

Submission to the Office of the Children's Guardian on the Code of Practice for designated agencies and adoption service providers

*"When you don't feel heard or listened to ... that affects your wellbeing" (Young person, NSW)
(CREATE Foundation, 2022d)*

*"Just because we are kids, it doesn't mean we don't know what's best... A person is a person no
matter how small." (Young person, NSW) (CREATE Foundation, 2022c)*

*"I didn't get told much. It's like I wasn't even there, like it's about your future but they're just telling
you what they're expecting. You can ask for something but it doesn't really go anywhere."
(Young person, NSW) (CREATE Foundation, 2022c)*

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About CREATE Foundation

The CREATE Foundation is the national consumer peak body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care, up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people with a statutory care experience and developing policy and research to advocate for a better care system.

Introduction

CREATE Foundation welcomes the opportunity to provide feedback to the Office of the Children's Guardian (OCG) as part of its final consultation on the Code of Practice for designated agencies and adoption service providers (the Code). CREATE is supportive of measures aimed to promote the safety, welfare and wellbeing of children who are in statutory out-of-home care or adoption arrangements, including extending OCG's child safe scheme to designated agencies and adoption service providers. Given our remit to elevate the voices of children and young people with a care experience, this submission focuses on strengthening practice to ensure children's rights are preserved and their voices are heard, especially in relation to decisions that affect them.

Monitoring ongoing compliance with the Code

CREATE notes the changes to the OCG's approach to agency practice monitoring and assessment, particularly that the OCG will no longer undertake comprehensive point-in-time renewal assessments against accreditation criteria for every agency. Rather, there will be briefer check-ins with agencies each year to understand how the agency is maintaining its compliance with the Code. CREATE welcomes this shift, specifically practice changes that allow assessors to spend more time talking to agency staff. CREATE also sees this shift in practice as an opportunity for the OCG to engage children and young people with a care experience in monitoring and assessment practices as experts by lived experience.

Young people's voices will be critical in reviewing agency compliance with the Code, especially given that the purpose of the Code is to promote the safety, welfare and wellbeing of children who are in statutory out-of-home care or adoption arrangements. Children and young people living within the out-of-home care system are best placed to comment on their experiences of being and feeling safe and what it would take to improve on this.

CREATE welcomes the inclusion of the Aboriginal and Torres Strait Islander Children and Young Persons Principle as one of the key guiding principles set out in s 4 of *Children's Guardian Amendment (Code of Practice) Regulation 2023*. Aboriginal sector voices are key to ensuring robust monitoring and ongoing compliance with the Aboriginal and Torres Strait Islander Children and Young Persons Principle. This also includes ensuring there are genuine commitments to self-determined approaches to keeping Aboriginal and Torres Strait Islander children safe, well and connected to culture.

CREATE recommends:

- Ensuring that the voices of children and young people with lived experience of child protection and care systems are deeply embedded in monitoring and evaluating agency practice, as experts by experience. CREATE is well positioned to facilitate the engagement of young people, noting that this would require additional resources.
- OCG work with Aboriginal sector to genuinely engage their voices and expertise in monitoring and evaluating agency practice against the Aboriginal and Torres Strait Islander Children and Young Persons Principle.

CREATE's feedback on the draft Code of Practice

Practice requirement 4: Meeting the individual needs of children—social and emotional development, identity and connections to family and culture

CREATE would like to see 'Practice requirement 4' strengthened to explicitly include maintaining sibling connections. In its current state, the *Children's Guardian Amendment (Code of Practice) Regulation 2023 s 12(3)*¹ makes no clear mention of sibling connections when outlining the extent of support designated agencies and adoption service providers should provide to children in terms of their social and emotional development, identity and connections to family and culture. Rather this may be broadly captured by the phrase 'people who are important to the child'. The children and young people in NSW that CREATE consults with have told us about the impact that lack of support to connect with their siblings has on them:

"My sister had a major life event and I didn't even know because it was hard to keep in touch once we got separated and that still affects me today but DCJ doesn't see that when they separate kids."
(Young person, NSW) (CREATE Foundation, 2022b)

"Lack of sibling contact and splitting up siblings can be really damaging." (Young person, NSW)
(CREATE Foundation, 2022c)

"It can be very difficult to rebuild sibling relationships at a later age than when they are younger."
(Young person, NSW) (CREATE Foundation, 2022c)

Young people also told us about the sense of safety they get from their siblings:


"My brother gave me support. I knew I was safer with him." (Young person, NSW) (CREATE Foundation, 2022b)

"A big thing for me is I can talk to my siblings and we can trust and confide in each other." (Young person, NSW) (CREATE Foundation, 2022a)

"Sibling contact is so important in fostering cultural connection. It would have helped me and my siblings and prevented them from getting in trouble and stuff and avoided current anger issues because I was the oldest and like in the mothering role." (Young person, NSW) (CREATE Foundation, 2022c)

Supporting strong sibling relationships for children in care is critical. Evidence suggests that nurturing sibling bonds while in care can help reduce the impact of previous negative experiences and trauma, and can provide valuable support well into adulthood (Aguiniga & Madden, 2018; Herrick & Piccus, 2005). Further, children who experience stronger relationships with their biological siblings whilst in

¹ s 12(3) sets out: *The entity supports children's relationships with family and people who are important to the child in accordance with the children's wishes and best interests.*



care are found to have greater levels of social support, self-esteem, and continuing adult sibling relationships than those who do not have such childhood relationships (McCormick, 2010).

CREATE's position is that where possible, sibling co-placements should be the priority but where that is not safe or possible, children must be supported by their caseworkers and carers to build and maintain strong and meaningful connections with their siblings. The National Standards for Out-of-home Care (agreed to by all states and territories, including NSW) also embeds the importance of maintaining sibling connections in Standard 9² (Commonwealth of Australia, 2011). The South Australian Department for Child Protection has recently engaged CREATE to co-design a guide for carers and caseworkers to support strong sibling relationships for children and young people in out-of-home care. CREATE will co-design this guide with children and young people with a care experience in South Australia, to better understand what factors young people feel will help with building and maintaining relationships with their siblings. CREATE is well positioned to support the OCG to develop a similar product in consultation with children and young people in NSW.

CREATE recommends:

- Enhancing the *Children's Guardian Amendment (Code of Practice) Regulation 2023* to explicitly outline the role designated agencies and adoption service providers play in supporting children and young people to maintain or build sibling connections and strengthening the practice guidance around sibling connections. This could include:
 - Adding a sub-section in s 12³ of the *Children's Guardian Amendment (Code of Practice) Regulation 2023* committing that 'the entity supports children's relationships with their siblings in accordance with children's wishes and best interests.'
 - Updating the '*Statutory Out-of-home Care and Adoption Implementation Handbook*' to include practice guidance that considers the impact of complex trauma on sibling groups, disconnection due to placement decisions, the nature of the connections between sibling groups (including the typologies of relationships between children who have experienced trauma considered by the Australian Childhood Foundation [2016]), and increasing positive connections. The South Australian Department for Child Protection has recently engaged CREATE to co-design a guide for carers and caseworkers to support strong sibling relationships for children and young people in out-of-home care. CREATE is well positioned to support the OCG to develop a similar product in consultation with children and young people in NSW.

Practice requirement 4—Meeting the individual needs of children—preparing for adulthood


While the *Children's Guardian Amendment (Code of Practice) Regulation 2023* maps some of the key elements for a successful transition in s 14⁴, CREATE would like to see this section strengthened to better capture and reinforce the need for the active participation of young people in planning for their transition. This should include planning across all life domains, with consideration of safe and affordable housing, connecting with culture and community, mentoring support that attends to relational needs and life skills, employment support, access to health services, and options to engage in further education.

CREATE welcomed the announcement by the previous NSW Government in November 2022 that NSW would offer extended care for young people in out-of-home care from 18 to 21 years, with the

² Standard 9 sets out: *Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.*

³ s 12 sets out: Practice requirement 4—Meeting the individual needs of children—social and emotional development, identity and connections to family and culture.

⁴ S 14 sets out: Practice requirement 4—Meeting the individual needs of children—preparing for adulthood



additional supports rolling out from February 2023. However, we have been hearing from young people and our sector partners that uptake of the program depends heavily on placement type (with those in foster care more likely to be accessing the package) and geographical location. It is concerning that young people seem to be experiencing different levels of support. They told us:

“I know I had a [transition] plan but didn’t really ever see it or know it.” (Young person, NSW) (CREATE Foundation, 2023b)

“I found out what it meant to transition from care when it happened. Didn’t know before it.” (Young person, NSW) (CREATE Foundation, 2023b)

“They didn’t do a leaving care plan until two weeks before [I left care] ... I ended up having to go out on my own to find a place and I ended up basically homeless... They just wiped their hands and said ‘there’s nothing more we can do.’ They set me up in a hotel for one night.” (Young person, NSW) (CREATE Foundation, 2023c)

While one young person highlighted their positive experience:

“I had a pre-employment program for two years... The program taught me how to work and now I have a job and money.” (Young person, NSW) (CREATE Foundation, 2023b)

Young people’s accounts point to inconsistencies in support and this ultimately results in variability in the extent to which young people are able to access support to improve the transition experiences. Barriers to support have real life consequences for young people, and anecdotally we have heard from some young people that it leaves them in positions of having to choose between food and rent, resulting in young people regularly going without food. Young people’s comments also speak to the need for more active involvement in planning processes.

CREATE recommends:

- Enhancing the *Children’s Guardian Amendment (Code of Practice) Regulation 2023* with the following amendments to considerations:
 - Update s 14(1)⁵ with an additional sub-section requiring the entity to ‘actively involve young people throughout the planning process including by providing them with real choices in relation to they type of support they receive in relation to housing, mentoring support, employment support, access to health services (including mental health services), and options to engage in further education’.
 - Update s 14(4)(c)⁶ to ensure the transition plan wraps in ‘planning across all life domains including considerations of mentoring support that attends to relational needs and life skills, employment support, access to health services (including mental health services), and options to engage in further education’.

Practice requirement 5 — People who work with and care for children are suitable and supported

Young people have told us about the characteristics they value in residential care workers. At CREATE’s recent Voices in Action Conference, which brought together young people with a care experience from across the nation (including young people from NSW) young people suggested that:

- there is a need for genuine and authentic support in residential care that recognises their individual needs

⁵ s 14(1) sets out: *The entity’s work to prepare children for adulthood— (a) starts when they are 15 years old, and (b) includes supporting children to develop and practise independent living skills.*

⁶ s 14(4)(C) sets out: *the plan sets out— (i) the financial assistance to be provided to the child, and (ii) where the child will live*

- residential care workers should focus less on risk and more on connections and positive relationships, and
- to improve and build a sense of safety within residential care settings that young people have a say in who looks after them in residential care
- there should be stronger mechanisms in place to match residential care workers to young people.

In NSW, 4.6% (or 706) of children and young people are placed in residential care (AIHW, 2024). We know it is important for these young people to develop trusting and supportive relationships with care workers and that staffing changes can profoundly disrupt their experiences of residential care and the level and quality of support they receive. And that there is a lack of opportunity to develop healthy attachments.

CREATE believes that all state and territory governments should be putting in place strategies to transition away from the use of residential care, in favour of increased investment in early intervention programs and alternative models of care that better meet the relational and developmental needs of children, especially small children. Alternative home-based care arrangements, such as professionalised foster care and home-based Intensive Therapeutic Support, should be established and expanded to replace the need for residential care for young people that require more intensive support in the long term. This could also be supplemented by more targeted and place-based recruitment drives to increase the number of foster carers entering the system to provide targeted trauma-informed care for young people with high needs through evidence-based models of care. CREATE acknowledges the transition will be a long-term process and calls on governments to adequately fund the residential care sector in the interim to ensure that fully therapeutic models of care are provided to all children and young people in those settings.

In this context CREATE recommends:


- Expanding the *Children’s Guardian Amendment (Code of Practice) Regulation 2023* by inserting an additional sub-section within s 16 requiring:
 - ‘the entity actively involve young people placed in residential care to have a say in who cares for them in an effort to improve placement matching between care workers and young people and in recognition of their individual needs’.

Practice requirement 6—Child protection and child safety; and Practice requirement 8—Quality assurance and continuous improvement

In 2023, CREATE asked 29 young people with a care experience aged 12 – 18 in NSW about making a complaint and what helps and hinders participation in this process. Of the young people surveyed who had made a complaint, 60% said they were "not at all" or only "a little happy" with the response received (CREATE Foundation, 2023c). Young people said that a key barrier to them raising a complaint was a belief that nothing would change. They told us:

“The last one [caseworker] I had told me that my carer wouldn’t have ever done anything [about what] I complained about and that was like the last straw for me, like, I’m never getting help, like, I’m not gonna get out of it type thing. They didn’t believe me, which really hurt ‘cause I was like, it’s really not going to get better if someone who once supposedly was there for me, not for the carer, is actually not there for me. I felt so defeated and then afterwards, like, I never opened my mouth about anything.” (Young person, NSW) (CREATE Foundation, 2023a)

“The process is often daunting and DCJ make it incredibly difficult to complain. I once called them for an issue in my leaving care plan and it took me quite a while to get in contact with them, and when I did, they weren’t friendly or understanding. So, I can’t imagine how inadequate their processes would be with complaining.” (Young person, NSW) (CREATE Foundation, 2023a)



“Because children don’t always get heard by adults, and if we express specific fears we are often ignored, and our concerns are not respected and we may be placed at risk.” (Young person, NSW) (CREATE Foundation, 2020b)

“No one takes me seriously.” (Young person, NSW) (CREATE Foundation, 2023a)

Young people’s words speak to the urgent need for more robust processes to ensure they feel safe, supported and that timely feedback will be provided when they take the steps to raise complaints or provide feedback based on their experiences.

To better meet the needs of children and young people, CREATE recommends:

- Including within s 17 (2)⁷ an additional sub-section requiring that ‘when children raise concerns or complaints, the entity provides timely updates to children on how this is being managed and communicates what actions will arise from their concerns or complaints. Where there is no response, children should be notified of this and provided with a reason as to why this course of action was chosen’.
- Including within s 18(3)⁸ an additional sub-section requiring that ‘when children provide feedback, the entity provides timely updates to children on how this is being managed and communicates what actions will arise from their feedback. Where there is no response in relation to the feedback provided, children should be notified of this and provided with a reason as to why’.
- Ensure that complaints mechanisms follow the principles set out in CREATE’s [Child-Centred Best Practice Guide \(see Appendix C for CREATE’s Child-Centred Best Practice Guide\)](#), which was informed by the voices of young people and outlines steps to ensure that children and young people are informed and encouraged to make complaints, are listened to and believed, are involved in decision-making, feel confident that they will be safe, and receive regular updates and timely resolutions.
- Include considerations relating to monitoring and evaluating complaints systems over time into the ‘*Statutory Out-of-home Care and Adoption Implementation Handbook*’. This could include establishing clear, specific, and measurable indicators assessing the experiences of young people and their level of satisfaction with complaint processes. Such measures would help to improve transparency and accountability of complaints mechanisms.

Practice requirement 7—Providing safe and suitable care environments

The young people CREATE consults with have told us that they highly value being attentively listened to and they appreciate care and trustworthiness as important qualities in caseworkers. In 2020, CREATE asked 30 young people in NSW, aged between 10–25 years and with a care experience, about their experiences connecting with caseworkers, the levels of support they receive from these relationships, and what caseworkers can do to be more supportive of their needs. 39.3% of the young people consulted had experienced poor communication, no information sharing, and uncaring/rude worker behaviours (CREATE Foundation, 2020b). Young people have also told us:

“I felt like I was not being respected and well treated with the way my organisation had treated me and my brother, because they would do stuff like leave things till the last minute and never take in mind about [take into consideration] our feelings.” (Young person, NSW) (CREATE Foundation, 2020b)

⁷ s 17(3)(b) sets out: *The entity— (a) provides children regular and direct access to a caseworker or a staff member of the entity, and (b) supports children to raise concerns or complaints, including by providing opportunities to speak with a caseworker or staff member separately from the person who provides the child with day-to-day care.*

⁸ s 18(3) sets out: *The entity seeks feedback, from children, children’s families and the people who work with and care for children, on— (a) their experiences of the entity, and (b) opportunities to improve practice.*



“I want to feel like my wishes are being respected by my caseworker and, to my knowledge, neither of these things are apparent.” (Young person, NSW) (CREATE Foundation, 2020b)

“I wish that caseworkers were held accountable for the things that they do/don't do. I wish that I could have multiple people hearing what I say so that my words don't get changed.” (Young person, NSW) (CREATE Foundation, 2020a)

In this context, CREATE is concerned that s 18 of *Children’s Guardian Amendment (Code of Practice) Regulation 2023* does not explicitly commit the entity in actively involving children and young people in decision making processes related to proposed placements, suitability and ongoing monitoring, and placement changes.

CREATE recommends:

- To better safeguard the rights of children in care, particularly the right to take part in making important decisions affecting their life, that s 18 of *Children’s Guardian Amendment (Code of Practice)* include a sub-section stating ‘the entity actively engages children in placement decisions in a way that is appropriate to their age and stage of development’.

Conclusion


Thank you for the opportunity to provide feedback to the Office of the Children’s Guardian on the Code of Practice for designated agencies and adoption service providers. Children and young people in care continue to voice their desire to exercise their right to participate in decisions that affect them and they call for systems and services that listen to their needs and their words. We urge the Office of the Children’s Guardian to implement the mechanisms outlined in our submission to better safeguard their rights. These additions would embed children and young people’s expertise and experiences in ongoing monitoring and assessment of agencies authorised to provide them with care and support.

Should you have any questions or require additional information, please contact Imogen Edeson, National Advocacy and Influencing Manager, CREATE Foundation. E: advocacy@create.org.au



References

- Aguiniga, D. M., & Madden, E. E. (2018). Foster care placement process and settings. In E. Trejos Castillo & N. Trevino-Schafer (Eds.), *Handbook of Foster Youth* (pp.20–40). Routledge.
- Australian Childhood Foundation. (2016). *The impact of trauma on sibling relationships*. Webpage. <https://professionals.childhood.org.au/prosody/2016/12/trauma-and-siblings/>
- Australian Institute of Health and Welfare. (2024). *Child protection Australia 2021–22*. Retrieved from <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22>
- Commonwealth of Australia (2011). *An outline of National Standards for Out-of-home Care: A Priority Project under the National Framework for Protecting Australia’s Children 2009 – 2020*. Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group. https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf
- CREATE Foundation. (2020a). *Participation in Out-of-Home Care in New South Wales: The views and experiences of children and young people living in care in New South Wales*. CREATE Consultation. <https://create.org.au/wp-content/uploads/2021/04/NSW-participation-report-FINAL-Jan-2021-amendment.pdf>
- CREATE Foundation. (2020b). *Young People and their Connection with Caseworkers: Seeking supportive relationships in out-of-home care*. CREATE Consultation. https://create.org.au/wp-content/uploads/2023/09/KMD_2020_Caseworker-Support-NSW_EH.pdf
- CREATE Foundation. (2022a). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on resources from the National Association for the Prevention of Child Abuse and Neglect (NAPCAN) and the child protection week theme - ‘Every child, in every community, deserves a fair go’*. Unpublished.
- CREATE Foundation. (2022b). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on sibling connection and placement change*. Unpublished.
- CREATE Foundation. (2022c). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on values in the out-of-home care system*. Unpublished.
- CREATE Foundation. (2022d). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on wellbeing*. Unpublished.
- CREATE Foundation. (2023a). *Complaints Processes: The views of young people with an out-of-home care experience in NSW*. CREATE Consultation. <https://create.org.au/wp-content/uploads/2024/03/Key-message-document-Complaints-Consultation-NSW-2023.pdf>
- CREATE Foundation. (2023b). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on Care to 21 - Let’s Do It Better*. Unpublished.
- CREATE Foundation. (2023c). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales on relationships with caseworkers*. Unpublished.

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- Herrick, M. A., & Piccus, W. (2005). Sibling connections: The importance of nurturing sibling bonds in the foster care system. *Children and Youth Services Review*, 27, 845– 861. <https://doi.org/10.1016/j.childyouth.2004.12.013>
- McCormick, A. (2010). Siblings in foster care: An overview of research, policy, and practice. *Journal of Public Child Welfare*, 4(2), 198–218. <https://doi.org/10.1080/15548731003799662>