



Mr Drew Warne-Smith  
A/ Deputy Secretary  
Department of Families, Fairness and Housing

17 May 2023

Dear Mr Warne-Smith,

### **REGULATORY IMPACT STATEMENT FOR THE SOCIAL SERVICES REGULATIONS 2023 ‘**

I would like to thank your staff at the Department of Families, Fairness and Housing (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Social Services Regulations 2023 (the proposed Regulations).

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal’s expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 15 May 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

### **Background**

There are over 700 social services providers in Victoria. These providers support vulnerable Victorians through disability, children, youth and family services. As such, the effective regulation of social services is critical to ensuring service users are protected from harm and abuse while accessing these services. Regulated social services in Victoria currently include:

- supported residential services,
- disability services, and
- children, youth and family services.

These services are regulated under sector-specific legislative schemes and structures by the Human Services Regulator. Several social services that are currently funded by the Victorian Government are not regulated by the Human Services Regulator or any

other formal regulatory scheme. These services include family violence, sexual assault and homelessness support services.

The *Social Services Regulation Act 2021* (the Act) was passed in September 2021 to establish a new regulatory framework for social services, and to bring social services funded by the Victorian Government under a single regulatory scheme. The proposed Regulations will be made under the Act. To address the inconsistencies and gaps in the current regulatory framework, the Act established:

- an independent Social Services Regulator, which replaces the Human Services Regulator;
- mandatory and ongoing registration for social service providers within the scope of the new regulatory scheme;
- six Social Services Standards (the Standards) that providers must comply with, which replace the Human Services Standards;
- a Worker and Carer Exclusion Scheme, which replaces the Victorian Carer Register for out-of-home care workers. The scheme excludes carers who pose an unacceptable risk to service users in the out-of-home care sector;
- a set of graduated enforcement tools that support early intervention and a risk-based approach by the regulator; and
- provisions to enable greater information sharing between the regulator and other relevant agencies to protect service users.

In the RIS, the Department explains that the Act contains several provisions that are intended to reduce regulatory burden for providers and the regulator. If a provider is subject to duplicative regulatory or investigative processes from other schemes, the Social Services Regulator may consider these processes in its decision making. For example, if the regulator considers that a service provider substantially meets the same requirement for registration under another regulatory framework, such as being a suitable person, the regulator could exempt a provider from needing to meet that corresponding requirement under the Social Services Regulations.

### **Problem analysis**

The Department explains that regulations are required to operationalise the new regulatory framework established under the Act. Regulations are required to prescribe which services are in the scope of the new scheme, since the Act does not specify those services which are within scope. The Department also explains that there are current challenges to the Regulator's ability to effectively manage the risk of harm to service users. Four problem areas are analysed by the Department:

1. the scope of services that are formally regulated;
2. inconsistent registration requirements and processes;
3. inconsistent service standards that a provider must meet; and
4. the limitations of the existing Victorian Carer Register's scope.

In addressing the problems with the **scope of services**, the Department explains that certain services are not subject to any formal regulation. As these services do not fall under the remit of a regulator, there are no regulatory powers or tools to establish quality and safety benchmarks. Instead, the Department must rely on funding arrangements to ensure quality and safety. Given the vulnerability of service users, particularly for users of family violence, sexual assault and homelessness support services, this gap in the regulatory system significantly undermines effective management of harms.

In addressing problems with **registration requirements**, the Department outlines that, as currently regulated services are subject to sector-specific legislation and requirements, the regulation of these services is inconsistent and fragmented. For example, disability service providers are required to comply with up to seven regulatory schemes and multiple Acts. The RIS explains that a provider may be required to comply with three different sets of registration requirements and processes. As such, this can cause significant confusion, and increase regulatory burden for these providers.

In addressing problems with **service standards** that providers must meet, the Department notes that service providers may be subject to different standards. All regulated social services are subject to the Human Services Standards, except for supported residential services, which are subject to the Accommodation and Personal Support Standards. These standards will be replaced by the Social Services Standards (the Standards). The Human Services Standards are high-level and lack detail on how providers can comply. Therefore, it may be challenging for providers to determine what actions are required to comply. The Act enables service requirements to be prescribed in regulations, which outline clear and tangible actions that providers can take to comply. Without prescribing these requirements, providers may have difficulty complying with the high-level Standards.

In addressing problems with the **scope of the Victorian Carer Register**, the Department explains that the new Worker and Carer Exclusion scheme will consider a broader range of conduct that could result in a worker being excluded from providing care to children and young people in the out-of-home care sector. Although the Act outlines some conduct that may exclude a worker or carer, it also enables regulations to prescribe additional conduct that may exclude a worker or carer. The RIS explains that prescribing additional conduct is expected to provide greater protection for children and young people in the out-of-home care sector.

## **Options and analysis**

In the RIS, the Department analyses options for the four problem areas outlined above.

In determining the **scope of services** that will fall under the new scheme, the Department explains that the intended scope was principally outlined in the second reading speech for the *Social Services Regulation Bill 2021*. Given the policy scope of the scheme was substantively established during the passage of the Bill, the RIS only considers one option for the scope of service. These services are:

- some services delivered by the Department including child protection services and secure welfare services;
- out-of-home care services for children and young people;
- community-based child and family services;
- disability services provided or funded by the Department, the Transport Accident Commission or WorkSafe;
- supported residential services;
- family violence services;
- sexual assault services; and
- homelessness support services.

The Department analyses two options for each of the three remaining problem areas. The Department uses a multi-criteria analysis (MCA) for its assessment, with weighted criteria as follows:

1. cost to service providers – the financial and time cost of an option to service providers (35 per cent);
2. cost to the regulator – the costs of administering and enforcing an option (15 per cent); and
3. safety and rights of service users – the extent to which the option avoids harm to, and protects the rights of, service users (50 per cent).

For each problem area, the Department analyses the options against a reference case, rather than the base case of no regulations. The Department explains that since the Act and the regulatory framework would not function without regulations prescribing the scope of services, the base case is not a useful point of comparison for the options.

### **Registration requirements**

The Department analyses two options for registration requirements. Under the reference case, providers will only be required to provide the name and address of the provider, and the details of a contact person, which are the minimum requirements to operationalise the registration scheme.

Option A prescribes registration requirements and considerations that are based on multiple suitability requirements. It assesses whether the provider and/or its key personnel:

- are suitable to provide the service;
- have relevant qualifications, skills or experience to provide the service;
- have suitable governance arrangements to provide the service; and
- have suitable premises to safely provide the service.

Option B has fewer suitability requirements. The only requirement is whether the provider and its key personnel are fit and proper persons or entities to provide the service (the first element of Option A).

The Department explains that Option A is its preferred option for prescribing registration requirements. It explains that Option A is expected to impose the greatest

costs on providers, although there is only a moderate cost increase relative to the reference case. It explains that the additional costs of Option A (relative to Option B) are outweighed by the additional benefits of having greater assurance that service users are protected from harm. The Department estimates that Option A will generate an overall cost saving for the regulator, when compared to the reference case and Option B. This is because providers are subject to stricter registration requirements under Option A, which is expected to decrease the need for ongoing compliance monitoring.

### **Service requirements and outcomes**

In the RIS, the Department analyses whether to prescribe service requirements and outcomes to support the six Social Service Standards outlined in the Act. Service requirements would outline specific actions that providers must undertake to comply with the Standards. If providers comply with these requirements, they would be deemed to comply with the Standards. There are a range of outcomes, which are aspirational in nature, that correspond with the service requirements. Outcomes articulate what is intended to be achieved when the service requirements are implemented. It is therefore mandatory for providers to comply only with service requirements.

Prescribing service requirements and outcomes is not required for the Standards to take effect. Therefore, both options are analysed against a reference case of no service requirements and outcomes.

Option A prescribes the same service requirements and outcomes for all in-scope services. Option B prescribes service requirements and outcomes that are tailored to each social service sector.

The Department explains that prescribing service requirements and outcomes make it easier for providers to comply with the Standards and easier for the Regulator to regulate providers, so both Options A and B are less costly than the reference case. Options A and B would also improve the quality of services provided and better protect users from harm (greater benefits). Hence, both Options A and B are preferred to the reference case.

The Department expects that generalised service requirements and outcomes under Option A will be easier for providers to comply with, and for the Regulator to apply, than Option B. This is because having sector-specific requirements could create confusion and complexity for both providers and regulators, particularly for providers that deliver multiple services.

The Department expects that the benefits of Option A would be marginally higher than Option B, as generalised requirements are expected to lead to more consistent standards of service delivery across different types of services, which benefits users of multiple services.

### **Worker and Carer Exclusion Scheme**

The new social services regulatory framework will introduce a Worker and Carer Exclusion Scheme (WCES) that will replace the current Victorian Carer Register. The Act

sets out conduct that may lead to a worker or carer being excluded from providing out-of-home care services and has a broader range of conduct than the current Victorian Carer Register. The Department analyses two options in the RIS for prescribing additional conduct in Regulations that would lead to a worker or carer being excluded. These two options are analysed against a reference case of no additional conduct being prescribed.

The Department notes that the scope of the scheme under the reference case is significantly broader than the scope of the current Victorian Carer Register, and it estimates there will be five to six times more investigations than there currently are. However, it notes, on average, there are a very small number of investigations, and workers and carers being excluded per year, with only two carers excluded in recent years.

Option A prescribes all reportable conduct, as defined under the *Child Wellbeing and Safety Act 2005* as additional conduct that can exclude a carer under the scheme. The Department explains that examples of reportable conduct include:

- sexual offences, sexual misconduct or physical violence committed against, with or in the presence of a service user;
- any behaviour that causes significant emotional or psychological harm to a service user; or
- significant neglect of a service user.

Option B prescribes a narrower range of reportable conduct as defined under the *Child Wellbeing and Safety Act 2005* as additional conduct that can exclude a worker or carer under the scheme. The Department explains the Option's scope does not include behaviour that causes significant emotional or psychological harm, or significant neglect of a service user (the second and third elements of Option A).

The Department explains that Option A is its preferred option for prescribing additional conduct that can exclude a carer under the WCES. The Department explains Option A is expected to exclude a larger number of workers and carers relative to the reference case and Option B, although it expects the number of carers who are excluded will still be relatively low. Therefore, when comparing Options A and B, providers will face marginally greater costs associated with complying with investigation requirements and replacing staff under Option A.

Both options are expected to marginally increase the regulator's costs, with Option A imposing slightly greater costs. The Department believes that Option A will deliver greater benefits for service user safety, compared with Option B. Therefore, the Department considers that the additional costs imposed by Option A are outweighed by the increased protection provided to vulnerable service users by the broader scope of conduct that can lead to the exclusion of a worker or carer.

## Implementation and Evaluation

The proposed Regulations will take effect when the scheme commences on 1 July 2024. The Department explains that the scheme's commencement has been delayed until this date so that providers have additional time to prepare for, and adjust to, the new scheme. When the Social Services Act was passed, the scheme was intended to commence on 1 July 2023.

The Department explains that several transitional arrangements will be implemented to minimise regulatory burden and to ensure continuity, including automatically transferring and recognising the registration of existing providers. It will also include arrangements that allow other existing service providers to provide services without committing an offence while the Regulator considers their registration application.

It is noted in the RIS that the new Social Services Regulator will not be appointed until the second half of 2023. Prior to the scheme's commencement, the new regulator will develop its compliance and enforcement approach, develop guidance for providers, and engage with the social services sector about the new requirements.

Under the *Subordinate Legislation Act 1994*, a draft of the proposed Regulations is required to be published alongside a RIS. The Department explains that provisions for the supported residential services sector are not included in the draft of the proposed Regulations and will be subject to a separate consultation process. It notes that these provisions will mirror existing provisions. The Department also explains that it will analyse options for registration fees in a separate RIS that will be published in late 2023.

The Department notes that the Act requires the Minister to conduct a review of the Act in 2027-28. It is expected that this review will cover both the Act and the proposed Regulations, so this review will likely acquit the requirement under the Victorian Guide to Regulation for a mid-term evaluation of the Regulations.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation

