

Australian Capital Territory

Children and Young People (Care and Protection Organisations and Responsible Persons – Suitability Approval Application) Guidelines 2018 (No 1)

Disallowable instrument – DI2018-95

made under the

Children and Young People Act 2008, Section 62 (Entity may apply to be suitable entity for a purpose)

1 Name of instrument

This instrument is the *Children and Young People (Care and Protection Organisations and Responsible Persons – Suitability Approval Application) Guidelines 2018 (No 1)*

2 Commencement

This instrument commences on the day after notification.

3 Guidelines

I make the following Children and Young People (Care and Protection Organisations and Responsible Persons – Suitability Approval Application) Guidelines.

Bernadette Mitcherson
Director-General, Community Services Directorate

16 May 2018

Children and Young People (Care and Protection Organisations and Responsible Persons Suitability Approval Application) Guidelines

1. Introduction

The Office of the Human Services Registrar (HSR), which is independent within the Community Services Directorate, is responsible for the regulation of approved Care and Protection Organisations on behalf of the Director-General. The function of regulation under the legislation is to provide safeguards for service users, government investment and the community. The legislation provides powers to approve organisations, monitor their performance, intervene when noncompliance may occur, and to revoke the approval of organisations if they are unwilling or unable to comply.

The primary and preferred method of ensuring compliance is through *regulatory engagement* – the Human Services Registrar and organisation working together, voluntarily, to achieve and maintain compliance. If non-compliance is significant and requires more than regulatory engagement to ensure that change is made and compliance is achieved, intervention powers can be used (refer to the *Approved Care and Protection Organisations – Intervention Guidelines*). Procedural fairness underpins the regulation of care and protection organisations.

This guideline is one of three that guide the overall operation of approved care and protection organisations in accordance with the *Children and Young People Act 2008* (the Act) and underpinned by the *Children and Young People Regulation 2009*. The other two guidelines are:

- approved Care and Protection Organisations – Monitoring Guidelines; and
- approved Care and Protection Organisations – Intervention Guidelines.

2. Regulation of Care and Protection Organisations

The Act requires the Director-General of the Community Services Directorate (the Director-General) to undertake functions for the provision of services to vulnerable children and young people and their families.

The Director-General has the powers to:

- register an organisation and revoke its registration under certain circumstances;
- monitor compliance of organisations with the Act;
- investigate complaints about an organisation's compliance with the Act; and
- record and make certain information about an organisation publicly available.

The Director-General expects that each approved Care and Protection Organisation will ensure that it continues to be compliant with the *Children and Young People Act 2008* and undertakes regular evidence based self-assessment of performance against the Act.

3. Separation between regulation and policy and funding activities

The Human Services Registrar's functions are limited to regulatory activities. Child, Youth and Families (CYF) and other areas of the Community Services Directorate will retain responsibility for policy and funding activities and relationship and program management. In line with the Auditor-General's recommendation, the HSR will make recommendations to the Director-General in their own right and CYF will not instruct or seek to influence the recommendations of the HSR. CYF will have the option of making a submission to the Director-General on the recommendations made by the HSR for the Director-General's consideration before a final decision is made.

4. Approved Care and Protection Organisations

Under the Act, only approved care and protection organisations can provide a care and protection purpose in the ACT. An organisation is given approval when it demonstrates its capacity to provide care and protection services in accordance with a set of criteria or standards. Approved care and protection organisations have been approved as suitable entities for a care and protection purpose and also have at least one person approved as a responsible person pursuant to sections 62 to 65 of the Act. Care and protection purposes are:

- to provide placement prevention, reunification and supported contact services in a home or community setting or a residential setting;
- to provide kinship and foster care services;
- to provide residential care services;
- to provide clinical services;
- to provide engagement, empowerment and advocacy services; and
- to provide transition to adulthood services.

5. Purpose of this guideline

The Act provides the legal framework for the system of regulatory oversight of care and protection organisations and services. This guideline, along with the Children and Young People Approved Care and Protection Organisations – Monitoring Guidelines, and the Children and Young People Approved Care and Protection Organisations – Intervention Guidelines, will support the administration of the Act and includes provision to support the day-to-day operation of the legislation.

This guideline provides the criteria to be applied by the Human Services Registrar to assess and approve an organisation as a suitable entity for a care and protection purpose and the criteria to assess and approve an individual as a responsible person for an approved care and protection organisation. Organisations include those subcontracted to provide care and protection services.

The guideline supports the use of assessment and approval activities that are:

- consistent under the Act; and
- consistent with the principles of good regulation.

The guideline is not prescriptive as care and protection organisations seek to provide a range of services within the purposes which they may apply for. In deciding whether to approve an organisation for a care and protection purpose, or a responsible person for a care and protection organisation, the Director-General should consider all relevant information in order to form a judgement about whether:

- an organisation has the capacity to comply, and is likely to continue to comply, with the requirements of the Act and the Care and Protection Organisation Standards (the Standards).
- a responsible person complies with, and is likely to continue to comply, with the requirements of the Act and demonstrates the required leadership and management capabilities.

6. Principles of Regulation

The Human Services Registrar applies the following principles of regulation for Care and Protection Organisations:

Proportionate - enforcement powers will be only be used when necessary and in a way that is appropriate to the assessed level of risk;

Accountable - able to justify regulatory assessments and be subject to scrutiny;

Consistent - enforcement will be consistent regardless of the jurisdiction in which the provider operates;

Transparent - there will be clear and open communication with providers about enforcement processes and decisions;

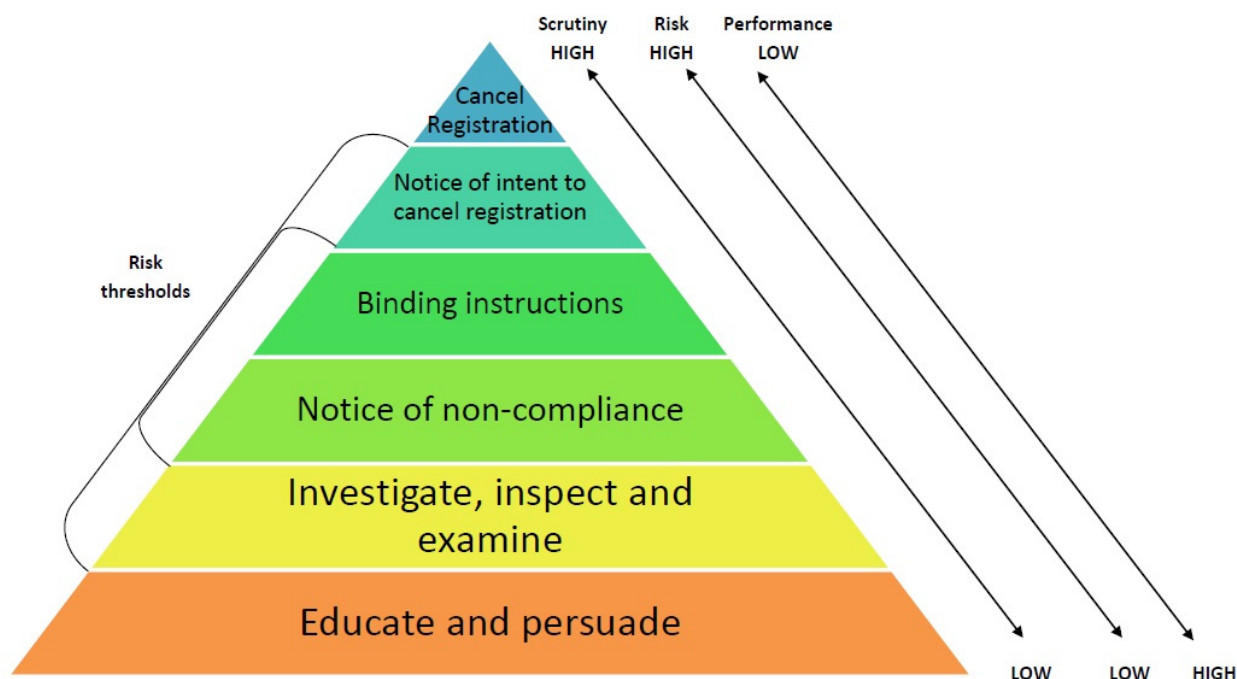
Flexible - enforcement will avoid unnecessary rules about how providers organise their business and demonstrate compliance;

Targeted - enforcement will be focused on the core purposes of improving outcomes and protecting vulnerable children and young people.

7. Risk-based Regulation

A proportionate regulatory approach will be applied, involving different levels of regulatory engagement, dependant on the approved care and protection organisation's risk profile. The Director-General will work from the principle of setting the minimum requirements necessary to appropriately manage risk.

Triggers and Scope for Action, Regulatory Sanctions and Support



8. Enforcement Powers

Under the Act, the Human Services Registrar has a range of enforcement powers for use if there is a reasonable belief that a provider is not complying with the Act, or its subordinate legislation (Refer to the *Approved Care and Protection Organisations – Intervention Guidelines*).

9. ACT Care and Protection Organisation Standards

The Director-General will use the ACT Care and Protection Organisation Standards (the Standards) as the basis for assessing and monitoring care and protection organisations. The purpose is to monitor organisation's ongoing compliance and recognise the need to intervene when non-compliance may occur. The Standards are consistent with the *United Nations Convention on the Rights of the Child* and incorporate the principles of child safety in organisations developed by the Australian Children's Commissioners and Guardians.

Domains

There are 18 standards within 5 domains relating to quality and safety and also to capacity and capability. Collectively, these domains describe how a service provides high quality, safe and reliable care that is centred on those using a service. The domains are:

1. Quality of care and support - Quality of life;
2. Quality of care and support - Meeting needs;
3. Quality of direct service staff, carers and volunteers;
4. Quality environments; and

5. Quality of leadership, governance and financial viability.

10. Suitable Entities

Suitable Entities include both care and protection organisations and their approved responsible persons under the Act. The Act requires that all suitable entities be assessed against certain information. In addition to being assessed against the suitability information:

- a care and protection organisation will also be assessed for their capacity to meet the Care and Protection Organisation standards.
- a responsible person is assessed against the following capabilities:
 - a champion for a child and young person safe and friendly organisation;
 - lead and value people;
 - shape strategic thinking;
 - achieve results with integrity; and
 - foster and facilitate collaboration within the organisation and across the service system.

11. Suitability Information

In deciding whether an entity is a suitable entity for a stated purpose, the Director-General must consider the following suitability information and provide the entity with a written notice that the following will be considered:

- any conviction of, or finding of guilt against the entity for:
 - an offence relating to the provision of services for children or young people; or
 - an offence against a child or young person; or
 - an offence involving a child or young person; or
 - an offence involving violence; or
 - a sex offence; or
 - an offence involving dishonesty or fraud; or
 - an offence involving the possession of, or trafficking in, a drug of dependence or controlled drug; or
 - an offence against an animal;
- any proven noncompliance by the entity with a legal obligation in relation to the provision of services to children or young people;
- a refusal of any application for a licence or other authority that relates to the provision of services for children or young people.
- how sound an entity's financial reputation and the stability of the entity's financial background;
- the entity's reputation for honesty and integrity;
- the entity's proven experience or demonstrated capacity to provide services for children and young people;
- whether a child concern report about an entity has been received by the Director-General and any action that has been taken in response to the report by the Director-General or a court or tribunal;
- for the purpose of a suitable entity being a foster carer, every adult in the household must also be assessed for being a suitable entity before the foster carer can be approved; and

- any other consideration relevant to the entity's ability to provide high quality services for children and young people.

The suitability information may be about any circumstance or thing mentioned whether it occurred inside or outside the ACT.

12. Application Process

To be assessed as a suitable entity for a purpose, an organisation or individual must:

1. apply in writing to the Director-General using the application to be approved as a suitable entity for a stated purpose (either for an organisation or responsible person);
2. identify the purpose or purposes for which they are seeking to be approved; and
3. provide evidence to demonstrate their suitability.

Evidence of suitability must demonstrate that the organisation has the capacity to provide a high quality service under the Standards and is likely to have at least 1 responsible person for the organisation at all times during the term of approval. The responsible person must demonstrate that they are suitable, and in a position, to take responsibility for the services provided by the organisation in the ACT.

13. Assessment of Application – Suitable Entity (organisation) for a Care and Protection Purpose

The Human Services Registrar will:

1. identify the services the organisation is seeking approval to provide;
2. identify if the organisation is seeking recognition of a license or authority through another assurance system, and then provide recognition against the comparable criteria; and
3. provide the organisation with a Suitable Entity Capacity Statement and Evidence Index identifying the domains against which the organisation must demonstrate capacity.

Evidence Portfolio

There are two types of evidence that organisations must provide:

- a completed Suitable Entity Capacity Statement and Evidence Index, and
- the corresponding portfolio of evidence.

The organisation may provide a number of different documents to support their application including, but not limited to:

- financial statements
- case plan templates
- referee templates
- policies and procedures
- meeting minutes

Gap Analysis and Assessment of Evidence

The Human Services Registrar will engage with organisations to work together to ensure compliance can be achieved. An assessment of the evidence portfolio, including a gap analysis, will be undertaken against the Domains and Standards. If capacity is demonstrated, then a recommendation for approval as a suitable entity is submitted to the delegate for a decision. If capacity is not demonstrated, additional information may be requested. If an organisation is unwilling or unable to demonstrate capacity they cannot be approved as a suitable entity for this purpose.

14. Assessment of Application – Suitable Entity (Responsible Person) for a Care and Protection Purpose

1. The application is considered by a panel of three, comprising the Human Services Registrar, CSD Executive Directors, Directors and/or the Deputy Director General, CSD.
2. An assessment of the application is undertaken against the assessment criteria.
3. If capacity is demonstrated, then a recommendation for approval as a suitable entity is made.
4. If capacity is not demonstrated, the panel may request additional information, in which case the information will be reconsidered and a decision about approval made.
5. If an individual is unwilling or unable to demonstrate capacity they cannot be approved as a suitable entity for this purpose.

15. Decision on Suitability

1. An organisation will be provided with an opportunity to comment on the draft report and recommendation before it proceeds to the delegate for a final decision;
2. If the Director-General, or delegate, agrees with the recommendation the organisation will be approved as a suitable entity and notified in writing of the recommendation; and
3. If the suitability of responsible person has been agreed, the organisation will be approved and placed on the Care and Protection Organisation Register.

16. Care and Protection Organisation Register

The Director-General is required to maintain a publicly accessible register of organisations that have been approved under *Section 63* of the Act as being suitable to be a Care and Protection Organisation for a stated purpose. This register is maintained by the Human Services Registrar. Along with the details of any regulatory action, the register must include the following details:

- the name of the organisation;
- the organisations ABN (if any);
- if the organisation is a corporation – the corporations ACN

- a unique approval number
- the name of the responsible person(s) for the organisation
- the care and protection purpose(s) for which the organisation is approved;
- any of the following given to the organisation:
 - a noncompliance notice;
 - a noncompliance direction;
 - a safety suspension notice;
 - an intention to cancel notice;
 - a cancellation notice;
- if the organisation's approval has been cancelled at any time, the details of the cancellation;
- anything else prescribed by regulation;

The Approved Care and Protection Organisations Register is listed on the Community Services Directorate website and is publically accessible.

17. Ongoing Compliance Assessment

The Human Services Registrar has a system to monitor on-going compliance with the suitable entity criteria (refer to the *Approved Care and Protection Organisation – Monitoring Guidelines*). The Care and Protection Organisation Standards also act as an instrument against which to assess compliance.

18. Reviews and Appeals

The Care and Protection Organisations and Responsible Person entities are reviewable decisions under the Act. There is a formal process that allows these decisions to be reviewed by the Administrative and Civil Appeals Tribunal (ACAT). This is underpinned by *ACT Civil and Administrative Tribunal Act 2008*.

The decisions include:

- refusal to approve organisation as suitable entity to be approved care and protection organisation;
- revoke approval of organisation as suitable entity to be approved care and protection organisation;
- refuse to approve individual as suitable entity to be responsible person for approved care and protection organisation; and
- revoke approval of individual as suitable entity to be responsible person for approved care and protection organisation.

Process for reviewing decisions

If a reviewable decision is made about Care and Protection Organisations and Responsible Person under the Act the following applies:

1. a written notice of the decision must be given to any person whose interests are affected by the decision. The Reviewable Decision Notice must include:
 - a. a written statement setting out the findings; and
 - b. the rights of the care and protection organisation or responsible person to have the decision reviewed.
2. the care and protection organisation or responsible person has twenty-eight (28) days from receipt of the written notice to lodge an appeal with the ACAT if they want to appeal the decision.

A reasons statement is not required if:

- the decision contains the matters that a reason statement would contain; or
- a document that contains the matters that a reasons statement would contain has already been given to the applicant; or
- certain material is not required to be disclosed if the Minister certifies in writing that the disclosure is not in the public interest.