

**Authorised Version No. 023**  
**Child Wellbeing and Safety Act 2005**  
**No. 83 of 2005**

Authorised Version incorporating amendments as at  
28 February 2018

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28 February 2018

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purposes**

The main purposes of this Act are—

- (a) to establish principles for the wellbeing of children; and
- (b) to establish the Victorian Children's Council; and
- (c) to establish the Children's Services Co-ordination Board; and
- (d) to provide for the Minister to make standards in relation to child safety with which certain entities must comply; and
- (e) to provide for the oversight and enforcement by the Commission for Children and Young People of compliance by certain entities with standards in relation to child safety; and
- (f) to provide for the notification of births to municipal councils; and

S. 1(d)  
repealed by  
No. 79/2012  
s. 73, new  
s. 1(d)  
inserted by  
No. 63/2015  
s. 4.

S. 1(e)  
repealed by  
No. 79/2012  
s. 73,  
new s. 1(e)  
inserted by  
No. 63/2016  
s. 4.

S. 1(fa)  
inserted by  
No. 4/2017  
s. 4.

- (fa) to provide for a scheme for the reporting to the Commission for Children and Young People of allegations of reportable conduct or misconduct that may involve reportable conduct committed by employees within or connected to certain entities, the oversight by the Commission of investigations of those allegations and the administration of the scheme by the Commission; and
- (g) to repeal Part IX of the **Health Act 1958**.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 October 2007, it comes into operation on that day.

S. 3  
amended by  
No. 63/2015  
s. 5(3) (ILA  
s. 39B(1)).

## 3 Definitions

- (1) In this Act—

S. 3(1) def. of  
*applicable entity*  
inserted by  
No. 63/2015  
s. 5(2),  
amended by  
No. 4/2018  
s. 3(1)(a).

*applicable entity* means—

- (a) an incorporated body or association; or
- (b) an unincorporated body or association (however structured); or
- (c) an individual who—
- (i) carries on a business; and
- (ii) engages contractors, employees or volunteers to assist the business in providing services or facilities or in producing or providing goods;



***authorised person*** has the same meaning as it has in the **Commission for Children and Young People Act 2012**;

S. 3(1) def. of *authorised person* repealed by No. 79/2012 s. 74(1), new def. of *authorised person* inserted by No. 63/2016 s. 5.

***category 1 entity*** means an applicable entity that is referred to in Schedule 1;

S. 3(1) def. of *category 1 entity* inserted by No. 63/2015 s. 5(2).

***category 2 entity*** means an applicable entity that—

S. 3(1) def. of *category 2 entity* inserted by No. 63/2015 s. 5(2).

(a) is referred to in Schedule 2; and

(b) is not referred to in Schedule 1;

\* \* \* \* \*

S. 3(1) def. of *central register* substituted by No. 96/2005 s. 604(1)(a), repealed by No. 79/2012 s. 74(1).

***Chief Commissioner of Police*** means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;

S. 3(1) def. of *Chief Commissioner of Police* inserted by No. 4/2017 s. 5(1).

***child*** means a person who is under the age of 18 years;

S. 3(1) def. of  
*child abuse*  
inserted by  
No. 63/2015  
s. 5(2),  
amended by  
No. 47/2016  
s. 33.

*child abuse* includes—

- (a) any act committed against a child involving—
  - (i) a sexual offence; or
  - (ii) an offence under section 49M(1) of the **Crimes Act 1958**; and
- (b) the infliction, on a child, of—
  - (i) physical violence; or
  - (ii) serious emotional or psychological harm; and
- (c) the serious neglect of a child;

S. 3(1) def. of  
*Child Safe Standards*  
inserted by  
No. 63/2015  
s. 5(2).

*Child Safe Standards* means the standards made under section 17(1);

S. 3(1) def. of  
*Child Safety Commissioner*  
repealed by  
No. 79/2012  
s. 74(1).

\* \* \* \* \*

S. 3(1) def. of  
*Commission*  
inserted by  
No. 63/2016  
s. 5.

*Commission* means the Commission for Children and Young People established by section 6 of the **Commission for Children and Young People Act 2012**;

*council* has the same meaning as it has in the **Local Government Act 1989**;

S. 3(1) def. of  
*court*  
inserted by  
No. 63/2016  
s. 5.

*court* means the Magistrates' Court;

***Department*** has the same meaning as it has in the  
**Public Administration Act 2004**;

S. 3(1) def. of  
*Department*  
inserted by  
No. 63/2016  
s. 5.

***employee***, in relation to an entity to which the  
reportable conduct scheme applies, means a  
person of or over the age of 18 years who  
is—

S. 3(1) def. of  
*employee*  
inserted by  
No. 4/2017  
s. 5(1),  
amended by  
No. 4/2018  
s. 3(1)(b).

- (a) employed by the entity, whether or not  
the person is employed in connection  
with any work or activities of the entity  
that relate to children; or
- (b) engaged by the entity to provide  
services, including as a volunteer,  
contractor, office holder or officer,  
whether or not the person provides  
services to children; or
- (c) if the entity is a religious body  
(within the meaning of section 81 of  
the **Equal Opportunity Act 2010**)—  
a minister of religion, a religious leader  
or an employee (within the meaning of  
paragraph (a) or (b)) or officer of the  
religious body; or
- (d) either—
  - (i) a foster carer approved by the  
entity under section 75 of the  
**Children, Youth and Families  
Act 2005** with whom a child is  
or has been placed under that  
Act or in accordance with an  
order made under that Act; or
  - (ii) a family member or other person  
of significance to a child with  
whom the child is or has been  
placed in out of home care, or

who is supervised in that care,  
by the entity, or the head of the  
entity, under the **Children, Youth  
and Families Act 2005** or in  
accordance with an order made  
under that Act—

and—

- (iii) a permanent care order has not  
been made in respect of the child;  
or
- (iv) a permanent care order has been  
made in respect of the child and a  
reportable allegation in relation to  
the child is made concerning the  
permanent carer in respect of the  
period before the making of the  
order;

S. 3(1) def. of  
*entity to  
which the  
reportable  
conduct  
scheme  
applies*  
inserted by  
No. 4/2017  
s. 5(1).

*entity to which the reportable conduct scheme  
applies* means—

- (a) on and after the commencement of  
Part 5A, an entity referred to in  
Schedule 3; and
- (b) on and after 6 months after the  
commencement of Part 5A, an  
entity referred to in Schedule 4; and
- (c) on and after 18 months after the  
commencement of Part 5A, an  
entity referred to in Schedule 5; and
- (d) on and after a prescribed date in  
relation to that entity or class of  
entities, a prescribed entity or an  
entity belonging to a prescribed  
class of entities;

**head**, in relation to an entity to which the reportable conduct scheme applies, means—

- (a) if the entity is a Department, the Secretary to the Department or the delegate of the Secretary; or
- (b) if the regulations prescribe a person or a class of persons as the head of an entity, the prescribed person or a person belonging to the prescribed class of persons; or
- (c) in any other case—
  - (i) the chief executive officer of the entity (however described); or
  - (ii) if there is no chief executive officer, the principal officer of the entity (however described); or
  - (iii) if there is no chief executive officer or principal officer, a person, or the holder of a position, in the entity nominated by the entity and approved by the Commission;

S. 3(1) def. of *head* inserted by No. 4/2017 s. 5(1), substituted by No. 4/2018 s. 3(1)(c).

**head of a relevant entity** means—

- (a) an individual who is primarily responsible for—
  - (i) engaging and terminating the engagement of the relevant entity's employees; and
  - (ii) managing the relevant entity's employees; or
- (b) a person nominated by the relevant entity; or
- (c) a person or class of person prescribed to be a head of a relevant entity;

S. 3(1) def. of *head of a relevant entity* inserted by No. 63/2016 s. 5.

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S. 3(1) def. of *health professional* substituted by Nos 97/2005 s. 182(Sch. 4 item 9), 13/2010 s. 51(Sch. item 11.1), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *health service* repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *human service* amended by Nos 23/2006 s. 233, 80/2011 s. 79(Sch. item 1), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *independent investigator* inserted by No. 4/2017 s. 5(1).

***independent investigator*** means an independent body or person with appropriate qualifications, training or experience to investigate reportable allegations;

***Maternal and Child Health Centre*** means a centre where health advice is given to the parents and other caregivers of children under 6 years of age;

S. 3(1) def. of *medical practitioner* inserted by No. 13/2010 s. 51(Sch. item 11.2), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

***midwife*** means a person registered under the Health Practitioner Regulation National Law—

S. 3(1) def. of *midwife* inserted by No. 13/2010 s. 51(Sch. item 11.2).

- (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and
- (b) in the register of midwives kept for that profession;

***municipal district*** has the same meaning as it has in the **Local Government Act 1989**;

***notice to comply***, in Part 6, means a notice given to a relevant entity under section 31;

S. 3(1) def. of *notice to comply* inserted by No. 63/2016 s. 5.

***notice to produce***, in Part 5A, means a notice given to an entity under section 16ZG;

S. 3(1) def. of *notice to produce*, in Part 5A inserted by No. 4/2017 s. 5(1).

***notice to produce***, in Part 6, means a notice given to a relevant entity under section 30;

S. 3(1) def. of *notice to produce*, in Part 6 inserted by No. 63/2016 s. 5.

***nurse*** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 11.2), amended by Nos 79/2012 s. 74(2), 63/2015 s. 5(1).

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S. 3(1) def. of *out of home care service* substituted by No. 96/2005 s. 604(1)(b), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *performance standards* substituted by No. 96/2005 s. 604(1)(c), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *permanent care order* inserted by No. 4/2017 s. 5(1).

*permanent care order* has the same meaning as in the **Children, Youth and Families Act 2005**;

S. 3(1) def. of *post-secondary qualification* repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *psychologist* inserted by No. 13/2010 s. 51(Sch. item 11.2), repealed by No. 79/2012 s. 74(1).

\* \* \* \* \*

S. 3(1) def. of *registered health practitioner* inserted by No. 4/2017 s. 5(1).

*registered health practitioner* has the same meaning as in the Health Practitioner Regulation National Law;



*regulator*, for the purposes of the reportable conduct scheme—

S. 3(1) def. of *regulator* inserted by No. 4/2017 s. 5(1).

- (a) in relation to an entity to which the reportable conduct scheme applies, means any of the following—
- (i) a Department that is responsible for regulating the entity;
  - (ii) a Department that provides funding to the entity;
  - (iii) the Victorian Registration and Qualifications Authority established under section 4.2.1 of the **Education and Training Reform Act 2006** if the entity is referred to in item 1, 2, 3 or 4 of Schedule 3;
  - (iv) any other body—
    - (A) that regulates or funds the entity; and
    - (B) that is prescribed to be a regulator in respect of the entity;
- (b) in relation to an employee, means any of the following, as the case requires—
- (i) the Suitability Panel established by section 98 of the **Children, Youth and Families Act 2005**;
  - (ii) the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law;

- (iii) a National Health Practitioner Board established by section 31 of the Health Practitioner Regulation National Law;
- (iv) the Victorian Institute of Teaching continued in operation by section 2.6.2 of the **Education and Training Reform Act 2006**;
- (v) any other body that is prescribed to be a regulator in respect of the employee;

S. 3(1) def. of *relevant authority* inserted by No. 63/2016 s. 5.

*relevant authority*, in relation to a relevant entity, means any of the following—

- (a) a Department that is responsible for regulating the relevant entity;
- (b) a Department that provides funding to the relevant entity;
- (c) the Victorian Registration and Qualifications Authority;
- (d) any other authority—
  - (i) that regulates or funds the relevant entity; and
  - (ii) that is prescribed to be a relevant authority;

S. 3(1) def. of *relevant entity* inserted by No. 63/2016 s. 5.

*relevant entity* means—

- (a) an applicable entity that is required under section 19, 20 or 21 to comply with the Child Safe Standards; or
- (b) an individual who is required under section 23 to comply with the Child Safe Standards;

***reportable allegation*** means any information that leads a person to form a reasonable belief that an employee has committed—

- (a) reportable conduct; or
- (b) misconduct that may involve reportable conduct—

whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment;

***reportable conduct*** means—

- (a) a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded; or
- (b) sexual misconduct, committed against, with or in the presence of, a child; or
- (c) physical violence committed against, with or in the presence of, a child; or
- (d) any behaviour that causes significant emotional or psychological harm to a child; or
- (e) significant neglect of a child;

***reportable conduct scheme*** means the scheme set out in Part 5A;

S. 3(1) def. of *reportable allegation* inserted by No. 4/2017 s. 5(1).

S. 3(1) def. of *reportable conduct* inserted by No. 4/2017 s. 5(1).

S. 3(1) def. of *reportable conduct scheme* inserted by No. 4/2017 s. 5(1).

\* \* \* \* \*

S. 3(1) def. of *Secretary* repealed by No. 79/2012 s. 74(1).

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S. 3(1) def. of  
*sexual  
misconduct*  
inserted by  
No. 4/2017  
s. 5(1).

*sexual misconduct* includes behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism;

S. 3(1) def. of  
*sexual  
offence*  
inserted by  
No. 4/2017  
s. 5(1).

*sexual offence* means an offence referred to in clause 1 of Schedule 1 to the **Sentencing Act 1991**;

S. 3(1) def. of  
*significant*  
inserted by  
No. 4/2017  
s. 5(1).

*significant*, in relation to emotional or psychological harm or neglect, means that the harm or neglect is more than trivial or insignificant, but need not be as high as serious and need not have a lasting permanent effect;

S. 3(1) def. of  
*State contract*  
repealed by  
No. 79/2012  
s. 74(1), new  
def. of *State  
contract*  
inserted by  
No. 63/2015  
s. 5(2),  
amended by  
No. 4/2017  
s. 5(2).

*State contract* has the same meaning as it has in the **Commission for Children and Young People Act 2012**;

S. 3(1) def. of  
*Victoria Police*  
inserted by  
No. 4/2017  
s. 5(1).

*Victoria Police* has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of  
*welfare  
practitioner*  
repealed by  
No. 79/2012  
s. 74(1).

\* \* \* \* \*

*working with children check* has the same meaning as in the **Working with Children Act 2005**.

S. 3(1) def. of *working with children check* inserted by No. 4/2017 s. 5(1).

- (2) A reference in this Act to the provision of a service or facility or the production or provision of goods by a category 1 entity, category 2 entity or applicable entity is, in relation to an individual who carries on a business, a reference to the provision of the service or facility or the production or provision of goods by the business.

S. 3(2) inserted by No. 63/2015 s. 5(3), substituted by No. 4/2018 s. 3(3).

## **Part 2—Principles for children**

### **4 Principles are for guidance**

- (1) It is the intention of Parliament that the principles set out in this Part should be used for guidance in the development and provision of Government, Government-funded and community services for children and their families.
- (2) The Parliament does not intend by this Part—
  - (a) to create in any person any legal right or give rise to any civil cause of action; or
  - (b) to affect in any way the interpretation of any Act or law in force in Victoria.

### **5 Principles for children**

- (1) The development and provision of services for children and families should be based upon the fundamental principles that—
  - (a) society as a whole shares responsibility for promoting the wellbeing and safety of children;
  - (b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background;
  - (c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing;

- (d) parents are the primary nurturers of a child and Government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing, however, it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection;
- (e) every child should be able to enrol in a kindergarten program at an early childhood education and care centre.
- (2) Services for children and families should be designed and developed—
- (a) to readily identify harm and damage to the child and to provide for intervention by providers of services to remove or ameliorate the causes of that harm or damage and to strengthen the capacity and efforts of parents, their families and communities to support the child as early as possible in the child's life;
- (b) to accord with the needs of each local community with the active involvement of that community's cultural groups, and to be accessible and responsive to the particular cultures, languages and circumstances of the community and to be properly planned and co-ordinated with services provided by other local and regional communities;
- (c) to give the highest priority to making appropriate and sufficient levels of assistance available to children and families in communities or population groups that are known to have the greatest need;
- S. 5(1)(d)**  
**amended by**  
**No. 22/2008**  
**s. 41(a).**
- S. 5(1)(e)**  
**inserted by**  
**No. 22/2008**  
**s. 41(b).**

- (d) to promote continuous improvement in the quality of those services, based on the best available knowledge of the needs of children and their stages of development.
- (3) The providers of services to children and families should—
- (a) protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision-making that affects their lives;
  - (b) acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child;
  - (c) make decisions about intervention by the providers of services into a child's or family's life and about access by a child or family to those services in a timely manner being mindful of any harmful effects that may be caused to the child by a delay in making decisions or providing services;
  - (d) ensure that families are made aware of the services available to them and of the benefits these services can provide, especially to those families in most need of assistance;
  - (e) co-operate with other services or professionals to work in the interests of the child and family.

S. 5A  
inserted by  
No. 63/2016  
s. 6.

#### **5A Principles for compliance with Child Safe Standards**

- (1) The oversight and enforcement by the Commission of compliance by relevant entities with the Child Safe Standards should be based on the fundamental principles that—



- (a) relevant entities are responsible, in respect of the children who use their services or facilities or who are engaged to assist in providing their services or facilities, for continuously improving the ways in which, in their operations—
    - (i) the safety of children is promoted; and
    - (ii) child abuse is prevented; and
    - (iii) allegations of child abuse are properly responded to; and
  - (b) relevant authorities of relevant entities have specific knowledge of the relevant entities that they regulate or fund and an important role in overseeing and promoting compliance by those relevant entities with the Child Safe Standards; and
  - (c) having regard to paragraph (b), the Commission should collaborate with the relevant authorities of relevant entities for the purpose of promoting compliance by relevant entities with the Child Safe Standards.
- (2) The Commission should educate and guide—
- (a) relevant authorities to promote compliance by relevant entities with the Child Safe Standards; and
  - (b) relevant entities, in respect of the children who use their services or facilities or who are engaged to assist in providing their services or facilities, to continuously improve the ways in which, in their operations—
    - (i) the safety of children is promoted; and

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- (ii) child abuse is prevented; and
- (iii) allegations of child abuse are properly responded to.

## **Part 3—Child wellbeing and safety**

### **6 The role of the Minister**

- (1) The Minister must promote the co-ordination of Government programs that affect child wellbeing and safety.
- (2) The Minister may establish any advisory committee that the Minister considers appropriate to assist the Minister in the administration of this Act.

### **7 Role of the Secretary in relation to Aboriginal communities**

The Secretary to the Department of Health and Human Services must work with Aboriginal communities to establish a Victorian Aboriginal Child Wellbeing Charter.

**S. 7**  
**amended by**  
**Nos 79/2012**  
**s. 75, 63/2015**  
**s. 9.**

## Part 4—Victorian Children's Council

### 8 Establishment of Victorian Children's Council

The Victorian Children's Council is established.

### 9 Constitution of Council

S. 9(1)  
substituted by  
No. 79/2012  
s. 76(1).

(1) The Victorian Children's Council consists of at least 8 members appointed by the Minister.

(2) The Minister must appoint one of the members to be the Chairperson.

S. 9(3)  
amended by  
No. 63/2015  
s. 10.

(3) A person appointed under subsection (1) must be a person who, in the opinion of the Minister, has expert knowledge of policies and services that enhance the health, wellbeing, development or safety of children.

S. 9(4)  
amended by  
No. 79/2012  
s. 76(2).

(4) A member—

(a) holds office for such period not exceeding three years, as is specified in the instrument of appointment and is eligible for re-appointment;

(b) is entitled to the remuneration and allowances determined by the Minister from time to time;

(c) may resign from the office of member by writing to the Minister;

(d) may be removed from office by the Minister;

S. 9(4)(e)  
substituted by  
No. 80/2006  
s. 26(Sch.  
item 10).

(e) is in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

## **10 Functions of the Council**

- (1) The functions of the Council are to provide the Premier and the Minister with independent and expert advice relating to policies and services that enhance the health, wellbeing, development and safety of children.
- (2) The Secretary must make available to the Council the services of any employees in the Department that are necessary to enable the Council to carry out its functions.

## **11 Sub-committees**

- (1) The Council, subject to the approval of the Minister, may appoint for the purposes of carrying out any of its functions under this Part a sub-committee consisting of such members as it determines together with such other persons as it determines.
- (2) A sub-committee appointed under this section must report to the Council.

## **12 Procedure of the Council**

- (1) A majority of members for the time being of the Victorian Children's Council constitutes a quorum of that Council.
- (2) The Victorian Children's Council may regulate its own proceedings.

## **Part 5—Children's Services Co-ordination Board**

### **13 Establishment of Children's Services Co-ordination Board**

The Children's Services Co-ordination Board is established.

### **14 Constitution of Board**

The Children's Services Co-ordination Board consists of—

- (a) the Secretary to the Department of Premier and Cabinet; and
- (b) the Secretary to the Department of Treasury and Finance; and
- (c) the Secretary to the Department of Health and Human Services; and
- (d) the Secretary to the Department of Education and Training; and
- (e) the Secretary to the Department of Justice and Regulation; and

S. 14(c)  
amended by  
No 63/2015  
s. 11(a).

S. 14(d)  
amended by  
Nos 28/2007  
s. 3(Sch.  
item 6),  
58/2007 s. 51,  
63/2015  
s. 11(b).

S. 14(e)  
amended by  
No 63/2015  
s. 11(c).

S. 14(f)  
repealed by  
No 63/2015  
s. 11(d).

\* \* \* \* \*

- (g) the Chief Commissioner of Police.

## **15 Functions of the Board**

The functions of the Children's Services Co-ordination Board are—

- (a) to review annually and report to the Minister on the outcomes of Government actions in relation to children, particularly the most vulnerable children in the community; and
- (b) to monitor administrative arrangements to support co-ordination of Government actions relating to children at local and regional levels.

## **16 Procedure of the Board**

- (1) A majority of the members for the time being of the Children's Services Co-ordination Board constitutes a quorum of that Board.
- (2) The Children's Services Co-ordination Board may regulate its own proceedings.

## Part 5A—Reportable conduct scheme

Pt 5A  
(Heading and  
ss 16A–16ZN)  
inserted by  
No. 4/2017  
s. 6.

### 16A Definition

In this Part—

*entity* means an entity to which the reportable conduct scheme applies.

S. 16A  
inserted by  
No. 4/2017  
s. 6.

### 16B Principles

- (1) The reportable conduct scheme is based on the fundamental principles that—
  - (a) the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child;
  - (b) criminal conduct or suspected criminal conduct should be reported to the police;
  - (c) a police investigation into the subject matter of a reportable allegation has priority and, unless the investigation may otherwise be conducted under any other Act, an investigation under the reportable conduct scheme must be suspended or must not be commenced until the police advise or agree that it may proceed;
  - (d) the Commission and others involved in the reportable conduct scheme should work in collaboration to ensure the fair, effective and timely investigation of reportable allegations;
  - (e) employees who are the subject of reportable allegations are entitled to receive natural justice in investigations into their conduct;

S. 16B  
inserted by  
No. 4/2017  
s. 6.



- (f) regulators have specific knowledge of the roles of the entities or the professional responsibilities of the employees they regulate and, if their functions permit, play an important role in the investigation of reportable allegations;
  - (g) information should be shared during and after the conclusion of an investigation into a reportable allegation;
  - (h) after the conclusion of an investigation into a reportable allegation, the Commission may share information with the Department of Justice and Regulation for the purpose of a working with children check.
- (2) The Commission should educate and guide—
- (a) entities in order to improve their ability to identify reportable conduct and to report and investigate reportable allegations; and
  - (b) regulators in order to promote compliance by entities with the reportable conduct scheme.

**16C Application of reportable conduct scheme**

The reportable conduct scheme does not apply to an entity that does not exercise care, supervision or authority over children, whether as part of its primary functions or otherwise.

S. 16C  
inserted by  
No. 4/2017  
s. 6.

**16D Administration, oversight and monitoring of scheme**

The Commission is responsible for administering, overseeing and monitoring the reportable conduct scheme.

S. 16D  
inserted by  
No. 4/2017  
s. 6.

**16E Avoiding unnecessary duplication**

The Commission must liaise with regulators—

- (a) to avoid unnecessary duplication in the oversight of the investigation of reportable allegations; and

S. 16E  
inserted by  
No. 4/2017  
s. 6.

- (b) to share information and provide advice and guidance about the protection of children.

S. 16F  
inserted by  
No. 4/2017  
s. 6.

### **16F Objectives of Commission under this Part**

Without limiting any other provision, the objectives of the Commission under this Part are—

- (a) to improve the ability of entities to identify reportable conduct and to report and investigate reportable allegations; and
- (b) to ensure that reportable allegations are properly investigated; and
- (c) to protect children by working with entities, regulators and other relevant bodies to prevent reportable conduct from occurring in entities; and
- (d) to share information with the Secretary to the Department of Justice and Regulation for the purpose of working with children checks.

S. 16G  
inserted by  
No. 4/2017  
s. 6.

### **16G Functions of Commission under this Part**

The Commission has the following functions in relation to the reportable conduct scheme—

- (a) to educate and provide advice to entities in order to assist them to identify reportable conduct and to report and investigate reportable allegations;
- (b) to educate and provide advice to regulators to promote compliance by entities with the reportable conduct scheme;
- (c) to oversee the investigation of reportable allegations;
- (d) to investigate reportable allegations if—
  - (i) it considers it to be in the public interest to do so; or

- (ii) an entity or regulator will not, or is unable to, investigate or engage an independent person or body to investigate;
- (e) if it considers it to be in the public interest to do so, to investigate whether reportable allegations have been inappropriately handled or responded to by an entity or a regulator;
- (f) to make recommendations to entities to address the findings of investigations referred to in paragraph (d) or (e);
- (g) to exchange information (including the findings of investigations into reportable allegations and the reasons for those findings) with Victoria Police, regulators, entities and the Secretary to the Department of Justice and Regulation;
- (h) to monitor the compliance of entities with the reportable conduct scheme;
- (i) to report to the Minister and to Parliament on trends in the reporting and investigation of reportable allegations and the results of those investigations;
- (j) to perform any other function conferred on the Commission under this Part.

### **16H Powers of the Commission**

The Commission has all the powers that are necessary or convenient to perform its functions under this Part.

S. 16H  
inserted by  
No. 4/2017  
s. 6.

### **16I Exemption by Commission**

- (1) The Commission, in accordance with the regulations, if any, may exempt the head of an entity or a class of entities from—

S. 16I inserted  
by No. 4/2017  
s. 6.

- (a) the requirements of section 16M in respect of a class or kind of conduct; or
  - (b) the requirement under section 16M(1)(b) to provide information to the Commission in respect of a class or kind of conduct.
- (2) The Commission may give an exemption under subsection (1) if the Commission considers that—
- (a) the entity is competent to investigate, without the oversight of the Commission, a reportable allegation in respect of the class or kind of conduct to which the exemption relates; and
  - (b) the entity has demonstrated competence in responding to reportable allegations in respect of that class or kind of conduct.
- (3) The Commission must—
- (a) notify the entity concerned of an exemption under subsection (1); and
  - (b) publish the exemption on the Commission's website.
- (4) The head of an entity exempted under subsection (1)(b), or a regulator of the entity, that conducts an investigation into conduct of a class or kind exempted under subsection (1)(b) must inform the Commission of the findings, the reasons for the findings and the action taken in response to those findings as soon as practicable after the conclusion of the investigation or within a period agreed with the Commission.

S. 16J  
inserted by  
No. 4/2017  
s. 6,  
amended by  
No. 4/2018 s. 4  
(ILA s. 39B(1)).

## **16J Exemption from whole of scheme**

- (1) The regulations may prescribe an entity or a class of entities to be exempt from the reportable conduct scheme.

- (2) The regulations may prescribe a part of an entity, or a part of a class of entities, to be exempt from the reportable conduct scheme.

S. 16J(2)  
inserted by  
No. 4/2018  
s. 4.

**16K Head of entity to have systems in place**

- (1) The head of an entity must ensure that the entity has in place—
- (a) a system for preventing the commission of reportable conduct by an employee of the entity within the course of the person's employment; and
  - (b) a system for enabling any person, including an employee of the entity, to notify the head of the entity of a reportable allegation of which the person becomes aware; and
  - (c) a system for enabling any person, including an employee of the entity, to notify the Commission of a reportable allegation involving the head of the entity of which the person becomes aware; and
  - (d) a system for investigating and responding to a reportable allegation against an employee of the entity.
- (2) If requested in writing by the Commission, an entity must provide to the Commission any information about a system referred to in subsection (1).
- (3) The Commission, after consulting with the relevant regulator, may make recommendations for action to be taken by an entity and may provide the entity with any necessary information relating to the recommendations if a reasonable concern with a system referred to in subsection (1) is identified.

S. 16K  
inserted by  
No. 4/2017  
s. 6.

S. 16L  
inserted by  
No. 4/2017  
s. 6.

**16L Disclosure to Commission of reportable allegation**

Any person may disclose a reportable allegation to the Commission.

S. 16M  
inserted by  
No. 4/2017  
s. 6.

**16M Head of entity to notify Commission of reportable allegation**

- (1) If the head of an entity becomes aware of a reportable allegation against an employee of the entity, the head must notify the Commission in writing of the following—
  - (a) within 3 business days after becoming aware of the reportable allegation—
    - (i) that a reportable allegation has been made against an employee of the entity; and
    - (ii) the name (including any former name and alias, if known) and date of birth, if known, of the employee concerned; and
    - (iii) whether Victoria Police has been contacted about the reportable allegation; and
    - (iv) the name, address and telephone number of the entity; and
    - (v) the name of the head of the entity; and
  - (b) as soon as practicable and within 30 days after becoming aware of the reportable allegation—
    - (i) detailed information about the reportable allegation; and
    - (ii) whether or not the entity proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take, or not to take, that action; and

- (iii) any written submissions made to the head of the entity concerning the reportable allegation that the employee wished to have considered in determining what, if any, disciplinary or other action should be taken in relation to the employee.
- (2) This section does not apply to the head of an entity, or an entity belonging to a class of entities, that the Commission has exempted under section 16I(1)(a) in respect of a class or kind or conduct that is the subject of the reportable allegation.
- (3) Subsection (1)(b) does not apply to the head of an entity, or an entity belonging to a class of entities, that the Commission has exempted under section 16I(1)(b) in respect of a class or kind of conduct that is the subject of the reportable allegation.
- (4) The head of an entity must not fail, without reasonable excuse, to comply with subsection (1).  
Penalty: 10 penalty units.
- (5) It is a defence to a charge for an offence against subsection (4) for the person charged to prove that the person honestly and reasonably believed that another person had notified the Commission of the reportable allegation in accordance with subsection (1).

**16N Head of entity to respond to reportable allegation**

- (1) As soon as practicable after the head of an entity becomes aware of a reportable allegation against an employee of the entity, the head must—
  - (a) investigate the reportable allegation or permit a regulator, or an independent investigator engaged by the entity or

S. 16N  
inserted by  
No. 4/2017  
s. 6.

regulator, to investigate the reportable allegation; and

(b) inform the Commission of the identity of the body or person who will conduct the investigation.

(2) If the Commission requests in writing that the head of the entity provide to the Commission information or documents relating to a reportable allegation or an investigation, the head of the entity must comply with the request.

(3) As soon as practicable after an investigation has concluded, the head of the entity must give the Commission—

(a) a copy of the findings of the investigation and the reasons for those findings; and

(b) details of any disciplinary or other action that the entity proposes to take in relation to the employee and the reasons for that action; and

(c) if the entity does not propose to take any disciplinary or other action in relation to the employee, the reasons why no action is to be taken.

S. 16N(3)(b)  
amended by  
No. 4/2018  
s. 5.

S. 16N(3)(c)  
amended by  
No. 4/2018  
s. 5.

S. 16O  
inserted by  
No. 4/2017  
s. 6.

## **16O Commission may investigate reportable allegation**

(1) The Commission, of its own motion, may conduct an investigation concerning a reportable allegation against an employee of an entity if the Commission—

(a) receives information about the reportable allegation from any person; and

(b) believes on reasonable grounds that reportable conduct may have been committed by an employee of the entity; and



- (c) considers that it is in the public interest that the Commission investigate the reportable allegation.
- (2) The Commission, of its own motion, may conduct an investigation concerning a reportable allegation against an employee of an entity if the Commission is advised by the entity or a regulator of the employee that the entity or regulator will not or is unable to—
  - (a) investigate the reportable allegation; or
  - (b) engage an independent investigator to investigate the reportable allegation.
- (3) The Commission, of its own motion or in response to a complaint, may conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation by an entity or a regulator if the Commission considers that it is in the public interest to do so.
- (4) At the conclusion of an investigation by the Commission and after consultation with the relevant regulator, the Commission—
  - (a) must make findings, give reasons for the findings and make recommendations, if any, for action to be taken with respect to the matter investigated; and
  - (b) must provide to the entity the findings, reasons and recommendations, if any, of the Commission, together with any necessary information relating to the recommendations; and
  - (c) may provide to the regulator the recommendations of the Commission for action to be taken by the regulator.

S. 16P  
inserted by  
No. 4/2017  
s. 6.

### **16P Commission may visit entity**

In conducting an investigation under section 16O, the Commission may visit the entity in order to—

- (a) inspect any document in relation to the reportable allegation; or
- (b) conduct an interview under section 16Q, 16R or 16S.

S. 16Q  
inserted by  
No. 4/2017  
s. 6.

### **16Q Commission may interview employee**

Subject to section 16S(2), the Commission may interview any employee of an entity if the Commission considers that the employee may have information about a reportable allegation.

S. 16R  
inserted by  
No. 4/2017  
s. 6.

### **16R Commission may interview child**

- (1) The Commission may interview—
  - (a) a child in relation to whom an employee of an entity is alleged to have committed reportable conduct or misconduct that may involve reportable conduct; or
  - (b) a child who is a witness to reportable conduct or misconduct that may involve reportable conduct.
- (2) The Commission may engage a person with appropriate qualifications, training or experience in interviewing child victims of abuse to conduct an interview on its behalf under subsection (1).
- (3) Before interviewing a child, the interviewer must consider, and take all reasonable steps to mitigate, any negative effect that the interview may have on the child.
- (4) Without limiting subsection (3), the Commission must consider whether the child's primary family carer (within the meaning of the **Commission for Children and Young People Act 2012**) should be present during the interview.

**16S Commission may interview employee subject of reportable allegation**

- (1) The Commission may interview an employee of an entity who is the subject of a reportable allegation.
- (2) An employee of an entity who is the subject of a reportable allegation may, but is not required to, answer any question of, or provide any information to, the Commission.

S. 16S  
inserted by  
No. 4/2017  
s. 6.

**16T Commission may obtain information from Victoria Police**

- (1) The Commission may request the Chief Commissioner of Police to provide the following information in relation to an employee of an entity who is the subject of a reportable allegation—
  - (a) whether Victoria Police is investigating the reportable allegation;
  - (b) the result of the investigation as soon as practicable after its completion.
- (2) The Chief Commissioner of Police must comply with a request under subsection (1) unless providing the information would be reasonably likely to prejudice—
  - (a) the investigation of a breach or possible breach of the law; or
  - (b) the enforcement or proper administration of the law in a particular instance.

S. 16T  
inserted by  
No. 4/2017  
s. 6.

**16U Victoria Police investigation has priority**

- (1) On becoming aware that a reportable allegation may involve criminal conduct, the Commission, an entity, a regulator or an independent investigator must report the matter to Victoria Police.

S. 16U  
inserted by  
No. 4/2017  
s. 6.

- (2) On becoming aware that Victoria Police is investigating a reportable allegation, the Commission, an entity, a regulator or an independent investigator must not commence or continue to investigate the reportable allegation under this Part until the Chief Commissioner of Police—
  - (a) advises that the police investigation has been completed; or
  - (b) agrees that the investigation under this Part may proceed in consultation with Victoria Police.
- (3) In this section, an investigation by Victoria Police includes any court proceeding (including an appeal) arising out of the investigation.
- (4) Nothing in this section affects an investigation that may otherwise be conducted under any other Act.

S. 16V  
inserted by  
No. 4/2017  
s. 6.

**16V Commission may request regulator to investigate or provide information and documents**

- (1) The Commission may request a regulator of an employee of an entity to investigate a reportable allegation in respect of the employee.
- (2) The Commission, by written notice, may require a regulator of an employee of an entity to provide to the Commission information and documents in relation to—
  - (a) an investigation of a reportable allegation in respect of the employee that is being conducted by the regulator; or
  - (b) the employee for the purpose of an investigation of a reportable allegation in respect of the employee that is being conducted by the Commission.

- (3) A regulator that is given a notice under subsection (2) must comply with the notice.

**16W Commission may monitor regulator's investigation**

The Commission may monitor the progress of an investigation by a regulator of a reportable allegation if the Commission considers it is in the public interest to do so.

S. 16W  
inserted by  
No. 4/2017  
s. 6.

**16X Regulator may disclose information or documents to Commission**

- (1) Despite any law to the contrary, a regulator may disclose to the Commission any information or documents for the purpose of the reportable conduct scheme.
- (2) A regulator of an entity must provide to the Commission any information or documents requested in writing by the Commission in relation to—
- (a) a reportable allegation; or
  - (b) the regulator's investigation of a reportable allegation; or
  - (c) the findings, reasons for the findings, and recommendations of the regulator made at the conclusion of an investigation by the regulator.

S. 16X  
inserted by  
No. 4/2017  
s. 6.

**16Y Disclosure of information or documents**

A disclosure of information or documents to the Commission by any person that is made in good faith under this Part—

- (a) does not for any purpose constitute unprofessional conduct or a breach of

S. 16Y  
inserted by  
No. 4/2017  
s. 6.

professional ethics on the part of the person by whom it is made; and

- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 346 of the **Mental Health Act 2014**.

S. 16Z  
inserted by  
No. 4/2017  
s. 6.

#### **16Z Protection against self-incrimination**

It is a reasonable excuse for an individual to refuse or fail to give information or documents to the Commission in response to questioning or a request or requirement under this Part if the giving of the information or documents would tend to incriminate the individual.

S. 16ZA  
inserted by  
No. 4/2017  
s. 6.

#### **16ZA Assistance to be provided**

An entity or the head of an entity must ensure that the Commission or an authorised person is given any assistance in connection with the reasonable performance of the Commission's functions under this Part that the Commission or the authorised person reasonably requires.

S. 16ZB  
inserted by  
No. 4/2017  
s. 6.

#### **16ZB Disclosure of information about investigations to children, parents and carers**

- (1) This section applies to the following information in relation to an investigation conducted under section 16N or 16O—
  - (a) information about the progress of the investigation;

- (b) the findings, reasons for the findings and the recommendations made at the conclusion of the investigation;
  - (c) any action taken in response to those findings.
- (2) The Commission, the head of an entity or a regulator may disclose the information referred to in subsection (1) to—
- (a) the child in relation to whom an employee of an entity is alleged to have committed reportable conduct or misconduct that may involve reportable conduct; or
  - (b) a parent (within the meaning of the **Children, Youth and Families Act 2005**) of the child; or
  - (c) the Secretary to the Department of Health and Human Services if the Secretary has parental responsibility for the child; or
  - (d) a person who has daily care and control of the child, whether or not that care involves custody of the child; or
  - (e) if the child is in out of home care (within the meaning of the **Children, Youth and Families Act 2005**), the out of home carer (within the meaning of section 74 of that Act) who provides that care.
- (3) Nothing in this section limits any disclosure that may otherwise be made under any Act or law.

**16ZC Disclosure of information to the Commission, the head of an entity, a regulator, Victoria Police and others**

S. 16ZC  
inserted by  
No. 4/2017  
s. 6.

- (1) This section applies to information in relation to the following—
- (a) a reportable allegation;

- (b) a concern that reportable conduct has been committed;
  - (c) the investigation of a matter referred to in paragraph (a) or (b);
  - (d) the findings, reasons for the findings and the recommendations made at the conclusion of the investigation;
  - (e) the action taken in response to those findings.
- (2) The Commission, the head of an entity and a regulator may disclose information referred to in subsection (1) to—
- (a) each other; and
  - (b) the Chief Commissioner of Police; and
  - (c) if necessary for the purposes of an investigation, an independent investigator; and
  - (d) if necessary for the purposes of a working with children check, the Secretary to the Department of Justice and Regulation; and
  - (e) a relevant Minister; and
  - (f) any other prescribed person or body in relation to a prescribed matter, or a prescribed class of matters; and
  - (g) any other prescribed person or body in relation to a prescribed matter, or a prescribed class of matters, if the information relates to the performance of a function conferred on the person or body by or under the laws of the Commonwealth, a State or a Territory.

S. 16ZC(2)(f)  
amended by  
No. 4/2018  
s. 6(a).

S. 16ZC(2)(g)  
inserted by  
No. 4/2018  
s. 6(b).



**16ZD Commission to notify Secretary after finding of reportable conduct**

S. 16ZD  
inserted by  
No. 4/2017  
s. 6.

- (1) Subject to subsection (2), if a finding is made by the Commission, the head of an entity or a regulator that an employee of an entity has committed reportable conduct, the Commission must notify the Secretary to the Department of Justice and Regulation of the following for the purposes of a working with children check—
  - (a) the fact that the finding has been made;
  - (b) the reasons for the finding;
  - (c) the name (including any former name and alias, if known) of the employee;
  - (d) the date of birth (if known) of the employee.
- (2) The Commission may but need not notify the Secretary to the Department of Justice and Regulation of a finding that an employee of an entity has committed reportable conduct if—
  - (a) the reportable conduct would be better addressed through training or supervision; or
  - (b) the finding has already been referred to the Department of Justice and Regulation by another person or body; or
  - (c) for any other reason it is not appropriate for the Commission to give the notification.

**16ZE Prohibition on publishing certain information**

S. 16ZE  
inserted by  
No. 4/2017  
s. 6.

- (1) A person must not publish, or cause to be published, any information that would enable the identification of a person who has notified the Commission of—
  - (a) a reportable allegation; or
  - (b) a concern that reportable conduct has occurred.

Penalty: In the case of a body corporate,  
300 penalty units;

In any other case, 60 penalty units.

- (2) A person must not publish, or cause to be published, any information that would enable the identification of a child in relation to whom—
- (a) a reportable allegation was made; or
  - (b) a finding of reportable conduct was made.

Penalty: In the case of a body corporate,  
300 penalty units;

In any other case, 60 penalty units.

- (3) Subsections (1) and (2) do not apply to the publication of information permitted by or under any other Act.

- (3A) Subsections (1) and (2) do not prevent a disclosure that is made for the purposes of Part 5A of the **Family Violence Protection Act 2008** by an information sharing entity (within the meaning of that Act).

S. 16ZE(3A)  
inserted by  
No. 23/2017  
s. 31.

- (4) In this section—

*publish* means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication;  
or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication.

**16ZF False or misleading information**

S. 16ZF  
inserted by  
No. 4/2017  
s. 6.

A person must not in purported compliance with this Part—

- (a) give information or make a statement that the person knows to be false or misleading in a material particular; or
- (b) produce a document that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a body corporate,  
100 penalty units;

In any other case, 10 penalty units.

**16ZG Notice to produce**

S. 16ZG  
inserted by  
No. 4/2017  
s. 6.

- (1) This section applies if an entity has not complied with a written request from the Commission for information or documents under this Part.
- (2) If the request is made under section 16K(2) in relation to a system referred to in section 16K(1), the Commission may give notice under subsection (3) if the Commission believes on reasonable grounds that the entity does not have such a system in place.
- (3) The Commission, by written notice, may require an entity to produce a specified document or category of documents to the Commission before a specified date (being not less than 14 days after the day on which the notice is given).
- (4) A notice under subsection (3) must be in the prescribed form, if any, and must specify—
  - (a) the document or category of documents that must be produced; and

- (b) the date by which the document or category of documents must be provided; and
  - (c) if the notice relates to a system referred to in section 16K(1), the grounds referred to in subsection (2); and
  - (d) the maximum civil penalty payable if the Magistrates' Court makes a declaration under section 16ZH; and
  - (e) the process for seeking an internal review of the decision to give the notice to produce; and
  - (f) the prescribed matters, if any.
- (5) An entity given a notice under subsection (3) must provide each document specified in the notice to the Commission on or before the date specified in the notice.
- (6) The Commission, by further written notice given at any time, may vary or revoke a notice under subsection (3).

S. 16ZH  
inserted by  
No. 4/2017  
s. 6.

**16ZH Application for declaration and order that entity pay a civil penalty**

- (1) If an entity fails to comply with a notice to produce, the Commission may apply to the Magistrates' Court for—
- (a) a declaration that the entity has failed to comply with the notice; and
  - (b) an order requiring the entity to pay a civil penalty.
- (2) The Magistrates' Court may make the declaration sought if the court is satisfied that—

- (a) the entity has failed to comply with the notice to produce; and
  - (b) the failure was unreasonable.
- (3) If the Magistrates' Court makes a declaration under subsection (2), the court may order the entity to pay to the Commission for payment into the Consolidated Fund an amount not exceeding \$9000 as a civil penalty.
- (4) In determining the amount of a civil penalty, the Magistrates' Court must consider—
- (a) the size of the entity; and
  - (b) the impact of the civil penalty on the entity; and
  - (c) whether the non-compliance with the notice to produce was wilful or serious.
- (5) An order made under this section is taken, for the purposes of enforcement, to be an order made by the Magistrates' Court in a civil proceeding.
- (6) A civil penalty paid to the Commission in accordance with an order made under this section must be paid into the Consolidated Fund.

**16ZI Internal review**

- (1) An employee of an entity may seek a review by the Commission of a finding made at the conclusion of an investigation under section 16O.
- (2) An entity may seek a review by the Commission of a decision of the Commission to give a notice to produce.
- (3) The Commission must prepare and implement a process for the review of—

S. 16ZI  
inserted by  
No. 4/2017  
s. 6.

- (a) a finding made at the conclusion of an investigation under section 16O; or
- (b) a decision to give a notice to produce.

S. 16ZJ  
inserted by  
No. 4/2017  
s. 6.

### **16ZJ Review by VCAT**

- (1) An employee of an entity may apply to VCAT for review of a decision by the Commission that the employee has committed reportable conduct.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, an employee of an entity requests a statement of reasons for the decision, the day on which the statement of reasons is given to the employee or the employee is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) Before an employee of an entity is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the employee must have exhausted all available avenues for the internal review of the decision.

S. 16ZJA  
inserted by  
No. 4/2018  
s. 7.

### **16ZJA Delegation**

The Secretary to a Department, as the head of an entity, by instrument, may delegate to a person employed under Part 3 of the **Public Administration Act 2004** who is working in the Department any power, function or duty of the Secretary under this Part.

S. 16ZK  
inserted by  
No. 4/2017  
s. 6.

### **16ZK Service of documents**

- (1) A document that is authorised or required by this Part to be served on or given to a person is served by—

- (a) delivering personally a true copy of the document to the person; or
  - (b) leaving a true copy of the document for the person at the person's last known or usual place of residence or business with a person who apparently resides or works there and who apparently is over the age of 16 years; or
  - (c) sending a true copy of the document by post addressed to the person at the person's last known or usual place of residence or business.
- (2) A document that is authorised or required by this Part to be served on or given to an entity that is not a legal person is served by—
- (a) delivering personally a true copy of the document to the head of the entity; or
  - (b) leaving a true copy of the document for the head of the entity at the last known or usual place of business of the entity with a person who apparently works there and who apparently is over the age of 16 years; or
  - (c) sending a true copy of the document by post addressed to the head of the entity at the last known or usual place of business of the entity.

**Note**

The **Electronic Transactions (Victoria) Act 2000** applies to enable a document to be served electronically, including fax transmission and email, in accordance with that Act.

**16ZL Annual reports and other reports**

- (1) The Commission in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include a review

S. 16ZL  
inserted by  
No. 4/2017  
s. 6.

of the operation of the reportable conduct scheme during the financial year to which the annual report relates.

- (2) The Commission must give a further report of the operation of the reportable conduct scheme to the Minister and the Secretary to the Department of Health and Human Services at any time at the request of the Minister or the Secretary.
- (3) A review under subsection (1) or a report under subsection (2) may include a statement about trends observed by the Commission in relation to the reportable conduct scheme.
- (4) The Commission must not include in a review under subsection (1) or a report under subsection (2)—
  - (a) information that identifies a child; or
  - (b) information from which the identity of a child can be determined.
- (5) Before submitting a report under subsection (1) or (2) that includes any comment or opinion that is adverse to an entity, a regulator or any person, the Commission must give the entity, regulator or person an opportunity to comment on the adverse comment or opinion.
- (6) The Commission must give a copy of a report submitted under subsection (1) or (2) to any other Minister and the Secretary to any other Department if the report considers a matter that is the responsibility of that Minister or that Secretary.

S. 16ZM  
inserted by  
No. 4/2017  
s. 6.

### **16ZM Giving a report to Parliament**

- (1) This section applies if at least 14 days have elapsed since the persons referred to in section 16ZL(2) were given a report under that subsection.



- (2) The Commission may give a copy of a report under section 16ZL(2) to the clerk of each House of the Parliament.
- (3) The clerk of each House of the Parliament must cause the report to be laid before the House on—
  - (a) the day on which it is received; or
  - (b) the next sitting day of the House.
- (4) If the Commission proposes to give the report to Parliament when neither House of the Parliament is sitting, the Commission must—
  - (a) give one business day's notice of the Commission's intention to do so to the clerk of each House of the Parliament; and
  - (b) give the copy of the report to the clerk of each House of the Parliament on the day indicated in the notice; and
  - (c) cause the report to be published by the Government Printer.
- (5) The clerk of a House of the Parliament must notify each member of the House of the receipt of a notice under subsection (4)(a) as soon as practicable after the clerk receives the notice.
- (6) On receiving a copy of the report under subsection (4)(b), the clerk of the House of the Parliament must—
  - (a) as soon as practicable after the report is received, notify each member of the House of the receipt of the report and advise that the report is available on request; and
  - (b) give a copy of the report to any member of the House on request; and

(c) cause the copy of the report to be laid before the House on the next sitting day of the House.

(7) A copy of a report that is given to the clerk of a House of the Parliament under subsection (2) or (4)(b) is taken to have been published by order, or under the authority, of that House.

S. 16ZN  
inserted by  
No. 4/2017  
s. 6.

**16ZN Review of reportable conduct scheme after 5 years of operation**

- (1) The Minister must cause a review to be made of the first 5 years of operation of the reportable conduct scheme and must cause a copy of a report of the review to be laid before each House of Parliament on or before 1 July 2023.
- (2) A review under subsection (1) must include consideration as to whether the reportable conduct scheme should be expanded to apply to any other entities.

## **Part 6—Child Safe Standards**

Pt 6 (Heading and ss 17–41) amended by Nos 96/2005 s. 604(2), 46/2009 ss 9–15, repealed by No. 79/2012 s. 77, new Pt. 6 (Heading and new ss 17–23) inserted by No. 63/2015 s 6.

### **Division 1—Child Safe Standards**

Pt 6 Div. 1 (Heading) inserted by No. 63/2016 s. 7.

#### **17 Minister may make Child Safe Standards**

New s. 17 inserted by No. 63/2015 s 6.

- (1) The Minister may make standards to ensure that in the operations of applicable entities—
  - (a) the safety of children is promoted; and
  - (b) child abuse is prevented; and
  - (c) allegations of child abuse are properly responded to.
- (2) The Minister must publish the Child Safe Standards in the Government Gazette.
- (3) An amendment to the Child Safe Standards has effect—
  - (a) on the day that is 30 days after the day that the amendment is published in the Government Gazette; or
  - (b) on a later day that is specified in the amendment.

New s. 18  
inserted by  
No. 63/2015  
s 6.

**18 Governor in Council may specify day for compliance with Child Safe Standards**

The Governor in Council may, by notice published in the Government Gazette, specify a day for the purposes of section 19.

New s. 19  
inserted by  
No. 63/2015  
s 6.

**19 Category 1 and 2 entities must comply with Child Safe Standards**

- (1) A category 1 entity must comply with the Child Safe Standards on and after the specified day unless—
  - (a) the entity is exempt under section 22; or
  - (b) the regulations provide that the entity is exempt from this requirement; or
  - (c) the entity is prescribed under section 20 or belongs to a class prescribed under section 21.
- (2) A category 2 entity must comply with the Child Safe Standards on and after the first anniversary of the specified day unless—
  - (a) the entity is exempt under section 22; or
  - (b) the regulations provide that the entity is exempt from this requirement; or
  - (c) the entity is prescribed under section 20 or belongs to a class prescribed under section 21.
- (3) Regulations made for the purposes of subsection (1)(b) or (2)(b) may prescribe—
  - (a) a class of applicable entity that is to be exempt from the requirement to comply with the Child Safe Standards; or
  - (b) an applicable entity (other than an individual) that is to be exempt from that requirement.

(4) In this section—

*specified day* means the day specified by the Governor in Council under section 18.

**20 Prescribed applicable entity must comply with Child Safe Standards**

New s. 20  
inserted by  
No. 63/2015  
s 6.

- (1) A prescribed applicable entity must comply with the Child Safe Standards on and after the date prescribed in respect of that entity.
- (2) Regulations made for the purposes of subsection (1) may only prescribe an applicable entity that is not an individual.

**21 Applicable entity belonging to a prescribed class must comply with Child Safe Standards**

New s. 21  
inserted by  
No. 63/2015  
s 6.

An applicable entity that belongs to a prescribed class must comply with the Child Safe Standards on and after the day prescribed in respect of that class unless the entity is exempt under section 22.

**22 Exemption from requirement to comply with Child Safe Standards**

New s. 22  
inserted by  
No. 63/2015  
s 6.

An applicable entity is exempt from a requirement to comply with the Child Safe Standards under section 19(1) or (2) or 21 if the entity does not do any of the following—

- (a) provide any services specifically for children;
- (b) provide any facilities specifically for use by children who are under the entity's supervision;
- (c) engage a child as a contractor, employee or volunteer to assist the entity in providing services or facilities or in producing or providing goods.

S. 22(c)  
amended by  
No. 4/2018  
s. 12(2).

New s. 23  
inserted by  
No. 63/2015  
s 6.

### **23 Application of Child Safe Standards to businesses not carried on by applicable entities**

- (1) This section applies to an individual—
  - (a) who is not an applicable entity; and
  - (b) who carries on a business that belongs to a prescribed class and that provides—
    - (i) services specifically for children; or
    - (ii) facilities specifically for use by children who are under the individual's supervision.
- (2) The individual must comply with the Child Safe Standards on and after the day prescribed in respect of the prescribed class of business.

Pt 6 Div. 2  
(Heading and  
new ss 24, 25)  
inserted by  
No. 63/2016  
s. 8.

### **Division 2—The Commission**

New s. 24  
inserted by  
No. 63/2016  
s. 8.

### **24 Objectives of Commission**

Without limiting section 7 of the **Commission for Children and Young People Act 2012**, the objectives of the Commission, in the exercise of the Commission's functions and powers under this Part, are—

- (a) to promote continuous improvement by relevant entities, in respect of the children who use their services or facilities or who are engaged to assist in providing their services or facilities, in the ways in which, in their operations—
  - (i) the safety of children is promoted; and
  - (ii) child abuse is prevented; and

- (iii) allegations of child abuse are properly responded to; and
- (b) to serve the public interest by promoting—
  - (i) the safety of children; and
  - (ii) the prevention of child abuse; and
  - (iii) the proper response to allegations of child abuse.

## **25 Functions of Commission**

- (1) The Commission has the following functions in relation to the oversight and enforcement of compliance with the Child Safe Standards—
  - (a) to educate and provide advice to relevant authorities to promote compliance by relevant entities with the Child Safe Standards;
  - (b) to educate and provide advice to relevant entities to ensure, in their operations—
    - (i) the safety of children is promoted; and
    - (ii) child abuse is prevented; and
    - (iii) allegations of child abuse are properly responded to;
  - (c) to oversee and enforce compliance by relevant entities with the Child Safe Standards;
  - (d) to perform any other functions conferred under this Part or exercise any powers specified under this Part.
- (2) In exercising its functions under this Part in respect of a relevant entity, the Commission must—

**New s. 25  
inserted by  
No. 63/2016  
s. 8.**

- (a) consider the most effective means of promoting compliance by the relevant entity with the Child Safe Standards; and
- (b) liaise with each relevant authority (if any) of the relevant entity in relation to promoting compliance by the relevant entity with the Child Safe Standards.

Pt 6 Div. 3  
(Heading and  
new ss 26–39)  
inserted by  
No. 63/2016  
s. 8.

### **Division 3—Compliance with the Child Safe Standards**

New s. 26  
inserted by  
No. 63/2016  
s. 8.

#### **26 Requests for information or documents**

The Commission by written notice may request a relevant entity to provide any information or document that the Commission reasonably requires to determine whether the relevant entity is complying with the Child Safe Standards.

New s. 27  
inserted by  
No. 63/2016  
s. 8.

#### **27 Requests for information or documents by relevant authorities**

- (1) A relevant authority of a relevant entity may request the relevant entity to provide any information or document that the relevant authority reasonably requires to determine whether the relevant entity is complying with the Child Safe Standards.
- (2) Subsection (1) does not apply to the extent of any inconsistency with a provision of any other Act or subordinate instrument or a term of any contract or agreement between the relevant authority and the relevant entity.



**28 Requests for information or documents from relevant authorities**

New s. 28  
inserted by  
No. 63/2016  
s. 8.

- (1) The Commission by written notice may request a relevant authority of a relevant entity to provide any information or document held by the relevant authority that the Commission reasonably requires to determine whether the relevant entity is complying with the Child Safe Standards.
- (2) A relevant authority may comply with a request under subsection (1) despite anything to the contrary in any other Act.

**29 Inspection of premises**

New s. 29  
inserted by  
No. 63/2016  
s. 8.

- (1) The Commission may inspect premises at which a relevant entity—
  - (a) provides services or facilities for children; or
  - (b) engages a child to assist the relevant entity in providing the relevant entity's services or facilities.
- (2) The Commission must not inspect premises under subsection (1) unless—
  - (a) the Commission has given written notice of the inspection at least 7 days before the date of the inspection; and
  - (b) the relevant entity or the head of the relevant entity consents to the inspection.
- (3) Despite subsection (2)(a), in exceptional circumstances, the Commission may inspect premises without giving written notice of the inspection at least 7 days before the date of the inspection if the relevant entity or the head of the relevant entity consents to the inspection.

- (4) During an inspection of premises, the Commission may—
- (a) observe the activities carried out at the premises; and
  - (b) inspect any document that the Commission reasonably requires to inspect to determine whether the relevant entity is complying with the Child Safe Standards; and
  - (c) request any person to provide to the Commission any information that the Commission reasonably requires to determine whether the relevant entity is complying with the Child Safe Standards.

New s. 30  
inserted by  
No. 63/2016  
s. 8.

### **30 Notice to produce**

- (1) The Commission by written notice may require a relevant entity to produce any document that the Commission reasonably requires to determine whether the relevant entity is complying with the Child Safe Standards if the Commission believes on reasonable grounds that the relevant entity is not complying, or is not reasonably likely to comply, with the Child Safe Standards.
- (2) A notice under subsection (1)—
- (a) must be in the prescribed form (if any); and
  - (b) must specify the following—
    - (i) the reason why the Commission believes that the relevant entity is not complying, or is not reasonably likely to comply, with the Child Safe Standards;
    - (ii) the document or category of document that must be produced;

- (iii) the date by which the documents must be provided, being not less than 14 days after the day on which the notice is given to the relevant entity;
  - (iv) the maximum pecuniary penalty for failing to comply with the notice;
  - (v) the process for seeking an internal review of the decision to issue the notice;
  - (vi) the prescribed matters (if any).
- (3) A relevant entity given a notice under subsection (1) must provide each document described in the notice to the Commission on or before the day specified in the notice.
- (4) The Commission, by further written notice given at any time, may vary or revoke a notice to produce.

### **31 Notice to comply**

- (1) The Commission may give a relevant entity a notice to comply if the Commission believes on reasonable grounds that the relevant entity is not complying with the Child Safe Standards.
- (2) A notice to comply—
- (a) must be in the prescribed form (if any); and
  - (b) must specify the following—
    - (i) the reason for the issue of the notice to comply;
    - (ii) the Child Safe Standards that the Commission believes the relevant entity is not complying with and the grounds for that belief;

New s. 31  
inserted by  
No. 63/2016  
s. 8.

- (iii) the action that the relevant entity is required to take to address any issues that have been identified in the notice to comply;
  - (iv) the date by which the relevant entity must take the action specified in the notice to comply, being not less than 14 days after the day on which the notice is given;
  - (v) the maximum pecuniary penalty for failing to comply with the notice;
  - (vi) the process for seeking a review of the decision to issue the notice;
  - (vii) the prescribed matters (if any); and
- (c) must be accompanied by any recommendations or advice available to assist the entity to address the issues identified in the notice.

- (3) A relevant entity given a notice to comply must comply with the notice.
- (4) Despite subsection (2)(b)(iv), the Commission may specify a date that is less than 14 days after the day on which the notice is given in exceptional circumstances.
- (5) The Commission, by further written notice given to a relevant entity, and at any time, may vary or revoke a notice to comply.

### **32 Non-compliance with notice to produce or notice to comply**

- (1) If a relevant entity fails to comply with a notice to produce or a notice to comply by the date specified in the notice, the Commission may give each relevant authority (if any) of the relevant entity any information about the relevant entity's failure to comply with the notice.

New s. 32  
inserted by  
No. 63/2016  
s. 8.

- (2) The Commission may request a relevant authority to take any action that is available to the relevant authority under any applicable law, contract or agreement to promote and require compliance by the relevant entity with the Child Safe Standards.

### **33 Application to court**

New s. 33  
inserted by  
No. 63/2016  
s. 8.

- (1) If a relevant entity fails to comply with a notice to produce or a notice to comply, the Commission may apply to a court for—
- (a) a declaration that the relevant entity has failed to comply with the notice; and
  - (b) an order requiring the relevant entity to pay a pecuniary penalty.
- (2) The court may make the declaration sought if the court is satisfied that—
- (a) the relevant entity is an entity that is required to comply with the Child Safe Standards; and
  - (b) the relevant entity has failed to comply with the notice to produce or notice to comply (as the case requires); and
  - (c) the failure to comply was unreasonable.

### **34 Civil penalty**

New s. 34  
inserted by  
No. 63/2016  
s. 8.

- (1) If a court makes a declaration under section 33(2) that a relevant entity has failed to comply with a notice to produce or a notice to comply, the court may order the relevant entity to pay to the Commission a pecuniary penalty not exceeding 60 penalty units.
- (2) In determining the amount of the pecuniary penalty under subsection (1), the court must take into account the following considerations—
- (a) in the case of a relevant entity that is not an individual, the size of the relevant entity;

- (b) the impact of the amount of the penalty on the relevant entity;
  - (c) whether the non-compliance by the relevant entity with the notice to produce or notice to comply was wilful or serious.
- (3) An order made under this section is taken, for the purposes of enforcement, to be an order made by the court in a civil proceeding.
  - (4) A pecuniary penalty paid to the Commission in accordance with an order made under this section must be paid by the Commission into the Consolidated Fund.

New s. 35  
inserted by  
No. 63/2016  
s. 8.

### **35 Protection against self-incrimination**

It is a reasonable excuse for a natural person to refuse or fail to give information or do any thing that the person is requested to do under section 26 or 29 or required to do by or under section 28, 30 or 31 if the giving of the information or the doing of that other thing would tend to incriminate the person.

New s. 36  
inserted by  
No. 63/2016  
s. 8.

### **36 Assistance to be provided**

A relevant entity or the head of a relevant entity must ensure that the Commission or an authorised person is given any assistance in connection with the reasonable performance of the Commission's functions under this Part that the Commission or authorised person reasonably requires.

New s. 37  
inserted by  
No. 63/2016  
s. 8.

### **37 Avoiding unnecessary duplication with other authorities**

The Commission, in overseeing and enforcing compliance by a relevant entity with the Child Safe Standards—

- (a) must liaise with the relevant authorities (if any) of the relevant entity to the extent necessary—

- (i) to avoid unnecessary duplication; and
  - (ii) to facilitate the coordination and expedition of monitoring and enforcement activities; and
- (b) may liaise with the persons referred to in section 41H to the extent necessary for the purposes referred to in paragraph (a)(i) and (ii).

### **38 Consultation with relevant authorities**

- (1) The Commission must consult with each relevant authority (if any) of a relevant entity before exercising any of the following powers in relation to the relevant entity—
- (a) requesting any information or document under section 26;
  - (b) conducting an inspection of premises under section 29;
  - (c) giving the relevant entity a notice to produce under section 30;
  - (d) giving the relevant entity a notice to comply under section 31;
  - (e) making an application to the court under section 33.
- (2) For the purposes of this section, in consulting with a relevant authority of a relevant entity, the Commission must provide the relevant authority with any information that is relevant to determining whether the relevant entity is complying with the Child Safe Standards.

New s. 38  
inserted by  
No. 63/2016  
s. 8.

- (3) The Commission must not exercise a power referred to in subsection (1) if a relevant authority of the relevant entity advises that the relevant authority will take action—
  - (a) to determine whether the relevant entity is complying with the Child Safe Standards; or
  - (b) to promote and require compliance by the relevant entity with the Child Safe Standards.
- (4) Despite subsection (3), the Commission may exercise a power referred to in subsection (1) if—
  - (a) the relevant authority fails, or is unable, to take the action referred to in subsection (3) within a reasonable time; and
  - (b) the Commission further consults with the relevant authority in relation to the exercise of the power.

New s. 39  
inserted by  
No. 63/2016  
s. 8.

### **39 Service of documents**

A notice, order or other document under this Part authorised or required by this Part to be given to a relevant entity is taken to be given to the relevant entity—

- (a) if a true copy of the document is delivered personally to the relevant entity or, if the relevant entity is not an individual, the head of the relevant entity; or
- (b) if a true copy of the document is left at the last known or usual place of business of the relevant entity or the head of the relevant entity with a person who apparently resides or works there and who apparently is over the age of 16 years; or



- (c) by sending by post a true copy of the document addressed to the relevant entity or the head of the relevant entity at that relevant entity's last known or usual place of business; or
- (d) by sending by electronic communication a true copy of the document addressed to the relevant entity or the head of the relevant entity.

### **Division 4—Confidentiality and disclosures of information**

Pt 6 Div. 4  
(Heading and  
ss 40–41H)  
inserted by  
No. 63/2016  
s. 8.

#### **40 Definitions**

In this Division—

*protected information* means information acquired by a relevant person under this Part by reason of being a relevant person;

*relevant person* means any of the following persons—

- (a) the Principal Commissioner within the meaning of the **Commission for Children and Young People Act 2012**;
- (b) a Commissioner within the meaning of the **Commission for Children and Young People Act 2012**;
- (c) a delegate of the Commission;
- (d) an authorised person;
- (e) a member of the staff of the Commission.

New s. 40  
inserted by  
No. 63/2016  
s. 8.

New s. 41  
inserted by  
No. 63/2016  
s. 8.

#### **41 Matters relevant to disclosures of information**

A person must have regard to the following matters in deciding whether to disclose information under section 26, 27, 28 or 29(4)(c)—

- (a) the objectives of the Commission under this Part;
- (b) the public interest in promoting—
  - (i) the safety of children; and
  - (ii) the prevention of child abuse; and
  - (iii) the proper response to allegations of child abuse.

S. 41A  
inserted by  
No. 63/2016  
s. 8.

#### **41A Disclosures made in good faith**

A disclosure of information made under section 26, 28 or 29, or in compliance with a notice to produce or a notice to comply, in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person who made the disclosure; and
- (b) does not make the person who made the disclosure subject to any liability in respect of the disclosure; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 346 of the **Mental Health Act 2014**.

**41B Disclosure of information by relevant person prohibited**

S. 41B  
inserted by  
No. 63/2016  
s. 8.

A person who is or has been a relevant person must not disclose to any person, whether directly or indirectly, any protected information except to the extent necessary—

- (a) to perform functions or exercise powers under this Act or the **Commission for Children and Young People Act 2012**; or
- (b) to give information that the person is expressly authorised, permitted or required to give under this Act or any other Act.

Penalty: 60 penalty units.

**41C Disclosure to other relevant persons permitted**

S. 41C  
inserted by  
No. 63/2016  
s. 8.

A relevant person may disclose protected information to another relevant person in connection with the performance of the Commission's functions or the exercise of the Commission's powers under this Act or the **Commission for Children and Young People Act 2012**.

**41D Disclosure to report concerns permitted**

S. 41D  
inserted by  
No. 63/2016  
s. 8.

A relevant person may disclose protected information to any of the following persons or authorities to report concerns that the Commission may have about the failure of a relevant entity, in its operations, to promote the safety of children, to prevent child abuse or to properly respond to allegations of child abuse—

- (a) the Minister;
- (b) the Secretary to the Department of Health and Human Services;

- (c) if the relevant person considers that the concerns are relevant to a Minister of the Crown (other than the Minister), to that Minister;
- (d) if the relevant person considers that the concerns are relevant to a Secretary to another Department, to that Secretary;
- (e) a relevant authority of the relevant entity.

S. 41E  
inserted by  
No. 63/2016  
s. 8.

#### **41E Disclosure to protect child permitted**

A person who is or has been a relevant person may disclose protected information to prevent a serious or imminent threat of harm to the health, safety or wellbeing of a child.

S. 41F  
inserted by  
No. 63/2016  
s. 8.

#### **41F Disclosure to court or tribunal permitted**

A person who is or has been a relevant person may disclose protected information—

- (a) to a court or tribunal in the course of criminal legal proceedings; or
- (b) in accordance with an order of a court or tribunal made under another Act or law.

S. 41G  
inserted by  
No. 63/2016  
s. 8.

#### **41G Disclosure to obtain legal advice permitted**

A person who is or has been a relevant person may disclose protected information to an Australian legal practitioner for the purpose of obtaining legal advice or representation.

S. 41H  
inserted by  
No. 63/2016  
s. 8.

#### **41H Disclosing information to other authorities**

- (1) Subject to subsection (2), a relevant person may disclose protected information to the following persons—
  - (a) the Chief Commissioner of Police appointed under the **Victoria Police Act 2013**;

- (b) the Commissioner for Privacy and Data Protection appointed under the **Privacy and Data Protection Act 2014**;
  - (c) a coroner;
  - (d) the Disability Services Commissioner within the meaning of the **Disability Act 2006**;
  - (e) the Health Services Commissioner within the meaning of the **Health Services (Conciliation and Review) Act 1987**;
  - (f) the Commissioner of the IBAC appointed under the **Independent Broad-based Anti-corruption Commission Act 2011**;
  - (g) the Mental Health Complaints Commissioner within the meaning of the **Mental Health Act 2014**;
  - (h) the Minister;
  - (i) the Ombudsman within the meaning of the **Ombudsman Act 1973**;
  - (j) the Public Advocate within the meaning of the **Guardianship and Administration Act 1986**;
  - (k) the Secretary to the Department of Health and Human Services.
- (2) A relevant person must not disclose protected information to a person under subsection (1) unless the information is relevant to—
- (a) the performance of the Commission's functions; or
  - (b) the performance of a function conferred on the person by or under an Act.

## Division 5—Review

Pt 6 Div. 5  
(Heading and  
ss 41I, 41J)  
inserted by  
No. 63/2016  
s. 8.

S. 41I  
inserted by  
No. 63/2016  
s. 8.

### 41I Internal review

- (1) A relevant entity may seek a review by the Commission of a decision of the Commission to issue a notice to produce or a notice to comply.
- (2) The Commission must prepare and implement a process for the review of a decision to issue the following—
  - (a) a notice to produce;
  - (b) a notice to comply.

S. 41J  
inserted by  
No. 63/2016  
s. 8.

### 41J Application to the Victorian Civil and Administrative Tribunal

- (1) A relevant entity may apply to VCAT for a review of a decision of the Commission to issue a notice to comply.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the relevant entity requests a statement of reasons for the decision, the day on which—
    - (i) the statement of reasons is given to the relevant entity; or
    - (ii) the relevant entity is informed under section 46(5) of that Act that a statement of reasons will not be given.

- (3) Before a relevant entity is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the relevant entity must have exhausted all available avenues for the review of the decision under section 41I.

## **Division 6—Reporting**

Pt 6 Div. 6  
(Heading and  
ss 41K–41M)  
inserted by  
No. 63/2016  
s. 8.

### **41K Report of compliance by relevant entities with Child Safe Standards**

S. 41K  
inserted by  
No. 63/2016  
s. 8.

- (1) An annual report of the operations of the Commission prepared for the purposes of section 45 of the **Financial Management Act 1994** must include details of compliance by relevant entities with the Child Safe Standards during the financial year to which the report of operations relates.
- (2) The Commission must give a further report of the details of compliance by relevant entities with the Child Safe Standards to the Minister and the Secretary to the Department of Health and Human Services at any time required by the Minister or the Secretary.
- (3) A section of an annual report or a further report prepared in accordance with subsection (1) or (2) must include the following details (as applicable) in relation to the reporting period—
- (a) the number of notices to produce that were given;
  - (b) the number of notices to comply that were given;
  - (c) the number of declarations made by the court under section 33 that a relevant entity did not comply with a notice to produce;

- (d) the number of declarations made by the court under section 33 that a relevant entity did not comply with a notice to comply;
  - (e) the number of civil penalties ordered by the court to be paid that related to a failure to comply with a notice to produce;
  - (f) the number of civil penalties ordered by the court to be paid that related to a failure to comply with a notice to comply;
  - (g) the educational activities undertaken by the Commission.
- (4) A section of an annual report or a further report prepared in accordance with subsection (1) or (2) may include the details of any persistent or recurrent systematic issues in compliance by relevant entities with the Child Safe Standards that were identified during the reporting period.
- (5) If the matters reported under this section include a matter that is the responsibility of a Minister of the Crown (other than the Minister), the Commission must give a copy of the report to that Minister of the Crown.
- (6) If the matters reported under this section include a matter that is the responsibility of a Secretary to a Department (other than the Department of Health and Human Services), the Commission must give a copy of the report to that Secretary.

S. 41L  
inserted by  
No. 63/2016  
s. 8.

**41L Matters to be included in annual report must not include identifying information**

The matters reported under section 41K must not include—

- (a) information that identifies a child who uses the facilities or services of a relevant entity or who has been engaged by a relevant entity to provide facilities or services; or



- (b) information from which the identity of a child referred to in paragraph (a) can be determined.

**41M Commission must first give opportunity to respond to adverse comment or opinion**

S. 41M  
inserted by  
No. 63/2016  
s. 8.

Despite any other provision in this Part, the Commission must not give a section of an annual report or a further report prepared in accordance with section 41K(1) or (2) to a Minister or a Secretary if—

- (a) the section or report includes any comment or opinion that is adverse to a relevant entity; and
- (b) the Commission has not given the relevant entity an opportunity to comment on the adverse comment or opinion.

**Division 7—Reporting to Parliament**

Pt 6 Div. 7  
(Heading and  
ss 41N, 41O)  
inserted by  
No. 63/2016  
s. 8.

**41N Application of Division**

S. 41N  
inserted by  
No. 63/2016  
s. 8.

This Division applies if—

- (a) the Minister or the Secretary to the Department of Health and Human Services has required the Commission to give a further report under section 41K(2); and
- (b) the Commission has given the further report, or a copy of the further report, to any of the following persons in accordance with Division 6—
- (i) the Minister;
- (ii) the Secretary to the Department of Health and Human Services;

- (iii) any other Minister of the Crown;
- (iv) a Secretary to another Department; and
- (c) at least 14 days have elapsed since the persons referred to in paragraph (a) were given the report or a copy of the report.

S. 41O  
inserted by  
No. 63/2016  
s. 8.

#### **41O Giving the report to Parliament**

- (1) The Commission may give a copy of the report to the clerk of each House of the Parliament.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House on—
  - (a) the day on which it is received; or
  - (b) the next sitting day of the House.
- (3) If the Commission proposes to give the report to Parliament when neither House of the Parliament is sitting, the Commission must—
  - (a) give one business day's notice of the Commission's intention to do so to the clerk of each House of the Parliament; and
  - (b) give the copy of the report to the clerk of each House of the Parliament on the day indicated in the notice; and
  - (c) cause the report to be published by the Government Printer.
- (4) The clerk of a House of the Parliament must notify each member of the House of the receipt of a notice under subsection (3)(a) as soon as practicable after the clerk receives the notice.
- (5) On receiving a copy of the report under subsection (3)(b), the clerk of the House of the Parliament must—

- (a) as soon as practicable after the report is received, notify each member of the House of the receipt of the report and advise that the report is available on request; and
  - (b) give a copy of the report to any member of the House on request; and
  - (c) cause the copy of the report to be laid before the House on the next sitting day of the House.
- (6) A copy of a report that is given to the clerk of a House of the Parliament under subsection (1) or (3)(b) is taken to have been published by order, or under the authority, of that House.

## Part 7—Birth notification

### 42 Application of Part

- (1) This Part applies in the case of every birth in Victoria, whether the child is born alive or dead, except for the delivery of a non-viable foetus.
- (2) This Part applies in addition to the requirements of the **Births, Deaths and Marriages Registration Act 1996**.

### 43 Early notification of births

- (1) If a child is born in Victoria notice of the birth of the child (the *birth notice*) must be given by the responsible person to—
  - (a) the Chief Executive Officer of the council of the municipal district in which the mother of the child usually resides; or
  - (b) if the municipal district is not known to the person giving notice, the Chief Executive Officer of the council of the municipal district in which the birth occurs; or
  - (c) if the mother of the child usually resides outside Victoria, the Secretary to the Department of Education and Training.

S. 43(1)(c)  
amended by  
Nos 79/2012  
s. 78, 63/2015  
s. 12.

- (2) The notice must be in the prescribed form.
- (3) In this section, *responsible person* has the same meaning as it has in section 12 of the **Births, Deaths and Marriages Registration Act 1996**.

### 44 How must the birth notice be given?

- (1) The birth notice must be given—
  - (a) personally; or
  - (b) by post; or

- (c) by facsimile transmission; or
  - (d) by electronic communication.
- (2) The birth notice must be given within—
- (a) 48 hours after the birth to which the notice relates; or
  - (b) if a longer period is prescribed in respect of a particular municipal district, that longer period.

#### **45 What must be done once notice is received?**

On receipt of the birth notice the Chief Executive Officer of a council must, as soon as practicable, send a copy of the notice—

- (a) if in the municipal district of the council there is a Maternal and Child Health Centre under the control of and subsidised by the council, to the nurse or midwife whose duty it is to visit or communicate with the house to which the notice relates; or
- (b) in any other case, to the Secretary to the Department of Education and Training.

S. 45(a)  
amended by  
No. 13/2010  
s. 51(Sch.  
item 11.3).

S. 45(b)  
amended by  
Nos 79/2012  
s. 79, 63/2015  
s. 13.

#### **46 Offence to fail to give notice**

- (1) Any person who fails to give notice of a birth in accordance with this Part is guilty of an offence and is liable to a penalty of not more than 1 penalty unit.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the person—
  - (a) satisfies the court that he or she had reasonable grounds to believe that notice had been duly given by another person; or
  - (b) had other reasonable grounds for not giving the notice.

## Part 8—General

### 47 Regulations

S. 47  
substituted by  
No. 63/2015  
s. 7.

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations may—

S. 47(2)(a)  
amended by  
No. 4/2017  
s. 7(a).

(a) be of general or limited application;

S. 47(2)(b)  
amended by  
No. 4/2017  
s. 7(b).

(b) differ according to differences in time, place or circumstances;

S. 47(2)(c)  
inserted by  
No. 4/2017  
s. 7(c).

(c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;

S. 47(2)(d)  
inserted by  
No. 4/2017  
s. 7(d).

(d) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person;

S. 47(2)(e)  
inserted by  
No. 4/2017  
s. 7(e).

(e) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations whether unconditionally or on specified conditions and either wholly or to any extent that is specified.

S. 48  
repealed by  
No. 79/2012  
s. 80.

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## **Part 9—Transitional provisions**

Pt 9 (Heading  
and new s. 48)  
inserted by  
No. 4/2017  
s. 8.

### **48 Children Legislation Amendment (Reportable Conduct) Act 2017**

New s. 48  
inserted by  
No. 4/2017  
s. 8.

This Act as amended by Part 2 of the **Children  
Legislation Amendment (Reportable Conduct)  
Act 2017** applies to a reportable allegation made  
on or after the commencement of Part 2 of that  
Act, irrespective of when the conduct that is  
the subject of the reportable allegation occurred.

Sch. 1  
inserted by  
No. 63/2015  
s. 8.

## Schedule 1—Category 1 entities

- 1 An applicable entity that operates a registered school within the meaning of the **Education and Training Reform Act 2006**.
- 2 An applicable entity registered under Division 3 of Part 4.3 of the **Education and Training Reform Act 2006** in respect of an accredited senior secondary course or registered senior secondary qualification.
- 3 An applicable entity that is approved, under section 4.5.1 of the **Education and Training Reform Act 2006**, to provide a specified course to students from overseas.
- 4 An applicable entity that is approved, under section 4.5A.1 of the **Education and Training Reform Act 2006**, as suitable to operate a student exchange program.
- 5 An approved provider within the meaning of the Education and Care Services National Law (Victoria).
- 6 A children's service within the meaning of the **Children's Services Act 1996**.
- 7 An applicable entity that receives funding under a State contract to provide early therapeutic intervention specifically for children with a disability, additional needs or developmental delay.
- 8 An applicable entity that operates a Maternal and Child Health Centre.
- 9 A hospital listed in Schedule 1 to the **Health Services Act 1988** as a public hospital.
- 10 A public health service within the meaning of the **Health Services Act 1988**.



- 11 A hospital listed in Schedule 2 to the **Health Services Act 1988** as a denominational hospital.
- 12 An applicable entity that operates a private hospital within the meaning of the **Health Services Act 1988**.
- 13 An applicable entity that operates a day procedure centre within the meaning of the **Health Services Act 1988**.
- 14 A multi purpose service within the meaning of the **Health Services Act 1988**.
- 15 A registered community health centre within the meaning of the **Health Services Act 1988**.
- 16 A disability service provider within the meaning of the **Disability Act 2006**.
- 17 A mental health service provider within the meaning of the **Mental Health Act 2014**.
- 18 An applicable entity that receives funding under a State contract to provide drug or alcohol treatment services.
- 19 An applicable entity that receives funding under a State contract to provide services in relation to family violence or sexual assault.
- 20 An applicable entity that receives funding under a State contract to provide support services for parents and families.
- 21 An applicable entity that receives funding under a State contract to provide housing services or other assistance to homeless persons.
- 22 An applicable entity that receives funding under a State contract to provide youth services.
- 23 An applicable entity that receives funding under a State contract to provide child protection services.

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Schedule 1—Category 1 entities

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- 24 An out of home care service within the meaning of the **Children, Youth and Families Act 2005**.
- 25 A Department within the meaning of the **Public Administration Act 2004**.
- 26 An applicable entity that is constituted by or under any Act and that has functions of a public nature.
- 27 A council.

## Schedule 2—Category 2 entities

Sch. 2  
inserted by  
No. 63/2015  
s. 8.

- 1 A religious body within the meaning of section 81 of the **Equal Opportunity Act 2010**.
- 2 A charity.
- 3 A non-profit body within the meaning of the **Electronic Transactions (Victoria) Act 2000**.
- 4 A post-secondary education institution within the meaning of the **Education and Training Reform Act 2006**.
- 5 A post-secondary education provider within the meaning of the **Education and Training Reform Act 2006**.
- 6 An applicable entity that operates a school other than—
  - (a) a registered school within the meaning of the **Education and Training Reform Act 2006**;  
or
  - (b) a place at which home schooling takes place in accordance with a registration under section 4.3.9 of that Act.
- 7 An applicable entity that operates a residential facility for a boarding school.
- 8 An applicable entity that provides coaching or tuition services specifically for children.
- 9 An applicable entity that provides counselling or other support services specifically for children.
- 10 An applicable entity, other than a disability service provider within the meaning of the **Disability Act 2006**, that provides disability services.

- 11 A youth organisation—
- (a) in which children participate; or
  - (b) that provides activities in which children participate.

**Example**

- 1 The Girl Guides Association of Victoria incorporated by section 3 of the **Girl Guides Association Act 1952**.
  - 2 The Boy Scouts Association, Victorian Branch incorporated by section 3 of the **Scout Association Act 1932**.
- 12 An applicable entity that provides cultural, sporting or recreational services specifically for children.
- 13 An applicable entity that provides gym or play facilities specifically for children.
- 14 An applicable entity that runs talent or beauty competitions in which children participate.
- 15 An applicable entity that provides overnight camps for children.
- 16 An applicable entity that provides photography services specifically for children.
- 17 An applicable entity that provides professional babysitting services.
- 18 An applicable entity that provides, on a publicly funded or commercial basis, a transport service specifically for children.
- 19 An applicable entity that provides entertainment and party services specifically for children.
- 20 An applicable entity that employs a child and that is required to hold a permit issued under the **Child Employment Act 2003** for that employment.

### **Schedule 3—Entities to which the reportable conduct scheme applies on and after commencement of Part 5A**

Sch. 3  
inserted by  
No. 4/2017  
s. 9.

- 1 An applicable entity that operates a registered school within the meaning of the **Education and Training Reform Act 2006**.
- 2 An applicable entity registered under Division 3 of Part 4.3 of the **Education and Training Reform Act 2006** in respect of an accredited senior secondary course or registered senior secondary qualification.
- 3 An applicable entity that is approved, under section 4.5.1 of the **Education and Training Reform Act 2006**, to provide a specified course to students from overseas.
- 4 An applicable entity that is approved, under section 4.5A.1 of the **Education and Training Reform Act 2006**, as suitable to operate a student exchange program.
- 5 A disability service provider within the meaning of the **Disability Act 2006** that provides residential services for children with a disability within the meaning of that Act.
- 6 A mental health service provider within the meaning of the **Mental Health Act 2014** that provides in-patient beds.
- 7 An applicable entity that receives funding under a State contract to provide drug or alcohol treatment services that provides in-patient beds.
- 8 An applicable entity that receives funding under a State contract to provide housing services or other assistance to homeless persons that provides overnight beds for persons under the age of 18 years.

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Schedule 3—Entities to which the reportable conduct scheme applies on and after commencement of Part 5A

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- 9 An applicable entity that receives funding under a State contract to provide child protection services.
- 10 An out of home care service within the meaning of the **Children, Youth and Families Act 2005**.
- 11 A Department within the meaning of the **Public Administration Act 2004**.

## **Schedule 4—Entities to which the reportable conduct scheme applies 6 months after commencement of Part 5A**

Sch. 4  
inserted by  
No. 4/2017  
s. 9.

- 1 An entity referred to in Schedule 3.
- 2 A religious body within the meaning of section 81 of the **Equal Opportunity Act 2010**.
- 3 An applicable entity that operates a residential facility for a boarding school.
- 4 An applicable entity that provides overnight camps for children as part of its primary activity and that is not a youth organisation—
  - (a) in which children participate; or
  - (b) that provides activities in which children participate.
- 5 A hospital listed in Schedule 1 to the **Health Services Act 1988** as a public hospital.
- 6 A hospital listed in Schedule 2 to the **Health Services Act 1988** as a denominational hospital.
- 7 An applicable entity that operates a private hospital within the meaning of the **Health Services Act 1988**.
- 8 A disability service provider within the meaning of the **Disability Act 2006** not referred to in Schedule 3.
- 9 An applicable entity, other than a disability service provider within the meaning of the **Disability Act 2006**, that provides disability services.

Sch. 5  
inserted by  
No. 4/2017  
s. 9.

## **Schedule 5—Entities to which the reportable conduct scheme applies 18 months after commencement of Part 5A**

- 1 An entity referred to in Schedule 3.
  - 2 An entity referred to in Schedule 4.
  - 3 An approved provider within the meaning of the Education and Care Services National Law (Victoria).
  - 4 A children's service within the meaning of the **Children's Services Act 1996**.
  - 5 A prescribed applicable entity that is constituted by or under any Act and that has functions of a public nature.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 6 October 2005*

*Legislative Council: 15 November 2005*

The long title for the Bill for this Act was "to establish principles for the wellbeing of children, to establish the Victorian Children's Council and the Children's Services Co-ordination Board, to provide for the Child Safety Commissioner and to confer functions and powers on the Child Safety Commissioner in relation to the safety of children, to provide for the notification of births to municipal councils, to repeal Part IX of the **Health Act 1958** and for other purposes."

The **Child Wellbeing and Safety Act 2005** was assented to on 29 November 2005 and came into operation as follows:

Sections 1–41 and 47 on 1 June 2006: Government Gazette 1 June 2006 page 1028; Part 7 (sections 42–46) and section 48 on 1 October 2007: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms

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part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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## 2 Table of Amendments

This publication incorporates amendments made to the **Child Wellbeing and Safety Act 2005** by Acts and subordinate instruments.

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### **Children, Youth and Families Act 2005, No. 96/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 604 on 23.4.07: Government Gazette 19.4.07 p. 672  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 9) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Disability Act 2006, No. 23/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 233 on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 10) 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 6) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Education and Training Reform Miscellaneous Amendments Act 2007, No. 58/2007**

*Assent Date:* 27.11.07  
*Commencement Date:* S. 51 on 28.11.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

### **Children's Legislation Amendment Act 2008, No. 22/2008**

*Assent Date:* 3.6.08  
*Commencement Date:* S. 41 on 25.5.09: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

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**Children Legislation Amendment Act 2009, No. 46/2009**

*Assent Date:* 18.8.09  
*Commencement Date:* Ss 9–15 on 19.8.09: s. 2  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 11) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Children's Services Amendment Act 2011, No. 80/2011**

*Assent Date:* 21.12.11  
*Commencement Date:* S. 79(Sch. item 1) on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 2  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Commission for Children and Young People Act 2012, No. 79/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 73–80 on 1.3.13: Special Gazette (No. 27) 29.1.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015, No. 63/2015**

*Assent Date:* 1.12.15  
*Commencement Date:* Ss 4–13 on 1.1.16: Special Gazette (No. 426) 22.12.15 p.1  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Crimes Amendment (Sexual Offences) Act 2016, No. 47/2016**

*Assent Date:* 6.9.16  
*Commencement Date:* S. 33 on 1.7.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

**Child Wellbeing and Safety Amendment (Oversight and Enforcement of Child Safe Standards) Act 2016, No. 63/2016**

*Assent Date:* 15.11.16  
*Commencement Date:* Ss 4–8 on 1.1.17: Special Gazette (No. 381) 13.12.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

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**Children Legislation Amendment (Reportable Conduct) Act 2017, No. 4/2017**

*Assent Date:* 28.2.17  
*Commencement Date:* Ss 4–9 on 1.7.17: Special Gazette (No. 216) 27.6.17  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Child Wellbeing and Safety Act 2005**

**Family Violence Protection Amendment (Information Sharing) Act 2017,  
No. 23/2017**

*Assent Date:* 14.6.17  
*Commencement Date:* S. 31 on 26.2.18: s. 2(6)  
*Current State:* This information relates only to the provision/s  
amending the **Child Wellbeing and Safety Act 2005**

**Health and Child Wellbeing Legislation Amendment Act 2018, No. 4/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* Ss 3(1)(3), 4–7, 12(2) on 28.2.18: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Child Wellbeing and Safety Act 2005**

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### 3 Amendments Not in Operation

This publication does not include amendments made to the **Child Wellbeing and Safety Act 2005** by the following Act/s.

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#### **Health and Child Wellbeing Legislation Amendment Act 2018, No. 4/2018**

<i>Assent Date:</i>	27.2.18
<i>Commencement Date:</i>	Ss 3(2), 8–12(1), 13–15 not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Child Wellbeing and Safety Act 2005</b>

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At the date of this publication, the following provisions amending the **Child Wellbeing and Safety Act 2005** were Not in Operation:

**Amending Act/s:**

#### **Health and Child Wellbeing Legislation Amendment Act 2018, No. 4/2018**

##### **3 Definitions**

- (2) In section 3(1) of the **Child Wellbeing and Safety Act 2005**—
- (a) in the definition of *category 1 entity* omit "applicable";
  - (b) in the definition of *category 2 entity* omit "applicable";
  - (c) in the definition of *relevant entity*, in paragraph (a) omit "applicable".

##### **8 Minister may make Child Safe Standards**

In section 17(1) of the **Child Wellbeing and Safety Act 2005**, for "applicable" substitute "relevant".

**9 Category 1 and 2 entities must comply with Child Safe Standards**

In section 19(3) of the **Child Wellbeing and Safety Act 2005**—

- (a) in paragraph (a), for "applicable entity" **substitute** "category 1 entity or category 2 entity";
- (b) in paragraph (b), for "an applicable entity" **substitute** "a category 1 entity or category 2 entity".

**10 Prescribed applicable entity must comply with Child Safe Standards**

- (1) In the heading to section 20 of the **Child Wellbeing and Safety Act 2005** omit "applicable".
- (2) In section 20(1) of the **Child Wellbeing and Safety Act 2005**, for "A prescribed applicable entity" **substitute** "A prescribed category 1 entity, category 2 entity or applicable entity".
- (3) In section 20(2) of the **Child Wellbeing and Safety Act 2005** omit "applicable".

**11 Applicable entity belonging to a prescribed class must comply with Child Safe Standards**

- (1) In the heading to section 21 of the **Child Wellbeing and Safety Act 2005**, for "Applicable entity" **substitute** "Entity".
- (2) In section 21 of the **Child Wellbeing and Safety Act 2005**, for "An applicable entity" **substitute** "A category 1 entity, category 2 entity or applicable entity".

**12 Exemption from requirement to comply with Child Safe Standards**

- (1) In section 22 of the **Child Wellbeing and Safety Act 2005**, for "An applicable entity" **substitute** "A category 1 entity, category 2 entity or applicable entity".

**13 Application of Child Safe Standards to businesses not carried on by applicable entities**

- (1) In the heading to section 23 of the **Child Wellbeing and Safety Act 2005**, for "**applicable entities**" **substitute** "**certain entities**".
- (2) In section 23(1)(a) of the **Child Wellbeing and Safety Act 2005**, after "not" **insert** "a category 1 entity, a category 2 entity or".

**14 Schedule 1—Category 1 entities**

In Schedule 1 to the **Child Wellbeing and Safety Act 2005**—

- (a) in item 6, for "A children's service" **substitute** "A licensee of a children's service";
- (b) in item 16, for "A disability service provider" **substitute** "An applicable entity that is a disability service provider".

**15 Schedule 2—Category 2 entities**

In item 2 of Schedule 2 to the **Child Wellbeing and Safety Act 2005**, for "A charity" **substitute** "An applicable entity that is a charity".



#### **4 Explanatory details**

No entries at date of publication.