) Regulation 2000* ("the Regulation"), which addresses assessment of suitability to be authorised as a carer.

The Children's Guardian must consider appropriate background checking arrangements, as clause 36(5)(a) of the Regulation provides that accreditation criteria must address "the assessment procedures (including probity testing) for determining whether a person is suitable to be an authorised carer".

I agree that risk management should not be confined to background checking and include an extract from the draft Review Report to the Minister:

*"Children in care are by any measure a vulnerable group. The management practices of designated agencies must maximise children's safety and well being, and minimise the risk of abuse or neglect in care. These practices extend well beyond the observation of legal requirements relating to the recruitment and selection of staff, such as background checking under the Commission for Children and Young People Act 1998.*

*They include comprehensive risk management that includes the systematic identification, assessment and minimisation of risk, the development of codes of conduct, and supportive and attentive monitoring and supervision of staff. Management influences the culture of an organisation and organisations that are responsive to the*

suitability to be the principal officer of a non-government designated agency or other authorised carer, unless the collection or consideration of such information is prohibited under any other Act or law.

This provides certainty that relevant information can be exchanged between the Children's Guardian and designated agencies. It also offers third parties, such as former employers, assurance that they can provide information as part of a referee check, or other information relevant to carer suitability.

### **Extending the definition of child-related employment to all designated agency principal officers**

The draft Discussion Paper referred to WWCC arrangements not applying to principal officers whose employment does not primarily involve direct contact with children as a weakness in the current regulatory regime. I have removed this reference and will not be proposing regulatory change in this area. I have amended the Discussion Paper to note:

*The Commissioner for Children and Young People has advised that it would not be appropriate for the background checking provisions of the CCYP Act to extend to principal officers whose employment does not primarily involve direct contact with children.*

### **Children's Guardian risk assessment of principal officers**

In light of your advice that CCYP would be unable to undertake any risk assessment of principal officers who are not in child-related employment, I have withdrawn proposals that the Regulation be amended to:

- enable the Children's Guardian to engage CCYP to carry out specified background checking on the Children's Guardian's behalf; and
- authorise CCYP to provide information obtained through such checking to the Children's Guardian or a person who determines whether an individual is to be appointed as a principal officer.

I appreciate your offer to provide OCCG with information to assist OCCG develop risk assessment tools to assess the suitability of persons to be appointed as principal officers. Joyce Semaan of OCCG will contact CCYP to discuss appropriate risk assessment models.

The OCCG Discussion Paper proposes that preferred applicants for principal officer positions obtain National Police Certificates through NSW Police, with these Certificates provided to OCCG. I agree with your suggestion that all National Police Certificate information be destroyed after it is considered by the Children's Guardian, subject to administrative review rights also having been exhausted. Whilst I believe such proposed destruction falls within the exemption of s21(2)(a) of the *State Records Act 1998*, I will finalise destruction arrangements after consultation with the State Records Authority.

CCYP has also advised the designated agency, in authorising an employee of a third party as a carer, should be regarded as an employer for the purposes of the CCYP Act. Given the CCYP Act provides "employment" includes performance of the duties of an authorised carer, the designated agency falls within the CCYP Act's first limb of the definition of "employer", being "a person who, in the course of business, arranges for the placement of a person in employment [as an authorised carer] with others".

I have therefore removed references to problems associated with designated agency background checking of third parties employees from the draft paper.

Please let me know if the above addresses CCYP's concerns with the earlier draft paper.

Please do not hesitate to contact David Hunt of my Office if you wish to discuss any of these matters further. Mr Hunt can be contacted on REDACTED or REDACTED.

Yours sincerely

Kerryn Boland  
**Children's Guardian**  
8 August 2007