
Safeguarding Overview: Key Reforms in Child Safety, Disability and Aged Care

2021 saw significant reforms across Australia in safeguarding children, people with disabilities, and people in aged care. This overview summarises some key reforms so that organisations can stay abreast of the legal and policy changes, position themselves as leaders in safeguarding, and prepare for reforms in the year ahead.

Introduction

Organisations must stay at the forefront of their rapidly changing legal obligations and best practice to ensure they can effectively safeguard children and vulnerable people, comply with their legal obligations, and respond appropriately when things go wrong.¹

This overview covers recent developments in safeguarding with a particular emphasis on child safety and the disability and aged care sectors, and what we can expect to see in 2022.

Child Safety

National

There is currently no uniform national law regarding child safety in Australia. Organisations must comply with relevant state legislation in relation to child safety, including compliance with relevant child safety principles or standards, reporting obligations and offences, mandatory notifications, worker screening, and reportable conduct schemes.

Organisations which operate nationally are required to comply with the obligations that apply in each state or territory in which they operate, which can be complex and challenging to navigate.

The National Office for Child Safety (**National**

Office) was established on 1 July 2018 in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The National Office leads the implementation and development of priority areas, including the development of the National Principles for Child Safety.

2021 was marked by the introduction of significant child safety reforms across Australia, including the replacement of child safety principles with the National Principles and a requirement that organisations comply with the National Principles, changes to screening requirements for people working with children in some states, new criminal offences in relation to reporting, the introduction of new Reportable Conduct Schemes in NSW and the ACT, and broad reforms in Western Australia and South Australia.

In Western Australia, the first Commissioner for Children and Young People commenced their term on 4 January 2022. The Western Australian government also passed a Bill to implement major reforms in relation to mandatory reporters and the National Principles, and a new Reportable Conduct Scheme is currently the subject of public consultation.

South Australia has passed the **Statutes Amendment (Child Sexual Abuse) Bill 2021**, which has a proposed commencement date of 26 April 2022 and introduces new offences

¹ This paper is designed and intended to provide general information in summary form current at the time of publication, for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

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in relation to failing to report and respond to child sexual abuse.

In Tasmania, the **Child Safe Organisations Bill 2020** is currently open to public consultation and is expected to be enacted later this year. If passed, the Bill will require organisations working with children to implement the National Principles in policy, procedure and practice, with the likelihood of further reforms being considered to introduce a reportable conduct scheme.

In NSW, the new Child Safe Scheme commenced on 1 February 2022. The Scheme embeds the Child Safe Standards (which are in line with the National Principles) and gives powers to the Children's Guardian to monitor, investigate and enforce the implementation of the standards across organisations in NSW.

Additionally, the introduction of the **Online Safety Act 2022** (Cth) in January 2022 significantly strengthens the protection of online safety in Australia. Among other things, the new law:

- Bolsters the existing Cyberbullying Scheme for children to enable the eSafety Commission to remove material from social media sites and other online platforms;
- Increases the obligations on online service providers to take down intimate images within 24 hours of getting a removal notice from the eSafety Commission (down from 48 hours); and
- Increases the eSafety Commission's powers to respond to failures to deal with image-based abuse, including child sexual exploitation material.

Victoria

In Victoria, 2021 was marked by:

—The introduction of reforms in relation to screening obligations for people working with children and people with disabilities, with the commencement of the **Worker Screening Act 2020** (Vic) on 1 February 2021.

—Over 1,000 notifications of reportable allegations to the Commission for Children and Young People (CCYP) in the 2020/2021 financial year, an eight per cent increase on

the number of notifications received in 2019–20. This was a record number of notifications, despite COVID-19 restrictions causing a major drop during lockdown periods. The increase in reports under the Reportable Conduct Scheme has been accompanied by increased oversight by the CCYP to ensure that organisations are reporting, investigating and responding to reportable allegations properly.

Many organisations started preparing for the implementation of the new Child Safe Standards by updating policies and procedures, staff training, and developing strategies to ensure compliance with the new standards (with a focus on empowering children and their families).

On 1 July 2022, we will see the replacement of the current Victorian Child Safe Standards with 11 new standards, and the introduction of Ministerial Order 1359, which sets minimum standards for schools and boarding premises in relation to child safety, care and welfare. Relevant organisations must be compliant with the new standards and Ministerial Order 1359 by 1 July 2022.

From 1 January 2023, we will see increased enforcement powers for the CCYP come into effect, which will allow CCYP to enforce the standards across Victorian organisations including the public issue of notices and fines for failing to comply.

Disability

National

The **[National Disability Insurance Scheme Act 2013](#)** (NDIS Act) is the national legislation which supports people with a permanent and significant disability that affects their ability to take part in everyday activities. The NDIS Quality and Safeguards Commission (**the NDIS Commission**) commenced operation on 1 July 2018, and all states transitioned to the NDIS Commission by 1 July 2020.

The NDIS Commission is the national regulator of supports and services provided to people with a disability who participate in the National Disability Insurance Scheme (NDIS).

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The NDIS Commission has strong regulatory and compliance powers under Commonwealth Law. Suspected breaches of a provider's obligations under the NDIS Act, including the NDIS Code of Conduct and the NDIS Practice Standards, can be enforced by the NDIS Commission. These powers include seeking civil penalties when a provider has failed to deliver supports and services in a safe and competent manner, with care and skill.

The NDIS requires providers to ensure that they comply with the NDIS Code of Conduct and Practice Standards, which set out expectations for the quality and safety of services and supports that providers deliver. The NDIS Commission also requires providers to comply with provider registration requirements, maintain internal complaint management systems, report incidents to the NDIS Commission, and comply with national Worker Screening Check obligations.

In December 2021, the NDIS Commission updated its Compliance and Enforcement Policy which iterates the NDIS Commission's power to monitor and enforce compliance to encourage best practice among NDIS providers, and manage risk to NDIS participants.

2021 was also marked by the first legal action undertaken by the NDIS Commissioner in relation to a provider's alleged breaches under the NDIS Act for failing to deliver supports and services in a safe and competent manner with care and skill. A summary of the case can be found [here](#).

Another critical development in the disability sector in 2021 was the continuation of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability (**the Disability Royal Commission**). The Disability Royal Commission commenced in April 2019, following widespread reports of violence, abuse and neglect of people with a disability. Due to the pandemic, there have been substantial delays in the progress of the Royal Commission which will continue in 2022.

The focus of the Disability Royal Commission is to investigate:

—how to prevent people with a disability being subjected to abuse, violence, neglect and exploitation;

—best practice in reporting, investigating and responding to abuse, violence, neglect and exploitation; and

—promoting a more inclusive society, where people with a disability are supported to live independent lives without abuse, violence, neglect and exploitation.

In 2021, the Disability Royal Commission held 10 public hearings, which tackled the issues of:

—The experiences of people with cognitive disability in the criminal justice system.

—The experiences of people with disability, in the context of the Australian Government's approach to the COVID 19 vaccine rollout.

—Preventing and responding to violence, abuse, neglect and exploitation in disability services.

—People with cognitive disability and the criminal justice system: NDIS interface.

—First Nations children with disability in out-of-home care.

—The experience of women and girls with disability with a particular focus on family, domestic and sexual violence.

—The human rights of people with disability and making the Convention on the Rights of Persons with Disabilities a reality in Australian law, policies and practices.

—Measures taken by employers and regulators to respond to the systemic barriers to open employment for people with disability.

—Preventing and responding to violence, abuse and neglect and exploitation in disability services.

These public hearings, accompanied by over 800 private hearings, paved the way for significant reforms. The key reforms in 2021 included the Government accepting the recommendations made in the COVID 19 Inquiry Report, which stemmed from Public Hearing 5 in 2020. The Government has taken steps to implement many of the Report's recommendations, including changes to consultation processes, improvements to data and governance arrangements, and the development of guidance for providers of disability accommodation services.

We expect that the findings of the Disability Royal Commission will drive substantial reform in the disability sector and result in

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organisations having increased obligations to ensure that disability providers offer safe services with quality care and skill.

The Disability Royal Commission resumed in February 2022, and we eagerly await its final report and recommendations.

Victoria

In the Victorian disability sector, 2021 saw the:

—Cessation of the Disability Worker Exclusion Scheme in Victoria on 31 December 2021.

—The introduction of a requirement that funded and/or registered organisations who provide services to clients in the Victorian health and community services sector will undergo safety screening checks for workers.

—The introduction of a Safety Screening Policy effective on 1 January 2020, which aims to minimise harm to vulnerable people by strengthening protections and safeguards through the safety screening process.

—The commencement of voluntary disability worker registration on 1 July 2021 to allow workers to be independently assessed by the Disability Worker Registration Board of Victoria. Disability worker registration is a key part of the Disability Worker Regulation Scheme – a new set of regulations to strengthen protections for Victorians with disability and ensure the quality of the disability workforce.

Aged Care

National

The **Aged Care Act 1997** (Cth) is the overarching law which covers all government-funded aged care providers. It provides the rules for funding, regulation, approval of providers, quality of care and also the rights of the people receiving the care.

The Aged Care Quality and Safety Commission (**the Commission**) was established in response to the recommendations of the Royal Commission into Aged Care Quality and

Safety.

The Commission's purpose is to protect and improve the safety, health, wellbeing and quality of life of people receiving Australian funded aged care. The Commission's responsibilities include granting approval for providers to deliver aged care services, administering the Serious Incident Response Scheme (**SIRS**), and reducing the use of restrictive practices.

The Commission's compliance powers enable it to prompt a provider to comply with responsibilities, improve compliance with the law, deter misconduct, and ensure that grave misconduct has proportionate consequences. Organisations providing aged care services must comply with the Aged Care Quality Standards, which came into effect on 1 July 2019.

Relevant organisations must also comply with the new SIRS, which commenced on 1 April 2021, and have an effective incident management system in place. Organisations are now required to report Priority 1 reportable incidents within 24 hours, and report Priority 2 reportable incidents within 48 hours. The Commission can take regulatory action and issue compliance notices if the SIRS is not complied with.

How we can help

The safeguarding team at Moores is committed to supporting organisations uphold best practice in safeguarding and keeping children and vulnerable people safe from harm. We appreciate that navigating reforms raises legal, cultural and governance challenges, and recognise that responding to regulatory investigations and critical incidents can place a lot of pressure on people within your organisation.

At Moores, we support our clients to be leaders in safeguarding, and preventing and responding to risk of harm.

We support our clients by:

— Conducting compliance audits to identify and address gaps in policy and practice.

— Reviewing and amending policies and

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procedures to ensure that they are clear, compliant, mitigate risk and support the protection of children and vulnerable people from harm.

- Advising on safeguarding issues.
- Responding to allegations and complaints in a trauma-informed way to minimise further harm to victims.
- Responding to regulatory inquiries and investigations, including compliance action.
- Investigating complaints and allegations consistent with regulatory requirements.
- Training on a variety of safeguarding topics, including identifying and responding to abuse, reporting obligations, effective complaints handling systems, regulatory schemes, investigations, and sector based safety and quality standards.

For more information or an obligation free discussion, please contact Skye or Patrice on (03) 9843 0418.

Moores' Safeguarding Team

We are one of the only firms in Australia that can advise on safeguarding across all states in Australia. We guide national organisations through this complicated legislative landscape to ensure a cohesive approach that is legally compliant. Contact us on (03) 9843 0418.



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