

## **Child Wellbeing and Safety Amendment (Oversight and Enforcement of Child Safe Standards) Bill 2016 – A Summary**

On 13 September 2016, Minister Mikakos introduced the Child Wellbeing and Safety Amendment (Oversight and Enforcement of Child Safe Standards) Bill 2016, ('the Bill') to the Victorian Parliament. The Bill is currently before parliament.

The overriding purpose of the Bill is to ensure compliance with the Victorian Child Safe Standards ('the Standards'). The Standards provide that there is a minimum standard for child safety in all organisations providing services to children. The Standards are being implemented in two phases: the first began in January 2016 for organisations funded or regulated by the state. The second phase, which will come into effect in January 2017, concerns organisations that provide services to children but receive limited or no government oversight or regulation in relation to child safety. The Bill applies to both types of organisations.

The Commission for Children and Young People ('the Commission') will be responsible for enforcing and monitoring the Standards. The objectives of the Commission outlined in the Bill are to:

- Encourage continuous improvement by organisations to promote the safety of children, prevent child abuse and properly respond to allegations of child abuse; and
- Serve the public interest by promoting the safety of children, the prevention of child abuse and the proper response to allegations of child abuse.

The Commission's primary focus will be on educating and providing guidance regarding the Standards. However, the Bill also enables the Commission to monitor and enforce compliance with the Standards.

The Commission will be able to take action to investigate whether an organisation is complying with the Standards. It will be able to seek the production of documents (notice to produce) by an organisation, physically inspect the premises of an organisation and observe the activities carried out on the premises, and request information.

In the event the Commission believes on reasonable grounds that an organisation is not complying or is unlikely to comply with the Standards it will be able to issue a notice to comply. In the event the organisation fails to comply with the notice the Commission has the power to seek a declaration that the relevant entity has failed to comply and seek a pecuniary penalty of up to 60 penalty units (\$9327.60).

The Bill makes provision for the confidentiality and disclosure of information obtained during the course of an investigation. Responding to the Commission's request for information does not constitute unprofessional conduct or a breach of professional ethics, and exempts the person who provided the information from any liability. Disclosure of information to the Commission does not constitute a contravention of the confidentiality provisions of the Health Services Act 1988 and the Mental Health Act 2014.

Information obtained during an investigation is able to be passed on to the Victoria Police and other authorities by the Commission.

An organisation is able to seek a review of the Commission's decision to issue a notice to produce documents or a notice to comply in the Victorian Civil and Administrative Tribunal.

The Bill provides that the Commission must prepare an annual report which will be tabled in parliament. The annual report will include details of compliance by relevant entities during the past financial year. Included in the report will be the number of notices to produce and comply, the number of declarations made by a court of failure to comply with a notice to comply or produce, and the number of civil penalties awarded. It must also report on the educational activities undertaken by the Commission. A copy of the report will be given to the Department of Health and Human Services and any other relevant departments. Additional reports may also be requested and submitted.

The report may also include any persistent or recurrent systemic issues in compliance with the Standards that were identified by the Commission during the reporting period.

The aim of the Bill is to avoid duplication within organisations and government when complying with the Standards and to use existing mechanisms to improve child safety and increase consistency within and across sectors.

The Bill proposes amendments to the Commission for Children and Young People Act 2012 to alter the requirement that the review of the administration of the Working with Children

Checks take place annually. The review will now take place every three years. This will allow the Commission to focus on promoting the Standards.

The Bill also proposes amendments to the Children, Youth and Families Act 2005. The Department of Health and Human Services will be required to publish the total number of adverse events relating to children in out of home care, youth justice centres and youth justice residential centres reported to the Commission each quarter.

The Bill provides the Commission with appropriate powers to ensure that Victoria's children are protected and that, as far as possible, child abuse is prevented and allegations of child abuse are properly responded to. It promotes a whole of government approach to the prevention of child abuse and clearly emphasises that it is the responsibility of all organisations that provide services to children to do so in ways that protect children.