

Child Safe Standards, Policy and Cabinet Division
Chief Minister Treasury and Economic Development Directorate
GPO Box 158
Canberra ACT 2601

Tuesday 3 March 2020

To Whom It May Concern,

Thank you for the opportunity to provide feedback in relation to the ACT Child Safe Standards Scheme.

As you are aware, the ACT Disability, Aged and Carer Advocacy Service (ADACAS), is a human rights based organisation, with staff teams providing free individual advocacy, information and advice to people with disability, people experiencing mental ill health, older people and carers. A team of ADACAS staff also deliver support coordination to NDIS participants. ADACAS additionally has a Policy and Projects team conducting research (especially focused on supported decision-making) and systemic advocacy. This response has been developed by this team, and endorsed by the ADACAS CEO.

Please see responses to a selection from the questions being asked, below.

1	<p>Should the coverage of the ACT Child Safe Standards scheme be broader than the organisations specified by the Royal Commission in recommendation 6.9? Examples of broader scope include the Victorian Child Safe Standards scheme and the ACT Working with Vulnerable People scheme.</p> <p>ADACAS considers that the coverage of the ACT Child Safe Standards Scheme should be broader in scope than the organisations specified by the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter referred to as “the Royal Commission”). We note in particular that the scope of the ACT Working with Vulnerable People scheme should be maintained, and not reduced. We would also encourage the inclusion of any organisations that are operating in the ACT or supporting individuals who are based in the ACT (as opposed only to organisations who are based in the ACT).</p>
3.	<p>Are there some organisations not ‘specifically’ provided to children and young people or their carers (so they do not fall within the definition in s8A Human Rights Commission Act 2005) that should be included in an ACT Child Safe Standards scheme?</p> <p>Yes. As an advocacy service predominately working with adults (but sometimes with families where there is a child with a disability, and sometimes in situations where there is a parent with disability), we would consider that the definition should be sufficiently broad to include us and other organisations in similar situations.</p> <p>These standards should also apply to people working in all types of organisations (including small businesses, sole traders, religious organisations, sporting groups, music groups etc.)</p>

4.	<p>Are there certain organisations engaging with children and young people in the ACT that should not be included in the Child Safe Standards scheme, and if so, for what reasons?</p> <p>ADACAS considers all organisations engaging with children and young people in the ACT should be included in the Child Safe Standards scheme.</p>
6.	<p>When comparing the National Principles, Victoria Standards and NSW Standards, which elements are:</p> <p>a. Important to include in the ACT Standards because they emphasise particular themes, concepts or actions?</p> <p>b. Easier to understand in structure, language or tone?</p> <p>c. Better suited to the ACT context?</p> <p>In our view - the National Principles are easier to understand than the Victorian standards, however we like the idea of the overarching principles requiring people implementing the principles to consider the increased vulnerability of Aboriginal children, children from culturally and linguistically diverse backgrounds and children with disability. We support these three groups being identified as groups where additional support might be required.</p> <p>We note however that in addition to these three groups, there are also other vulnerable groups (children who have experienced trauma or abuse, children who experience mental ill health, young carers, children who are homeless, children who both identify with gender and/or sexual diversity (one or more of LGBTQIA+) and are in a family/social context where their identity/ies are unsupported etc.)</p> <p>Rather than additionally specify all the additional possible types of vulnerabilities - we wonder whether it might be necessary to include an overarching statement about the need to consider/respond to increased vulnerability in all forms (with lists of possible examples, but not a comprehensive list)?</p> <p>We note also the importance that it be clear that child safe standards apply for all children (regardless of citizenship, residency or asylum seeker status).</p> <p>We would encourage information being made available in plain (and Easy) English about child safe standards.</p> <p>We would encourage participation and co-design processes with children and youth as part of the development of the information required.</p>

7.	<p>The location for Child Safe Standards oversight has been decided, and will not be changed. However, government welcomes feedback on how the Child Safe Standards will intersect with the other functions of the Human Rights Commission, to ensure that the benefits of co-location are enhanced, and risks are mitigated.</p> <p>We note that having the ACT Human Rights Commission administer/lead the Child Safe Standards scheme offers opportunities to increase awareness about rights, human rights obligations and best practice approaches in balancing risks/balancing rights when this is needed.</p> <p>Given the ACT Human Rights commission role in handling complaints in relation to health, disability and community services, and also complaints under discrimination law, we are conscious that there are risks, and the potential for conflict of interests to arise.</p> <p>Potential examples:</p> <ul style="list-style-type: none"> • If a person were to be making a complaint of discrimination against an organisation whose actions were originating with responsibilities in line with child safe standards • If a parent with disability interacting with child protection wanted to make a complaint about sharing of information and CYPS was advising that they were relying on the Child safe standards in determining their response, what impact would this have for the perceived independence of the Human Rights Commission as the agency to respond to the person’s complaint? <p>Given the potential for issues to arise, we would recommend that the ACT Human Rights Commission make publically available the approaches/ actions taken to manage such risks, and mitigate the impacts of any conflict of interests that could arise from dual roles.</p> <p>We also wonder whether the functions of community engagement and capacity building should be separated from the roles of people doing monitoring and enforcement.</p>
8.	<p>Which functions proposed for oversight of Child Safe Standards are particularly important, and should be emphasised?</p> <p>All of the suggested oversight roles (community engagement and capacity building, monitoring and enforcement and interagency collaboration) are important.</p> <p>We consider that “build[ing] compliance into existing regulatory or administration systems” and “having sector-specific tools and resources to support compliance” are especially important, and should be emphasised.</p>

9.	<p>Are any functions potentially unsuitable, and should be reconsidered?</p> <p>There should be additional avenues for monitoring or compliance in situations where a conflict of interest has arisen, or where there is a risk that involvement of the ACT Human Rights Commission in monitoring or compliance would have unwanted repercussions.</p>
11.	<p>What types of information should be used to inform the Child Safe Standards risk assessment framework (to help the Commission target monitoring activities where it will have the greatest outcomes for child safety)?</p> <p>Do existing government agencies and regulatory bodies have relevant information that they can appropriately share with the Child Safe Standards oversight body for this purpose?</p> <p>Some of the information that should be used to inform the child safe standards risk assessment framework:</p> <ul style="list-style-type: none"> • Whether breaches of human rights have occurred (both the number and the nature of those breaches) • Level of impact of the breach of rights • What the impact would be on the rights of other people involved. • What actions the agency has taken to address what has occurred, and whether these actions are sufficient in light of the nature of the breach. • The quality of the policies, procedures and practices that the organisation has in place to ensure child safety. • The level of understanding of the management and governance of the organisation of their responsibilities under the child safety standards legislation • The level of training that staff have received, and their demonstrated understanding of that training. • Views of children, youth and families about the operations of a particular agency/organisation • We are conscious that there are many more. <p>In terms of information-sharing: ADACAS believes children have a right to be safe, and note that information sharing can be a vital mechanism to ensure that this safety is protected. We also however note that there are circumstances where information sharing can be very harmful (especially if information collected were to be shared without due consideration of whether the information is accurate, the impacts of sharing such information, or where such information might find itself if it is shared).</p> <p>Whilst in this question the focus is on sharing information between government departments, we provide examples of impacts of other types of information-sharing that we have seen:</p> <ul style="list-style-type: none"> • ADACAS as an advocacy service working with parents with disability, has at times received requests from government departments or tribunals or courts to share information about a client that we are working with, in instances where the benefits of providing information were minimal (often our information was already on record), where we were not the most appropriate agency to ask, and where ADACAS providing information would cause harm to the relationship

	<p>between the client and ADACAS, and reduce the supports (and the chances of good outcomes for children and the family involved).</p> <ul style="list-style-type: none"> • In other instances: we are aware that residents of the ACT have had medical and clinical information subpoenaed from every available source. This widespread subpoenaing (instead of requesting a report when necessary from the clinician involved) can have the impact of making clients feel pursued, and that they are unable to safely (privately) access health or medical support. This can also be especially of concern in terms of safety of all parties, especially if there is a chance that information might end up being placed before a tribunal or court in a way that (former partners) can access such private information. (Whilst some people have access to lawyers to help ensure this does not happen, there are also people in situations where legal help is not so readily available). • ADACAS is also aware of situations where agencies have shared information between themselves in preference to seeking the information directly from a person with disability, purely as it would take a little more time to provide the information to the person in a way that the person could understand the information and the options available to them, have support available to them in their decision-making process. It is imperative that people with disability have their rights upheld, not undermined by processes which have the impact of excluding the person with disability from decision-making processes <p>ADACAS works with populations who are vulnerable (often due to disability and/or mental ill health). Given the existing responsibility to report if we think a child is at risk of abuse or neglect, and to report to police if we believe child sexual abuse has occurred, we note that information-sharing should happen only when it needs to occur, that it should occur in a considered way, and that there needs to be rigorous processes to assess the appropriateness of requests for information (and the impacts of such requests on all parties involved) before such requests are made.</p>
12.	<p>How should the oversight body support organisations to build their capacity to meet Child Safe Standards?</p> <p>We liked the list of examples of support that might be provided or coordinated by an oversight body, and would encourage as many of these as possible to occur.</p> <p>We would suggest that training be made available, in multiple formats over multiple dates, and that also mentoring (in an ongoing way) should be made available to organisations to ensure that there is a clear understanding of rights but also responsibilities. We also would recommend that sector-specific information be made available in multiple formats. We would recommend children and youth be involved in the processes to develop the training.</p>

13	<p>How can the scheme be designed to enhance the beneficial impacts of Child Safe Standards, and minimise the potential burden, for the following types of organisations with their different characteristics and challenges? a. Community organisations b. Small business operators c. Volunteer groups</p>
	<p>We defer to the opinions of the various types of organisations for their comments on this topic.</p>
14.	<p>What powers should the oversight body have to monitor compliance with Child Safe Standards?</p>
	<p>We consider that the ACT Human Rights body should have the full complement of monitoring and enforcement powers (as per those listed on pages 18-19 of the Child Safe Standards discussion paper).</p> <p>As mentioned above – we note the need for especial care around information sharing (and requiring of information) such that when there are rights being balanced that there are not unnecessary harm caused to the support structures working with people who might be vulnerable for little benefit.</p> <p>We support the need for a power to require Working with Vulnerable People cards to be returned and/or seized when this is necessary.</p>
15.	<p>What powers should the oversight body have to enforce compliance with Child Safe Standards?</p>
	<p>We consider that the ACT Human Rights body should have the full complement of monitoring and enforcement powers (as per those listed on pages 18-19 of the Child Safe Standards discussion paper).</p>
18.	<p>Should sector regulators have a formal role in enforcing compliance with Child Safe Standards?</p>
	<p>Yes – but this role must be very carefully worked through, such that there are not unanticipated consequences (e.g. organisations obscuring non-compliance due to fear of impacts).</p>
19.	<p>Should funding bodies have a formal role in promoting compliance with Child Safe Standards?</p>
	<p>Yes, however we would encourage ensuring that any duplication is strategic, as opposed to unnecessary.</p>
20.	<p>What sort of partnerships do the following types of organisations wish to establish with the Child Safe Standards oversight body (what activities are they comfortable undertaking, and what activities do they wish to avoid): a. Sector regulators b. Funding bodies c. Peak bodies</p>
	<p>We defer to these organisation types for commentary on this question.</p>

22.	<p>How much of the partnership framework should be formally legislated (to authorise collaboration and ensure consistency across sectors); and how much should be left open to negotiation through bilateral MOUs with the oversight body (to allow flexibility in different contexts)?</p> <p>We would envisage that a combination of legislation and MOUs would be needed. We emphasise the need for transparency for people who might be at the centre of processes (especially of information being shared).</p> <p>We note the need for a definition of child safety: a definition that incorporates an understanding of safety but also that appropriate balancing with risk can be a positive and important aspects of a child's life.</p>
23.	<p>To what extent are existing information sharing provisions (eg. in the Human Rights Commission Act 2005, Children & Young People Act 2008, and Ombudsman Act 1989) sufficient to enable the Child Safe Standards oversight body to establish partnerships with regulators, funding bodies and peak bodies. What additional authority to share information may be needed to support collaboration on Child Safe Standards?</p> <p>As mentioned above the existing information sharing provisions do not always work appropriately in practice (and "fishing expeditions" can be harmful to the shared outcomes desired of improved children's experience). We encourage consideration of how the effectiveness of such provisions could be improved.</p>

Please do not hesitate to contact us should you have any enquiries about this feedback.

Yours faithfully,

Mr Michael Bleasdale
 Chief Executive Officer (CEO)
 ACT Disability Aged and Carer Advocacy Service (ADACAS)
 Unit 14 Weston Community Hub Gritten Street Weston ACT 2611
 PO Box 3167 Weston Creek ACT 2611
 Ph 02 6242 5060 Fax 02 6242 5063 TTY 133 677 (National Relay Service)
<http://www.adacas.org.au/>

ADACAS acknowledges the Ngunnawal people as the traditional owners of the land on which we work, and pay our respects to their Elders, and to all Aboriginal and Torres Strait Islanders in our community.

ACT Disability Aged and Carer Advocacy Service Inc
 Unit 14 Weston Community Hub Gritten Street Weston ACT 2611
 Ph 02 6242 5060 Fx 02 6242 5063 TTY 133 677 (National Relay Service)
<http://www.adacas.org.au/>

ABN 15 750 251 576
 PO Box 3167 Weston Creek ACT 2611
adacas@adacas.org.au