



Public Consultation Submission

NSW Child Safe Scheme

27 January 2021



CHILD WISE
creating child safe communities

Introduction

Child Wise supports public, private and not-for-profit organisations to establish and sustain child safe environments. In Australia, Child Wise introduced the use of child safety standards within organisations where children and young people spend time, and we continue to see the significant benefits that clear, outcome-focused expectations can have in creating child safe culture. When Child Wise participated in the NSW Government's initial public consultations into the development of child safe standards, we expressed our strong support for a rigorous legislative approach which would sharpen a collective focus on the safety of children and young people. Child Wise again welcomes the opportunity to contribute to the implementation of child safe standards in NSW by providing feedback on the *Exposure Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2020*.

Consultation Questions

Survey Question 3: What sector is your organisation in?

'Other – Community Services'

Survey Question 4:

(suggested rating scale: 'disagree'; 'neutral'; 'agree'; 'strongly agree')

4a. The proposed scope of the Child Safe Scheme (aligning to organisations already captured by the Reportable Conduct Scheme) is adequate.

'Disagree'

While the list of organisations captured by the Reportable Conduct Scheme is extensive and includes many of the higher risk areas where children and young people spend time, it does not appear to include sporting and leisure organisations which provide services to children and young people. In our experience, and as demonstrated by numerous case studies from the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), sporting and leisure organisations can pose considerable risk to children and young people for a range of reasons including: the extent of time spent there, large staff and volunteer numbers, significant employment churn and variable levels of child safe capacity. In our experience, child safe standards can focus the attention of leaders of these organisations and stimulate improvements. Child Wise would urge the Office of the Children's Guardian (OCG), to include these organisations, as well as their peak bodies, in the Child Safe Scheme.

According to the Kids Guardian website, the following services are yet to be included in the NSW Reportable Conduct Scheme: providers of family group homes; providers of overnight camps; accommodation and respite services for children that provide overnight beds for children, including housing and homelessness services. It is assumed that once these services are included in the Reportable Conduct Scheme, they will also be included in the broader Child Safe Scheme. Given the extent of contact these services have with children and young people (often very vulnerable), Child Wise would urge their inclusion as soon as possible.

4b. The requirement for organisations to implement the Child Safe Standards through its systems, policies and procedures is clear (section 8BA).

‘Disagree’

Child Wise agrees that section 8BA captures most of the key systems, policies and procedures required in a child safe organisation. What is less clearly set out, however, are expectations for how organisations communicate and engage with children, young people and families in regards to these systems, policies and procedures, including producing accessible information and facilitating opportunities for them to participate in the development of the organisation’s child safety infrastructure. There is a risk that entities may note the key documents and processes listed in 8BA and consider these to represent a child safe framework, whereas we have learned from inquiries such as the Royal Commission, that the engagement and empowerment of children, young people and families is critical to establishing effective child safeguarding systems and processes. By more explicitly setting this out, the OCG would be reinforcing National Principles 2 and 3 as foundational to an organisation’s approach to child safeguarding. In our experience, organisations struggle most when it comes to adequately addressing these two principles, so a more prominent inclusion in the legislation may prompt a greater investment in these vital practice areas.

Child Wise would also encourage a greater focus in the legislation on the requirement to build and maintain a child safe organisational culture. While it is appreciated that the culture of an organisation may be less tangibly assessed (or prescribed) than its policies, procedures and systems, it is a core determinant of child safety. It is also often one that a child ‘feels’ the most. By more prominently setting out the responsibilities of leaders to foster an open, aware child safe culture, the legislation would reinforce the significance of National Principle 1 and underscore the importance of culture in embedding consistently effective child safeguarding practice.

4c. The requirement that an organisation must implement the Child Safe Standards through its systems, policies and processes (section 8BA) strengthens the existing requirement that relevant entities have systems and processes in place (section 54).

‘Agree’

This section would be further strengthened by addressing the feedback noted in Q2 regarding the empowerment and participation of children, young people and families.

4d. There is sufficient flexibility in the Child Safe Scheme to enable different organisations to implement the Child Safe Standards in ways that are meaningful in their context, guided by OCG supports and resources.

‘Agree’

In our experience of working with a broad range of organisations, we have found that the National Principles for Child Safe Organisations are sufficiently flexible and adaptable to different organisational contexts. The proposed NSW Child Safe Scheme appears equally as flexible. Given the flexibility afforded organisations, however, it will

be key to ensure some degree of specificity as to success indicators for the range of relevant entities, including self-assessment measures, continuous improvement targets and examples of effective practice.

4e. Codes of Practice set up an adequate mechanism to provide more prescriptive requirements for the implementation of the Child Safe Standards in higher risk sectors.

‘Agree’

‘Codes of Practice’ are an adequate measure to ensure more specific requirements for higher risk sectors such as the Out of Home Care sector. While appreciating the OCG’s targeted and risk-led approach, Child Wise would also support ‘Codes of Practice’ to be rolled out to other entities included in the Scheme such as schools. The proposed inclusions to a Code of Practice in section 8DC reflect critical safeguarding issues and set out how an organisation will operationalise the Child Safe Scheme. Developing such a Code should be a core leadership function which provides a vehicle for positive cultural change in organisations, and as such would be a valuable tool for all entities included in the Scheme.

4f. Capability building and support should be the foundation of the Child Safe Scheme and the first step before taking regulatory action.

‘Agree’

Child Wise agrees that this approach should be taken in most circumstances, and that for the majority of organisations capacity building and support are sufficient to facilitate progress along the child safety continuum. There will be circumstances, however, when an absence of compliance with the Child Safe Scheme may be so serious that it should attract enforcement action at an earlier stage. In this respect, our agreement with the precept is limited. Child Wise believes that the OCG should reserve the right to expedite monitoring, investigation and enforcement action where this is warranted due to potential risk to children and young people, and that this should be made clear to relevant entities.

4g. The monitoring, investigation and enforcement powers adequately strengthen the OCG’s ability to hold organisations to account on their implementation of the Child Safe Standards.

‘Agree’

The monitoring, investigation and enforcement powers adequately strengthen the OCG’s remit in holding organisations to account. That said, we are of the view that section 8FA would be strengthened significantly by explicitly including that the Children’s Guardian may opt to consult with children, young people, families, staff and volunteers as part of monitoring an organisation’s compliance with the Scheme. In our experience of assessing organisational compliance with child safety standards, it is communication with these stakeholders which helps us to more effectively understand whether policy, procedure and systems have resulted in meaningful, sustained improvements in child safety practice.

4h. The penalties attached to Compliance Notices and Enforceable Undertakings are sufficient (noting they are maximum and would only be used in very serious cases of non-compliance).

'Disagree'

The public nature of penalties offers a level of transparency which means children, young people and families can be informed consumers of services. They can therefore be seen as clear demonstration of how serious the Government is in its commitment to the Standards.

While we appreciate the need to take a supportive approach in leading organisations further along the child safe journey (and indeed see the clear need for it), we believe there may need to be a greater balance between incentive and deterrent here.

Currently, under s 17 *Crimes (Sentencing Procedure) Act 1999*, a penalty unit is \$110. This means that the maximum value of penalty for failure to meet the requirements of a Compliance Notice is \$60,500. Given the risks to children and young people for such failures, it is anticipated this fine is small. For example, the implications of a large multi-million dollar Out of Home Care organisation failing to comply could be egregious for many vulnerable children and young people. Without the threat of de-funding or funding cuts, it is difficult to see how there would be a wholesale mandate for change. It would seem to pit the severity of the issue at odds with other areas where an organisation can lose its funding as a penalty: for example it might form a perverse example if an organisation could lose its funding for financial misappropriation but not for failures to keep children and young people safe.

Conclusion

As we expressed in our initial consultation submission, Child Wise is a strong advocate for organisational child safe standards. We regularly bear witness to the significant, sustained cultural changes that can be brought about by clearly articulated and effectively implemented standards. Child Wise is grateful to have had the opportunity to contribute to the development of the NSW Child Safe Scheme and welcomes its implementation. Should you have any questions about this submission or wish to discuss any aspect of it, please contact me.

Contact Details

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