



ACT
Government

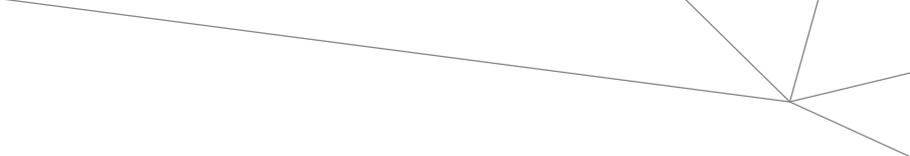
CHILD SAFE STANDARDS

Chief Minister Treasury and
Economic Development
Directorate

November 2019

CONTENTS

INTRODUCTION.....	4
Purpose of this discussion paper	4
Why is government regulating Child Safe Standards?.....	4
How can I have my say?	4
Complete a short online survey	4
Make a submission	5
How we will use your feedback	5
Contact details.....	5
BACKGROUND INFORMATION.....	6
What are Child Safe Standards?	6
Royal Commission into Institutional Responses to Child Sexual Abuse	6
National Principles for Child Safe Organisations	6
Existing schemes for Child Safe Standards in Victoria and NSW	8
DEVELOPING AN ACT CHILD SAFE STANDARDS SCHEME.....	9
Decisions made so far	9
How Child Safe Standards relates to existing child safety schemes in the ACT	9
Impact on organisations.....	10
DISCUSSION QUESTIONS	12
Scope of organisations to be brought within the scheme.....	12
Content and language of the Standards.....	14
Location of oversight body	14
Functions of oversight body.....	15
Compliance activity required of organisations.....	16
Support for organisations to help them implement child safe practice	16



Monitoring and enforcement to achieve child safe outcomes	17
Gradual implementation of the scheme	19
Partnering with other entities to reduce duplication and regulatory burden	20
Victoria co-regulation model	21
NSW partnerships model.....	21
.....	23

CHILD SAFE STANDARDS

INTRODUCTION

Purpose of this discussion paper

This discussion paper provides the ACT community with information about proposed regulation of Child Safe Standards. It has been prepared in order to:

- > assist organisations engaging with children and young people to learn more about Child Safe Standards, and
- > provide opportunity for interested community members to contribute to the design of legislation.

Thousands of organisations across Canberra provide services and create opportunities for children and young people. Schools, health services, sporting clubs, arts and culture groups, community services, not-for-profit organisations and volunteer groups all contribute to children's development and assist them to prepare for a healthy and happy life.

The organisations engaging with children and young people hold valuable information and experience which can inform the way ACT Government implements the Royal Commission recommendations for mandatory Child Safe Standards.

The Child Safe Standards scheme aims to be robust in promoting the safety of children and young people, while being sensible and realistic for organisations. The views of organisations, peak bodies, and membership associations will be important to inform the design of regulation.

Why is government regulating Child Safe Standards?

ACT Government is acting upon recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse to make it mandatory for organisations engaged in child related work to comply with Child Safe Standards.

ACT Government is also promoting the National Principles for Child Safe Standards, which were endorsed by all States and Territories in February 2019.

How can I have my say?

Complete a short online survey

If you are a worker, volunteer or manager in an organisation that engages with children and young people, tell us what types of support will help you comply with Child Safe Standards through a short [online survey](#).¹

The survey will be open from November 2019 to 28 February 2020.

¹ <https://www.yoursay.act.gov.au/child-safe-standards>

Make a submission

The detailed design for the ACT Child Safe Standards scheme will be developed in early 2020. If you would like to contribute to this process, please make a submission.

ACT Government has made these decisions:

- > To require organisations working with children and young people to comply with Child Safe Standards, and
- > To give formal oversight functions to the ACT Human Rights Commission.

The community is invited to provide feedback on these questions, which have not yet been decided:

- > Scope of the scheme (which organisations should be included),
- > Types of support to be provided by the oversight body, to assist organisations to comply with the Standards,
- > What monitoring and enforcement powers should be given to the oversight body, and
- > How best to delay commencement of the scheme so that organisations have time to prepare.

To make a submission:

- > Send an email to ChildAbuseRoyalCommission@act.gov.au
- > Write to Child Safe Standards, Policy and Cabinet Division, ACT Government, GPO Box 158 Canberra ACT 2601

It is not essential to address all the discussion questions presented in this paper.

Submissions close 28 February 2020.

How we will use your feedback

ACT Government will use your feedback to inform the way we design an ACT Child Safe Standards scheme.

All submissions will be treated as public and may be published unless the author indicates that it is to be treated as confidential. All requests for the submission to be treated confidentially will be respected and dealt with in accordance with any applicable laws, including freedom of information legislation.

Contact details

If you have questions or would like to speak directly with someone, please contact us at:

Name	Chief Minister Treasury and Economic Development Directorate
Phone	(02) 6205 2472
Email	ChildAbuseRoyalCommission@act.gov.au
Post	Child Safe Standards, Policy and Cabinet Division Chief Minister Treasury and Economic Development Directorate GPO Box 158 Canberra ACT 2601

BACKGROUND INFORMATION

What are Child Safe Standards?

Royal Commission into Institutional Responses to Child Sexual Abuse

The recent Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) exposed the tragedy of abuse in organisations across Australia. The findings on the scale and impact of child sexual abuse in organisations highlighted the need to improve prevention activities.

In its 2017 final report, the Royal Commission recommended that States and Territories:

- > require organisations engaging in child related work to meet the Child Safe Standards (recommendation 6.8); and
- > establish an independent oversight body to monitor and enforce compliance with Child Safe Standards, and provide information, advice and training (recommendations 6.10 – 6.11).²

ACT Government agreed in principle to these recommendations in June 2018.³

National Principles for Child Safe Organisations

In February 2019, all Premiers and Chief Ministers endorsed the National Principles for Child Safe Organisations.⁴ The National Principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. They build upon the Royal Commission recommendations by addressing all forms of harm to children (physical, sexual, emotional abuse and neglect).

The National Principles for Child Safe Organisations are:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture.
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved in promoting child safety and wellbeing.
4. Equity is upheld and diverse needs respected in policy and practice.
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.
6. Processes to respond to complaints and concerns are child focused.
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
9. Implementation of the national child safe principles is regularly reviewed and improved.
10. Policies and procedures document how the organisation is safe for children and young people.

² Royal Commission into Institutional Responses to Child Sexual Abuse (2017), *Report Volume 6, Making institutions child safe* <https://www.childabuseroyalcommission.gov.au/making-institutions-child-safe>

³ ACT Government (2018) Response to the Royal Commission into Institutional Responses to Child Sexual Abuse <https://www.act.gov.au/childabuseroyalcommission/formalresponse>

⁴ National Principles for Child Safe Organisations, <https://childsafefhumanrights.gov.au/national-principles/about-national-principles>

The National Principles are also represented visually in Figure 1.

Organisations are encouraged to review these ten areas of policy and practice, and begin a process of continuous improvement. Detailed action areas and indicators are available on the National Principles website.⁵



Figure 1: National Principles for Child Safe Organisations

⁵ <https://childsafe.humanrights.gov.au/national-principles/download-national-principles>

The National Principles website includes free tools and resources to help organisations implement Child Safe Standards, including:⁶

- > Short video overview by the National Children’s Commissioner
- > Introductory self-assessment tool for organisations
- > E-learning modules
- > Sample Charter of Commitment to Children and Young People
- > Child Safety and Wellbeing Policy template
- > Sample Child Safe Code of Conduct
- > Checklist for online safety

Existing schemes for Child Safe Standards in Victoria and NSW

Victoria regulated Child Safe Standards in 2016 following the Victoria Parliament *Betrayal of Trust* inquiry.⁷ This regulatory approach was endorsed by the Royal Commission in its 2017 recommendations. The scheme is operated by the Victoria Commission for Children and Young People.⁸

NSW is currently developing legislation to follow the Victorian model, with some modifications based on differences in context, and lessons from the first years of Victorian operation.⁹ The NSW scheme will be operated by the Office of the Children’s Guardian.¹⁰

⁶ National Principles for Child Safe Organisations www.childsafe.humanrights.gov.au

⁷ Parliament of Victoria, Family and Community Development Committee, *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations* https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Preliminaries.pdf

⁸ Victoria Commission for Children and Young People <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/>

⁹ Office of the Children’s Guardian (2019) *Making organisations safer for Children: Regulation of child safe standards in NSW – Consultation Report* <https://www.kidsguardian.nsw.gov.au/about-us/news/new-report-outlines-key-elements-of-a-child-safe-regulatory-model-in-nsw>

¹⁰ NSW Office of the Children’s Guardian <https://www.kidsguardian.nsw.gov.au/about-us/news/new-report-outlines-key-elements-of-a-child-safe-regulatory-model-in-nsw>

DEVELOPING AN ACT CHILD SAFE STANDARDS SCHEME

Decisions made so far

ACT Government will fully implement Royal Commission recommendations to regulate Child Safe Standards. The following decisions have been made:

- > To require organisations working with children and young people to comply with Child Safe Standards, and
- > To give formal oversight functions to the ACT Human Rights Commission.

The detailed design for the ACT Child Safe Standards scheme will be developed in early 2020. The community has opportunity to provide input to the following four questions, which have not yet been decided:

- > Scope of the scheme (which organisations should be included),
- > Types of support to be provided by the oversight body, to assist organisations to comply with the Standards,
- > What monitoring and enforcement powers should be given to the oversight body, and
- > How best to delay commencement of the scheme so that organisations have time to prepare.

How Child Safe Standards relates to existing child safety schemes in the ACT

Child Safe Standards will intersect with the existing child safety schemes in the ACT:

- > Mandatory Reporting commenced in the ACT in 1997,
- > Working with Vulnerable People (WWVP) checks were phased in from 2011, and
- > Reportable Conduct scheme began operating in 2017.

These are all necessary components of a child safety framework; however, further action is required to ensure organisations create child safe environments in line with the latest evidence outlined by the Royal Commission.

The three existing child safety schemes in the ACT require people to report known incidents of abuse, and prevent known perpetrators from working with children and young people.

In contrast, Child Safe Standards place the emphasis on early prevention; they help organisations create conditions that prevent abuse from occurring in the first place.

Figure 2 below shows how Child Safe Standards relate to existing child safety schemes. WWVP assists organisations to partially comply with National Principle 5 (staff recruitment). Mandatory Reporting and Reportable Conduct assist organisations to partially comply with National Principle 6 (reporting incidents).

Child Safe Standards will assist organisations to build their capacity to meet the remaining eight National Principles and, in doing so, create child safe environments.



Figure 2: How Working with Vulnerable People Checks, Reportable Conduct scheme and Mandatory Reporting relate to Child Safe Standards

Impact on organisations

When recommending Child Safe Standards, the Royal Commission recognised that unnecessarily onerous regulation should be avoided:

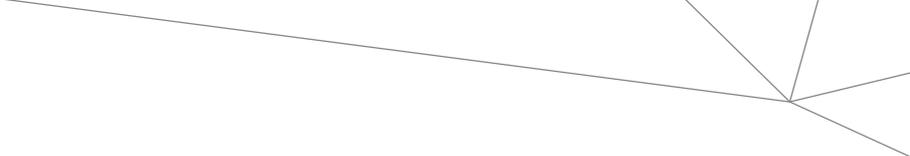
*'Governments must strike the balance between ensuring that child safe standard are implemented effectively and that institutions are not overly burdened by the weight of compliance. Government oversight should aim to achieve better safety for children while minimising costs for institutions.'*¹¹

There is no 'one size fits all' approach to implementing the Standards. Organisations will have flexibility to comply with the Standards in ways that make sense in their context; considering their size, the nature of their interactions with children and young people, and the administrative resources available to the m.

The scheme will be designed to minimise the burden on organisations, in the following ways:

- > Principle based standards (rather than fixed or absolute rules) will allow flexibility in implementation for different types of organisations. The standards will be clearly defined, but allow organisations to comply in ways that make sense in their context.
- > Child Safe Standards are about capacity building, and continuous improvement over time (not immediate leaps in progress).
- > Organisations will not be expected to design material from scratch. In addition to the existing resources on the National Principles website described above at page 6, the ACT oversight body will provide local guidance material, tools and resources, training sessions, telephone and email support.
- > The oversight body will not expect the same level or sophistication of response from a large well-resourced organisation and a small business operator or volunteer group.

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse Report, vol. 6, p. 16.

- 
- > While Child Safe Standards will require work, they also present opportunities for small business operators:
 - Investment in prevention is cost effective, as it mitigates exposure to the costs of investigations following allegations.
 - Business that comply with the Standards are becoming providers of choice; as community awareness of the Standards grows, parents/carers will increasingly ask about child safety when selecting an organisation to work with their children.

DISCUSSION QUESTIONS

Scope of organisations to be brought within the scheme

The boundaries of the scope of the ACT Child Safe Standards scheme have not yet been decided.

The Royal Commission recommended that organisations be required to comply with Child Safe Standards if they engage in 'child related work'.¹² Recommendation 6.9 is that the following organisations be required to comply with Child Safe Standards:

- > Accommodation and residential services for children, including overnight excursions or stays,
- > Activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children,
- > Education services for children,
- > Child protection services, including out-of-home care,
- > Activities or services where clubs and associations have a significant membership of, or involvement by, children,
- > Commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions,
- > Services for children with disability,
- > Health services for children,
- > Justice and detention services for children, including immigration detention facilities,
- > Childcare or childminding services,
- > Coaching or tuition services for children, and
- > Transport services for children, including school crossing services.

In Victoria, the scope of the Child Safe Standards scheme is itemised in a long list of organisation types in the schedule to the legislation.¹³ The list is simplified to the term 'services or facilities for children or young people' on the website of the Victoria Commission for Children and Young People.¹⁴

The Victorian scheme is broader than the scope recommended by the Royal Commission. In addition to the list of organisations recommended by the Royal Commission, the Victorian scheme also covers:

- > Victoria Government departments,
- > Local councils in Victoria,
- > Support services for parents and families funded under a State contract,
- > Family violence or sexual assault services,
- > Homelessness services,
- > Youth services, and

¹² Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendation 6.9

¹³ *Child Wellbeing and Safety Act 2005* (Vic)

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobist10.nsf/DDE300B846EED9C7CA257616000A3571/191E231BE2CDE48BCA25833800048603/\\$FILE/05-83aa025%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobist10.nsf/DDE300B846EED9C7CA257616000A3571/191E231BE2CDE48BCA25833800048603/$FILE/05-83aa025%20authorised.pdf)

¹⁴ Victoria Commission for Children and Young People <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/>

- > Victorian health services, hospitals and day procedure centres if they provide services to children.¹⁵

The scope of the NSW Child Safe Standards scheme has not yet been confirmed. In a consultation report published in July 2019, the NSW Office of the Children’s Guardian proposed to include within the Child Safe Standards scheme those organisations where at least one person is required to hold or holds a Working with Children Check in NSW.¹⁶

Three potential options for defining the scope of the ACT Child Safe Standards scheme include:

- Option 1: Listing the range of sectors and organisation types to be included within the scheme in a schedule to the legislation (as exists in Victoria).
- Option 2: Direct alignment with the scope of the WWVP scheme (as is proposed for NSW). Noting that the ACT would need to include exemption provisions for those organisations working solely with vulnerable adults (not children and young people).
- Option 3: Using the existing definition of ‘services for children and young people’ in s8A of the *Human Rights Commission Act 2005*:

‘A service for children or young people is a service provided in the ACT specifically for children, young people, both children and young people, or their carers.’

Noting that the community would need guidance to clarify the range of organisations falling within this definition. This is the simplest option, but may exclude some relevant organisations due to use of the term ‘specifically’ in the definition.

Discussion questions

1. Should the coverage of the ACT Child Safe Standards scheme be broader than the organisations specified by the Royal Commission in recommendation 6.9? Examples of broader scope include the Victorian Child Safe Standards scheme and the ACT Working with Vulnerable People scheme.
2. Is it preferable for ACT Child Safe Standards legislation to (a) list the types of organisations that are covered by the scheme, or (b) establish an overarching definition of scope? Which approach offers greater clarity for organisations, and assurance of coverage for child safety outcomes?
3. Are there some organisations engaging with children and young people that fall within the scope of the Working with Vulnerable People Scheme, but are not captured by the definition of ‘services for children and young people’ in s8A *Human Rights Commission Act 2005*?
4. Are there some organisations not ‘specifically’ provided to children and young people or their carers (so they do not fall within the definition in s8A *Human Rights Commission Act 2005*) that should be included in an ACT Child Safe Standards scheme?
5. Are there certain organisations engaging with children and young people in the ACT that should not be included in the Child Safe Standards scheme, and if so, for what reasons?

¹⁵ Victoria Government Department of Health and Human Services (November 2018) *Review of Victoria’s Child Safe Standards, Issues Paper*

¹⁶ Office of the Children’s Guardian (2019) *Making organisations safer for Children: Regulation of child safe standards in NSW – Consultation Report*, p.6

https://www.kidsguardian.nsw.gov.au/ArticleDocuments/316/Standards_Consultation_report_full.pdf.aspx?Embed=Y

Content and language of the Standards

The language of the ACT standards will be adapted from the National Principles, informed by the Victorian and NSW expressions in interest of harmonisation.

The National Principles for Child Safe Organisations are listed above at page 6.

The seven Victorian Standards were developed in 2016, and pre-date the Royal Commission:¹⁷

- > Standard 1: Governance and leadership
- > Standard 2: Clear commitment to child safety
- > Standard 3: Code of conduct
- > Standard 4: Human resource practices
- > Standard 5: Responding and reporting
- > Standard 6: Risk management and mitigation
- > Standard 7: Empowering children

When applying the seven standards, organisation in Victoria must have regard to three overarching principles requiring them to consider the increased vulnerability of:¹⁸

- > Aboriginal children,
- > Children from culturally and linguistically diverse backgrounds, and
- > Children with disabilities.

The language of the NSW Standards has not yet been confirmed.

Discussion questions

6. When comparing the National Principles, Victoria Standards and NSW Standards, which elements are:
 - a. Important to include in the ACT Standards because they emphasise particular themes, concepts or actions?
 - b. Easier to understand in structure, language or tone?
 - c. Better suited to the ACT context?

Location of oversight body

The ACT Human Rights Commission (the Commission) will be given legislative functions to promote, monitor and enforce compliance with Child Safe Standards.

¹⁷ Victoria Commission for Children and Young People <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/>

¹⁸ Victoria Commission for Children and Young People <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/child-safe-principles/#TOC-1>

This organisation was chosen to be oversight body for the following reasons:

- > Through its existing functions, the Commission already engages with most, if not all, sectors that will be within the scheme. This includes government, community, commercial, sporting, volunteer and not for profit organisations.
- > The Commission currently performs functions and activities that are similar to those required for the oversight of Child Safe Standards, such as sector development, service improvement, monitoring activities and complaints investigation.
- > The Commission is actively involved in information sharing and collaboration activities with existing ACT regulators, including the full range of regulators relevant to Child Safe Standards. For example, the Commission takes a coordination role to foster collaboration between ACT agencies by chairing the Child and Young People Oversight Agencies Group.
- > The structure of the Commission, by allocating functions among Commissioners, mitigates any real or perceived conflict between individual advocacy activities and complaint handling or regulatory activities.

Discussion questions

7. The location for Child Safe Standards oversight has been decided, and will not be changed. However, government welcomes feedback on how the Child Safe Standards will intersect with the other functions of the Human Rights Commission, to ensure that the benefits of co-location are enhanced, and risks are mitigated.

Functions of oversight body

The Child Safe Standards oversight body is anticipated to undertake the following range of activities, based on similar schemes operating in Victoria and being developed in NSW.

- > **Community engagement and capacity building**
 - Promoting child safety within organisations (eg. facilitating training courses, developing resources and materials, developing communications strategies to promote awareness and compliance).
- > **Monitoring and enforcement**
 - Engaging with organisations to evaluate their compliance with the standards and providing advice and guidance to improve practice; using monitoring powers when necessary.
 - Annual monitoring program and targeted compliance audits of particular sectors or organisation types, using risk analysis to prioritise resources.
 - Interacting with community members who raise concerns about implementation of Child Safe Standards within a particular organisation.
 - Using formal enforcement powers only as last resort.
- > **Interagency collaboration**
 - Partnering with sector regulators and funding bodies (to build compliance into existing regulatory or administration systems, and to develop sector-specific tools and resources to support compliance).
 - Coordination with other regulators to reduce duplication and assist each other in performing child safety functions (eg. Reportable Conduct, Working with Vulnerable People Checks, early childhood regulation, Senior Practitioner, and Human Services Registrar).

Discussion questions

8. Which functions proposed for oversight of Child Safe Standards are particularly important, and should be emphasised?
9. Are any functions potentially unsuitable, and should be reconsidered?

Compliance activity required of organisations

It is expected that organisations working with children and young people will not be required to formally register with the Child Safe Standards oversight body, or routinely lodge paperwork for inspection.

Rather, at some time, organisations may be asked to provide information to the oversight body describing how they have implemented Child Safe Standards.

The oversight body will establish a risk assessment framework to help them determine which organisations to monitor and audit each year, to ensure it uses its resources for the greatest possible impact on child safety outcomes. The oversight body may also seek information in response to an individual complaint about an organisation by a client or parent/carer.

Discussion questions

10. In what ways would organisations prefer to be approached by the oversight body to discuss compliance matters? What types of interactions with an oversight body are helpful and unhelpful?
11. What types of information should be used to inform the Child Safe Standards risk assessment framework (to help the Commission target monitoring activities where it will have the greatest outcomes for child safety)? Do existing government agencies and regulatory bodies have relevant information that they can appropriately share with the Child Safe Standards oversight body for this purpose?

Support for organisations to help them implement child safe practice

The primary role of the Child Safe Standards oversight body will be capacity building; in other words, supporting organisations to comply with the Standards. The Human Rights Commission will work with organisations to help them understand what Child Safe Standards mean, and how they apply to their context.

Examples of support that might be provided or coordinated by an oversight body may include:

- > Online factsheets/FAQs,
- > Online videos,
- > Telephone number to seek information and advice,
- > Email address to seek information and advice,
- > Training courses,
- > Email network to share ideas with organisations similar to yours,
- > Face-to-face meetings to share ideas with organisations similar to yours,
- > Template policy documents,
- > Template forms, and

- > Periodic reminder emails to prompt organisations to review child safety work done so far, and build upon it.

Discussion questions

12. How should the oversight body support organisations to build their capacity to meet Child Safe Standards?
13. How can the scheme be designed to enhance the beneficial impacts of Child Safe Standards, and minimise the potential burden, for the following types of organisations with their different characteristics and challenges?
 - a. Community organisations
 - b. Small business operators
 - c. Volunteer groups

Monitoring and enforcement to achieve child safe outcomes

The oversight body will be asked to take a responsive regulatory approach, which means that in the first instance it will engage in cooperative, non-coercive communication when monitoring compliance with Child Safe Standards. Formal enforcement mechanisms will only be used as last resort.

The primary focus of the Child Safe Standards oversight body will be on supporting organisations engaging with children and young people to comply and grow (discussed above at page 15).

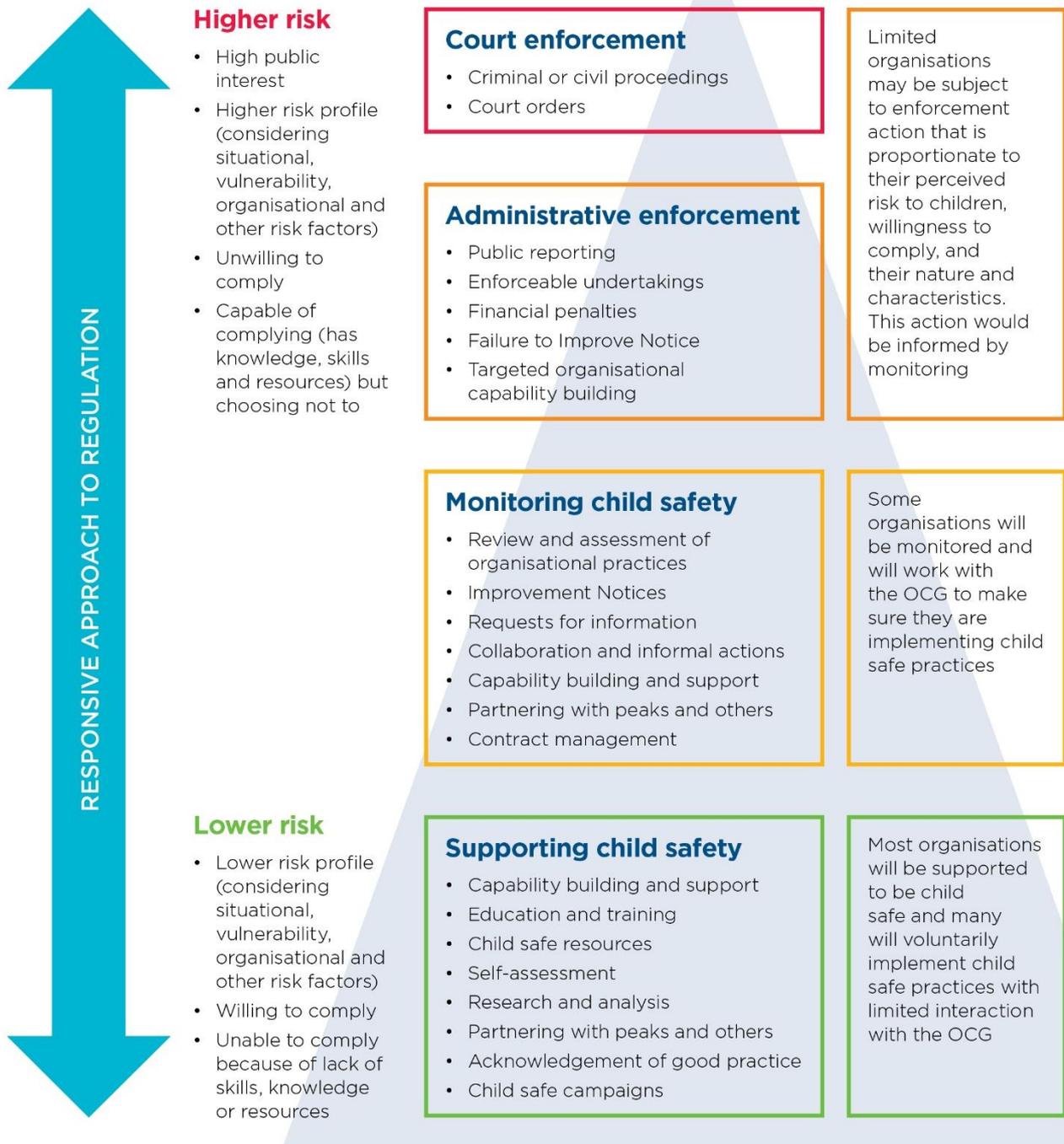
Compliance activity will be founded on risk assessment. The oversight body will be asked to establish a risk assessment framework to help them determine which organisations to monitor and audit each year, to ensure it uses its resources for the greatest possible impact on child safety outcomes.

It is intended that formal enforcement powers will be used in the rare situation where an organisation has the resources and ability to comply with the Standards, but repeatedly refuses to do so, despite attempts by the oversight body to work cooperatively.

For example, NSW Office of the Child Guardian has published a regulatory pyramid describing its proposed approach to monitoring and enforcing Child Safe Standards (see Figure 3).¹⁹ The emphasis is on supporting child safety, with a secondary focus on monitoring child safety; enforcement action is expected to occur only rarely.

¹⁹ Office of the Children’s Guardian (2019) *Making organisations safer for Children: Regulation of child safe standards in NSW – Consultation Report*, p.8.
https://www.kidsguardian.nsw.gov.au/ArticleDocuments/316/Standards_Consultation_report_full.pdf.aspx?Embed=Y

CHILD SAFE STANDARDS TO GUIDE PRACTICE AND OUTCOMES



COMMUNITY AWARENESS AND EDUCATION

Figure 3: Proposed approach to regulation of Child Safe Standards in NSW (NSW Office of the Children’s Guardian)

Examples of monitoring and enforcement powers that may be considered for the ACT scheme include:

- > Power to request/compel information in order to monitor compliance,
- > Power to undertake audits to assess compliance,
- > Power to make recommendations, and to follow up and verify changes made in response to a recommendation,
- > Power to issue 'improvement' notices, and 'failure to improve' notices,
- > Power to enter into voluntary and enforceable undertakings, and/or
- > Power to make a public report of non-compliance.

Note that some organisations are already required to implement the National Principles for Child Safe Organisations, and their performance can currently be monitored by the Human Rights Commission under its powers to investigate complaints about services for children and young people in the *Human Rights Commission Act 2005*.

Discussion questions

14. What powers should the oversight body have to *monitor* compliance with Child Safe Standards?
15. What powers should the oversight body have to *enforce* compliance with Child Safe Standards?

Gradual implementation of the scheme

It is proposed that the Child Safe Standards scheme be implemented gradually, to provide organisations engaging with children and young people sufficient time to prepare for the changes.

Delayed or staged commencement of the legislation will enable the oversight body to begin awareness raising and capacity building work before formal obligations or enforcement provisions commence. Several options are available, including:

- Option 1: Delayed commencement of legislation (eg. pass legislation in order to provide community with confirmation of what to expect, but then give everyone time to get ready).
- Option 2: Staged commencement of legislation for different types of organisations (eg. Victoria required government agencies to comply with Child Safe Standards one year before community and private sector organisations).
- Option 3: Delayed commencement of enforcement powers (eg. give oversight body resources and time to undertake widespread awareness raising and capacity building work, but delay the commencement of formal enforcement activity, as occurred with the introduction of the Senior Practitioner).

Discussion questions

16. How much time do organisations need to prepare for Child Safe Standards?
17. Which of these options for gradual implementation would work best, and why?
 - a. Delaying commencement of the entire scheme
 - b. Staging commencement for different types of organisations (eg. starting with government agencies, then incorporating the community and private sectors)
 - c. Delaying the commencement of enforcement powers

Partnering with other entities to reduce duplication and regulatory burden

Victoria and NSW are adopting a ‘co-regulation’ or ‘partnership’ approach to Child Safe Standards. This involves the Child Safe Standards oversight body collaborating with existing sector regulators and funding bodies to harmonise compliance processes. For example, where a sector is already regulated, organisations might be able to use existing regulatory processes to demonstrate they comply with Child Safe Standards.

The potential benefits of this approach include reducing regulatory burden on organisations; efficiencies in resourcing enforcement activities across government; and utilising regulators’ and funding bodies’ extensive networks and expert knowledge of their particular sector.

Examples of sector regulators who may be asked to work in partnership with the ACT Child Safe Standards oversight body are included in Table 1 below.

Table 1: Sector regulators who may be asked to work in partnership with the ACT Child Safe Standards oversight body

Sector	Regulator
ACT Public Schools Non-government schools	Education Directorate
Early childhood Out of school hours care	Education Directorate
Out of home care	Community Services Directorate Human Services Registrar
Youth justice	Inspector of Custodial Services
Health	Australian Commission on Safety and Quality in Health Care
Disability	NDIS Quality and Safeguards Commission

Examples of funding bodies who may be asked to work in partnership with the ACT Child Safe Standards oversight body are included in Table 2 below.

Table 2: Funding bodies who may be asked to work in partnership with the ACT Child Safe Standards oversight body

Sector	Funding body
Arts and culture	artsACT
Sports and recreation	Sports and Recreation
Community services	Community Services Directorate
Health services	Health Directorate

Government invites feedback on the framework for enabling the Child Safe Standards oversight body to establish partnerships with sector regulators, funding bodies and peak bodies. Options for discussion include:

Option 1: A formal legislated framework such as that which exists in the Victorian scheme

Option 2: Bilateral arrangements authorised by legislation, but negotiated by the oversight body with each co-regulator and funding body on a case-by-case basis, with clear roles and responsibilities set out in memoranda of understanding (MOUs)

Victoria co-regulation model

The Victorian scheme divides organisations into category 1 (government agencies and services regulated or funded by government) and category 2 (un-regulated organisations in the community and private sector). Sector regulators ('relevant authorities') for category 1 organisations are expected to take an active role in overseeing compliance with Child Safe Standards in their sector. The intention of the legislation is that the Victoria Commission for Children and Young People, as the central regulator, focus on oversight of the unregulated organisations in category 2, and oversee quality and consistency of approach by the co-regulators across different sectors (negotiating with them on the approach they take to enforcement of Child Safe Standards).²⁰

The Victorian scheme was designed on the principle that Child Safe Standards 'enforcement mechanisms should not duplicate existing regulation for organisations that are already regulated by government'.²¹

In Victorian parliamentary debate it was suggested that the intent of the co-regulation model was 'to design a regulatory system that reflects that there are obligations on multiple government bodies to ensure that organisations are child safe'.²²

NSW partnerships model

NSW Office of the Children's Guardian uses the term 'partnerships' when explaining their intention to work with regulators and funding bodies to reduce duplication and regulatory burden:

'The OCG – as the central regulator – would partner with sector regulators, peak bodies and other entities where appropriate to reduce regulatory duplication and facilitate consistency with other child safe frameworks. These arrangements would be entered into on a case by case basis with clear roles and responsibilities articulated in formal arrangements. The central regulator would also enter into partnerships with peak bodies and community-run entities to deliver capability building and support measures as required'.²³

NSW has not yet announced whether the partnerships framework will be formally legislated.

Discussion questions

18. Should sector regulators have a formal role in *enforcing* compliance with Child Safe Standards?
19. Should funding bodies have a formal role in *promoting* compliance with Child Safe Standards?
20. What sort of partnerships do the following types of organisations wish to establish with the Child Safe Standards oversight body (what activities are they comfortable undertaking, and what activities do they wish to avoid):
 - a. Sector regulators
 - b. Funding bodies
 - c. Peak bodies

²⁰ *Child Wellbeing and Safety Act 2005* (Vic)

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/191E231BE2CDE48BCA25833800048603/\\$FILE/05-83aa025%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/191E231BE2CDE48BCA25833800048603/$FILE/05-83aa025%20authorised.pdf)

²¹ Victoria Government Department of Health and Human Services (November 2018) *Review of Victoria's Child Safe Standards, Issues Paper*, p. 16.

²² State of Victoria, *Hansard*, Legislative Assembly, 14 September 2016, p. 3482 (Hon. Martin Foley MP).

²³ Office of the Children's Guardian (2019) *Making organisations safer for children: Regulation of child safe standards in NSW – Consultation Report*, p. 11. <https://www.kidsguardian.nsw.gov.au/about-us/news/new-report-outlines-key-elements-of-a-child-safe-regulatory-model-in-nsw>

21. What legislative authority will be required to enable regulators, funding bodies and peak bodies to work in partnership with the ACT Child Safe Standards oversight body?
22. How much of the partnership framework should be formally legislated (to authorise collaboration and ensure consistency across sectors); and how much should be left open to negotiation through bilateral MOUs with the oversight body (to allow flexibility in different contexts)?
23. To what extent are existing information sharing provisions (eg. in the *Human Rights Commission Act 2005*, *Children & Young People Act 2008*, and *Ombudsman Act 1989*) sufficient to enable the Child Safe Standards oversight body to establish partnerships with regulators, funding bodies and peak bodies. What additional authority to share information may be needed to support collaboration on Child Safe Standards?



Chief Minister Treasury and Economic
Development Directorate

November 2019