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| **Social Services Regulation Reform** Factsheet  |
| July 2022 |
| OFFICIAL |

# Background

Victorians access important social services every day. The children, young people, families and adults who use these services are often vulnerable to abuse or exploitation. Many live with the impact of trauma and are dealing with complex circumstances. This can lead to an imbalance of power which, if not acknowledged and managed well, can place service users at risk of harms such as abuse, neglect and exploitation.

The Victorian Government is committed to addressing these risks through robust and appropriate safeguarding systems. The current regulation of social services is fragmented and based on separate schemes that were developed in isolation from each other some time ago.

Many social services are currently subjected to various accountability measures, but these arrangements are fragmented and inefficient. The social services sector has highlighted the need for regulation reform in order to support its commitment to prioritising safety and to create greater efficiencies. The sector has also told us the current accountability measures and processes are complex and burdensome.

To address these issues, the Victorian Government is replacing the existing set of disjointed schemes with one single, streamlined regulatory framework that will be administered by a new independent regulator that reports directly to the Minister for Disability, Ageing and Carers, and the Minister for Child Protection and Family Services. This regulatory scheme is provided for in the *Social Services Regulation Act 2021* which passed Parliament in September 2021. This Act creates a separation from the functions of system stewardship, policy design, funding and contract management.

The new framework will better support safe service delivery.

## The Social Services Regulation Act 2021

Six new Social Services Standards that are articulated in the Act will form the foundation of the new regulatory framework, replacing the current Human Services Standards. These will also replace the Supported Residential Services sector’s Accommodation and Personal Support Standards. They set out outcome-based requirements that focus on ensuring safe service delivery and protecting the human rights of service users. They were designed through extensive consultation with people who had accessed support from a range of social services. While they cover similar areas to the current standards, their strong connection to specific outcomes will provide clarity to regulated entities about what is required for compliance. They are designed to target key risks to service users and be enforceable by the new Social Services Regulator.

Timeline for the reforms

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| Early to mid 2022 | Targeted consultation on the regulations |
| March 2023 | Regulations finalised  |
| July 2023 | Staged commencement of regulator activities First tranche of service providers transition to reforms  |
| December 2023 | Remaining in scope providers transition |

**Note:** The Victorian Government has introduced a Bill in Parliament proposing an amendment to extend the commencement date of the Social Services Regulation Act to 1 July 2024 for all social services in scope of the new scheme. This will allow additional time for consultation and for the social services sector to transition to the new arrangements. We will update the sector on the outcome of Parliament’s deliberations once the information becomes available. We will also update the timelines outlined above if the Bill is passed.

## Purpose of this paper

The purpose of this paper is to introduce the reforms, including what they do and don’t involve, implementation timeframes and consultation opportunities during the next phase of the reform. It is designed to help stakeholders understand the proposed changes, and to participate in more targeted discussions and consultation over the coming months.

# Why do we need regulation?

Regulation plays a crucial role in reducing risks of abuse and harm to children, young people and adults.

Good regulation relies on clear objectives that drive safe delivery of services. Reforms are needed to enable effective and efficient regulation of social services.

Service providers, their users and the community all benefit from good and efficient regulation.

## Regulation reduces the risk of harm

The government has a responsibility to understand and manage public risks. This applies across streams including economic, environmental and social – where there may be risk of harm to the community. Regulation plays a crucial role in reducing risks of harm to children, young people and adults who are experiencing vulnerability. Regulation obliges service providers to meet fundamental safety standards. It protects human rights by enforcing these core safety requirements and enabling timely interventions to help prevent neglect, abuse or exploitation.

## The importance of good regulation

Best practice regulation starts with clear objectives and expectations and applies a risk-based approach to monitoring whether they are being met.

Best practice regulation also involves the regulator having access to a comprehensive regulatory toolkit. This allows the regulator to respond to risks in a timely, targeted, and proportionate manner.

Having a single regulatory body for service users to report into will improve efficiency and allow the regulator to use a risk-based approach in responding to concerns. Using a risk-based approach, the regulator can focus its attention where the likelihood and consequences of harm are greatest.

When best practice regulation is applied, service providers, their users and the community all benefit. Industries that are subject to good regulation benefit from increased confidence.

## Why do we need reform?

The current regulation of social services is fragmented and based on separate schemes that were developed in isolation from each other some time ago.

Some services are not currently formally regulated, but safety standards are instead embedded in funding contracts. Separating out core safety standards and embedding them in a regulatory framework will allow them to stand alone as a non-negotiable set of expectations. This will allow contract arrangements to focus on purchasing the right mix of local and tailored services, targeted to particular cohorts, with additional quality measures specific to those services, as required.

## Which types of services will be covered by the new regulatory scheme?

The new regulatory scheme will focus on services that support children, young people and adults who are experiencing vulnerability.

Services within the scope of the new regulatory framework include:

* Out of home care services for children and young people
* Child protection services
* Community based child and family services that are required to register under the *Children, Youth and Families Act 2005* such as early parenting, intake services, Aboriginal liaison services and counselling services
* Disability services provided or funded by the department, Transport Accident Commission or Workcover
* Supported residential services
* Family violence services provided or funded by the department, including those already required to comply with the Human Service Standards
* Sexual assault services provided or funded by the department including those already required to comply with the Human Service Standards
* Homelessness services provided or funded by the department including those already required to comply with the Human Service Standards.

## The scheme is focused on social services supporting people who are experiencing vulnerability

Many social services providing support to at-risk cohorts will be in scope of the new regulatory scheme. This includes services to children and families, such as those currently funded and registered under the *Children, Youth and Families Act 2005*, services funded under the *Disability Act 2006* and accommodation services registered under the *Supported Residential Services Act 2010*. Other services covered by the scheme include homelessness, family violence and sexual assault services.

The new scheme will primarily regulate providers, by requiring them to comply with the Social Services Standards (replacing the current Human Services Standards and the Supported Residential Services standards). It will include an element of worker and carer regulation (replacing the current system in place for carers and workers providing foster care and residential care).

# What are the new Social Services Standards?

The new Social Services Standards set out outcome-based requirements for safe service delivery and support the human rights of service users.

The new Standards replace the Human Services Standards. The department engaged extensively with social service users to learn and understand what is important in drafting the new Standards.

Consultation on draft regulations including prescribed outcomes and prescribed service requirements that social service providers will need to meet, will continue over 2022.

## Why are we replacing the current Human Services Standards?

The new Standards set out outcome-based requirements that focus on ensuring safe service delivery and protecting the human rights of service users. The proposed standards will provide clarity to regulated entities about what is required for compliance. They are designed to target key risks to service users and be capable of enforcement.

## The new standards incorporate stakeholder feedback

The department engaged with social service users in a review of the Human Services Standards through a series of targeted focus groups, phone consultations and surveys from August and October 2019. We drew on service users’ lived experience to identify what made them feel and be safe when accessing services as well as to identify what was important to them to focus upon in order to ensure safe services. Service users consistently highlighted the importance of being treated with dignity and respect, being included in decisions, being listened to, being able to make choices, being accepted, and working with the right staff supported by organised leadership.

Service providers were also consulted through a number of workshops and consultative forums including the children and families Roadmap for Reform Ministerial Advisory Group.

## The Social Services Standards

Drawing on this feedback, the new Social Service Standards that are provided for in the Act are:

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| **Safe service delivery** – services are planned, coordinated and safely delivered based on assessed needs. | **Service user agency and dignity** - services are person-centred and respect and uphold client rights and agency. |
| **Safe service environment** – services are provided in a safe, secure and fit-for purpose environment. | **Feedback and complaints** – service users are supported to provide feedback, complaints or concerns about service safety. |
| **Accountable organisational governance** – effective governance and organisational systems support safe service delivery | **Safe workforce** – service users receive safe services from a workforce that is skilled, experienced and supported. |

More detailed requirements for service providers, that are consistent with these principles, are to be developed in consultation with stakeholders during 2022.

# What is the Worker and Carer Exclusion Scheme?

The new Worker and Carer Exclusion Scheme will replace the current Carers Register and independent investigations model and will be administered by the new Social Services Regulator when the framework is operational.

Service providers who are engaging workers and carers to care for children and young people within the Child Protection system will need to confirm the worker or carer is not listed on the exclusion register prior to engagement.

Conduct that places children and young people at risk of harm, including sexual, physical and emotional abuse will be considered and may lead to exclusion.

## The new Worker and Carer Exclusion Scheme will replace the current Carers Register

The new Worker and Carer Exclusion Scheme will address concerns raised about the gaps in our current regulation of workers and carers which places children and young people at risk of abuse. Under this scheme, carers will no longer need to be registered, but service organisations will be obligated to check whether a worker is on the excluded worker list before they are engaged. This may be in addition to other screening requirements.

## Better worker and carer screening

Social services, particularly those supporting children and young people who have experienced trauma, understand the importance of thorough worker and carer screening.

The shift away from a registration requirement to an enhanced exclusion scheme better reflects the activities of the regulator and its indirect relationship with carers and workers. Unlike schemes such as the Victorian Disability Worker Commission’s voluntary registration scheme, there are no specific standards attached to registration or qualification requirements for carers and workers. As such, there is no basis for the regulator to make a positive assessment of the worker’s suitability.

Under the existing carer registration requirements, conduct that causes or is reasonably likely to cause serious harm to a service user may not be investigated, because such conduct does not always meet the definition for exclusion. The intent of the new regime is to provide additional nuance to mitigate the risk of abuse and neglect and to capture persistent and repeated patterns of conduct that could cause significant harm to service users. It empowers the regulator to exclude workers and carers where they are found to have engaged in such conduct, even where criminal charges or convictions have not resulted. The conduct of workers and carers and their compliance with the Social Services Standards will be monitored by the regulator on an ongoing basis.

## Conduct that places a child at risk of abuse may result in exclusion

The types of conduct that will be investigated under the new Worker and Carer Exclusion Scheme include allegations of physical, sexual or emotional abuse or significant neglect. The regulator will be responsible for ensuring procedural fairness underpins all investigations of workers and carers. The new legislation will enable information-sharing arrangements with related schemes, including the Reportable Conduct Scheme, to streamline reporting and administrative processes.

# Why a new regulator?

The reforms involve the establishment of a new regulator that reports directly to the Minister and will regulate social services against new Social Services Standards.

The regulation of social services will transfer from the department to the new regulator, separating regulation from conflicting functions such as policy design and commissioning.

The new regulator will regulate social services delivered by the department as well as those delivered by non-government organisations.

## A new regulator

The reforms involve the establishment of a new regulator that reports directly to the Minister. This will create a separation from the functions of system stewardship, policy design, funding and contract management. The regulator will regulate social services against the new Social Services Standards and the Worker and Carer Exclusion Scheme. The Minister will have the ability to give general directions to the regulator in relation to its functions.

## Regulation of social services will transfer out of the department

The regulation of social services including child safeguarding will transfer out of the department across to the new regulator. The regulator will take on functions equivalent to those previously associated with accreditation against the Human Services Standards.

## The new regulator will also regulate services delivered by the department

Currently, the department delivers some services and these are accredited against the Human Services Standards. These services will be included in the new regulatory scheme. The establishment of an independent regulator will address the current conflict inherent in the department effectively regulating itself.

# What will change for service providers covered by the new regulatory scheme?

Organisations currently registered under the *Children, Youth and Families Act 2005*, the *Disability Act 2006* or the *Supported Residential Services Act 2010* will have their registration automatically transferred to the new regulatory scheme in mid-2023.

For other organisations that are currently required to comply with the Human Services Standards, an administratively streamlined process of registration will be developed in consultation with the sector with the view to organisations being registered by December 2023.

## Mandatory registration

Organisations currently registered under the *Children, Youth and Families Act 2004*, the *Disability Act 2006* or the *Supported Residential Services Act 2010* will have their registration automatically transferred to the new regulator. Providers of Out of Home Care will also need to comply with the Worker and Carer Exclusion Scheme which will replace the current Carers Register.

Organisations that provide family violence, sexual assault and homelessness support services (currently required to comply with the Human Services Standards) will need to register under the new regulatory scheme.

## An enhanced focus on ongoing compliance with the Standards

The Social Services Standards will replace the Human Services Standards. The regulator will assess compliance against the Standards through monitoring, audit and inspection activities. This will occur within a risk-based framework. The regulator will have a comprehensive regulatory toolkit, enabling it to intervene to respond to risks in a timely, targeted, and proportionate manner. It will make regulatory decisions based on evidence and procedural fairness principles.

# Next steps

The department will be engaging with stakeholders in the coming months to design the next level of detail of the new regulatory framework, specifically, the Social Services Regulations.

## Consultation

During the debate on the Social Services Reform Bill in Parliament, the government committed to establishing a Social Services Regulation Taskforce (the taskforce) to support and guide the development of the regulations, ahead of the scheme’s commencement from July 2023.

The taskforce has now been established and is co-chaired by Parliamentary Secretary for Health and Parliamentary Secretary for Carers and Volunteers, Mr Josh Bull MP and independent co-chair, Ms Susan Pascoe AM.

Ms Pascoe has an extensive background in government and non-government sectors. She is represented on numerous boards including the Board of Mercy Health and was the inaugural Commissioner for the charities regulator, the Australian Charities and Not-for-profits Commission. Ms Pascoe is currently an Adjunct Professor at the University of Western Australia.

The taskforce comprises representatives with a deep knowledge of the social services sector, including representatives of providers and users of social services, as well as a First Nations representative and a regulatory expert.

The taskforce will be a key consultation mechanism with the social services sector. To inform their work, taskforce members will consult as appropriate with social service providers, service users and experts.

The department will continue to consult with stakeholders internally, externally and across government to inform operational, legal, policy and design aspects of the implementation of the scheme, including developing a broad range of regulations.

Additional engagement activities include:

* Sector consultation
* Bilateral discussions
* Specific engagement on the Regulatory Impact Statement
* Regular attendance at the Human Services and Health Partnership Implementation Committee (HSHPIC)

An external consultant will be engaged to develop a Regulatory Impact Statement to support the draft regulations. The consultant’s work will include consulting with a sample of service providers to inform a cost benefit analysis of the draft regulations, which will be a key component of the Regulatory Impact Assessment. The consultant, along with the department, will be responsible for ensuring the Regulatory Impact Statement meet the requirements of Better Regulation Victoria. The taskforce will be engaged and updated in relation to this work.

## Timeline for the development of the regulations

* A Social Services Regulation Taskforce was established in April 2022 to inform the draft regulations.
* Engagement period with key stakeholders within and outside government will occur until August 2022.
* Regulatory Impact Assessment to support the draft regulations will be progressively developed and finalised between July and September 2022.
* The formal public consultation period for the Regulatory Impact Assessment and draft regulations will occur from October to December 2022.
* Regulations will be published in March 2023.

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