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Dear Larissa

AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (AbSec) welcomes this opportunity to provide this submission on the NSW Office of the Children's Guardian (OCG) review of accreditation and monitoring functions 2021-22. We thank the OCG for the additional time provided to make this submission.

AbSec welcomes OCG's focus on Aboriginal children and families throughout the consultation paper and in the proposals, and we welcome the recognition and inclusion of the Aboriginal Case Management Policy as a guiding policy for the system.

We note that the Aboriginal child and family sector is experiencing increased demands and pressures with COVID and in the lead up to the end of year period. This has impacted some organisation's capacity to engage in this consultation. As such, we have provided a high level response and note that some issues need to be revisited in more detail with the sector.

Our submission is structured according to the sections and issues outlined in the OCG's *Review of accreditation and monitoring functions - Consultation paper*. As AbSec and our communities do not support the adoption of Aboriginal children through non-Aboriginal processes, we have not commented on the proposals as they relate to adoption.

For more information in relation to this submission, contact Solange Frost, Senior Policy Officer, [Solange.frost@absec.org.au](mailto:Solange.frost@absec.org.au) or mb: 0438 332 864.

Regards

A handwritten signature in black ink, appearing to read 'John Leha', with a small blue dot below it.

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## **1. ACCREDITATION OF DESIGNATED AGENCIES AND ADOPTION SERVICE PROVIDERS**

### **1.1 Agencies that may apply for accreditation as designated agencies**

*Q. Should accreditation to provide statutory OOHC services be limited to Government Sector agencies and charitable or not-for-profit organisations?*

*Q. Are there benefits in having a mix of for-profit and charitable or not-for-profit providers in the statutory OOHC system?*

AbSec supports limiting accreditation to Government Sector agencies and charitable or not-for-profit organisations in principle. However we note that this is a complex issue in practice and there are a mix of views within the Aboriginal child and family sector. As such, we recommend there is further targeted consultation with the sector about this proposal.

AbSec agrees with the 2019 Family Is Culture review's concerns that for-profit organisation's financial motivations could potentially result in cost cutting and poor quality care. We accept there are financial imperatives for all types of providers, including government agencies, in the form of financial viability and budget considerations. However we believe the primacy of profit-making objectives means there is a greater risk that for-profit organisations will be driven to cost saving measures that could compromise their provision of quality care.

AbSec notes that some of our members believe this risk can be adequately managed through a stringent regulatory and oversight system that would require close monitoring of providers against appropriate standards. However we note that the OCG's proposed new accreditation and monitoring system is premised on new for-profit providers being excluded from the system.

AbSec does not think the proposed new system is adequate to safeguard against the risk that for-profit provider's perverse financial incentives may have on care quality. As such, the accreditation and monitoring system would need further review to provide for robust checks and balances should for-profit providers be permitted to operate.

AbSec believes that leaving the market open to for-profit providers presents a risk to the future growth and sustainability of the Aboriginal community-controlled child and family sector. The sector is proportionally small and developing. Aboriginal community-controlled child and family organisations, particularly new and emerging organisations, do not have the same resources and capacity to compete with larger or well-resourced providers. Permitting for-profit providers, particularly mainstream organisations, presents a risk to the viability of the Aboriginal community-controlled child and family sector.

AbSec acknowledges the need to ensure that Aboriginal children in OOHC and their families are supported through quality, culturally safe care that keeps them connected to family, community, culture and Country. As such, we recognise that there may need to be consideration of having a mix of Aboriginal-specific providers until such time that the community-controlled sector is fully established state-wide. However the merits and implications of this issue needs to be explored further in partnership with the Aboriginal child and family sector.

### **1.2 Agencies that may apply for accreditation as an accredited adoption service provider**

No comment

### **1.3 Applications for accreditation as a designated agency**

*Q. Do you agree that an application for accreditation should set out how the agency intends to meet the particular needs of Aboriginal children and young people?*

*Q. What things should an agency applying for accreditation consider when reflecting on its capacity to provide culturally safe care?*

AbSec strongly supports the proposal requiring agencies to provide a policy statement about how they intend to meet the needs of Aboriginal children and young people. As the consultation paper identifies, Aboriginal children and young people are over-represented in OOHC, comprising around 42 per cent of children in care. Yet only around only one-fifth (20.6 per cent) of Aboriginal children are placed with an Aboriginal agency. This raises serious concerns about the cultural safety and wellbeing of the other 5,460 Aboriginal children placed with DCJ and non-Aboriginal organisations.

We support the OCG's suggestion that the statement should explicitly include consideration of how the agency will apply the Aboriginal Case Management Policy principles and the Aboriginal Child Placement Principle. We suggest that where an agency identifies capacity building is required that this should also be accompanied by a plan outlining how the agency intends to work towards strengthening its practice.

AbSec notes that there is a risk that the policy statement could become tokenistic if the content and the agency's compliance is not appropriately scrutinised and monitored. We recommend the OCG embed a process for cultural knowledge holders to review the policy statements and that agency compliance with the content of those statements is monitored and reviewed as part of the regular monitoring process during the accreditation period.

Some specific elements we recommend agencies are required to consider as part of the policy statement in support of the ACMP and ACPP are:

- Demonstrated relationships with local ACCOs
- Aboriginal recruitment strategy and support
- Cultural planning policies and procedures
- Plans to transition Aboriginal children and young people to Aboriginal agencies (where it is possible to do so).

#### **1.4 Experience and qualifications of principal officers and structure of governing bodies**

*Q. The OCG proposes that having an appropriate governing body in place is a prerequisite for applying for accreditation. It is also a requirement that any person appointed to the principal officer role - once the agency is accredited - must have relevant skills and experience in delivering services to children and young people.*

*Q. What skills and experience do you believe are most relevant for the principal officer role?*

Do you agree that the principal officer for an agency must have relevant skills and experience in working with children and young people?

AbSec agrees that having a skilled and experienced principle officer is critical to the success of the organisation. However we believe that management, planning, reporting and financial skills are the most important requirements for the role. As such, we do not believe the principle officer should be required to have skills and experience in working with children and young people as a prerequisite for accreditation.

AbSec is concerned that this requirement may have an adverse impact on the establishment of new community-controlled services, which longer term is to the detriment of Aboriginal children and young people who miss out on more culturally appropriate care. It is already very difficult for Aboriginal agencies to recruit skilled managers, particularly in rural and remote areas with ongoing skills shortages. These provisions would further reduce an already small pool of candidates.

Should such provisions be adopted, AbSec recommends that agencies be given time for the principle officer to work towards acquiring relevant skills and experience after accreditation.

This could take the form of mentoring, on-the-job training, or a short course. It is important that any requirement for skill development is not too onerous so that the principle officer can continue to focus on the management of the agency.

*Q. Do you agree that having an appropriate governance structure in place should be a prerequisite to apply for accreditation?*

AbSec supports the proposal for an established governing body comprising of at least four independent members, as a prerequisite to apply for accreditation. Robust, independent and skilled boards of management are essential to the sustainability, and credibility, of the sector.

### **1.5 Accreditation of new providers**

*Q. Do you agree that the Children's Guardian should exercise discretion in prioritising applications for accreditation?*

*Q. Do you agree with the proposed priority groups at (9) above? Are there other organisations that should be prioritised?*

AbSec welcomes the proposal for the OCG to exercise discretion in prioritising applications, and for priority to priority groups such as Aboriginal children and young people. We note and support the OCG's intention to publish information about the criteria that will be used to determine priority applications. It is important that there is transparency and accountability about the decision making process.

*Q. Do you agree that a designated agency or an adoption service provider that has had its accreditation shortened or cancelled should be prohibited from applying for accreditation for a period of time?*

AbSec does not support a two year prohibition on designated agencies whose accreditation has been shortened or cancelled from applying for accreditation. Our experience is that agencies circumstances can change in a short period of time. New or changed composition of governance bodies or management can result in substantial changes to agencies operations.

We believe a flexible system needs to be established that would take a case by case approach to determine whether to prohibit an agency from applying and for how long, based on a set of publically available guidelines.

### **1.6 Accrediting 'models' of statutory OOHC**

*Q. Do you agree with the proposal to accredit an agency to provide statutory OOHC, rather than specifying whether the agency can provide foster care, residential care or both?*

*Q. Would this approach provide greater flexibility for the way your organisation delivers services?*

*Q. Are there any risks or challenges in providing agencies greater flexibility in how they deliver services?*

AbSec received mixed, but limited, feedback from our members on this issue. One agency supported the proposal citing the benefit of reduced red tape and additional work for agencies when trying to resolve placement issues that are already complex. Another disagreed with the proposal arguing that foster and residential care have very different needs, skills and experience. We suggest further targeted consultation on this issue may be required.

### **1.7 Accrediting adoption providers**

*OCG proposes to retain the current distinctions between accreditation to provide domestic adoption services and accreditation to provide intercountry adoption services.*

No comment

### **1.8 An alternative accreditation process for short-term emergency care providers**

*Q. What are your views on creating a new class of accreditation for providers that provide short-term emergency care only?*

*Q. Do you agree that providers accredited to provide emergency care only, should have limits placed on the types of services they can provide?*

*Q. Do you agree that case management and decision making about the child's care should remain with a fully accredited agency?*

*Q. What risks or challenges do you foresee with the proposed model?*

AbSec supports the proposals to create a new class of accreditation for providers that provide short-term emergency care, and that case management and decision making about the child's care should remain with a fully accredited agency. As short-term emergency care providers are delivering services to vulnerable children, it is essential that they are required to meet the same standards to provide safe care.

### **1.9 Provisionally accredited agencies progressing to full accreditation**

*The OCG proposes a policy change to provide that a provisionally accredited agency's accreditation commences on the date that the agency commences providing services to children and young people.*

*The OCG also proposes to provide for the Children's Guardian to have discretion to extend the accreditation period for a provisionally accredited agency that has demonstrated progress towards meeting the Standards, but where there has been insufficient time to demonstrate compliance with all of the Standards, prior to the accreditation period expiring.*

AbSec supports proposals 11 and 12 to change the commencement date for provisionally accredited agency to provide OCG with discretion to extend the accreditation period where an agency has demonstrated progress towards meeting the Standards. AbSec notes that the current provisional accreditation period is relatively short and it can be difficult for smaller agencies or those with small placements to achieve the required standards.

*The OCG proposes to provide for greater flexibility in regulating agencies that have provided limited services to children and young people over the course of the accreditation period.*

AbSec does not support proposal 13 that would require agencies to have provided care in the 12 months prior to their application to renew accreditation. We note that decisions regarding placements are often beyond agencies direct control. Past placements are not necessarily an indication of future placements. AbSec suggests that OCG's decision as to whether or not to consider an agency's application for accreditation should not be determined by resource constraints. The OCG must be adequately resourced to perform its required functions.

AbSec suggests an alternate approach is for the OCG to develop a prioritisation criteria in a similar approach, as suggested at section 1.5, for new providers. Agencies that have not provided services or that have provided very limited services could then be ranked as a lower priority for assessment.

### **1.10 Assessing applications to renew accreditation**

No proposals identified.

### **1.11 A new approach to monitoring and accreditation**

*Q. What are your views on the proposal for more regular monitoring of agencies' compliance with the Standards and a more streamlined accreditation renewal process?*

*Q. Do you agree that the Children's Guardian should have discretion to undertake a briefer accreditation renewal assessment where an agency has demonstrated compliance with the Standards and accreditation criteria over the course of its accreditation period?*

*Q. Do you agree that information gathered by DCJ or other oversight bodies, or information gathered by the OCG for other regulatory purposes should be considered as evidence of compliance with the Standards and other accreditation criteria? What sorts of information should be relevant to the Children's Guardian's decision whether to renew accreditation?*

*Q. Do you agree that the proposed processes for determining applications for renewal for designated agencies should be replicated for adoption service providers?*

AbSec broadly supports the OCG's proposal to move towards a more streamlined accreditation renewal and monitoring with an increased focus on continuous improvement. AbSec member agencies have long identified that the current process is extremely onerous and time consuming. The proposal to use information gathered during the monitoring visit as the basis for informing accreditation renewal decisions could alleviate some of this burden for agencies and the OCG.

AbSec agrees with the need for more regular monitoring visits as part of the new system, but is concerned the proposed schedule of 4 visits every 12-18 months may not be sufficient. An issue with the current monitoring cycle is that it is not frequent enough to identify potential issues early and prevent them from escalating with more serious consequences. While the proposal is an improvement on current practice, it may still not be regular enough to provide effective, timely oversight.

AbSec recommends the OCG consider a revised monitoring visit scheduled with a minimum of one visit every 12 months. This would need to be considered as part of a streamlined monitoring system noting that monitoring visits involve considerable work for agencies and OCG. We understand that more frequent visits are standard practice in other industries such as aged care.

AbSec would also like to be notified of agencies that have submitted an application earlier in the process. Currently AbSec only receives information about new accreditation applications through DCJ. If this information was provided to AbSec earlier, we may be able to reach out to agencies and provide specialist cultural support to increase the likely success of their application.

AbSec wishes to raise an additional consideration about cultural responsiveness of the renewal process, as well as the assessment of new accreditation applications. We note that Aboriginal community controlled organisations (ACCO) have culturally different governance practices and their operating context is different to other organisations. The audit of Cultural Care Plans developed for Aboriginal children in the care of non-Aboriginal agencies also requires distinct cultural knowledge and experience.

We recommend that an Aboriginal cultural lens is embedded as part of OCG's accreditation assessment process to recognise and value these distinct elements. We recognise that the OCG has experienced, supportive staff but we would like to see this practice institutionalised as standard practice so it is not contingent on individuals. Refer also to our recommendation for Aboriginal sector specific standards at Section 5.

### **1.12 Accreditation criteria**

*Q. Do you agree that the provision regarding what must be included in the Standards should be broadened to include practices that promote the safety, welfare and wellbeing of children and young people in OOHC?*

AbSec supports this proposal.

## **2. TRANSFER OF ACCREDITATION**

*Q. Do you agree there are circumstances where it is appropriate for an agency to transfer its accreditation to another agency?*

AbSec supports the proposal. We believe it is important to have provision to transfer accreditation, particularly in the case where an ACCO fails so its services can be auspiced by another ACCO.

### **3. ACCREDITATION ADMINISTRATION**

#### **3.1 Form and accreditation period**

*The OCG proposes provisions for the Children's Guardian to accredit an agency for 3 or 5 years.*

AbSec supports the proposal to remove 1 year accreditation period, noting the need for frequent monitoring.

*The OCG proposes to retain these provisions for the Children's Guardian to vary the accreditation periods for an agency that is accredited as both a designated agency and an adoption service provider, so the accreditation periods for both service types can be aligned.*

No comment

#### **3.2 Deferral of a decision to renew accreditation**

*The OCG proposes that where a decision on an agency's application to renew accreditation is deferred, the agency must participate in a risk management program approved by the Children's Guardian.*

AbSec supports in principle the proposal to implement a risk management program for agencies where accreditation renewal is deferred. Such a program could be a useful source of support for agencies who are experiencing governance or operational challenges. AbSec would welcome the opportunity to explore with OCG what support we could provide in the delivery of any such program.

AbSec recommends that the risk management program is designed and implemented in a culturally responsive way, in partnership with AbSec and the sector. It is important that any such program is focused on support and improvement, rather than being punitive.

As noted in Section 1.11, we believe that the escalation process for issues should ideally be embedded earlier through the monitoring process, and as such more regular visits are required.

*Where a decision has been deferred for two years, the agency's application for accreditation is automatically refused, unless the Children's Guardian is satisfied that the risk management program should be extended for a further period.*

AbSec does not support the two year time limit placed on deferred applications. While we support the need to ensure agencies are providing children with safe quality care, we believe there needs to be a more flexible approach that assesses agencies on a case by case basis determined according to the nature of the concerns identified and progress made under the risk management program.

#### **3.3 Extending accreditation to accommodate changes**

*The OCG proposes to retain these provisions for Children's Guardian to extend the accreditation of a designated agency or an accredited adoption service provider where the Children's Guardian is of the opinion that changes or proposed changes to the administration of the OOHC or adoption sector make the extension appropriate.*

AbSec supports the proposal.

#### **3.4 Conditions on accreditation and process of accreditation**

*Q. Do you agree that there should be a restriction on providing care to children and young people in a carer's private home unless the carer has been authorised under clause 30 or 31*

*of the Care Regulation? This means, for example that workers authorised to provide emergency care or workers authorised by DCJ to provide special care cannot care for children in their own homes.*

No comment.

*Q. Do you agree that where a decision on an agency's accreditation is deferred, the agency should be required to participate in a risk management program?*

Yes – see response at 3.2

### **3.5 Shortening, suspending, or cancelling accreditation**

*The OCG proposes to remove the provision to suspend an agency's accreditation but retain the provisions to shorten or cancel accreditation.*

No comment.

## **4. PROVIDING GREATER CLARITY ON THE CHILDREN'S GUARDIAN'S FUNCTIONS**

### **4.1 The Children's Guardian may investigate the carrying out of agencies' responsibilities**

*Q. Do you agree with the proposal to provide greater clarity regarding the Children's Guardian's current work in monitoring and investigating designated agencies and accredited adoption service providers?*

AbSec supports the proposal.

## **5. INTERSECTION WITH THE CHILD SAFE SCHEME**

*Q. What are your views on the statutory OOHC and adoption sectors combining under the Child Safe Scheme?*

*Q. What are your views on the 10 Child Safe Standards (and additional sector-specific accreditation criteria) becoming the new standards for the accreditation of statutory OOHC and adoption providers in the future?*

*Q. Are there benefits to having one set of standards across all child-related organisations? Or should the statutory OOHC and adoption sector remain as a separate scheme with its own Standards?*

*Q. If your agency provides other child-related services in addition to statutory OOHC/adoption, and the sector supports a separate set of standards for statutory OOHC and adoption providers, do you anticipate any challenges with operating under two sets of standards?*

*Q. If the 10 Child Safe Standards were to replace the existing standards, what other accreditation criteria should be included to reflect the particular needs of children and young people in statutory OOHC or adoption?*

*Q. What are your views on how enforcement would operate for statutory OOHC and adoption providers, under the child safe scheme?*

AbSec notes the proposal to replace the current 23 NSW Child Safe Standards for Permanent Care with the 10 Child Safe Standards is a substantial change and as such we recommend that there is more detailed, targeted consultation with the Aboriginal child and family sector.

AbSec received feedback from some of its members who supported greater streamlining of the Standards so that agencies only had one set of compliance requirements. However they

also noted the need for further work to be undertaken to determine how this would look in practice.

Another agency provided feedback to AbSec that it does not support replacing the existing NSW Standards with the national CSS. They submitted that the 10 national CSS do not provide specific detail of meeting a child and family's need, and they don't specify a child's identity, culture, healing and family and community connections.

AbSec recommends that any review of applicable industry standards considers the creation of Aboriginal community controlled sector-specific standards. The current standards, both the NSW and national CSS, do not reflect or accommodate Aboriginal governance practices or cultural ways of working that are different to that of non-Aboriginal organisations. Developing ACCO sector specific standards, or at a minimum embedding Aboriginal cultural ways of working within the existing standards, would provide new and existing agencies with a greater chance of success.

We note that AbSec's Queensland equivalent, the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSIPP), has developed dedicated standards for the community-controlled sector that apply to community-controlled organisations providing dedicated Aboriginal and Torres Strait Islander programs.