

**26 August 2022**

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Delivered by email to [policyteam@ocg.nsw.gov.au](mailto:policyteam@ocg.nsw.gov.au)

RE: Statutory Review of the Children's Guardian Act 2019

Thank you for the opportunity for **People with Disability Australia** (PWDA) to respond to the **statutory review** of the **Children's Guardian Act 2019**.

PWDA is Australia's peak national disabled people's organisation and is funded to engage in disability advocacy on behalf of people with disability in New South Wales.

PWDA's position is that the best place for a child is with their family wherever possible.

### **Deputy Children's Guardian for children and young people with disability**

We note that the Statutory Review consults on the role and functions of the Deputy Children's Guardian for Aboriginal Children and Young People.

As part of your consultation process, PWDA recommends that the Office of Children's Guardian (OCG) considers the additional appointment of a Deputy Children's Guardian for children and young people with disability, and that this position is an identified role held by an appropriately qualified person with disability. Our experience in advocating for parents

with disability in contact with the OCG indicates the need for specific understanding and expertise surrounding decisions about their children. Similarly, children with disability in contact with the OCG will benefit from specific and contemporary disability expertise guiding considerations and decisions.

OCG decisions involving parents with disability should not be singularly based on their diagnosis of disability but rather on the evidence of their capacity, with appropriate supports, to maintain the family unit. Assessments of risk must be informed by contemporary disability values and practice to avoid outdated and archaic stereotypes and unconscious bias.

Decisions regarding children with disability should be well informed about the nature of their disability, and the possibilities for supporting the family as a whole. OCG decisions involving children with disability and parents with disability should regularly consider involving a disability advocate for specific understanding of the impact of disability, help to explain and navigate the process, advice on the availability of supports and services, and how to maximise the potential for success.

The appointment of a Deputy Children's Guardian for children and young people with disability would demonstrate the OCG's commitment to the eight principles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), covering dignity and autonomy, non-discrimination, participation and inclusion, difference and acceptance, equal opportunity, accessibility, gender equality, and respect for the capacity and identity of children with disabilities. The Deputy Children's Guardian could support the alignment of the OCG's everyday activities with [Article 23](#) of the UNCRPD relating to Respect for Home and the Family.

Equally, this appointment would give effect to the Guiding Principle in the Children's Guardian Act which states that OCG actions and decisions should take into account the disability of the child and persons with parental responsibility. PWDA advises that the new Deputy could promote updated thinking and disability approaches, as well as contemporary disability practice regarding OCG actions and decisions.

A Deputy Children's Guardian for children and young people with disability would operationalise all these principles by:

- Facilitating the exercise of disability appropriate functions and decision-making at the OCG.
- Improving how the Out-of-Home-Care (OOHC) system interacts with children with disability and parents with disability towards more appropriate supports and standards of care.
- Promoting the rights of children and young people with disability, and families with disability, at both systemic and individual levels.
- Connecting directly with disability advocates, the disability sector and the community to ensure appropriate supports are made available.
- Leading improvements in disability competency and building capacity within the OCG and across the child protection and related sectors to appropriately respond to concerns about children with disability, and to understand the needs and capacity of parents with disability, in relation to child protection, wellbeing and reunification.

In this way, perceptions of unconscious and ill-informed bias against families with disability could be avoided, and any inherent premature default to remove children in families with disability could be overcome.

### **Specialised substitute residential care**

Section 5.3 of the Statutory Review describes the refocus of the Voluntary Out-of-Home-Care (VOOHC) regulation as *specialised substitute residential care* within the child safe scheme. *Specialised substitute residential care* will relate to children and young people funded by the NDIS, or provided for respite or behaviour support. PWDA reiterates that the primary focus of OCG decisions must be to maintain the child within the family, with the extended family, or in a family-like environment.

### **In conclusion**

PWDA would welcome the opportunity to discuss and further explore our recommendations with you with a view to working together to improve the exercise of the rights and protections of children, young people and families with disability in NSW.

If you have any questions about this submission or would like to arrange a meeting, please contact Senior Manager of Policy, Giancarlo de Vera, at [giancarlo@pwd.org.au](mailto:giancarlo@pwd.org.au) or on 0413 135 731.

Kind regards



**Sebastian Zagarella**

**People with Disability Australia CEO**