

Special Inquiry into the experiences of children and young people in NSW in alternative care arrangements

GENERAL PRACTICE GUIDELINE

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PART A - Introductory matters

- 1 This Practice Guideline relates to the conduct of the Advocate for Children and Young People (the **Advocate**) in relation to the Special Inquiry (the **Inquiry**) into the experiences of children living in alternative care arrangements (**ACAs**).
- 2 This Practice Guideline should be read in conjunction with the *Advocate for Children and Young People Act 2014* (NSW) (**the Act**), the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**the CYP Act**) and the [Terms of Reference](#).
- 3 This Practice Guideline sets out general guidance about the procedures the Advocate will follow relating to the conduct of the Inquiry.
- 4 Where the Advocate thinks it appropriate, this Practice Guideline may be varied, changed or replaced at any time.
- 5 Unless otherwise specified, contact with the Inquiry should be made by email to specialinquiry@acyp.nsw.gov.au. If you do not have access to email, please call 0461 252 921 for assistance.

PART B - Providing information to the Inquiry

- 6 The Advocate invites submissions from any persons with information or documents relevant to the matters contained in the Terms of Reference.
- 7 Any person who wishes to provide the Inquiry with information relevant to the Inquiry's Terms of Reference should contact the Advocate through the [online submission page](#), which can be accessed on the [Advocate's website](#).
- 8 If you would like to speak to a member of staff at the office of the Advocate regarding the information you wish to provide to the Inquiry or if you require assistance to provide information to the Inquiry, please email specialinquiry@acyp.nsw.gov.au or call 0461 252 921.
- 9 You should tell us if you are assisting someone who has information or documents to provide to the Inquiry and you are of the opinion that the person you are assisting is disadvantaged or hampered from providing the information or documents in any way.

PART C – Confidentiality

- 10 The Inquiry is sensitive to the need to keep certain information provided to it confidential, particularly information which may identify or adversely reveal confidential information about children or young people who are or have been in ACAs or OOHC.
- 11 The Inquiry will not publish or otherwise disclose Confidential Information except in accordance with this Practice Guidance and any other practice guidelines published by the Inquiry.

- 12 The Inquiry may disclose or publish copies of de-identified or redacted documents or information where it is satisfied that the Confidential Information has been removed.
- 13 Any person providing information to the Inquiry may request that such information be determined by the Inquiry to be Confidential Information.
- 14 A person or their legal representative may request that information, including a whole document or part thereof, be determined to be Confidential Information by written application given at the time of submitting the information setting out:
 - (a) the part of the information in respect of which confidentiality is sought;
 - (b) whether complete confidentiality is sought or whether publication was acceptable to some person or categories of persons; and
 - (c) the basis for the claim of confidentiality.
- 15 The Inquiry will:
 - (a) maintain confidentiality over the subject matter of the application pending consideration of the request for confidentiality;
 - (b) decide the application on the papers and notify the person or the person's nominated representative accordingly; and
 - (c) where confidentiality is granted, decide the terms of the confidentiality.
- 16 The Inquiry may determine that a whole document or part thereof is Confidential Information.
- 17 The terms upon which information is determined to be Confidential Information may include directions relating to the preparation and production of de-identified or redacted documents suitable for use during the Inquiry or publication.
- 18 The Inquiry may of its own volition determine that any information received is Confidential Information, and take appropriate steps to maintain this confidentiality, including limiting or preventing publication of such information.
- 19 The Inquiry may disclose Confidential Information where the mandatory reporting obligations in the CYP Act or any other relevant legislation apply.

Confidentiality – children and young people

- 20 Any child or young person giving evidence to the Inquiry will be assisted by a person from the Inquiry witness support team and given information about the Inquiry and their appearance prior to giving evidence.
- 21 Evidence from, and information about, a witness regarding their experience in an ACA or OOHC will be treated by the Inquiry as Confidential Information with respect to:
 - (a) the name of the witness;
 - (b) any information identifying the witness;

- (c) any information identifying any other child or young person;
- (d) any other information determined to be Confidential Information by the Inquiry:

and the witness, and any other child or young person referred to in the witness' evidence, will be referred to by a pseudonym, unless the witness or that person is over 25 years of age and can and does consent freely and knowingly to their name and identifying information being published by the Inquiry.

Disclosure of Confidential Information for the purpose of the Inquiry

- 22 The Advocate may seek access to documents held by relevant Government agencies or service providers with respect to children and young people who give information or evidence to the Inquiry about their experiences in ACAs or OOHC. Such documents will be treated as Confidential Information by the Inquiry.
- 23 The Inquiry may provide Confidential Information to an interested party or a person to whom a notice requiring the production of a statement or documents in relation to a particular child or young person or service provider has been issued, for the purpose of the Inquiry.
- 24 Where the Advocate determines it necessary to disclose any Confidential Information for the purposes of the Inquiry, the disclosure will be limited to information sufficient to meet the circumstance and the disclosure will be on a confidential basis.

PART D – Other methods of inquiry

- 25 The Advocate may consult with any person, and hold public seminars or workshops, in the course of the Inquiry, to obtain information and views in relation to the subject matter of the Inquiry.
- 26 The Advocate may establish working groups and task forces during the course of the Inquiry, to carry out such work as is requested of them by the Advocate, and report to the Advocate, in relation to the subject matter of the Inquiry.
- 27 The Advocate will publish on the Inquiry web page information as to any seminar or workshop it holds, or any working group or task force it establishes.

PART E – Hearings

- 28 The Advocate may hold public and/or private hearings during the course of the Inquiry. The Advocate may, by written notice, require a person to attend a hearing before the Advocate to give evidence.
- 29 The Advocate may make any special arrangements it considers appropriate regarding the conduct of public and private hearings. Such arrangements include, but are not limited to requiring that:
 - (a) evidence of witnesses be given at a place other than the hearing room and transmitted to the hearing room by video or audio transmission;
 - (b) a witness be accompanied or supported by a relative, friend or other person as approved by the Advocate; and

(c) a witness give evidence with the assistance of an interpreter.

30 The Advocate intends to communicate with ACA service providers to ensure that children and young people in ACAs are able to participate in the Inquiry.

Public hearings

31 The Advocate will give reasonable notice prior to holding any public hearings by way of advertisement published in a newspaper circulating throughout the State and in such other manner as the Advocate considers appropriate as required by the Act.

32 Any such notice will include detail as to the subject-matter of the hearings.

33 A person or entity who considers they have an interest in a hearing may make an application to the Inquiry to be approved as an interested party to appear and be heard at all or part of the hearing. The Advocate has the discretion to approve such an application where the person is substantially and directly interested in the subject-matter of the Inquiry.

Private hearings

34 The Advocate will hold a hearing in private if:

(a) the Advocate is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason; or

(b) the hearing concerns the evidence of a child or young person.

35 The Advocate may issue a Direction that information given at, or in relation to, a private hearing not be published. The Advocate may direct that:

(a) any evidence given at a private hearing of a special inquiry;

(b) the contents of any document, or a description of any thing, produced to the Advocate at a private hearing;

(c) any information that might enable a person who has given or may be about to give evidence at a private hearing to be identified or located; or

(d) the fact that any person has given or may be about to give evidence at a private hearing;

must not be published except in such manner, and to such persons, as the Advocate specifies.

36 In accordance with the Act, a person must not make a publication in contravention of such a direction.

37 The Advocate may publish transcripts of a private hearing in a form redacted to preserve Confidential Information.

Proposed team for Special Inquiry

- 38 The Advocate, for the purpose of this Inquiry, has created a dedicated team the work on the Inquiry.
- 39 The team will consist of the following (and may be subject to change):
- (a) Advocate as Chair of the Inquiry;
 - (b) Deputy Chair – Senior Policy Advisor;
 - (c) Lived Experience Chair – person with lived experience of OOHC and ACAs;
 - (d) Social worker to provide support to witnesses at Inquiry hearings;
 - (e) Taskforce that will review submissions, and transcripts and other material that is relevant to the Inquiry;
 - (f) Legal support team; and
 - (g) Any other person that the Advocate deems appropriate.

PART F - Telephone or Video Proceedings

- 40 At the discretion of the Advocate, part of any hearing may be conducted either by telephone, video link or other mechanism as approved by the Advocate. Any person appearing before the Inquiry may apply to participate by telephone, video link or other mechanism.
- 41 Where information or evidence is to be given either by telephone, video link or other approved mechanism, the Office of the Advocate will make the necessary arrangements and provide the details of the proceedings, the witness or witnesses, location, telephone numbers and the date, time and estimated duration to the parties.

PART G – Legal representation at hearings

- 42 The Advocate may authorise a person appearing at a hearing of the Inquiry to be represented by an Australian legal practitioner if the Advocate is satisfied that the authorisation is necessary or desirable in the public interest or for the safety, welfare or well-being of a child or young person.
- 43 A person seeking authorisation for legal representation at a hearing must make an application to the Advocate at least four days before the hearing in writing via specialinquiry@acyp.nsw.gov.au. An application should include submissions of no more than two pages as to why it is necessary or desirable in the public interest or for the safety, welfare or well-being of a child or young person for legal representation to be allowed.
- 44 Any decision to allow legal representation may be varied, withdrawn, or subject to additional conditions by the Advocate at any time.

PART H – Cross examination of witnesses

- 45 The cross-examination of witnesses will not be permitted other than with the approval of the Advocate or person presiding.

- 46 Any questions to be put to a witness in cross examination must be submitted in advance to the Advocate and will be put to the witness by the Advocate or person presiding, at their discretion.

PART I – Interpreters

- 47 Interpreters will be provided by the Inquiry as needed. Witnesses and parties must ensure that the Office of the Advocate is advised of the need for an interpreter as soon as reasonably practicable, and, in any event, in sufficient time for arrangements to be made. Interpreters will be accredited at the first professional level, Interpreter, with the National Authority for Accreditation of Translators and Interpreters (“**NAATI**”). Only in languages where no professional level interpreter is accredited will a Paraprofessional Interpreter be utilised.

PART J - Production of documents

- 48 The following relates to the production of documents to the Inquiry, whether in answer to a notice issued by the Advocate in accordance with the Act (**Notice**) or otherwise. A person’s obligations in relation to the production of documents are governed by the Act, other legislation and the general law, and nothing in this Practice Guideline modifies those obligations.
- 49 If you are producing large numbers of documents to the Inquiry, you should contact the Office of the Advocate to discuss database management arrangements. Please email specialinquiry@acyp.nsw.gov.au and you will be provided with information about how to upload and provide documents to ACYP.
- 50 The Inquiry will require that documents be produced electronically, unless a Notice specifies that paper documents (“**hard copy**”) are required to be produced. Any person seeking to produce documents in hard copy should communicate in advance with the Inquiry.
- 51 In the event a person must produce hard copies of documents, they must produce the original hard copy document.
- 52 Electronic documents produced to the Inquiry must include all parts of the document. For example, where the electronic file is an email chain, all parts of that chain should be produced, and where the electronic file is an email with an attachment, both the email and its attachment should be produced.

PART K – Publication of information provided to the Inquiry

- 53 The Inquiry will determine whether and when any submissions, statements, documents or other information produced to the Inquiry will be published and in what form.

PART L – Adverse information

- 54 Should the Advocate seek to make findings or publish material that may be adverse to a person’s interests, the person shall receive notice of the adverse material and given an opportunity to respond to that material.

Definitions

- 55 **ACA** means alternative care arrangements or “high-cost emergency placements”, which includes the use of hotels, motels, caravan parks, serviced apartments and other similar settings as emergency accommodation.
- 56 **Child** means a person under the age of 12 years.

- 57 **Confidential Information** means any information provided to the Inquiry that the Inquiry has determined is confidential, including but not limited to any information which discloses the identity of or is likely to lead to the identification of a child or young person who is in, or who has been in, an ACA or OOHC who is under the age of 25 years.
- 58 **Person presiding** means the Advocate or a member of their staff (as appointed by the Advocate in a formal written document) who presides the Special Inquiry hearing.
- 59 **Out-of-home care (OOHC)** means:
- (a) residential care and control of a child or young person that is provided under the CYP Act:
 - (i) by a person other than a parent of the child or young person, and
 - (ii) at a place other than the usual home of the child or young person, whether or not for fee, gain or reward.
 - (b) There are two types of OOHC:
 - (i) statutory OOHC:
 - (A) OOHC that is provided in respect of a child or young person for a period of more than 14 days, or
 - (B) pursuant to a care order of the Children’s Court, or
 - (C) by virtue of the child or young person being a protected person.
 - (ii) supported OOHC:
 - (A) OOHC in respect of a child or young person that is, as a result of the Secretary forming the opinion that the child or young person is in need of care and protection, arranged, provided or otherwise supported by the Secretary.
- 60 **Young person** means a person who is 12 years of age or above but under 25 years of age.