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| Disability and Social Services Regulation Amendment Bill 2024  |  |
| *Information for providers, workers and carers of children and young people in residential, foster care and secure care – questions and answers about the Worker and Carer Exclusion Scheme* |  |



**OFFICIAL**

**Introduction**

The government announced that several social services safeguarding entities would integrate into the Social Services Regulator, starting with the Disability Services Commissioner from 1 July 2024 subject to the passage of legislation.

On 19 March 2024, a Bill wasintroduced to parliament proposing to merge the functions of the Disability Services Commissioner into the Regulator. It also proposed delaying the Worker and Carer Exclusion Scheme for workers and carers of children and young people in residential, foster care or secure care for up to two years until 1 July 2026. Because this Bill is unlikely to progress prior to 1 July, the Worker and Carer Exclusion Scheme will start as originally planned on 1 July 2024.

The government remains committed to simplifying the sector and providing all social service users with a place to take complaints. We are also committed to providing users of Victorian-funded disability services with a straight-forward system.

Although there are some differences in arrangements between the Victorian Carer Register and the Worker and Carer Exclusion Scheme, key components of the scheme will stay the same.

This includes:

* the scope of workers covered by the scheme
* using panels to consider whether conduct warrants a worker’s exclusion
* requirements for out-of-home care providers to check a person is not excluded before engaging them as a worker or carer.

## Worker and Carer Exclusion Scheme

1. What is the Worker and Carer Exclusion Scheme?

The Worker and Carer Exclusion Scheme will replace the current Victorian Carer Register and the Suitability Panel.

The scheme prevents workers and carers of children and young people in residential, foster care or secure care from working in the out-of-home care sector if their behaviour demonstrates an unjustifiable risk of harm to children and young people.

Providers who want to employ or engage a new worker or carer of children and young people in residential, foster care or secure care, will need to confirm with the Social Services Regulator that the worker or carer is not listed on the scheme’s exclusion database before engaging them.

1. What are the requirements for providers under the scheme?

Providers engaging or employing residential, foster care or secure care workers and carers will have obligations under the Worker and Carer Exclusion Scheme.

Obligations for providers include the following:

* Before engaging a worker or carer, providers must check with the Social Services Regulator that the person is not excluded from working in the sector. This is like the existing ‘disqualified carer check’.
* Providers will not need to register new workers or carers or update information about carers on a register. The Victorian Carer Register will no longer exist.
* Providers must notify the Regulator about incidents during service delivery that result in or are reasonably likely to result in serious harm to a child or young person. This is instead of the current requirement to report physical or sexual abuse by a carer of a child in their care.
* Providers must assist the Social Services Regulator or a panel in relation to a Worker or Carer Exclusion Scheme matter. This is like existing requirements to assist the Human Services Regulator.
* Providers must not knowingly employ or engage an excluded person as a worker or carer of children and young people in residential, foster care or secure care. This is the same as existing requirements to not employ or engage a disqualified person as a carer.

1. What information must providers notify to the Regulator under the Worker and Carer Exclusion Scheme?

Under the Worker and Carer Exclusion Scheme, providers engaging or employing residential, foster care or secure care workers and carers **must** notify the Social Services Regulator of any ‘serious incident’ during the delivery of a social service. Serious incidents include incidents that result or are likely to result in serious harm to a service user.

The mandatory reporting requirement for providers is consistent with the requirement for all registered social service providers to notify the Social Services Regulator about serious incidents that occur during service delivery. This is set out in section 48 of the *Social Services Regulation Act 2021*.

The reporting threshold for out-of-home care providers is different from the mandatory reporting requirement of notifying about allegations of sexual or physical abuse. However, the Social Services Regulator will be able to access information about worker and carer conduct from a variety of sources including from the Commission for Children and Young People about reportable conduct allegations in the out-of-home care sector.

Also, any person, including a provider, **may** notify the Social Services Regulator about the conduct of an out-of-home worker or carer that could form the basis for exclusion.

The scheme broadens the range of conduct that may result in a worker or carer’s exclusion from the out-of-home care sector. The main difference is that the new scheme uses a broader concept of ‘conduct that causes harm’ than the current framework. The current framework assesses allegations of physical or sexual abuse.

Other conduct that may be considered as a basis for excluding a worker or carer includes repeated or persistent conduct that results in harm. This includes harm of an emotional, psychological, financial or cultural nature. Also, the elements of reportable conduct under the reportable conduct scheme, that out-of-home care providers must comply with, can lead to exclusion. Reportable conduct includes:

* sexual offences or sexual misconduct committed against, with or in the presence of a child
* physical violence committed against, with or in the presence of a child
* any behaviour that causes significant emotional or psychological harm to a child or
* significant neglect of a child.
1. Which workers and providers does the Worker and Carer Exclusion Scheme cover?

The scope of the Worker and Carer Exclusion Scheme mirrors the current scope of the Victorian Carer Register framework.

 Workers and carers in scope of the Worker and Carer Exclusion Scheme include:

* foster carers
* workers or carers providing services to children in residential out-of-home care services
* workers or carers providing services to children at secure welfare services.

Out-of-home care providers that engage the above carers are in scope of the scheme.

The scheme does not apply to:

* kinship carers
* permanent carers
* adoptive carers
* people engaged by out-of-home care providers on a voluntary basis other than foster carers, for example some lead tenants.
1. What will stay the same under the Worker and Carer Exclusion Scheme?

Many elements of the Worker and Carer Exclusion Scheme are broadly similar to the requirements of the current Victorian Carer Register and Suitability Panel framework. For example:

* The scope of workers covered by the scheme is the same.
* The regulatory response is the same. If a worker engages in certain conduct and is found to pose an unjustifiable risk of harm to children, they will be excluded from working in the out-of-home care sector.
* Requirements to check that a worker or carer is not excluded are broadly the same.

Like the Suitability Panel, Worker and Carer Exclusion panels will be set up to consider whether a worker’s conduct should exclude them from working in the sector.

**Scope of workers**

Workers and carers who had to register on the Victorian Carer Register will be regulated under the Worker and Carer Exclusion Scheme. This will include:

* foster carers
* workers and carers providing services to children in residential out-of-home care services
* workers and carers providing services to children at secure welfare services.

The Worker and Carer Exclusion Scheme does not apply to:

* kinship carers
* permanent carers
* adoptive carers
* persons engaged by providers on a voluntary basis other than foster carers, for example some lead tenants.

This mirrors the current scope of the Victorian Carer Register framework.

**Excluding a worker in certain circumstances**

Like the Victorian Carer Register framework, in certain circumstances workers can be excluded from working in the out-of-home care sector. As is currently the case, workers or carers must not apply for work as an out-of-home carer if they have been excluded.

However, the Worker and Carer Exclusion Scheme adds the ability for the Regulator or a Worker and Carer Exclusion panel to impose an interim exclusion on a worker while their conduct is being investigated or considered by a Worker and Carer Exclusion panel. If a worker is subject to an interim exclusion, they may not provide an out-of-home care service or apply for employment or engagement as an out-of-home carer.

**Requirements to check that a worker or carer has not been excluded from working before engaging them**

Like the Victorian Carer Register framework, under the Worker and Carer Exclusion Scheme providers must ensure a person has not been excluded from working in the sector before they engage them as a worker or carer. To meet this obligation, providers will need to contact the Social Services Regulator to check its exclusion database.

**Panels**

Worker and Carer Exclusion panels will have a similar makeup and functions as the current Suitability Panel. The Governor in Council will still appoint panel members on the recommendation of the minister.

Where a matter is referred to a Worker and Carer Exclusion panel, the panel will determine whether the worker or carer’s conduct presents an unjustifiable risk to children and young people. If the conduct does meet this threshold, the worker will be excluded from providing care or services in the out-of-home care sector.

1. What are the differences between the Worker and Carer Exclusion Scheme and the Victorian Carer Register and Suitability Panel?

Differences between the Worker and Carer Exclusion Scheme and the existing Victorian Carer Register and Suitability Panel include the following:

* The new independent Social Services Regulator will administer the scheme.
* There will no longer be a Victorian Carer Register. An ‘exclusion database’ will replace this. Out-of-home care providers will no longer need to register new workers or update information about workers or carers they engage.
* The scheme includes a broader range of conduct that can lead to a person’s exclusion from working in the out-of-home care sector. This will increase protections for children in out-of-home care.
* The ability to exclude a person from working in the out-of-home care sector on an interim basis while an investigation or Worker and Carer Exclusion panel process is ongoing.
* Out-of-home care providers must report serious incidents to the Social Services Regulator. Currently they report physical or sexual abuse of children and young people in care.
* Workers and carers must notify their employers when under investigation and when excluded.
* The scheme introduces a range of offences for workers and carers. Offences apply if they:
	+ work while excluded
	+ do not disclose information to the Regulator
	+ do not notify their employers when under investigation or excluded.

**Move to an exclusion database**

Under the new Worker and Carer Exclusion Scheme, out-of-home care workers and carers will no longer be included on a register maintained by the department.

Instead, the Social Services Regulator will administer a database with details of workers or carers who are excluded from working in the out-of-home care sector.

This means out-of-home care service providers will no longer need to provide or update information about workers or carers it engages on the Victorian Carer Register.

Before engaging an out-of-home care worker or carer, providers will have to ask the Regulator to check the database. This is to disclose whether the carer or worker they wish to engage is the subject of an investigation or an exclusion decision.

**Broader range of conduct that can lead to exclusion**

The scheme broadens the range of conduct that may lead to a person’s exclusion from working in the sector.

Currently, a person can be disqualified if they have physically or sexually abused a child in their care and pose an unacceptable risk of harm to children.

Under the Worker and Carer Exclusion Scheme a person can be excluded from working in the out-of-home care sector if they have engaged in the following conduct, and pose an unjustifiable risk of harm to children:

* conduct that causes or is reasonably likely to cause serious harm to a child (serious harm includes death; loss of a foetus; permanent or long-term serious impairment, serious disfigurement or severe psychological injury or developmental delay)
* repeated or persistent conduct that results in harm, including harm of a physical, sexual, emotional, psychological, financial or cultural nature
* prescribed conduct. The elements of reportable conduct have been prescribed including:
	+ sexual offences or sexual misconduct committed against, with or in the presence of a child
	+ physical violence committed against, with or in the presence of a child
	+ any behaviour that causes significant emotional or psychological harm to a child or
	+ significant neglect of a child

The main difference is that the new scheme uses a broader concept of ‘conduct that causes harm’ compared to the current framework. The current framework assesses allegations of physical or sexual abuse.

**Notifying the Regulator about serious incidents**

Currently, providers must notify the Secretary of the department about allegations of sexual or physical abuse of a child during a person’s engagement as a worker or carer.

Under the Worker and Carer Exclusion Scheme, out-of-home care providers **must** notify the Social Services Regulator of any ‘serious incident’ during the delivery of a social service. Serious incidents include incidents that result in or are likely to result in serious harm to a service user. The mandatory reporting requirement for out-of-home care providers is consistent with the requirement for all registered social service providers to notify the Social Services Regulator about serious incidents that occur during service delivery.

The reporting threshold for out-of-home care providers is different from the current mandatory reporting requirement of notifying about allegations of sexual or physical abuse. However, the Social Services Regulator will be able to access information about worker and carer conduct from a variety of sources including from the Commission for Children and Young People about reportable conduct allegations in the out-of-home care sector.

Also, any person (including providers) may notify the Social Services Regulator about the conduct of an out-of-home worker or carer that could form the basis for exclusion. This conduct includes:

* persistent or repeated conduct that results in harm to a child or young person, where harm includes harm of a physical, sexual, emotional, psychological, financial, or cultural nature
* conduct of workers and carers that providers must report to the Commission for Children and Young People under the Reportable Conduct Scheme, including:
	+ sexual offences or sexual misconduct committed against, with or in the presence of a child
	+ physical violence committed against, with or in the presence of a child
	+ any behaviour that causes significant emotional or psychological harm to a child or
	+ significant neglect of a child.

**Interim exclusions**

The Social Services Regulator and Worker and Carer Exclusion panel will be able to be issue interim exclusions to workers and carers while an investigation or panel process is underway. The current Suitability Panel may only disqualify a worker or carer on a permanent basis. This ensures that risks of harm to children can be managed while the Regulator and the Worker and Carer Exclusion panel consider the person’s conduct. Greater protections to children in the out-of-home care sector will result.

**Obligations and offences for out-of-home care workers and carers**

The Worker and Carer Exclusion Scheme includes extra obligations and new offences for out-of-home care workers and carers than under the Carer Register framework.

Under the Worker and Carer Exclusion Scheme it will be an offence for a worker or carer to work while excluded, including on an interim basis.

It is also an offence for a worker or carer to:

* fail to inform the Social Services Regulator of details of out-of-home care services they work for
* fail to notify an employer when they are under investigation or if they have been excluded, including on an interim basis.
1. What requirements are staying the same for workers and carers?

As is currently the case under the *Children, Youth and Families Act 2005*, workers or carers must not:

* apply to be engaged as an out-of-home carer if excluded
* apply for employment as an out-of-home care worker or carer if being investigated, or if a panel is considering their conduct to decide whether to exclude them from working, without disclosing that they are under investigation or that a panel is considering the matter.

Under the *Social Services Regulation Act 2021*, it is an offence for a worker to not comply with any of these requirements.

1. What will workers and carers need to do differently under the Worker and Carer Exclusion Scheme?

New obligations are being introduced for workers and carers as part of the Worker and Carer Exclusion Scheme. These include new requirements for an out-of-home care worker or carer to:

* notify the out-of-home care provider they are working for if they are under investigation, or have been excluded
* if a worker or carer is under investigation or their conduct has been referred to a panel for determination, tell the Regulator details of the out-of-home care providers they are working for, or any out-of-home care providers they have applied to work for
* not work in the out-of-home care sector if excluded on an interim basis
* if a worker or carer is excluded, including on an interim basis, tell the Regulator about any changes to the worker or carers personal information such as their name or address.

It is an offence for a worker or carer to not comply with any of these requirements. There are no similar offences under the Victorian Carer Register framework.

Also, there is a new offence for a worker or carer to work in the out-of-home care sector while excluded.

1. How will out-of-home care providers, carers and workers know what is required under the Worker and Carer Exclusion Scheme?

The Social Services Regulator is preparing guidance material to support out-of-home care providers, carers and workers with the transition to the Worker and Carer Exclusion Scheme.

This information will be available on the Social Services Regulator’s webpage <https://www.vic.gov.au/social-services-regulator> in the coming weeks.

We will also email this information to the Social Services Ministerial Taskforce and peak bodies.

## More information

1. Where can I get more information?

The Social Services Regulator will soon provide more guidance about the Worker and Carer Exclusion Scheme. We will also email information to key stakeholders. This information will be published on the Social Services Regulator webpage <https://www.vic.gov.au/social-services-regulator>.

Queries can be emailed to enquiries@ssr.vic.gov.au

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