



Commissioner for Children and Young People  
Western Australia

# Oversight of child safe standards and out-of-home care in WA

Discussion paper

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## Message from the Commissioner

The safety of children and young people is a community responsibility. We must all do better to protect and respond to children and young people at risk of sexual abuse and other forms of physical and psychological harm. Since the release of the Royal Commission into Institutional Responses to Child Sexual Abuse Final Report in December 2017, I have strongly advocated for an ambitious and unflinching approach by governments and leaders towards the implementation of the Royal Commission's recommendations, and for these efforts to be resourced accordingly. Key amongst these recommendations are those that relate to the introduction, monitoring and enforcement of Child Safe Standards, and the accreditation of out-of-home care services by an independent body.

As Commissioner for Children and Young People WA I have a statutory responsibility to promote and monitor the wellbeing of children and young people under the age of 18 in Western Australia. Under the *Commissioner for Children and Young People Act 2006* I must give priority to Aboriginal and Torres Strait Islander children and young people and to children and young people who are vulnerable or disadvantaged for any reason. Furthermore, I must regard the best interests of children and young people as my paramount consideration.

The importance of children's safety and wellbeing was reinforced by the recent release of the Joint Standing Committee on the Commissioner for Children and Young People's report on its inquiry into the monitoring and enforcement of Child Safe Standards in WA, *From Words to Action: Fulfilling the obligation to be child safe*. In undertaking this inquiry, the Joint Standing Committee has examined some of the most critical recommendations of the Royal Commission and plotted a pathway for locally-informed implementation, reinforcing my own recommendations in this area.

The importance of successfully implementing the Royal Commission's Child Safe and out-of-home care recommendations cannot be underestimated. The imperative of doing so is best summed up by the Chair of the Joint Standing Committee, Hon. Dr Sally Talbot MLC:

*"The report's basic premises are straightforward: that the institutional failure to put the interests of children first will be rectified once organisations embed the National Child Safe Principles into the heart of their operations; and that the failure to effectively assess and monitor the capacity of institutions to put the interests of children first will be addressed when independent oversight renders systems transparent."*

In this discussion paper I have outlined my views as to how I believe the recommendations of the Royal Commission are best progressed for the benefit of all children and young people in Western Australia. I look forward to reviewing the State Government's ongoing response to the Royal Commission and the Joint Standing Committee's report, and will continue to work with government agencies, local organisations and leaders in our community to ensure the safety and best interests of Western Australian children and young people remain at the forefront.

The implementation of strong child safe accreditation and oversight must be a priority for everyone and promote confidence across our community that children's safety, health and wellbeing are valued.

Colin Pettit  
Commissioner for Children and Young People

## Background

### **The Royal Commission into Institutional Responses to Child Sexual Abuse**

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) released its Final Report in December 2017, making 409 recommendations for legislative and service reforms across a wide range of areas to improve responses and support to victims of child sexual abuse, and to strengthen preventative measures to reduce the prospect of future harm to children and young people.

#### *Child Safe Standards*

Within Volume 6 of the Final Report, the Royal Commission made recommendations on introducing, monitoring and enforcing Child Safe Standards (CSS). The ten CSS define the essential standards required of institutions to act to prevent harm to children, including child sexual abuse. The CSS are principle-based and focus on changing institutional culture and the Royal Commission identified an extensive range of institutions engaged in child related work that should be required to meet them. The Royal Commission recommended that monitoring of CSS implementation should be undertaken at the state and territory levels by existing independent bodies who are able to delegate monitoring compliance to sector regulators where they exist.

#### *Out-of-home care*

The Royal Commission also examined institutional responses to child sexual abuse in contemporary out-of-home care (OOHC) (see Final Report Volume 12). In doing so it identified common failings and made recommendations aimed at preventing child sexual abuse in OOHC and ensuring effective responses where it occurs. The recommendations require that both government and non-government provided OOHC services must implement the CSS as part of a comprehensive accreditation scheme administered by an independent statutory body.

### **Inquiry by the Joint Standing Committee on the Commissioner for Children and Young People**

The Joint Standing Committee on the Commissioner for Children and Young People (the JSC) commenced its inquiry into the monitoring and enforcing of Child Safe Standards in November 2018. As per the inquiry's terms of reference, the JSC examined the scope and direction of the work currently being undertaken by government agencies, regulatory bodies and non-government organisations to improve the monitoring of CSS, as well as the role of the Commissioner in ensuring Western Australia's independent oversight mechanisms operate in a way that makes the interests of children and young people the paramount consideration. Particular consideration was given to the recommendations made by the Commissioner in his 2017 report *Oversight of services for children and young people in Western Australia*, as well as the Royal Commission's recommendations regarding independent monitoring and enforcement of the CSS. The Commissioner for Children and Young People (the Commissioner) provided both written and verbal submissions to the inquiry.

## Current landscape in WA

In June 2018 the WA Government accepted and committed to implement the Royal Commission recommendations on introducing, monitoring and enforcing CSS across child-serving institutions, and on mandatory accreditation of OOHC service providers. In 2019 the Council of Australian Governments, including the Premier of WA, endorsed the National Principles for Child Safe Organisations which reflect the CSS.

The CSS are currently not mandatory in WA, hence they are not monitored or enforced. Since 2015, the Commissioner's team has undertaken capacity building work to support the voluntary implementation of the CSS across government and non-government organisation in WA. This has included providing targeted and responsive advice to government and non-government organisations, maintaining and developing locally-informed resources to support the implementation of the CSS, and raising community awareness about the importance of child safe organisations. The *Commissioner for Children and Young People Act 2006* outlines a statutory responsibility to monitor the way government agencies investigate or otherwise deal with a complaint made by a child or young person, the outcome of such complaints, and trends in complaints made by children and young people to government agencies. The Commissioner's complaints monitoring process directly reflects the core components outlined in the CSS, particularly Standard 6 (child focussed complaints processes).

At present there is no mandatory accreditation scheme or independent oversight of the delivery of OOHC services in WA. The Department of Communities (Communities) currently funds, directly provides and oversees OOHC services in accordance with its Better Care, Better Services Standards. Funded OOHC service providers are authorised to deliver services when they enter into a service agreement with Communities, and Communities-provided OOHC services are monitored through several internal departmental mechanisms.

## Progressing CSS and OOHC oversight in WA

Implementing independent oversight and accreditation is critical to driving cultural change and building organisational capability to prevent and respond to child abuse when it occurs in organisations. The Commissioner considers his office to be best placed to lead the implementation of independent oversight of CSS and OOHC in WA for the following reasons:

- a) In addition to the monitoring and capacity building capabilities outlined above, the office has built considerable expertise regarding best practice models for oversight of child-related services, evidenced by recent activities such as:
  - i. In 2017, the release of the first mapping project of its kind in WA to understand oversight mechanisms of child related services. This work identified oversight gaps in WA and established parameters of best practice for oversight of child-related services.
  - ii. In 2019 the publication of the report *Improving the Odds for WA's Vulnerable Children and Young People*<sup>i</sup>, which contained recommendations that the State Government develop, implement and resource a model of independent oversight that covered services providing support to any children and young people in WA.
- b) The existing strong relationships with government and non-government agencies to monitor and advocate for children in the OOHC system. This has included monitoring developments in child protection legislation, monitoring relevant policies and practices, undertaking and commissioning work on improving case practice and complaints systems for vulnerable children in the care system, and consulting with children and young people in OOHC on raising complaints.
- c) The independent oversight role aligns with many of the legislated functions as contained in section 19 of the *Commissioner for Children and Young People Act 2006*<sup>ii</sup>.
- d) The design, capacity building and initial implementation stages of independent oversight can commence under the current provisions of the *Commissioner for Children and Young People Act 2006*.

This position is supported by the findings of the JSC, and is responsive to the Royal Commission's suggestion that the key role already played by state-based independent children's commissioners in child safe approaches lends itself to such authorities taking on responsibility for child safe oversight<sup>iv</sup>.

## Proposed approach to oversight

Consistent with the principles of risk-based regulation, oversight should strike the right balance between direct regulation and enforcement, and building the capability of institutions in a manner proportionate to the risk of harm to children and young people. It should also allow space for organisations to utilise bespoke methods to achieve CSS compliance with respect to their particular setting, service type and size.

In the event the Commissioner is given responsibility for the CSS and OOHC oversight functions recommended by the Royal Commission, the proposed approach to oversight would be firmly grounded in the Royal Commission recommendations. This would require a responsive and risk-based oversight model capable of applying different regulatory tools and capacity building strategies calibrated to the varying levels of risk organisations pose to children and young people. How such an approach may look in practice is outlined at Figure 1.

A wide range of stakeholders, including children and young people, would be engaged in developing the oversight model as well as in the development of a staged rollout of the CSS and OOHC oversight mechanisms. This staged approach would be proportionate to the varying levels of risk to children and young people posed by different sectors and service types and balanced with providing enough time for organisations to understand what is expected of them and building capability to meet expectations.

The development of the CSS oversight and OOHC accreditation schemes would also involve collaboration with Aboriginal communities in WA to ensure the associated systems and processes, and the ways they are applied to Aboriginal Community Controlled Organisations and organisations serving Aboriginal children and young people, are culturally safe and respectful.

This approach will include exploring the introduction of a dedicated Aboriginal Commissioner for Children and Young People, as advocated for by senior Aboriginal leaders who attended an Aboriginal Forum in 2018 as part of the Vulnerability Speaker Series<sup>v</sup> and recommended by the JSC in 2016<sup>vi</sup>. An equivalent position already exists in both Victoria and South Australia, and has recently been announced in NSW<sup>vii</sup> for the purpose of strengthening the NSW Children's Guardian's "oversight and enforcement of powers in accrediting out-of-home care and ensuring a high practice of standard is met for Aboriginal children and young people in care"<sup>viii</sup>.

As recognised by the JSC, the long term establishment of oversight functions fully compliant with the Royal Commission's recommendations will require legislative amendments that at a minimum:

- a) make the CSS mandatory for organisations engaged in child related work;
- b) implement a mandatory OOHC accreditation scheme;
- c) provides the Commissioner with the necessary enforcement powers to undertake these oversight functions;
- d) allows the Commissioner to delegate appropriate powers to existing sector regulators where necessary; and
- e) provide for appropriate information sharing with other oversight bodies and regulators where doing so is in the best interests of children and young people.

The Commissioner would place a priority on ensuring implementation of independent oversight and accreditation regarding CSS and OOHC does not place onerous or duplicative administrative burdens on relevant organisations.

## **Integrating oversight and accreditation into current functions**

There are significant benefits to adding CSS oversight and OOHC accreditation responsibilities to the Commissioner's current functions, a stance that is backed by the findings of the JSC. Chief among these is the benefit to children and young people themselves. WA's children and young people would have an independent, child-focussed body responsible for monitoring their safety, promoting their rights, hearing their voices and making their views heard across government and the community. This would harness the existing expertise of the office regarding consultation, capacity building, monitoring and advocacy, all of which will be essential to standing up and operating an effective oversight mechanism that effects real change for children and young people in a manner that is efficient, timely and risk-proportionate.

While there is the potential for conflicts of interest, perceived and real, to arise in this scenario, a number of legal, structural, technological and physical measures are under consideration to ensure that the privacy of children and young people and the integrity of the Commissioner's functions would not be adversely impacted by a decision to add CSS oversight and OOHC accreditation to the responsibilities of the office.

The design and operation of consolidated CSS oversight, OOHC accreditation and current section 19 functions would be informed by organisational best practice and the experiences of jurisdictions with independent officers who simultaneously hold comparable functions.

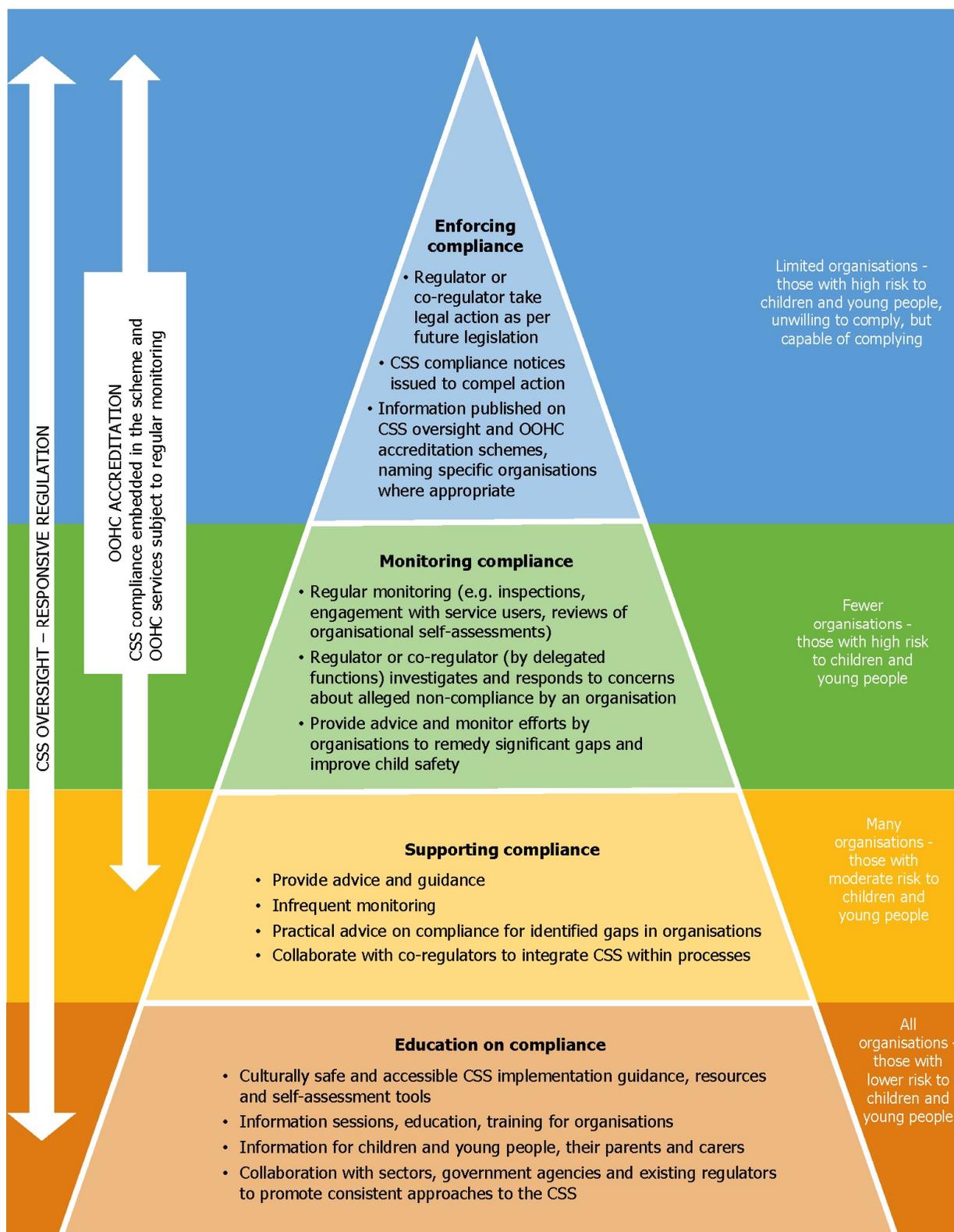
Children's Commissioners and Guardians in New South Wales and Victoria, as well as in New Zealand, have simultaneously held several or all of these functions for a number of years and have successfully implemented strategies to manage potential conflicts of interest. These jurisdictions also have experience incorporating additional functions into their existing mandates, as recently occurred in New Zealand<sup>ix</sup>, and developing a variety of mechanisms to manage this expansion, which would be carefully analysed in refining measures for the WA context.

## **Conclusion**

Western Australia's children and young people need to have access to a comprehensive, rigorous and properly-resourced model of independent oversight. Oversight of organisations that provide services for children and young people, both government and non-government, is a critical accountability mechanism that can also contribute to the effective delivery of outcomes-based services. Monitoring these organisations can improve the transparency of practice and procedure, provide Parliament, government and the public with important information about service standards and performance, support efforts to direct services more appropriately, and foster broad improvements in sector practice.

For the reasons outlined in this paper, the Commissioner for Children and Young People would welcome a decision by the State Government to be entrusted with designing, implementing and operating an independent oversight and accreditation scheme for the benefit of WA's children and young people. Such a decision would ensure this responsibility is undertaken in a manner that reinforces a holistic view of service responsibilities, values and understands the lived experiences of children and their families, and has the best interests of children and young people as its paramount consideration and focus.

**Figure 1: Proposed approach to CSS oversight and OOHC accreditation**



## Endnotes

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- <sup>i</sup> Joint Standing Committee on the Commissioner for Children and Young People, 13 August 2020 *From Words to Action: Fulfilling the obligation to be child safe*, p. iv
- <sup>ii</sup> Full report available at <https://www.ccyp.wa.gov.au/media/3718/improving-the-odds-for-was-vulnerable-children-and-young-people-april-2019.pdf>
- <sup>iii</sup> The following functions of the Commissioner, as contained in section 19 of the *Commissioner for Children and Young People Act 2006*, would align with an oversight and accreditation role related to the Child Safe Standards and out-of-home care:
- (a) to advocate for children and young people;
  - (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity;
  - (c) to promote and monitor the wellbeing of children and young people generally;
  - (d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint;
  - (e) to monitor the trends in complaints made by children and young people to government agencies;
  - (f) to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people;
  - (g) to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;
  - (h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people;
  - (n) to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year;
  - (o) to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4.
- <sup>iv</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2016, Final Report: Volume 6, Making institutions child safe, p. 282
- <sup>v</sup> Further information about the Vulnerable Speaker Series is available at <https://www.ccyp.wa.gov.au/our-work/projects/vulnerability-speaker-series/>
- <sup>vi</sup> Joint Standing Committee on the Commissioner for Children and Young People, 16 June 2016, *Everybody's Business: An examination into how the Commissioner for Children and Young People can enhance WA's response to child abuse*, p. 58
- <sup>vii</sup> New South Wales Government, 8 July 2020, *Media release: Enhanced protections for Aboriginal children and young people in care*, available from <https://www.dcj.nsw.gov.au/news-and-media/media-releases/enhanced-protections-for-aboriginal-children-and-young-people-in-care>
- <sup>viii</sup> New South Wales Government, , *Response to the Family is Culture Review Report*, available at [https://www.facs.nsw.gov.au/data/assets/pdf\\_file/0005/784517/NSW-Government-Response-to-FIC.pdf](https://www.facs.nsw.gov.au/data/assets/pdf_file/0005/784517/NSW-Government-Response-to-FIC.pdf)
- <sup>ix</sup> New Zealand Children's Commissioner, 3 July 2020, *Media release: Safeguarding the rights of children in secure detention centres*, available from <https://www.occ.org.nz/publications/news/safeguarding-the-rights-of-children-in-secure-detention-centres/>