

Reforming Social Services Regulation

A brief introduction to the reforms

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OFFICIAL

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Overview

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. 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 department is replacing the existing set of disjointed schemes with one single, streamlined regulatory framework that will be administered by 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 new framework will better support safe service delivery whilst reducing administrative burden.

New Social Services Standards 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 capable of enforcement.

Purpose of this paper

The purpose of this paper is for the department to introduce the reforms and provide a baseline level of information about them: what they do and don't involve, implementation timeframes and consultation opportunities. It is designed to support stakeholders to participate in more targeted discussions over the coming months on an informed basis.

Next steps

The department will be engaging with stakeholders in the coming months as we design the detail of the new regulatory framework which will be in place by early 2023. A key milestone leading up to implementation is the introduction of new legislation in mid to late 2021 which will enable the establishment of the new Social Services Regulator in 2022.

The detail of service provider requirements will be in the regulations and supporting guidelines which will be drafted in consultation with stakeholders during 2022. We recognise the diverse range of services that collectively make up our social service system and look forward to your input to ensure the new framework is fit-for-purpose in meeting our shared objective of keeping at-risk Victorians safe.

Please email regulationreform@dhhs.vic.gov.au with any questions.



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 the 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 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 vulnerable sections of 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 it to respond to risks in a timely, targeted, and proportionate manner. Using a risk-based approach, the Regulator can focus its attention where the likelihood and consequences of harm are greatest. This reduces compliance burden by managing regulatory activity where the risks are relatively low.

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.

Reforming the way we regulate

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, 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 be focussed on services that support children, young people and adults who are experiencing vulnerability
- Service providers currently required to comply with the Human Services Standards and registered Supported Residential Services will be covered by the scheme.
- In addition, we are considering whether some alcohol and other drug (AOD) services should be in scope, where there are similar risk characteristics and there is no other suitable regulatory mechanism to treat these risks.

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).

The scheme will apply to those currently required to comply with the Human Services Standards and the Supported Residential Services standards

Currently, funded children and family services, disability services, family violence and homelessness services are required to comply with the Human Services Standards. This occurs through requirements embedded in either legislation or service agreements (funding contracts with the department).

The new regulatory scheme is being designed to replace these arrangements and as such will apply to services that currently have an obligation to comply with the Human Services Standards and Supported Residential Services Standards.

Alcohol and other drug services

Consideration is being given to whether some AOD providers should also be included in the new regulatory framework. Noting the diverse characteristics of this sector, this would focus on services where there are similar risk characteristics to the other services captured by the scheme and where there is no other suitable regulatory mechanism to treat these risks.

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 will replace the Human Services Standards. Their key principles will be enshrined in legislation, with outcomes and service requirements embedded in new regulations.
- The department engaged extensively with social service users through a co-design process to learn and understand what is important in drafting the new Standards. Consultation will continue over the coming months.

Why we are 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.

Proposed 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 on 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 proposed new Social Services Standards

Drawing on this feedback, the department will develop new Social Service Standards based on the following principles:

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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.

Relationship to Child Safe Standards and other regulatory regimes

Concurrent reforms are underway that will reduce uncertainty and administrative overhead in regulating the Child Safe Standards. The new Regulator will become the responsible body for these, enabling the streamlining of reporting and other compliance activities for the respective standards. The Commission for Children and Young People will continue to regulate the Child Safe Standards in other environments and administer the Reportable Conduct Scheme. The Regulator will have the ability to recognise other regulators' activities and assessments, which will help streamline compliance activities. More information about the Regulator is available later in this document ("Why a new Regulator").

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 new framework is operational.
- When the scheme has commenced, service providers who are engaging workers and carers to care for children and young people who are 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.

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. Under the new scheme service providers will be required to check that workers and carers are not on the Regulator's exclusion register prior to their appointment. This may be in addition to other screening requirements.

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 positive assessment of the worker's suitability. A register in this context would not reduce risk, but may increase it if incorrectly perceived as a credentialing mechanism.

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 includes 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 to 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 late 2022 or early 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 of organisations being registered by 2023.
- Following further consultation with stakeholders, some alcohol and other drug services may also be required to register and participate in the new regulatory scheme in 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 continue to be regulated under the new scheme. Their registration will be 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.

Further consultation is occurring to develop a deeper understanding of where there are similar risk characteristics in alcohol and drug services which are not already managed through another regulatory mechanism which may result in some alcohol and other drug services also requiring to be registered.

Service providers will no longer need to be accredited

Social service providers will only need to register once using an administratively streamlined process, replacing the current requirement of cyclic accreditation against the Human Services Standards. The registration process does not need to be duplicated if they deliver more than one category of social services. The Regulator's ongoing monitoring, audit and inspection activities will replace existing accreditation processes which are characterised by point-in-time attestation. This will enable more risk-based targeting of regulatory activity and support a culture of continuous improvement.

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.

What is the timeline for the reforms? Will there be an opportunity to have a say?



- In early 2021 we will engage in a more detailed, targeted manner, particularly in relation to the changes to the Standards. Legislation giving effect to the new regulatory scheme will be introduced in the second half of 2021
- The sector will be consulted through 2021 and into early 2022 in the development of a transition plan and the new regulations to enable the new regulatory scheme to be operational in 2023.
- The Regulations will include details such as the objectives and service requirements that form part of the Standards and the criteria for services covered by the regulatory scheme

A new Social Services Regulation Bill in 2021

Parliament will consider a new Social Services Regulation Bill in mid to late 2021 to give effect to the new regulatory framework. From early 2021 we will be engaging in targeted stakeholder consultation on key issues including the new standards to help inform the drafting of the new bill and regulations. Further detail will be provided in early 2021.

The new regulatory scheme will be operational in 2023.

The scheme is proposed to be in place by 2023. We will consult further as we develop the transition plan. Acknowledging the diverse compliance requirements against the Human Services Standards currently in place across the social services sector, a staged approach to implementation will be possible.