

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Human Rights Commission (Child Safe Standards) Amendment Bill 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

**Presented by
Rachel Stephen-Smith
Minister for Children, Youth and Family Services
March 2024**

HUMAN RIGHTS COMMISSION AMENDMENT BILL 2024

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Human Rights Commission (Child Safe Standards) Amendment Bill 2024 (the Bill) will amend the *Human Rights Commission Act 2005* (HRC Act). The purpose of the Bill is to establish a regulatory Scheme for the Child Safe Standards in the ACT. The Bill will:

- make it mandatory for all organisations providing a service for children and young people in the ACT to implement the Child Safe Standards in their daily work; and
- strengthen the Human Rights Commission's role in providing capacity building support to organisations.

The Government's response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) accepted in principle the recommendations that states and territories:

- require organisations engaging in child related work to meet the Child Safe Standards (rec 6.8), and
- establish an independent oversight body to monitor and enforce compliance with Child Safe Standards, and provide information, advice and training on Child Safe Standards (recs 6.10-6.11).

The Royal Commission emphasised that members of the public, children and young people, parents, carers, families, and communities should feel confident that organisations working with children provide safe environments in which children's rights, needs and interests are met.

Extensive evidence presented by the Royal Commission supports government regulation of Child Safe Standards. The direct social costs of child abuse (poor physical and mental health, poor education outcomes, drug use, unemployment) are significant. The additional and substantial longer term economic costs of child abuse (to the health system, criminal justice system, housing and homelessness services, lost tax revenue) make prevention of child abuse a priority for governments and the community.

In February 2019, the Chief Minister, on behalf of the ACT Government, endorsed the National Principles for Child Safe Organisations. The principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. The National Principles draw on the work of the Royal

Commission, Australia's Children's Commissioners and Guardians and the 2005 National Framework for Creating Safe Environments for Children. Underpinned by a child-rights approach and based on the standards recommended by the Royal Commission, the National Principles are designed to build capacity and deliver child safety and wellbeing in organisations, families and communities and prevent future harm.

The ACT Child Safe Standards will replicate the National Principles for Child Safe Organisations and aim to address all forms of harm to children and young people (i.e., psychological, emotional, and physical abuse, as well as neglect).

The Scheme will impose proportionate risk-based regulation by: using principle-based standards; focusing on capacity building and continuous improvement over time, and; relying on existing compliance and enforcement mechanisms (including the Human Rights Commission's complaint handling, conciliation and public reporting powers).

The ten ACT Child Safe Standards 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 of child sexual abuse 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. An organisation's implementation of the Child Safe Standards is regularly reviewed and improved.
10. Policies and procedures document how the organisation is safe for children and young people.

The National Office for Child Safety is leading work to foster national harmonisation of Child Safe Standards schemes. It is intended that, if an organisation is complying with

another jurisdiction's scheme that also aligns with the National Principles, that organisation will be complying with the ACT Child Safe Standards.

The amendments in this Bill:

- Amend the Human Rights Commission Regulation 2023 to require providers to implement the Child Safe Standards.
- Amend the HRC Act to include promoting and encouraging providers to uphold the Child Safe Standards in the main objects of the Act and in the Children and Young People Commissioner's functions.
- Amend the HRC Act to clarify that a complaint may be made about a service for children and young people in relation to the Child Safe Standards.
- Amend the HRC Act to review the Scheme after 5 years of operation.

Who must implement the Child Safe Standards?

The requirement to implement the Child Safe Standards will apply to organisations that are already included in the HRC Act. The HRC's existing powers (for example complaint handling and advocacy) already cover these organisations. The Bill relies on the current definition of a service for children and young people in section 8A of the HRC Act: 'a service provided in the ACT specifically for children and young people, both children and young people, or their carers. Section 8A includes the following examples: a service that provides care, transport, education, training and skill, food services, recreation, advocacy, accommodation support or employment services. It is expected that the Human Rights Commission will apply this definition in line with their current practice, using a beneficial and broad interpretation and rights-based approach. Providing services 'specifically for children' does not mean providing services solely for children. It means that some, or all, of the services or programs the organisation provides must be particularly directed at or offered for children or have a special application to children in the manner of form in which they are provided.

Existing Human Rights Commission Powers and Safeguards

This Bill draws and relies on existing powers within the HRC Act in the function of the amendments. Compliance and enforcement for the Scheme relies on existing functions and powers of the Human Rights Commission. This includes:

- Section 14 – Commission's functions to encourage the resolution of complaints and provide an independent, fair and accessible process for resolving complaints;
- Part 4 – Consideration of complaints and power to ask for information; documents and other things;
- Section 52A – referral of a complaint to a more suitable regulator;

- Sections 99A and 99B – Information sharing between commissioners;
- Division 4.5 – Reporting powers; and
- Sections 98 and 99 – Victimisation and Secrecy provisions.

CONSULTATION ON THE PROPOSED APPROACH

National Consultation

The National Principles were developed in 2017-2018 through a consultation process that included Australian governments, national peak bodies from sectors that work with children and young people, national advocacy and research organisations, and children and young people.

The National Principles draw on the work of the Royal Commission, Australia's Children's Commissioners and Guardians and the 2005 National Framework for Creating Safe Environments for Children.

SNAICC - National Voice for our Children and the Victorian Aboriginal Childcare Agency consulted with a range of stakeholders who engage with Aboriginal and Torres Strait Islander children, young people and their families across all Australian states and territories to develop *Keeping Our Kids Safe: Cultural Safety and the National Principles for Child Safe Organisations*. This is an in-depth resource to provide additional, culturally appropriate support for implementing the National Principles in Aboriginal and Torres Strait Islander communities and organisations.

ACT-specific Consultation

The ACT Government undertook public consultation between November 2019 and February 2020 on the design of the regulatory scheme for Child Safe Standards in the ACT. In partnership with the ACT Public Advocate and Children and Young People Commissioner, the ACT Government conducted stakeholder forums to understand sector readiness to implement the Child Safe Standards.

Approximately sixty individuals attended the sessions, representing a range of community, religious, residential and educational institutions and organisations. The diversity of attendees fostered dynamic discussion and enabled the group to consider current practices and potential next steps. The majority of attendees represented medium to large organisations, primarily operating in the Canberra region, and catering to the needs of children and young people.

The ACT Government undertook further consultation with government agencies and regulators in the development and finalisation of the Bill.

CONSISTENCY WITH HUMAN RIGHTS

The proposed amendments have been carefully considered in the context of the objects of the *Human Rights Act 2004* (HR Act). Any limitations on human rights are justifiable as reasonable limits set by laws in a free and democratic society, as required by section 28 of the HR Act. Importantly, the Bill also supports and strengthens protection of several rights under the HR Act. The human rights limitations that this Bill creates are proportionate to and the least restrictive approach to achieve the overall policy objective of this Bill.

Rights Promoted

This Bill engages and promotes the following rights under the HR Act:

- Section 11 – Protection of the family and children
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment etc.

Section 11 provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. The Bill promotes this right by requiring implementation of the Child Safe Standards which seeks to increase the safety of children and young people and bolster their wellbeing. The Child Safe Standards will help prevent harm and abuse from happening in organisations. New functions and additional funding for the Human Rights Commission will support organisations working with children and young people to develop more holistic and child-friendly approaches to safety and wellbeing.

Section 10 provides that no one may be tortured or treated or punished in a cruel, inhuman or degrading way. The Bill promotes this right as the Child Safe Standards require organisations to be child safe through creating a child safe culture, adopting strategies and taking action to promote child wellbeing and prevent harm to children and young people. In implementing the Child Safe Standards, being accountable to oversight and receiving capability building support from the Human Rights Commission, organisations are more likely to be able to prevent, identify and respond to conduct that impedes on this right.

Rights Limited

This Bill may limit the following rights:

- Section 27B – Right to work and other work-related rights
- Section 12 – Privacy and reputation

Right to work and other work-related rights

Nature of the right (s28(2)(a), HR Act)

Section 27B of the HR Act provides that everyone has the right to work, including the right to choose their occupation or profession freely and that the practice of a trade, occupation or profession may be regulated by law.

The amendments proposed by the Bill engage and may limit the right to work and other work-related rights.

Nature of the limitation (s28(2)(c), HR Act)

The Bill engages with and potentially limits this right as an individual may be prevented from working if certain conduct or circumstances conflict with the Child Safe Standards. It may also limit the work available where a complaint is made to the Human Rights Commission about compliance with the Child Safe Standards, and in instances where a complaint is referred to a regulatory body.

Legitimate purpose (s28(2)(b), HR Act)

The objective of the Bill is to protect children and young people in the provision of services for them. The legitimate purpose is to mandate implementation of the Child Safe Standards for providers of services to children and young people.

Rational connection between the limitation and the purpose (s28(2)(d), HR Act)

An obligation on organisations to apply Child Safe Standards in relation to employment will assist to ensure the safety and wellbeing of children using these services.

Proportionality (s28(2)(e), HR Act)

Any limitations on the right to work are justified where this is necessary to protect children and young people. The Child Safe Standards complement and enhance other schemes in the ACT including the Working With Vulnerable People Scheme, Reportable Conduct Scheme and background checking schemes. The Human Rights Commission may make recommendations about the employment of a person where this is inconsistent with the standards. The Human Rights Commission can also refer any concerns to other regulatory bodies including the Commissioner for Fair Trading and the Ombudsman. These regulatory bodies may then make decisions relating to the operation of a provider or the employment of a person.

Privacy and reputation

Nature of the right (s28(2)(a), HR Act)

Section 12 of the Human Rights Act protects individuals from unlawful and arbitrary interference with privacy, family, home or correspondence. Limitations on the right to privacy must be lawful and must not be arbitrary.

The Human Rights Commission currently has functions and powers under the Human Rights Commission Act 2005 in relation to complaints made by community members about a broad range of services, including health services, services for children and young people, services for older people and services for people with disability. The Human Rights Commission also has the power to ask for information, documents and other things (s 73 Human Rights Commission Act 2005) and requiring attendance (s 74, Human Rights Commission Act 2005), refer a complaint to a more suitable regulator (s 52A, Human Rights Commission Act 2005) or share information with another commissioner (s 99A, s 99 B, Human Rights Commission Act 2005).

The Bill will create a new section 40A(b)(ia) in the Human Rights Commission Act 2005 to clarify that a complaint may be made to the Human Rights Commission about the implementation of the Child Safe Standards by a provider of a service for children and young people.

Nature of the limitation (s28(2)(c), HR Act)

The right may be engaged by the Bill as the Human Rights Commission may obtain and share information about individuals in their investigation or referral of a complaint in relation to the Child Safe Standards and providers of services to children and young people.

Legitimate purpose (s28(2)(b), HR Act)

The legitimate purpose is to enable an accessible complaints mechanism in instances where providers are not complying with the Child Safe Standards.

Rational connection between the limitation and the purpose (s28(2)(d), HR Act)

The Human Rights Commission plays an important role in promoting and upholding human rights and will promote and uphold the Child Safe Standards through community education, advice to government, and its complaints-handling jurisdiction. Because of its existing expertise and role in the ACT, it is appropriate for the Human Rights Commission to have a complaints handling function in regard to the Child Safe Standards and associated powers, which may limit this right.

Proportionality (s28(2)(e), HR Act)

The nature of the section 12 right is not absolute. The term 'arbitrary interference' is described as intending to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Therefore, it is reasonable to suggest that a person's right to privacy can be interfered with, provided the interference is both lawful (allowed for by the law) and not arbitrary (reasonable in the circumstances). Enabling complaints to be made to the Human Rights Commission in relation to the Child Safe Standards is lawful and reasonable in circumstances to achieve the objectives of protecting children and young people and improving service provision for children and young people.

Human Rights Commission (Child Safe Standards) Amendment Bill 2024

Human Rights Act 2004 – Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Human Rights Commission Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause and sets out the name of the Act as the Human Rights Commission (Child Safe Standards) Amendment Act 2024.

Clause 2 Commencement

The clause enables the Act to commence on the later of 1 August 2024 and the day after its notification day.

Clause 3 Legislation amended

This clause identifies that the Act amends the *Human Rights Commission Act 2005*, the *Human Rights Commission Regulations 2023* and the *Education Regulation 2005*.

Part 2 Human Rights Commission Act 2005

Clause 4 Main objects of Act, New section 6(2) (fa)

This clause inserts the new section 6(2)(fa) in the *Human Rights Commission Act 2005* which adds to the main objects of the Act to include the promotion of environments that are safe for children and young people by promoting the prescribed child safe standards and encouraging providers of services for children and young people to uphold the standards.

Clause 5 New section 19B(1) (aa)

This clause inserts the new section 19B(1) (aa) in the *Human Rights Commission Act 2005* which adds to the functions of the children and young people commissioner promoting the implementation of the child safe standards by providers of services for children and young people and encouraging providers to uphold the standards.

Clause 6 New section 40A (b) (ia)

This clause inserts the new section 40A(b)(ia) in the *Human Rights Commission Act 2005* to clarify that a complaint may be made to the Human Rights Commission about the implementation of the child safe standards by a provider of a service for children and young people.

This strengthens the existing jurisdiction of the Human Rights Commission to handle complaints with reference to the National Principles for Child Safe Organisations.

Clause 7 New Part 5A Child safe standards

This clause inserts the new Part 5A in the *Human Rights Commission Act 2005* which enables a regulation to prescribe the child safe standards in relation to the provision of a service by providers of services for children and young people (section 94V).

Clause 94W requires a provider of a service for children and young people to implement the child safe standards.

Clause 94X requires the Minister to review the operation of Part 5A as soon as practicable after the end of its 5th year of operation and to present a report of the review to the Legislative Assembly within 12 months after the day the review is started. It is anticipated that the review will include consideration of whether available enforcement powers are sufficient and whether the scope of application to organisations providing a service to children or young people is appropriate.

Clause 8 Dictionary, new definition of *child safe standards*

This clause inserts the definition of child safe standards in the dictionary of the *Human Rights Commission Act 2005*.

Part 3 Human Rights Commission Regulation 2023

Clause 9 New Part 3 – child safe standards

This clause inserts a new Part 3 in the *Human Rights Commission Regulation 2023* to insert the ten child safe standards (section 25).

Other than the Standards set out in new clause 25(i) and (j), the Standards replicate the language used in the National Principles for Child Safe Organisations. It is expected that the ACT Standards and the National Principles can be used interchangeably. The extensive resources developed at a national level will also be applicable to the ACT context.

Clause 25(i) is slightly altered from the wording used in National Principle Nine to align it with the language used in the Bill and clarify that the organisation is responsible for reviewing and improving its own implementation of the standards.

Clause 25(j) is slightly altered from the wording used in National Principle Ten to align it with the language used in the Bill and reinforce the focus on the organisation's internal policies and procedures.

Clause 10 Expanded terms

This clause adds child safe standards to Note 2 of the Dictionary of the *Human Rights Commission Regulation 2023*.

Schedule 1 Education Regulation 2005— consequential amendment

1.1 Schedule 2, section 2.15

This clause replaces the previous reference to the National Principles for Child Safe Organisations with the child safe standards as expressed in this Bill for consistency across ACT legislation. It is expected that the ACT standards and the National Principles can be used interchangeably.