

**Australian Childhood Foundation – Certification Trade Mark Application No
1585884**

ACCC initial assessment

The Application

- 1 The Australian Childhood Foundation (ACF) certification trade mark is intended to certify that organisations using the mark are accredited by the ACF under its Safeguarding Children Program as having best practice standards for protecting children and young people from abuse and exploitation whilst they participate in the organisation's services and programs.
- 2 The ACF is an independent children's charity which works to prevent child abuse and reduce the harm it causes to children, families and the community.
- 3 Further information about the ACF and its work is available from the ACF website: <http://www.childhood.org.au/>.
- 4 The Safeguarding Children Program was developed by the Australian Council for Children and Youth Organisations which merged with the ACF in July 2009. The program is now run and managed by the ACF. It provides standards, training and an accreditation scheme intended to build the capacity of organisations to protect the children and young people in their care from abuse and exploitation. The ACF submits that the Safeguarding Children Program:
 - helps organisations to better understand the risks to children and young people in their care
 - helps organisations implement effective child protection policies and procedures
 - provides parents with assurance that the organisation values and safeguards children, and
 - promotes a child-safe and child-friendly culture within organisations, enhancing their connection to the community they serve.
- 5 Specifically, the ACF's Safeguarding Children Program covers seven standards:
 - commitments to safeguarding children
 - personnel roles and conduct
 - recruitment and screening practices
 - personnel induction and training
 - involving children and parents
 - child abuse reports and allegations, and
 - supporting a child-safe culture.
- 6 Organisations that have been accredited by the ACF as meeting these seven standards are eligible to use the Safeguarding Children Accreditation Symbol.



- 7 A list of organisations that are currently accredited by the ACF under the Safeguarding Children Program, and organisations that are currently undergoing the accreditation process, is available at <http://www.safeguardingchildren.com.au/the-program/accredited-organisations.aspx>.

Consultation

- 8 The ACCC invited submissions from 40 potentially interested parties including youth organisations, child protections organisations, relevant government departments, regulatory agencies and industry associations. Three submissions were received – from ChildSafe Limited (ChildSafe), the Association of Children’s Welfare Agencies (ACWA) and the South Australian Department for Education and Child Development (DECD).
- 9 Submissions expressed support for initiatives and programs such as the ACF’s Safeguarding Children Program but raised some concerns with a single privately run organisation such the ACF seeking to register a Certification Trade Mark in relation to such a scheme.
- 10 ChildSafe is a harm prevention charity established by Scripture Union Australia specifically focused on supporting community organisations to improve their practice for care and harm mitigation over children. ChildSafe submits that for over ten years it has had a program (ChildSafe SP3 Safety Management System) that it not unlike the ACF’s Safeguarding Children Program. ChildSafe submits that it does not object to the ACF’s application provided: it does not affect its rights under its existing ‘ChildSafe’ Trade Mark; prevent ChildSafe from applying for its own ChildSafe accredited CTM in the future; and the ACF’s seven accreditation standards and related guidelines and practices are not part of the trade mark claim.
- 11 The ACWA opposes the ACF’s application, submitting that it does not consider it appropriate for a single organisation such as the ACF to be permitted to certify the credentials of other organisations or to be allowed to set the ‘standards’ that organisations in this sector must adhere to. ACWA submits that no single non-government organisation should be allowed to register a CTM in this area without explicit support from key industry stakeholders including relevant government agencies’. The ACWA also expressed concerns that registering the CTM would allow the ACF to monopolise training and development by being the ‘only’ program that those operating in the industry must complete to obtain industry recognition.
- 12 DECD states that it is not familiar with the specific accreditation program offered by the ACF and accordingly confines its submission to general comments about accreditation processes in the area of child safety. DECD recommends caution in regards to any program that purports to accredit best practice within organisations because there is no

single agreed standard that constitutes 'best practice' in regards to securing the safety of children in an organisational context, and there are significant challenges in monitoring implementation of an organisation's policies and procedures on a day to day level.

- 13 DECD further submits that it is critical that any proposed accreditation program is consistent with the obligations placed on organisations under the child protection laws for the relevant jurisdiction in which the organisation delivers services.
- 14 The ACF provided a submission in response to the concerns raised. The ACF states that it welcomes an open market and has not developed the CTM for the purpose of a competitive market edge. Rather, the CTM is designed to instil with committed organisations a sense of credibility about the achievement of accreditation and to value-add to the organisation's overall risk management approach in keeping children and young people safe. The ACF further submits that it strongly supports choice between accreditation providers and welcomes collaborative working arrangements with other providers.

ACCC Assessment

- 15 The Trade Marks Act requires that the ACCC only approve a CTM application if it is satisfied that:
 - (a) the attributes required of approved CTM assessors are sufficient to enable the person to competently assess whether goods and/or services meet the certification requirements and
 - (b) the CTM rules would not be to the detriment of the public and are satisfactory having regard to the principles of competition, unconscionable conduct and consumer protection.¹
- 16 The ACF appoints auditors to assess whether organisations meet the certification requirements in order to be able to use the CTM. The auditor prepares an audit report which is submitted to the ACF's accreditation panel. The accreditation panel, which is an independent subcommittee of the ACF Board, makes the final decision about whether the organisation meets the certification requirements. The ACCC is satisfied that the attributes person must have to be a Safeguarding Children Program auditor or a member of the accreditation panel are sufficient to enable them to competently assess whether organisations meet the certification requirements.
- 17 The ACCC considers that the CTM Rules, which seek to convey to consumers that organisations using the CTM have best practice standards for protecting children and young people from abuse and exploitation whilst they participate in the organisation's services and programs, are unlikely to be misleading or deceptive to consumers.
- 18 The ACCC considers that the CTM Rules sufficiently set out certification requirements necessary to meet each of the Safeguarding Children Programs seven standards and provide rigorous processes for determining compliance with the certification requirements, initially and on an ongoing basis.
- 19 The ACCC notes the concerns raised by DECD that without ongoing scrutiny and support there is a risk that an organisation may present itself as accredited but be ill-

¹ Section 178 of the *Trade Marks Act 1995* and Regulations 16.8-16.9 of the Trade Marks Regulations 1995.

equipped to ensure its policy is well understood and applied consistently by all those involved in the organisation. The ACCC considers that the ongoing training, support and auditing provided by the ACF during the period of accreditation will satisfactorily ensure that organisations presenting themselves as “accredited” continue to meet the certification requirements.

- 20 The ACCC considers that the CTM Rules are unlikely to raise competition concerns. The ACCC notes the concerns raised by ACWA that allowing the ACF to register the CTM would facilitate a single organisation being able to profit from child safety training activities to the potential detriment of other organisations currently operating programs similar to the ACF’s Safeguarding Children Program. The ACCC does not consider that registering this CTM would allow the ACF to monopolise training and development in this area. Organisations providing services and programs to children are in no way obligated to obtain accreditation under the Safeguarding Children Program or otherwise adhere to the standards in order to operate. The Safeguarding Children Program is an entirely voluntary program and organisations providing care for children can seek to be accredited by the ACF through the program, be accredited by another provider of child safety training or not be accredited at all.
- 21 More generally, the Safeguarding Children CTM does not affect any other organisations rights under existing Trade Marks, prevent other organisations from applying for their own CTM in the future or prevent them from providing child safety training. Further, the ACF’s CTM application relates to the Safeguarding Children Mark only, its seven accreditation standards and related guidelines and practices are not part of the CTM application.
- 22 The ACCC considered that the CTM Rules are not to the detriment of the public. In this context, detriment to the public means ‘harm to the community in addition to the consumer protection concerns and competition concerns.’²
- 23 Broadly, CTMs are expected to provide public benefits by indicating to consumers that a product or service meets a particular standard. The ACCC considered that the CTM is likely to provide this benefit and any public detriment from the CTM requirements is likely to be limited.
- 24 DECD has noted that it is critical that any proposed accreditation program is consistent with the obligations placed on organisations under the child protection laws for the relevant jurisdiction in which the organisation delivers services. In this respect the ACCC notes that under the CTM Rules in carrying out activities arising from or in connection with the Safeguarding Children Program, accredited organisations are specifically required to comply with all applicable laws and obtain any necessary consents, including any consents required by any government agency.

ACCC decision

- 25 The ACCC considers that the attributes required of approved CTM assessors are sufficient to enable the person to competently assess whether goods and/or services meet the certification requirements. The ACCC also considers that the CTM Rules are unlikely to raise concerns regarding misleading and deceptive conduct, competition concerns or concerns under other aspects of the *Competition and Consumer Act 2010* and is therefore satisfied that the CTM Rules satisfy the criteria in section 175(2) of the

² Section 175(2)(b)(i) of the *Trade Marks Act. Certification trade marks – the role of the ACCC* (2011) p 8.

Trade Marks Act (1995). The ACCC is also satisfied that the CTM Rules comply with section 173(2) of the *Trade Marks Act*.

- 26 Accordingly, on 26 October 2015, the ACCC issued an Initial Assessment proposing, subject to any request for a conference or lodgement of written submissions pursuant to the Trade Marks Regulations 1995, to approve the CTM application lodged by the ACF.