

Australian Capital Territory

Children and Young People (Approved Care and Protection Organisations – Monitoring) Guidelines 2018 (No 1)

Disallowable instrument – DI2018-96

made under the

Children and Young People Act 2008, Section 352F (Approved care and protection organisations-monitoring)

1 Name of instrument

This instrument is the *Children and Young People (Approved Care and Protection Organisations – Monitoring) Guidelines 2018 (No 1)*

2 Commencement

This instrument commences on the day after notification.

3 Guidelines

I make the following Children and Young People (Approved Care and Protection Organisations – Monitoring) Guidelines.

Bernadette Mitcherson
Director-General, Community Services Directorate

16 May 2018

Children and Young People) Approved Care and Protection Organisations

Monitoring) 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:

- care and Protection Organisations and Responsible Persons – Suitability Approval 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 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 Family (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 (refer to the *Care and Protection Organisations - Suitability Approval Guidelines*). 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 Care and Protection Organisations - Suitability Approval 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 in monitoring an approved care and protection organisation's ongoing suitability under the provisions of the Act. This includes organisations subcontracted to provide care and protection services.

The guideline supports the use of monitoring powers that are:

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

The guideline is not prescriptive as care and protection organisations provide a range of services within the purposes for which they are approved. In monitoring an organisation's ongoing suitability, the Director-General should consider all relevant information in order to form a judgement about whether an organisation is complying with the Act.

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;

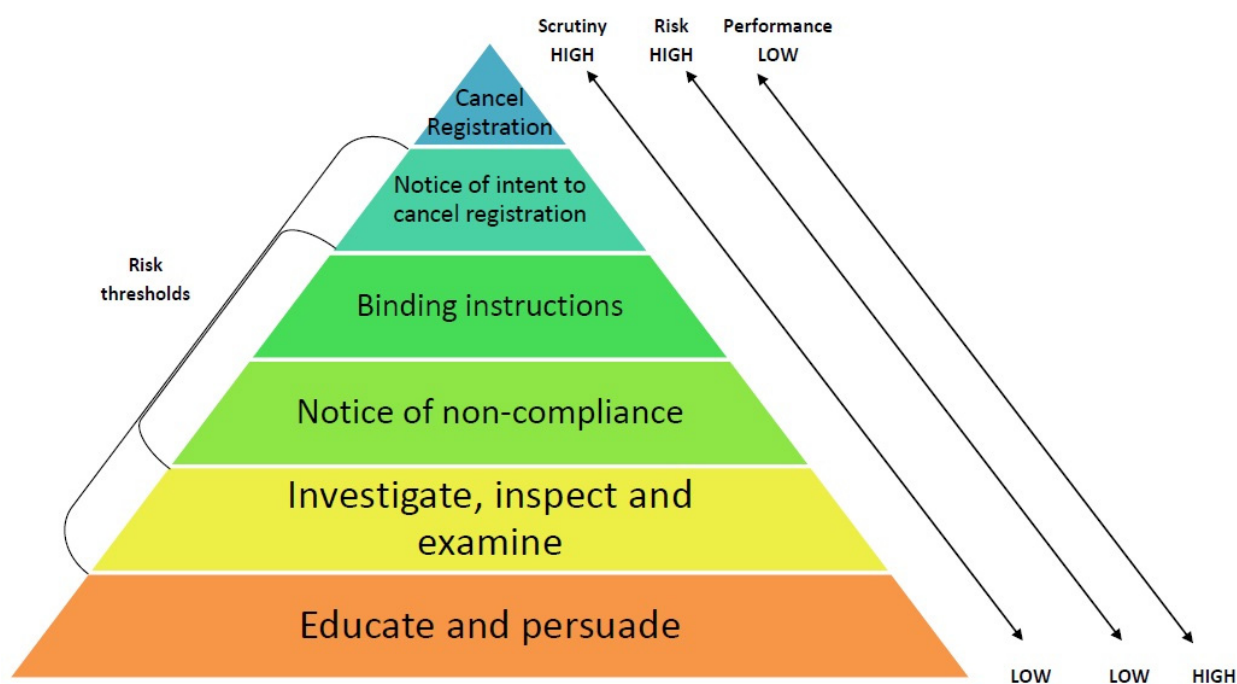
Flexible-enforcement will avoid unnecessary rules about how providers organise their business and demonstrate compliance;

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 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. Scheduled and Unscheduled Monitoring

All monitoring can be scheduled or unscheduled and may take place at any time day or night.

Scheduled monitoring allows organisations to plan and prepare in advance and is in line with the principles of regulatory engagement. In addition, scheduled monitoring allows the organisation to inform staff, children and young people, families, carers and others. This allows people associated with the organisation the opportunity to request to speak with the regulator if they wish.

Unscheduled monitoring visits are also a mechanism to evaluate compliance. Unscheduled visits afford regulators an insight into the organisation's service provision in operation. This can allow valuable understanding of the way that policies and procedures are being applied and understood during the day to day work of the staff, carers and/or volunteers.

11. Targeted Monitoring

On occasion the monitoring will be targeted to focus on a single or specific issue. This may arise as a consequence of events, including receipt of a complaint or a notification of a significant event, affecting the safety or well-being of children or young people.

This process allows the regulator to focus (but not exclusively), on the concerns identified through the information received.

12. Monitoring Process

For any monitoring, a site visit is only part of the process. The process starts with the submission of data and /or information supporting the care and protection organisation's continued regulatory compliance and concludes when the organisation receives the monitoring report.

Examining and reviewing evidence, interviewing individuals and spending time within the organisation provides both a quantitative and qualitative basis to assist in validation of findings. This methodology is intended to assist regulators to overcome the potential impacts of assessing through a single method.

The HSR does not expect organisations to use disproportionate amounts of time or resources to achieve compliance. Organisations can assist regulators in the monitoring process by ensuring their policies and procedures and all key documentation are available for examination. During visits regulators will:

- talk to staff about their understanding of the service they deliver within the organisation;
- meet with staff, children and young people, kin, volunteers and/or carers;
- review key records and relevant documentation; and
- check the environment to ensure compatibility with governance aspects.

13. Complaints

A person may make a complaint to the Director-General if they believe on reasonable grounds that an approved care and protection organisation is noncompliant. A complaint must:

- be in writing; and
- be signed by the person (the complainant) making the complaint; and
- include the complainant's name and address.

However, a complaint:

- may be made orally if the Director-General is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint; and
- need not include the complainant's name and address if the Director-General is satisfied on reasonable grounds that exceptional circumstances justify action without the complainant's name and address.

If the complaint is made orally, the Director-General must make a written record of the complaint as soon as practicable. If the complaint does not include the complainant's name and address the Director-General need not report to the complainant after an investigation.

The Director-General may make arrangements for people, with particular communication needs to ensure they have adequate opportunity to make a complaint.

14. Complaints- withdrawing a complaint

A complainant may withdraw a complaint at any time by written notice to the Director-General. If the complainant withdraws the complaint, the Director-General:

- need not, but may, take further action on the complaint; and
- if the Director-General takes further action - need not report to the complainant after an investigation on the action taken.

15. Complaints- further information or verification

The Director-General may, at any time, require a complainant:

- to give the Director-General with additional information about the complaint; or
- to verify all or part of the complaint by statutory declaration.

If the Director-General makes a requirement, there must be a reasonable amount of time provided in which to satisfy the requirement and an extension of the timeframe may be provided, either before or after the period.

If the complainant does not comply with a requirement, the Director-General need not, but may, take further action on the complaint.

16. Complaints – investigation

The Director-General must take reasonable steps to investigate each complaint which is accepted for consideration.

Before investigating a complaint, the Director-General must:

1. inform the complainant, in writing, that the complaint is to be investigated; and
2. inform the approved care and protection organisation the subject of the complaint, in writing;
 - a. that the Director-General has received a complaint about the organisation; and
 - b. the details of the complaint; and
 - c. that the Director-General is going to investigate the complaint; and
 - d. that the organisation may make an oral or written submission to the Director-General about the complaint.

However, if the Director-General considers that disclosure of a particular detail of the complainant including the name of the complainant or the address may have an adverse effect on the complainant, the Director-General:

- must not disclose the detail; and
- may instead include a general statement about the detail.

17. Complaints – no further action

The Director-General must not take further action on a complaint if satisfied the complaint:

- lacks substance; or
- is frivolous, vexatious or was not made genuinely; or
- has been adequately dealt with.

18. Complaints – action after investigation

(Refer to Approved Care and Protection Organisations – Intervention Guidelines for additional information)

The Director-General after investigating a complaint against an approved Care and Protection Organisation must:

- if satisfied on reasonable grounds that the organisation is noncompliant, give the organisation:
 - a noncompliance notice; or
 - a noncompliance direction; or
 - an intention to cancel notice; and
- if not satisfied that the organisation is noncompliant:
 - tell the complainant, in writing of not taking further action on the complaint; and
 - not take further action on the complaint.

The Director-General is not prevented from taking further action on a complaint if later becoming satisfied that the organisation is noncompliant.