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| Social services Regulation Reform |
| Questions and answers – overarching scope and requirements |
| OFFICIAL |

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# Background and context

## Why is the government introducing a new regulatory framework for social services?

The new regulatory framework will address gaps in the current framework. It will better protect users of social services to keep them safe from harms such as abuse and neglect.

Changing the rules about how we regulate social services will:

* **support safe service delivery** through applying the same Social Services Standards (the standards) to service types that share common risks
* **promote the rights of service users** by requiring providers to understand their role in protecting the rights of service users
* ensure providers **operate efficiently** – the new Social Services Regulator’s role is delineated, and regulated entities will face less overlap in their dealings with government
* provide the new regulator with **up-to-date monitoring and enforcement powers**, enabling it to respond quickly and effectively to risks of harm
* **improve information sharing** between regulators so non-compliance is picked up and acted on.

## Why does the system need reforming?

Improving the regulatory framework for social services will make services more efficient. It will also create certainty for service providers.

The changes will make social services safer. The changes will also protect service users against avoidable harm.

The current regulatory system for social services has three main challenges:

**1. Gaps, inconsistencies and fragmentation**

* These make it difficult for the government to properly manage risk.
* Not all services have formal regulation. Family violence and homelessness services are examples.
* The current framework cannot always respond quickly and effectively to instances of abuse, harm and neglect.

**2. Duplication and complex requirements**

* This creates inefficiencies both for providers and government.
* Service providers are subject to overlapping regulatory schemes, duplicating effort.
* Compliance requirements are similar for providers across different schemes and funding agreements.

**3. Insufficient powers to act in a timely and proportionate manner**

* The current regulator does not have the power to address risks of abuse and neglect quickly and in a balanced way.

The social services sector prioritises safety and wants greater efficiencies. It has highlighted the need for regulation reform to support this.

# Major changes under the new framework

## What are the main changes to the regulatory framework?

The new changes set up a tailored framework run by an independent regulator. This will improve the quality of services. It will also offer greater protection for service users from harm, neglect and abuse.

The new regulatory framework will:

* establish an independent regulator
* create mandatory registration
* develop a set of Social Services Standards
* set up the new Worker and Carer Exclusion Scheme
* establish a broad regulatory toolkit
* streamline reporting.

## How will a new regulatory framework improve the quality of social services?

Regulation requires service providers to meet core safety standards. It protects the rights of service users by enforcing these safety requirements. It also enables early intervention to help prevent neglect, abuse or exploitation.

The new rules aim to reduce or prevent harms to social service users. Each element of the reform addresses risks to social service users. Addressing these risks is vital to improving the quality of social services.

## Will the changes affect service users and their families?

The framework will adopt 6 new standards (see ‘Service requirements’ section). Under the standards, social service providers will change or improve the way they deliver services. Service users and their families can expect:

* services that better support the unique needs of users
* treatment that is dignified and respectful
* services delivered in fit-for-purpose environments
* to be asked for feedback and supported to make any complaints.

### Services designed to support the unique needs of users

Service providers must deliver safe services. This means prioritising service user health and wellbeing in designing and delivering services. (Adopting trauma-informed practices is one example of this.) It also means expecting cultural safety such as:

* respecting and valuing the identities and experiences of Aboriginal people
* requiring providers to ensure workers understand Aboriginal culture and its importance to wellbeing and safety
* implementing ways to expose, confront and deal with racism.

### Being treated with dignity and respect

Under the new standards, social services must respect and uphold service user rights and agency. This includes:

* giving service users clear and accessible information
* supporting service users to exercise their rights
* ensuring service users and their support people can take part in decision making.

### Accessing services in fit-for-purpose environments

The physical environment in which providers deliver services must be safe and secure.

### Being asked for feedback and supported in making complaints

Service providers need to ask for feedback from service users. They must help service users navigate dispute resolution processes where needed. This includes supporting users to:

* give feedback
* make complaints
* voice concerns.

## What impact will the new framework have on service users’ family members and carers?

The new framework will give family members and carers more assurance about the quality and safety of services their loved ones use.

# Timeline

## What are the key dates for implementing the new framework?

| Timing | Activity |
| --- | --- |
| 2022–2023 | Targeted consultations and information sessions on the regulations |
| Mid-2023 | Formal public consultation for the Regulatory Impact Statement and draft regulations  |
| November 2023 | Regulations finalised and published  |
| Early 2024 | Regulator appointment announced |
| 1 July 2024 | Scheme starts Worker and Carer Exclusion Scheme starts |

## How will the new regulator differ from the Human Services Regulator?

Currently, the Human Services Regulator works within the Department of Families, Fairness and Housing (the department) as a delegate of the Secretary. This means that the department is, in effect, regulating itself for some services. The Human Services Regulator also has a limited suite of compliance monitoring and enforcement tools to regulate social services.

Under the new scheme, the Governor-in-Council appoints the Social Services Regulator. The role reports to the responsible minister. This helps to separate the functions of:

* system management
* policy design
* funding
* contract management.

The regulator will regulate social services against the new standards and the Worker and Carer Exclusion Scheme.

## Who is the regulator for social services?

The Government appointed Jonathan Kaplan as the inaugural Social Services Regulator in February 2024. Mr Kaplan is a highly experienced senior public servant.

Before his appointment, Mr Kaplan was the CEO of the Victorian Registration and Qualifications Authority, which regulates education and training in schools and vocational education and training providers.

The regulator will have access to a comprehensive suite of compliance and enforcement tools enabling it to take a flexible and proportionate response to harms or risks. Consistent with the practices of regulators operating other new schemes, it is expected that the regulator’s approach in the early stages will focus on supporting providers to comply with the new scheme. This could include, for example:

* engaging with and supporting social services providers and their peak bodies
* providing guidance to registered social service providers about their obligations and what they need to do to comply
* consulting with service users and their advocates to build intelligence to inform risk-based responses.

Where social service providers deliberately, recklessly or repeatedly fail to comply or their behaviour poses a significant risk to service users, the regulator will have discretion to use higher level enforcement measures that respond to the level of regulatory risk and the consequences of these risks.

Learn more about the new Regulator on the Social Services Regulator’s website: <https://www.vic.gov.au/social-services-regulator>.

For questions about the Social Services Regulator, please email enquiries@ssr.vic.gov.au.

## How can providers hold the regulator accountable for its decisions?

Several structures will ensure the regulator is accountable for its approach and decisions.

### Internal review of decisions

Where the regulator issues a provider with an improvement or prohibition notice for not complying with the standards:

The provider may ask for an internal review of the regulator’s decision.

If a provider applies for an internal review, the regulator will review the decision.

The regulator can then decide to either:

* + affirm the decision (the decision stays the same)
	+ change the decision (by amending or revoking the notice)
	+ make recommendations to an authorised officer of the regulator, who will then reconsider in light of those recommendations.

### External review of decisions

Providers can also apply to the Victorian Civil and Administrative Tribunal to review decisions. This includes:

* decisions about non-compliance with the standards
* issues with the Worker and Carer Exclusion Scheme.

### Institutional model

The regulator will be set up as a body corporate appointed by the Governor-in-Council. The regulator will publish an annual report on its activities. The regulator will also be subject to the general direction of the responsible minister. The Minister will not have the power to direct the regulator on specific regulatory matters. But the minister may use existing frameworks to set clear expectations of performance. (This might include the Statement of Expectations Framework for regulators.)

### General scrutiny

As a government entity, the regulator is also subject to scrutiny through:

* the media
* various inquiries (for example, parliamentary inquiries)
* the Victorian Ombudsman
* the Victorian Auditor General’s Office.

### Role within the broader quality and safeguarding system

The regulator will work alongside other functions within the broader quality and safeguarding system. These include the independent Community Visitors program and various complaints handling processes.

## How will new social services providers register under the framework?

### One-off requirement

The new framework has a one-off registration process. This means social services providers do not need to re-register.

Providers already registered under other Acts will have their registration transfer to the new framework from 1 July 2024. These Acts include:

* *Disability Act 2006*
* *Children, Youth and Families Act 2005*
* *Supported Residential Services (Private Proprietors) Act 2010*.

The regulator will help educate providers in how to follow the new scheme.

### Service providers registering for the first time

Some social service providers are new to formal regulation. These include providers of:

* family violence services
* sexual assault services
* homelessness services.

For these providers, the regulator will create a simple registration process.

The new regulatory framework allows the registration process and requirements to appear in law. The registration requirements will:

* be accessible
* minimise unnecessary burden
* protect service users from risks that can be assessed before service delivery.

The registration requirements focus on:

* the provider’s suitability
* if the provider and its staff have suitable qualifications and skills to deliver services
* if the provider has relevant arrangements in place such as appropriate insurance and governance structures
* the suitability of the site where providers deliver services, to ensure services can be safely delivered.

### After registration

Once registered for a service or services, a provider will need to make a separate application to deliver any other service. For example, if a provider is registered for sexual assault services and wants to offer family violence services, they will need to make another application. The Social Services Regulator will be able to:

* register providers
* impose or vary conditions of registration
* suspend or revoke a provider’s registration in serious circumstances such as where:
	+ the provider has breached the Act, the standards or registration conditions
	+ the provider gives the regulator false information.

The regulator will keep a record of all registered organisations.

Registered providers must follow the requirements of the Social Services Regulation Act and the Regulations. This includes complying with the Social Services Standards and reporting commitments.

## How will providers get information about their obligations under the new framework?

The department will work with peak bodies and industry representatives throughout the reform. We have consulted with stakeholders to develop the draft regulations. This included the service scope and service requirements. We also invited the Victorian community to offer input through a public consultation on the regulations, which occurred in mid-2023.

# Scope of services

## What is within the scope of the prescribed services?

The scheme focuses on social services funded or provided by the department. It also includes supported residential services. The detailed scope of services will be in the regulations.

Some organisations will have their registration transfer to the new regulator. This includes organisations currently registered under the:

* Children, Youth and Families Act
* Disability Act
* Supported Residential Services (Private Proprietors) Act.

Out-of-home care providers will also have to follow the Worker and Carer Exclusion Scheme. This scheme will replace the Victorian Carer Register and Suitability Panel.

Organisations currently under the Human Services Standards will need to register for the new scheme. This includes organisations that provide either:

* family violence services
* sexual assault services
* homelessness services.

## What social services will the new framework apply to?

Social services within scope are those that help Victorians who may be experiencing vulnerabilities with:

* housing
* family instability
* family violence
* sexual assault
* accessing disability services not covered by the National Disability Insurance Scheme
* those using supported residential services.

The new registration scheme will cover services currently subject to registration schemes under the:

* Children, Youth and Families Act (for example, foster care, out-of-home care, child protection)
* Disability Act (disability support services, forensic disability services provided or funded by the department)
* Supported Residential Services (Private Proprietors) Act.

The scheme also will cover other social services provided or funded by the department. These include:

* family violence services
* sexual assault services
* homelessness services
* disability services funded by the Transport Accident Commission or WorkSafe.

The regulations have more detail. This will ensure there are no unintended consequences from these broad descriptions.

## How are the services included in the scope of the new regulations defined?

Services within the scope of the new regulatory framework include:

* **some department-delivered services** including child protection services and secure welfare services
* **out-of-home care services** currently registered under the Children, Youth and Families Act such as foster care, kinship care and permanent care services
* **community-based child and family services** currently registered under the above Act such as:
	+ early parenting services
	+ case planning and case management services
	+ Aboriginal child specialist advice and support services and counselling services
	+ (note that maternal and child health services, schooling and early childhood education are out of scope)
* **disability services** provided or funded by the department, or funded by the Transport Accident Commission or WorkSafe, including:
	+ forensic disability
	+ disability support
	+ residential services
* **supported residential services** currently registered under the Supported Residential Services (Private Proprietors) Act– these are private businesses that offer accommodation and support with everyday activities
* **family violence services** provided or funded by the department already under the Human Services Standards such as:
	+ case management
	+ support and accommodation services provided to people experiencing family violence
	+ services for perpetrators
* **sexual assault services** provided or funded by the department currently under the Human Services Standards
* **homelessness services** provided or funded by the department including those currently under the Human Services Standards such as:
	+ assessment
	+ support
	+ accommodation services.

Community and public housing are not in scope of the new regulatory scheme.

## What is the significance of being a registered service?

Providers that offer a service within a regulated category **must be registered** before offering that service. There are penalties for offering a prescribed service without registering.

Once registered, service providers must follow the Social Services Standards (the standards). The regulator will assess compliance against the standards through monitoring. This will occur within a risk-based framework. The regulator will have a regulatory toolkit enabling it to respond to risks in a way that is:

* prompt
* risk-based
* targeted
* balanced.

The regulator will make regulatory decisions based on evidence and procedural fairness principles.

## What are the categories of services that will be within the scope of the scheme?

The specific service types within scope of the scheme are based on services that:

* have similar risks of abuse and neglect from working with vulnerable service users
* are currently subject to the Human Services Standards, either through registration schemes or funding agreements
* have no other regulated scheme under which to manage these risks.

The services that are within the scope of the new framework include:

* department-regulated social services, whether under other law or through funding agreements
* some related department-regulated services with similar risks (such as disability services funded by the Transport Accident Commission and WorkSafe).

The scope does not include services:

* with lower or very different risk (for example, disability advocacy services)
* not right for regulation in the new framework (for example, National Disability Insurance Scheme services).

## Will the government review the scope of services?

The legislation is flexible. It offers the possibility of other sectors coming into scope in the future.

A statutory review of the scheme will happen in the fourth year of the first three years of the operation. Other sectors could be considered as part of that review if the Government considers there is a need to do so.

# Service requirements

## What are the new standards and how do they fit in with the new regulatory framework?

Providers of social services will be subject to six Social Services Standards. Outlined in the Act, the standards are:

* **safe service delivery** – services are safely delivered based on need
* **service user agency and dignity** – services uphold client rights and agency
* **safe service environment** – services are delivered in a safe, secure and fit-for-purpose location
* **feedback and complaints** – clients are supported to voice concerns about service safety
* **accountable organisational governance** – effective governance and organisational systems support safe service delivery
* **safe workforce** – the workforce has the knowledge, capability and support to deliver safe services with care and skill.

The new regulatory framework prescribes:

* outcomes – the results that the regulator wants to see from measures the service provider puts in place
* service requirements – the actions that service providers must take to achieve each outcome.

To help providers work within the standards, the regulatory framework gives the regulator powers to:

* issue detailed guidance on working within the standards (and service requirements)
* recognise compliance codes issued by the Governor-in-Council for providing practical guidance to service providers.

## How will social service providers know how to work within the new standards?

If a provider follows the service requirements, then they will comply with the standards.

The draft service requirements list the actions that service providers must take to follow the standards.

The service requirements reflect what service providers should do to protect service users from avoidable harm. This includes taking steps to prevent:

* physical abuse
* sexual abuse
* psychological abuse
* cultural abuse
* financial abuse
* neglect of service users who are at risk.

### Reasonable practicability of compliance

The new framework says that services must work within the standards as far as is reasonably practicable*.* (This includes, in effect, service requirements.) In deciding what is ‘reasonably practicable’, the following must be considered:

* any risk that a service user’s rights would be violated
* the likelihood that a service user would suffer avoidable harm caused by abuse or neglect in receiving the service
* the impact of breaching a service user’s rights
* the impact of harm to a service user caused by abuse or neglect
* what the registered social service provider knew, or should have known, about any harm or risks of harm, or any ways of reducing risks
* the availability, suitability and costs of removing or reducing risks.

### Further instruments to support compliance

The new scheme allows the regulator to publish guidelines and compliance codes for the standards and service requirements. Guidelines will help regulated entities to understand the service requirements in different environments. Guidelines can also provide parameters and considerations for compliance.

## How has the government decided the penalties for breaching the standards?

The penalties for breaching the standards reflect that a provider, by their conduct (whether by act or omission):

* falls short of the standard that the community regards as acceptable
* acts against the trust placed in them by service users (and the community), who rely on providers to deliver safe services
* goes against core values about the proper treatment of vulnerable people.

This is particularly relevant for aggravated breaches.

Breaches of the standards could also:

* expose service users to risks of serious harm
* result in harm to service users in a way that has deep and lasting impacts (such as death).

The penalties align with other regulatory schemes including the:

* *Environment Protection Act 2017*
* *Occupational Health and Safety Act 2004*.

## How do the standards differ from the Human Services Standards and the Accommodation and Personal Support Standards?

The Human Services Standards have high-level criteria that are not prescriptive or outcomes based. This makes it difficult for providers to show compliance with the current standards and for the Human Services Regulator to assess compliance.

The Accommodation and Personal Support Standards are specific to supported residential services.
The Social Services Standards apply to all social services. This is consistent with the finding that social service users face similar risks of harm such as abuse and neglect. The new regulatory scheme has specific requirements that only apply to supported residential services. These provisions largely replicate the Supported Residential Services (Private Proprietors) Act. This ensures the rights of residents in supported residential services are not reduced. The provisions include legal safeguards for:

* getting consent to manage a resident’s money, and for recording payments
* timeframes and processes for written residential agreements in appropriate language, having important information about the services to be provided, and the requirements for notifying changes to such agreements
* prohibiting certain transactions between the provider and residents (such as transferring property to a provider at less than market value), and requiring reports to the regulator of certain other transactions
* types of fees, charges and security deposits that a provider can accept (for example, limits on the amount of security deposit or reservation fee).

Under the new standards, the service requirements will include more specific descriptions of actions that a service provider must take to meet the outcomes and principles of the standards.

# Worker and Carer Exclusion Scheme

## 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.

Out-of-home care providers who want to engage a new worker or carer will need to confirm with the Social Services Regulator that a worker or carer is not listed on the scheme’s exclusion database before engaging them.

## 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.

## What types of conduct 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.

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