

Authorised Version No. 026
Child Wellbeing and Safety Act 2005
No. 83 of 2005

Authorised Version incorporating amendments as at
12 February 2019

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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
- (ea) to enable specified entities to share confidential information in a timely and effective manner in order to promote the wellbeing and safety of children; 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repealed by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repealed by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(ea)
inserted by
No. 11/2018
s. 4(a).

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

- (f) to provide for the notification of births to municipal councils; and
- (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
- (fb) to establish the Child Link Register to improve child wellbeing and safety outcomes for, and to monitor and support the participation in government-funded programs and services by, children born or resident in Victoria; and
- (g) to repeal Part IX of the **Health Act 1958**.

S. 1(fb)
inserted by
No. 11/2018
s. 4(b).

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—

applicable entity means—

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

- (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.

authorised representative, in relation to an individual, means a person—

S. 3(1) def. of *authorised representative* inserted by No. 11/2018 s. 5(a).

- (a) who is an authorised representative, within the meaning of section 28(6) of the **Privacy and Data Protection Act 2014**, of that individual; and
- (b) who is not a person of concern within the meaning of section 144B of the **Family Violence Protection Act 2008**; and
- (c) who is not alleged to pose a risk of family violence;

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

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

category 2 entity means an entity that—

- (a) is referred to in Schedule 2; and
- (b) is not referred to in Schedule 1;

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

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repealed by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

* * * * *

S. 3(1) def. of
*Chief
Commissioner of
Police*
inserted by
No. 4/2017
s. 5(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
child
amended by
No. 11/2018
s. 5(b).

child means (other than in Part 6A) 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);

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*	*	*	*	*	
					S. 3(1) def. of <i>Child Safety Commissioner</i> repealed by No. 79/2012 s. 74(1).
					S. 3(1) def. of <i>Commission</i> inserted by No. 63/2016 s. 5.
					S. 3(1) def. of <i>confidential information</i> inserted by No. 11/2018 s. 5(a).
					S. 3(1) def. of <i>court</i> inserted by No. 63/2016 s. 5, amended by No. 11/2018 s. 5(c).
					S. 3(1) def. of <i>Department</i> 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**;

confidential information means—

- (a) health information; or
- (b) personal information; or
- (c) sensitive information within the meaning set out in Schedule 1 to the **Privacy and Data Protection Act 2014**; or
- (d) unique identifiers; or
- (e) identifiers within the meaning of the **Health Records Act 2001**;

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

court means (other than in Parts 6A and 7A) the Magistrates' Court;

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

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

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—

- (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;

*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;

family violence has the same meaning as in the
Family Violence Protection Act 2008;

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

S. 3(1) def. of
*family
violence*
inserted by
No. 11/2018
s. 5(a).

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

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 of a
relevant entity*
inserted by
No. 63/2016
s. 5.

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;

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health information has the same meaning as in section 3(1) of the **Health Records Act 2001**;

S. 3(1) def. of *health information* inserted by No. 11/2018 s. 5(a).

* * * * *

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).

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

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

information sharing entity has the meaning set out in section 41R;

S. 3(1) def. of *information sharing entity* inserted by No. 11/2018 s. 5(a).

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).

* * * * *

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

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

- (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**;

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

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

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

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

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

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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).

* * * * *

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).

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

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

personal information has the same meaning as in section 3 of the **Privacy and Data Protection Act 2014**;

S. 3(1) def. of *personal information* inserted by No. 11/2018 s. 5(a).

* * * * *

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

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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;

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

regulator, for the purposes of the reportable
conduct scheme—

- (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;

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 authority*** inserted by No. 63/2016 s. 5.

S. 3(1) def. of
relevant entity
inserted by
No. 63/2016
s. 5,
amended by
No. 4/2018
s. 3(2)(c).

relevant entity means—

- (a) an 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;

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

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;

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

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;

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

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

restricted information sharing entity has the meaning set out in section 41S;

S. 3(1) def. of *restricted information sharing entity* inserted by No. 11/2018 s. 5(a).

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S. 3(1) def. of *Secretary* repealed by No. 79/2012 s. 74(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 misconduct* 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 *sexual offence* 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 *significant* inserted by No. 4/2017 s. 5(1).

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
*unique
identifier*
inserted by
No. 11/2018
s. 5(a).

unique identifier has the same meaning as in
Schedule 1 to the **Privacy and Data
Protection Act 2014**;

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).

* * * * *

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

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

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

- (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.

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

S. 5(1)(d)
amended by
No. 22/2008
s. 41(a).

is unable to provide adequate care and protection;

S. 5(1)(e)
inserted by
No. 22/2008
s. 41(b).

- (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—

S. 5(2)(a)
substituted by
No. 11/2018
s. 6.

- (a) to readily identify risks, harm and damage to the child and to provide for the earliest possible intervention by providers of services to remove or ameliorate the causes of the risks, harm or damage;

S. 5(2)(ab)
inserted by
No. 11/2018
s. 6.

- (ab) 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;
- (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.

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—

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

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

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

- (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).

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

16ZD Commission to notify Secretary after finding of reportable conduct

- (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

- (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.

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

- (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.

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

- (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(3B)
inserted by
No. 11/2018
s. 7.

- (3B) Subsections (1) and (2) do not prevent a disclosure that is made for the purposes of Part 6A by an information sharing entity or a restricted information sharing entity.

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

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

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

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

- (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 relevant 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.

S. 17(1) amended by No. 4/2018 s. 8.

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 category 1 entity or category 2 entity that is to be exempt from the requirement to comply with the Child Safe Standards; or

S. 19(3)(a)
amended by
No. 4/2018
s. 9(a).

S. 19(3)(b)
amended by
No. 4/2018
s. 9(b).

(b) a category 1 entity or category 2 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 entity must comply with Child Safe Standards

S. 20
(Heading)
amended by
No. 4/2018
s. 10(1).

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

(1) A prescribed category 1 entity, category 2 entity or applicable entity must comply with the Child Safe Standards on and after the date prescribed in respect of that entity.

S. 20(1)
amended by
No. 4/2018
s. 10(2).

(2) Regulations made for the purposes of subsection (1) may only prescribe an entity that is not an individual.

S. 20(2)
amended by
No. 4/2018
s. 10(3).

21 Entity belonging to a prescribed class must comply with Child Safe Standards

S. 21
(Heading)
amended by
No. 4/2018
s. 11(1).

New s. 21
inserted by
No. 63/2015
s. 6,
amended by
No. 4/2018
s. 11(2).

A category 1 entity, category 2 entity or 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,
amended by
No. 4/2018
s. 12(1).

A category 1 entity, category 2 entity or 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—

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

- (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. 23
(Heading)
amended by
No. 4/2018
s. 13(1).

23 Application of Child Safe Standards to businesses not carried on by certain entities

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

- (1) This section applies to an individual—
 - (a) who is not a category 1 entity, a category 2 entity or 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.

S. 23(1)(a)
amended by
No. 4/2018
s. 13(2).

Division 2—The Commission

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

24 Objectives of Commission

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

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

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

- (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—
- (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.

27 Requests for information or documents by relevant authorities

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

- (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.

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

- (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;
 - (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

New s. 32
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 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.
- (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.

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

34 Civil penalty

- (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.

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. 36
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).

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

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;

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

- (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.
- (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**;

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

- (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. 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.

41H Disclosing information to other authorities

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

- (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.

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

Division 5—Review

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.

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

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

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.

Pt 6A
(Headings
and ss 41P–
41ZQ)
inserted by
No. 11/2018
s. 8.

Part 6A—Information sharing

Division 1—Preliminary

S. 41P
inserted by
No. 11/2018
s. 8.

41P Definitions

In this Part—

child means—

- (a) a person who is under the age of 18 years; and
- (b) an unborn child that is the subject of a report made under section 29 of the **Children, Youth and Families Act 2005** or a referral under section 32 of that Act;

consent means express or implied consent;

excluded information has the meaning set out in section 41Q;

handling, in relation to confidential information, has the meaning set out in section 3 of the **Privacy and Data Protection Act 2014** in relation to personal information;

Health Privacy Principle means any of the Health Privacy Principles set out in Schedule 1 to the **Health Records Act 2001**;

Information Privacy Principle means any of the Information Privacy Principles set out in Schedule 1 to the **Privacy and Data Protection Act 2014**;

person includes an unincorporated association, a firm and a partnership.

41Q Meaning of *excluded information*

In this Part, confidential information is *excluded information* if—

S. 41Q
inserted by
No. 11/2018
s. 8.

- (a) the collection, use or disclosure of that information could be reasonably expected to—
 - (i) endanger a person's life or result in physical injury; or
 - (ii) prejudice the investigation of a breach or possible breach of the law, or prejudice the enforcement or proper administration of the law, in a particular instance; or
 - (iii) prejudice a coronial inquest or inquiry; or
 - (iv) prejudice the fair trial of a person or the impartial adjudication of a particular case; or
 - (v) disclose the contents of a document, or a communication, that is of such a nature that the contents of the document, or the communication, would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege; or
 - (vi) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or

- (vii) contravene a court order or a provision made by or under this Act or any other Act that—
 - (A) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding; or
 - (B) requires or authorises a court or tribunal to close any proceeding to the public; or
- (viii) be contrary to the public interest; or
- (b) the information is prescribed to be excluded information for the purposes of this Part.

S. 41R
inserted by
No. 11/2018
s. 8.

41R Meaning of *information sharing entity*

- (1) In this Act, *information sharing entity* means a person or body, or a class of person or body, prescribed to be an information sharing entity.
- (2) For the avoidance of doubt, if a provision of this Part or the regulations does not specify that it applies to a category of information sharing entity, then the provision applies to all information sharing entities.

S. 41S
inserted by
No. 11/2018
s. 8.

41S Meaning of *restricted information sharing entity*

- (1) In this Act, *restricted information sharing entity* means a person or body, or a class of person or body, prescribed to belong to a category of restricted information sharing entity specified in the regulations.
- (2) Without limiting subsection (1), the regulations may specify that a category of restricted information sharing entity may carry out one or more of the following activities as if it were an information sharing entity—

- (a) disclose confidential information under section 41V to—
 - (i) an information sharing entity; or
 - (ii) a restricted information sharing entity that belongs to a category of restricted information sharing entity that may collect confidential information under this Part;
- (b) collect confidential information disclosed under this Part;
- (c) request the disclosure of confidential information under section 41W(1), and collect that information, from—
 - (i) an information sharing entity; or
 - (ii) a restricted information sharing entity that belongs to a category of restricted information sharing entity that may disclose confidential information under section 41W(3);
- (d) disclose confidential information under section 41W(3) if requested to do so by—
 - (i) an information sharing entity; or
 - (ii) a restricted information sharing entity that belongs to a category of restricted information sharing entity that may request confidential information under section 41W(1);
- (e) disclose confidential information under section 41Y.

- (3) A restricted information sharing entity must only disclose confidential information to the extent permitted by this Part or the regulations for the category of restricted information sharing entity to which the restricted information sharing entity belongs.

S. 41T
inserted by
No. 11/2018
s. 8.

41T Application of this Part to courts and tribunals

If any of the following persons or bodies are prescribed to be information sharing entities or restricted information sharing entities, nothing in this Part applies to the collection, use or disclosure of confidential information by those persons or bodies in relation to, or for the purposes of, their judicial or quasi-judicial functions—

- (a) a court or tribunal;
- (b) the holder of a judicial or quasi-judicial office or other office pertaining to a court or tribunal in their capacity as the holder of that office;
- (c) a registry or other office of a court or tribunal;
- (d) the staff of such a registry or other office in their capacity as members of that staff.

S. 41U
inserted by
No. 11/2018
s. 8.

41U Principles

- (1) The principles set out in this section should be used for guidance in relation to the collection, use or disclosure of confidential information that is authorised or required to be collected, used or disclosed under this Part.
- (2) Information sharing entities and restricted information sharing entities should—
 - (a) give precedence to the wellbeing and safety of a child or group of children over the right to privacy; and

- (b) only share confidential information to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with the best interests of that child or those children; and
- (c) work collaboratively in a manner that respects the functions and expertise of each information sharing entity and restricted information sharing entity; and
- (d) seek and take into account the views of a child and the child's relevant family members, if it is appropriate, safe and reasonable to do so; and
- (e) seek to preserve and promote positive relationships between a child and the child's family members and persons of significance to the child; and
- (f) be respectful of and have regard to a child's social, individual and cultural identity, the child's strengths and abilities and any vulnerability relevant to the child's safety or wellbeing; and
- (g) take all reasonable steps to plan for the safety of all family members who are believed to be at risk from family violence; and
- (h) promote the cultural safety and recognise the cultural rights and familial and community connections of children who are Aboriginal, Torres Strait Islander or both; and
- (i) seek to maintain constructive and respectful engagement with children and their families.

- (3) The Parliament does not intend these principles—
- (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.

Division 2—Information sharing

41V Voluntary disclosure for wellbeing or safety of children

S. 41V
inserted by
No. 11/2018
s. 8.

An information sharing entity (the *disclosing entity*) may, on its own initiative, disclose confidential information, other than excluded information, to another information sharing entity (the *receiving entity*) if—

- (a) the disclosure is made for the purpose of promoting the wellbeing or safety of a child or group of children; and
- (b) the disclosing entity reasonably believes that the disclosure may assist the receiving entity to carry out one or more of the following activities—
 - (i) making a decision, an assessment or a plan relating to a child or group of children;
 - (ii) initiating or conducting an investigation relating to a child or group of children;
 - (iii) providing a service relating to a child or group of children;
 - (iv) managing any risk to a child or group of children.

41W Request for confidential information for wellbeing or safety of children

S. 41W
inserted by
No. 11/2018
s. 8.

- (1) An information sharing entity (the *requesting entity*) may request another information sharing entity (the *responding entity*) to disclose to the requesting entity confidential information, other than excluded information, if the request is made for the purpose of promoting the wellbeing or safety of a child or a group of children.
- (2) In making a request under this section, a requesting entity may disclose to the responding entity any confidential information that may assist the responding entity to—
 - (a) identify the confidential information held by the responding entity that is relevant to the request; and
 - (b) form an opinion on whether the confidential information may be disclosed in accordance with this Part.
- (3) Subject to subsection (5), the responding entity must comply with a request made under subsection (1) for the disclosure of the confidential information if—
 - (a) the disclosure is made for the purpose of promoting the wellbeing or safety of a child or group of children; and
 - (b) the responding entity reasonably believes that the disclosure may assist the requesting entity to carry out one or more of the following activities—
 - (i) making a decision, an assessment or a plan relating to a child or group of children;
 - (ii) initiating or conducting an investigation relating to a child or group of children;

- (iii) providing a service relating to a child or group of children;
 - (iv) managing any risk to a child or group of children.
- (4) Subject to subsection (5), a responding entity that does not comply with a request made under subsection (1) must provide, in writing, the requesting entity with the reason for the failure to comply with the request.
- (5) Subsections (3) and (4) do not apply to any person or body specified in section 41T that has been prescribed to be an information sharing entity or a restricted information sharing entity.

S. 41X
inserted by
No. 11/2018
s. 8.

41X Further disclosure of confidential information

If confidential information is disclosed under this Part to an information sharing entity or a restricted information sharing entity, nothing in this Part prevents or limits the information sharing entity or restricted information sharing entity from using or disclosing that information if it is required or permitted to do so by or under any Act or law.

S. 41Y
inserted by
No. 11/2018
s. 8.

41Y Voluntary disclosure to child or person with parental responsibility or with whom child is living

- (1) An information sharing entity may disclose confidential information, other than excluded information, to any of the following persons for the purposes of managing a risk to a child's safety—
- (a) the child;
 - (b) a person who has parental responsibility for the child;
 - (c) a person with whom the child is living.

- (2) A person to whom confidential information has been disclosed under subsection (1) must not use or disclose that information except for the purposes of managing a risk to the child's safety.
- (3) Nothing in this section limits any disclosure that is required or permitted under any Act or law.

41Z Collection and use of confidential information

An information sharing entity or a restricted information sharing entity may, for the purposes of this Part, collect and use any confidential information disclosed to the information sharing entity or restricted information sharing entity under this Part.

S. 41Z
inserted by
No. 11/2018
s. 8.

Division 3—Guidelines, protected disclosures and recording requirements

41ZA Guidelines

- (1) The Minister must issue guidelines in relation to the operation of this Part.
- (2) Without limiting subsection (1), guidelines issued must address—
 - (a) how an information sharing entity or a restricted information sharing entity may demonstrate its capacity to handle confidential information responsibly and appropriately in accordance with this Part; and
 - (b) how the principles set out in section 41U are to be applied in practice by an information sharing entity or a restricted information sharing entity when collecting, using or disclosing confidential information under this Part.

S. 41ZA
inserted by
No. 11/2018
s. 8.

- (3) Before issuing guidelines under subsection (1), the Minister must publish, on an appropriate Internet site—
 - (a) a draft of the proposed guidelines; and
 - (b) a statement that submissions may be made to the Minister on or before a specified date, being at least 28 days after the day on which the draft guidelines are published.
- (4) As soon as practicable after finalising draft guidelines, the Minister must publish the guidelines on an appropriate Internet site.
- (5) Subject to subsection (6), an information sharing entity or a restricted information sharing entity must comply with any guidelines issued under this section when handling confidential information in accordance with this Part.
- (6) Subsection (5) does not apply to any person or body specified in section 41T that has been prescribed to be an information sharing entity or a restricted information sharing entity.
- (7) Guidelines issued under subsection (1) are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**.
- (8) The Minister may review guidelines issued under subsection (1) at any time and may issue amended guidelines as the Minister considers necessary.
- (9) If the Minister considers that an amendment to the guidelines is significant or substantial, the requirements of subsection (3) must be met before the amended guidelines may be issued.

41ZB Use and disclosure in good faith protected

The use or disclosure of confidential information under this Part in good faith and with reasonable care—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the individual by whom it was made; and
- (b) does not make the individual by whom it was made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention by the individual of any other Act.

S. 41ZB
inserted by
No. 11/2018
s. 8.

41ZC Recording requirements

An information sharing entity or a restricted information sharing entity must record the prescribed information in respect of its collection, use and disclosure of confidential information in accordance with this Part and the regulations.

S. 41ZC
inserted by
No. 11/2018
s. 8.

Division 4—Relationship of this Part with other Acts

41ZD Information sharing entities under the Family Violence Protection Act 2008

- (1) This section applies if an information sharing entity or a restricted information sharing entity is an information sharing entity within the meaning of Part 5A of the **Family Violence Protection Act 2008**.
- (2) An information sharing entity or a restricted information sharing entity to which this section applies may collect, use or disclose confidential information either—

S. 41ZD
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- (a) under and in accordance with Part 5A of the **Family Violence Protection Act 2008**; or
- (b) under and in accordance with this Part.

S. 41ZE
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No. 11/2018
s. 8.

41ZE Part does not affect handling of confidential information permitted by other Acts

This Part does not affect the collection, use or disclosure of confidential information by an information sharing entity or a restricted information sharing entity that would otherwise be permitted by or under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001**, this Act or any other Act.

S. 41ZF
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No. 11/2018
s. 8.

41ZF Restrictions on access to confidential information

- (1) An information sharing entity or a restricted information sharing entity may refuse to give an individual access to that individual's confidential information under a relevant privacy law if the information sharing entity or restricted information sharing entity believes on reasonable grounds that giving the individual access to the information would increase a risk to the safety of a child or group of children.
- (2) In this section—
relevant privacy law means—
 - (a) Health Privacy Principle 6; or
 - (b) Information Privacy Principle 6; or
 - (c) the Privacy Act 1988 of the Commonwealth; or
 - (d) the Privacy Act 1988 of the Commonwealth applied as a law of Victoria by another Act.

41ZG Application of Privacy and Data Protection Act 2014 to certain information sharing entities and restricted information sharing entities

S. 41ZG
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s. 8.

- (1) This section applies to an information sharing entity or a restricted information sharing entity that is not—
 - (a) an organisation within the meaning of the **Privacy and Data Protection Act 2014**; or
 - (b) subject to the Privacy Act 1988 of the Commonwealth, or that Act as applied as a law of Victoria by any other law.
- (2) The **Privacy and Data Protection Act 2014** applies to the handling of personal information or unique identifiers by the information sharing entity or restricted information sharing entity under this Part as if the entity were an organisation within the meaning of that Act.

41ZH Information sharing entities and restricted information sharing entities authorised to disclose confidential information despite specified provisions

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No. 11/2018
s. 8.

An information sharing entity or a restricted information sharing entity is authorised to collect, use or disclose confidential information in accordance with this Part and the regulations despite anything to the contrary in a provision of an Act—

- (a) specified in Schedule 7; or
- (b) prescribed for the purposes of this section.

41ZI Disclosure of confidential information is not breach of Family Violence Protection Act 2008

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Sections 166(2) and 207(3) of the **Family Violence Protection Act 2008** do not prevent a disclosure of confidential information that is made by an information sharing entity or a restricted

information sharing entity for the purposes of this Part.

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41ZJ Disclosure of confidential information is not breach of Judicial Proceedings Reports Act 1958

Sections 3 and 4 of the **Judicial Proceedings Reports Act 1958** do not prevent a disclosure of confidential information that is made by an information sharing entity or a restricted information sharing entity for the purposes of this Part.

Division 5—Offences

S. 41ZK
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No. 11/2018
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41ZK Unauthorised use and disclosure of confidential information collected under this Part

- (1) A person must not use or disclose confidential information disclosed to the person under this Part except in accordance with this Part.

Penalty: In the case of a person other than a body corporate, 60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person used or disclosed the confidential information in good faith and with reasonable care.

Note

See also section 41ZB.

- (3) Subsection (1) does not apply to the following uses and disclosures of confidential information—
- (a) a use or disclosure made with the consent of the person to whom the information relates;
 - (b) if the person to whom the information relates is incapable of giving consent to the use or disclosure, a use or disclosure made with the

- consent of the person's authorised representative;
- (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a use or disclosure made pursuant to an order of a court or tribunal;
 - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
 - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (4) Subsection (1) does not apply to the use or disclosure of confidential information by a person who is given the confidential information under section 41Y.
- (5) A person does not commit an offence against subsection (1) only for the reason that the person uses or discloses confidential information in a way that does not comply with guidelines issued under section 41ZA(1).

Note

Despite non-compliance not being an offence—

- (a) this does not preclude non-compliance being taken into account in dealing with a complaint made under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or the Privacy Act 1988 of the Commonwealth; and
- (b) non-compliance may lead to a person or body ceasing to be prescribed as an information sharing entity or a restricted information sharing entity.

S. 41ZL
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No. 11/2018
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41ZL Intentional or reckless unauthorised use and disclosure of confidential information

- (1) A person must not use or disclose confidential information disclosed to the person under this Part in a manner that is unauthorised under this Part and that the person—
- (a) knows is unauthorised under this Part; or
 - (b) is reckless as to whether the use or disclosure of the information is unauthorised under this Part.

Penalty: In the case of a person other than a body corporate, 600 penalty units or imprisonment for 5 years or both;

In the case of a body corporate, 3000 penalty units.

- (2) Subsection (1) does not apply to the following uses and disclosures of confidential information—
- (a) a use or disclosure made with the consent of the person to whom the information relates;
 - (b) if the person to whom the information relates is incapable of giving consent to the use or disclosure, a use or disclosure made with the consent of the person's authorised representative;
 - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a use or disclosure made pursuant to an order of a court or tribunal;

- (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
 - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (3) Subsection (1) does not apply to the use or disclosure of confidential information by a person who is given the confidential information under section 41Y.
- (4) A person does not commit an offence against subsection (1) only for the reason that the person uses or discloses confidential information in a way that does not comply with guidelines issued under section 41ZA(1).

Note

Despite non-compliance not being an offence—

- (a) this does not preclude non-compliance being taken into account in dealing with a complaint made under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or the Privacy Act 1988 of the Commonwealth; and
- (b) non-compliance may lead to a person or body ceasing to be prescribed as an information sharing entity or a restricted information sharing entity.

S. 41ZM
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41ZM False claim that person is or represents an information sharing entity or a restricted information sharing entity

- (1) A person who is not an information sharing entity or a restricted information sharing entity must not, in any way, claim or hold themselves out to be an information sharing entity or a restricted information sharing entity.

Penalty: In the case of a person other than a body corporate, 60 penalty units;

In the case of a body corporate, 300 penalty units.

- (2) A person who is not authorised by an information sharing entity or a restricted information sharing entity to collect confidential information under this Part on behalf of the information sharing entity or restricted information sharing entity must not, in any way, claim or hold themselves out to be authorised to collect such information on the information sharing entity or restricted information sharing entity's behalf.

Penalty: In the case of a person other than a body corporate, 60 penalty units;

In the case of a body corporate, 300 penalty units.

- (3) It is a defence to a charge under subsection (1) if the person reasonably believes that the person is an information sharing entity or a restricted information sharing entity.

- (4) It is a defence to a charge under subsection (2) if the person reasonably believes that the person is authorised by the information sharing entity or restricted information sharing entity to collect the confidential information on the information sharing entity or restricted information sharing entity's behalf.

Division 6—Review

41ZN Review of operation of Part within 2 years

- (1) The Minister must cause an independent review of the operation of this Part to be conducted within 2 years of the commencement of this Part.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months after the end of the period of the review.
- (3) The review must include consideration of any adverse effects of this Part.
- (4) The review may include any recommendations on any matter addressed in the review.

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No. 11/2018
s. 8.

41ZO Review of operation of Part within 5 years

- (1) The Minister must cause an independent review of the operation of this Part to be conducted within 5 years of the commencement of this Part.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months after the end of the period of the review.
- (3) The review must include consideration of any adverse effects of this Part.
- (4) The review may include any recommendations on any matter addressed in the review.

S. 41ZO
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No. 11/2018
s. 8.

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; and
- (b) in any case, to the Secretary to the Department of Education and Training.

S. 45(a)
amended by
Nos 13/2010
s. 51(Sch.
item 11.3),
11/2018
s. 9(a).

S. 45(b)
amended by
Nos 79/2012
s. 79, 63/2015
s. 13, 11/2018
s. 9(b).

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

Child Wellbeing and Safety Act 2005
No. 83 of 2005
Part 7—Birth notification

(b) had other reasonable grounds for not giving the notice.

Part 7A—Child Link Register

Division 1—Definitions

Pt 7A
(Headings
and ss 46A–
46Z)
inserted by
No. 11/2018
s. 10.

46A Definitions

S. 46A
inserted by
No. 11/2018
s. 10.

In this Part—

approved education and care service means an approved education and care service within the meaning of section 5(1) of the Education and Care Services National Law (Victoria) that provides funded kindergarten;

approved provider, in relation to an approved education and care service, has the same meaning as in section 5(1) of the Education and Care Services National Law (Victoria);

Child Link identifier means an identifier allocated to a child by the Secretary under section 46C;

Child Link user means a person who is authorised to access the Register, specified in section 46K;

child protection order means—

- (a) an order made under Part 4.8 of the **Children, Youth and Families Act 2005**; or
- (b) a protection order within the meaning of the **Children, Youth and Families Act 2005**; or
- (c) a permanent care order within the meaning of the **Children, Youth and Families Act 2005**;

de-identified, in relation to confidential information, means confidential information that no longer relates to an identifiable individual or an individual who can be reasonably identified;

funded kindergarten means a service provided in accordance with the guidelines in relation to kindergarten funding published on the website of the Department of Education and Training;

Government school has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

licensed children's service means a children's service (within the meaning of the **Children's Services Act 1996**) that is licensed under Part 3 of that Act that provides funded kindergarten;

licensee, in relation to a licensed children's service, has the same meaning as in the **Children's Services Act 1996**;

Maternal and Child Health service means a service under the control of a council that provides health advice to parents and other caregivers of children under 6 years of age;

non-Government school has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

principal has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

Register means the Child Link Register established under section 46B;

registered early childhood teacher has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

registered school has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

registered teacher has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

relevant service means—

- (a) a Maternal and Child Health service; or
- (b) a supported playgroup; or
- (c) an approved education and care service; or
- (d) a student support service provided by the Department of Education and Training; or
- (e) a licensed children's service; or
- (f) a registered school that is a Government school; or
- (g) a registered school that is a non-Government school; or
- (h) a school nurse program; or
- (i) any other prescribed service;

school nurse means a nurse employed under Part 3 of the **Public Administration Act 2004** by the Secretary, or otherwise engaged by the Secretary, for the purposes of providing a school nurse program in a registered school;

Secretary means the Secretary to the Department of Education and Training;

sibling of a child includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother or step-sister of the child;

State Register means the State Register established under Part 4.6 of the **Education and Training Reform Act 2006**;

Student Register means the Student Register established under Part 5.3A of the **Education and Training Reform Act 2006**;

supported playgroup means a playgroup providing support for families experiencing disadvantage that is funded by the Department of Education and Training;

Victorian Registration and Qualifications Authority means the Victorian Registration and Qualifications Authority established under Chapter 4 of the **Education and Training Reform Act 2006**;

Victorian student number has the same meaning as in section 1.1.3(1) of the **Education, Training and Reform Act 2006**.

Division 2—The Child Link Register

46B The Child Link Register

- (1) The Secretary must establish and maintain the Child Link Register in relation to each child—
 - (a) who is born in Victoria; or
 - (b) who accesses, enrolls in, registers with or otherwise engages with a relevant service, as applicable; or
 - (c) who is registered for home schooling under section 4.3.9 of the **Education and Training Reform Act 2006**; or

S. 46B
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No. 11/2018
s. 10.

- (d) in respect of whom a child protection order is made.
- (2) The Secretary may maintain an entry in the Register in relation to a person who is 18 years of age—
 - (a) who is currently enrolled in a registered school or registered for home schooling; and
 - (b) who enrolled or registered (as the case may be) prior to attaining 18 years of age.
- (3) The Secretary is to keep the Register in a form to be determined by the Secretary.

46C Secretary must create Child Link entry and allocate Child Link identifier

S. 46C
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No. 11/2018
s. 10.

- (1) The Secretary must create an entry in the Register for a child referred to in section 46B(1) and allocate a Child Link identifier to the child—
 - (a) on receipt of a copy of a birth notice for the child under section 45(b); or

Note

A birth notice must be given for every birth in Victoria, whether the child is born alive or dead, except for the delivery of a non-viable foetus—see section 42(1).

- (b) if the Secretary has not received a copy of a birth notice for the child, on receiving notice of the earliest of the following—
 - (i) the child's first contact with a relevant service;
 - (ii) the allocation to the child of a Victorian student number by the Secretary under Part 5.3A of the **Education and Training Reform Act 2006**;

- (iii) the registration of the child for home schooling by the Victorian Registration and Qualifications Authority;
- (iv) the making of a child protection order in respect of the child.

(2) In this section—

first contact means—

- (a) in relation to a Maternal and Child Health service—the first notification received by the relevant service in relation to the child; or
- (b) in relation to a supported playgroup—the first notification received by the relevant service in relation to the child; or
- (c) in relation to an approved education and care service or a licensed children's service—the enrolment of the child in a funded kindergarten provided by the service; or
- (d) in relation to a Government school—the enrolment of the child at the school; or
- (e) in relation to a non-Government school—the enrolment of the child at the school; or
- (f) in relation to a student support service provided by the Department of Education and Training—the first access or engagement by the child of or with the relevant service; or
- (g) in relation to a school nurse program—the first notification received by the relevant service in relation to the child; or

- (h) in relation to a service prescribed as a relevant service—on the first occurrence of a prescribed event in relation to that service.

46D Particulars to be included in the Register

S. 46D
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No. 11/2018
s. 10.

- (1) The Secretary may include the following particulars in the Register in relation to a child to whom a Child Link identifier is allocated—
 - (a) the Child Link identifier;
 - (b) the child's full name and any other names by which the child is or has been known;
 - (c) the child's date of birth;
 - (d) the child's place of birth;
 - (e) the child's sex or, if it has not been disclosed, a record to that effect;
 - (f) the full names of each person who at any time has or has had parental responsibility for, or day-to-day care of, the child, and any other names by which each of those persons is or has been known;
 - (g) the relationship to the child of each person with parental responsibility for, or day-to-day care of, the child;
 - (h) in relation to each sibling of the child—
 - (i) the full name and any other names by which the sibling is or has been known; and
 - (ii) the sibling's Child Link identifier;
 - (i) whether the child is Aboriginal, Torres Strait Islander, or both;

- (j) if a child protection order has been made in respect of the child or any of the child's siblings (whether currently in force or otherwise)—
 - (i) the date on which the order was made; and
 - (ii) whether the order is currently in force; and
 - (iii) whether the order has or had the effect of placing the child in out of home care within the meaning of the **Children, Youth and Families Act 2005**; and
 - (iv) whether the order confers or conferred parental responsibility on a person other than the child's parent to the exclusion of all others;
- (k) whether the child is a participant in the National Disability Insurance Scheme, established by the National Disability Insurance Scheme Act 2013 of the Commonwealth;
- (l) if the child dies before the age of 18 years, the date and cause of death;
- (m) the specified information in relation to each of the following services that the child has accessed, enrolled in, registered for, been referred to or otherwise engaged with, as applicable—
 - (i) Maternal and Child Health services;
 - (ii) supported playgroups;
 - (iii) funded kindergartens;
 - (iv) registered schools or home schooling;
 - (v) school nurse programs;

- (vi) student support services provided by the Department of Education and Training;
 - (vii) any other prescribed service or program.
- (2) The Secretary may, at any time, amend an entry relating to a child in the Register, or delete or create an entry about a child in the Register, to bring the Register into conformity with the most accurate information referred to in subsection (1) available to the Secretary under section 46G.
- (3) In this section—
- specified information*** means the following information in relation to a service—
- (a) the name of the service;
 - (b) the contact details for the service;
 - (c) the dates of the child's participation in the service, including—
 - (i) the date on which the child accessed, enrolled in, was referred to or otherwise engaged with the service, as applicable; and
 - (ii) the last date on which the child accessed, was enrolled in or otherwise engaged with the service;
 - (d) a description of the child's participation in the service, including any programs provided by the service to the child;
 - (e) the date of registration of the child for home schooling, if applicable;

- (f) the date of cancellation of registration of the child for home schooling;
- (g) any other prescribed information.

S. 46E
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No. 11/2018
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46E Secretary may decide not to record information on the Register

Despite section 46D, the Register must not include any information about a child or a person with parental responsibility for, or day-to-day care of, the child if the Secretary determines that the information is not to be recorded on the Register for any reason.

S. 46F
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No. 11/2018
s. 10.

46F Entry in the Register for child who turns 18, leaves school or dies

- (1) Subject to subsections (2) and (3), an entry in the Register relating to a child must not be accessed or amended—
 - (a) if the child has died; or
 - (b) otherwise—
 - (i) if the child has attained the age of 18 years; or
 - (ii) if the child is no longer attending a registered school or the home schooling of the child has ceased; or
 - (iii) if the home schooling registration of the child is cancelled by the Victorian Registration and Qualifications Authority under section 4.3.9(1)(b) of the **Education and Training Reform Act 2006**, as applicable—
whichever is latest.

- (2) The Secretary may continue to amend an entry relating to a child referred to in subsection (1) for a period of not more than 12 months after an event referred to in subsection (1)(a) or the latest event described in subsection (1)(b), as the case may be.
- (3) An entry relating to a child referred to in subsection (1) may be accessed after an event referred to in subsection (1)(a) or (b) for the purpose of providing de-identified information in accordance with section 46O.

Division 3—Secretary authorised to collect, use and disclose information for Register purposes

46G Secretary authorised to collect, use and disclose information for purposes of establishing and maintaining the Register

S. 46G
inserted by
No. 11/2018
s. 10.

For the purposes of establishing and maintaining the Register, the Secretary may collect, use and disclose confidential information that may be included in the Register under section 46D and that is derived from the following—

- (a) information given to the Department of Education and Training by a relevant service for the purposes of—
 - (i) providing Maternal and Child Health services; or
 - (ii) providing supported playgroups or funded kindergartens; or
 - (iii) providing services and education to students in registered schools;
- (b) information contained in the Student Register in relation to students enrolled in registered schools or students registered for home schooling;

- (c) information contained in the State Register in relation to students registered for home schooling;
- (d) information given to the Department of Education and Training by a school nurse for the purposes of providing a service as part of a school nurse program;
- (e) information given to the Department of Education and Training by an allied health professional for the purpose of providing student support services in Government schools;
- (f) information given to the Department of Education and Training by the Secretary to the Department of Health and Human Services for inclusion in the Register;
- (g) information disclosed to the Secretary under section 46I;
- (h) information given to the Department of Education and Training by a prescribed service for a prescribed purpose.

S. 46H
inserted by
No. 11/2018
s. 10.

46H Secretary authorised to collect and use information for purposes of data management

- (1) For the purposes of data management, the Secretary, or a person employed or engaged by the Secretary who is authorised in writing by the Secretary, may collect, use and disclose the following confidential information about a child or a person with parental responsibility for, or day-to-day care of, a child—
 - (a) information given to the Department of Education and Training by a relevant service for the purposes of—
 - (i) providing Maternal and Child Health services; or

- (ii) providing supported playgroups or funded kindergartens; or
 - (iii) providing services and education in registered schools;
 - (b) information contained in the Student Register in relation to students enrolled in registered schools or students registered for home schooling;
 - (c) information contained in the State Register in relation to students registered for home schooling;
 - (d) information given to the Department of Education and Training by a school nurse for the purposes of providing a service as part of a school nurse program;
 - (e) information given to the Department of Education and Training by an allied health professional for the purpose of providing student support services in Government schools;
 - (f) information given to the Department of Education and Training by the Secretary to the Department of Health and Human Services for inclusion in the Register;
 - (g) information given to the Department of Education and Training under section 46I;
 - (h) information given to the Department of Education and Training by a prescribed service for a prescribed purpose.
- (2) In this section—

data management means the examination and analysis of information to the extent reasonably required for the purpose of verifying the accuracy of information collected about a child under section 46D,

but does not include the recording of that information on the Register.

S. 46I
inserted by
No. 11/2018
s. 10.

46I Disclosure of information to the Secretary

- (1) The following persons are authorised to collect confidential information and disclose it to the Secretary for a permitted purpose—
 - (a) a Maternal and Child Health service nurse;
 - (b) a supported playgroup facilitator;
 - (c) a school nurse;
 - (d) an allied health professional providing student support services to students in Government schools;
 - (e) an approved provider of an approved education and care service;
 - (f) a licensee of a licensed children's service;
 - (g) a principal of a registered school that is a Government school;
 - (h) a principal of a registered school that is a non-Government school;
 - (i) the Secretary to the Department of Health and Human Services;
 - (j) the Victorian Registration and Qualifications Authority;
 - (k) any person prescribed to collect and disclose the information on behalf of a prescribed service or program.
- (2) In this section, the following purposes are permitted purposes—
 - (a) to enable the Secretary to establish and maintain the Register;
 - (b) to enable the Secretary to facilitate data management in relation to the Register.

46J No consent required

- (1) The Secretary may collect, use or disclose confidential information about a child under section 46G, 46H or 46I without the consent of the child or a person with parental responsibility for, or day-to-day care of, the child.
- (2) The Secretary may collect, use or disclose confidential information under section 46G, 46H or 46I about a person other than a child without the consent of that person.

S. 46J
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No. 11/2018
s. 10.

**Division 4—Access to Child Link Register and use
and disclosure of information contained in the
Register**

46K Who is a Child Link user?

- (1) For the purposes of this Part, each of the following is a Child Link user—
 - (a) the Secretary;
 - (b) the Secretary to the Department of Health and Human Services;
 - (c) the Principal Commissioner appointed under section 11 of the **Commission for Children and Young People Act 2012**;
 - (d) the Disability Services Commissioner within the meaning of the **Disability Act 2006**;
 - (e) a person or class of persons employed by the Secretary under Part 3 of the **Public Administration Act 2004** or otherwise engaged by the Secretary, who is authorised in writing by the Secretary for one or more of the following purposes—
 - (i) to identify children who are not participating in services for which they may be eligible;

S. 46K
inserted by
No. 11/2018
s. 10.

- (ii) to perform functions relating to systems administration of the Register;
- (iii) for the purpose of data management in accordance with section 46H;
- (iv) for the purpose of de-identifying confidential information and to provide that de-identified information under section 46O;
- (f) a person or class of persons employed by the Secretary to the Department of Health and Human Services under Part 3 of the **Public Administration Act 2004** or otherwise engaged by that Secretary, who is authorised in writing by that Secretary;
- (g) a person employed or engaged by a council in relation to childhood services implementation or policy who is authorised in writing by the Chief Executive Officer of the council;
- (h) a nurse employed or engaged by a council to provide maternal and child health programs for a Maternal and Child Health service who is authorised in writing by the Chief Executive Officer of the council;
- (i) a nurse employed or engaged by an entity that provides maternal and child health programs on behalf of a council for a Maternal and Child Health service, who is authorised in writing by the person who has overall management and control of the Maternal and Child Health service;
- (j) a nurse employed or engaged by the Secretary to provide maternal and child health advice through a state-wide telephone service who is authorised in writing by the Secretary;

- (k) a person employed or engaged by the Victorian Aboriginal Health Service Co-operative Limited in relation to childhood services implementation or policy who is authorised in writing by the Chief Executive Officer of the Service;
- (l) a registered medical practitioner, nurse or midwife employed or engaged by the Victorian Aboriginal Health Service Co-operative Limited engaged in providing maternal and child health programs who is authorised in writing by the Chief Executive Officer of the Service;
- (m) a registered early childhood teacher providing education and care to children at an approved education and care service who is authorised in writing by the approved provider;
- (n) a registered early childhood teacher providing education and care to children at a licensed children's service who is authorised in writing by the licensee of the service;
- (o) a school nurse who is authorised in writing by the Secretary;
- (p) a school nurse manager who is authorised in writing by the Secretary;
- (q) a principal of a Government school who is authorised in writing by the Secretary;
- (r) any of the following persons authorised in writing by the principal of a Government school—
 - (i) a registered teacher employed or engaged to provide instruction or other education services to students at the school;

- (ii) any other person employed or engaged to provide health or welfare services for students at the school;
 - (s) the principal of a non-Government school who is authorised in writing by the person or body responsible for governance, conduct or management of that school;
 - (t) any of the following persons or classes of persons authorised in writing by the principal of a non-Government school—
 - (i) a registered teacher employed or engaged to provide instruction or other education services to students at the school;
 - (ii) any other person employed or engaged to provide health or welfare services for students at the school;
 - (u) a person or class of persons employed by the Commission for Children and Young People under section 21(1) of the **Commission for Children and Young People Act 2012** or otherwise engaged by the Commission, who is authorised in writing by the Principal Commissioner within the meaning of that Act;
 - (v) a person employed to assist the Disability Services Commissioner under section 18(1) of the **Disability Act 2006** who is authorised in writing by the Commissioner;
 - (w) a prescribed person who is authorised in writing in accordance with the regulations.
- (2) For the purposes of subsection (1)(m) and (n), not more than 3 registered early childhood teachers may be authorised at one time in relation to the approved education and care service or licensed children's service, as the case requires.

- (3) For the purposes of subsection (1)(r) and (t), not more than 7 persons may be authorised at one time in relation to the Government school or non-Government school, as the case requires.
- (4) If a person who has been authorised under subsection (1) no longer requires access to the Register, the person authorised to give the authorisation must revoke that authorisation.

46L Delegation

- (1) The Secretary may by instrument delegate any power, function or duty of the Secretary under this Part, other than this power of delegation, to a person employed or engaged by the Secretary.
- (2) The Chief Executive Officer of a council may by instrument delegate any power, function or duty of the Chief Executive Officer under this Part, other than this power of delegation, to a person employed in or engaged by the council.
- (3) An approved provider of an approved education and care service may by instrument delegate any power, function or duty of the approved provider under this Part, other than this power of delegation, to a person employed in or engaged by the education and care service.
- (4) A licensee of a licensed children's service may by instrument delegate any power, function or duty of the licensee under this Part, other than this power of delegation, to a person employed in or engaged by the licensed children's service.
- (5) The Disability Services Commissioner may by instrument delegate any power, function or duty of the Commissioner under this Part, other than this power of delegation, to a person employed or engaged by the Disability Services Commissioner.

S. 46L
inserted by
No. 11/2018
s. 10.

- (6) The Principal Commissioner may by instrument delegate any power, function or duty of the Commissioner under this Part, other than this power of delegation, to a person employed or engaged by the Principal Commissioner.

S. 46M
inserted by
No. 11/2018
s. 10.

46M Child Link users may access and use confidential information in the Register

A Child Link user may access the Register and—

- (a) use confidential information contained in the Register for a purpose specified in Schedule 6 in relation to that Child Link user; and
- (b) disclose confidential information contained in the Register—
 - (i) to persons employed or engaged by the organisation at which the Child Link user is employed or engaged for a purpose specified in Schedule 6 in relation to that Child Link user; and
 - (ii) in accordance with Part 6A, if applicable.

S. 46N
inserted by
No. 11/2018
s. 10.

46N Secretary may remove Child Link user access to the Register

- (1) The Secretary may remove access to an entry, or part of an entry, in the Register relating to a child if the Secretary is satisfied that allowing any Child Link user other than the Secretary access to the child's entry (or that part of the entry, as applicable) would—
- (a) pose an unacceptable risk of harm to a person; or
 - (b) in all the circumstances be otherwise inappropriate.

- (2) The Secretary may remove a Child Link user's access to the Register or an entry, or part of an entry, in the Register relating to a child if the Secretary is satisfied that the Child Link user's continued access to the Register or the child's entry (or that part of the entry, as applicable) would—
 - (a) pose an unacceptable risk of harm to a person; or
 - (b) in all the circumstances be otherwise inappropriate.
- (3) The Secretary may remove access to an entry under subsection (1) or a Child Link user's access under subsection (2) on the Secretary's own initiative or on the written request of any person, in accordance with the guidelines (if any).
- (4) A person may disclose confidential information to the Secretary for the purposes of making a request under subsection (3).
- (5) The Secretary may remove access to an entry under subsection (1) or a Child Link user's access under subsection (2) for any period that the Secretary considers necessary under the circumstances.
- (6) A person authorised to grant an authorisation (the *first person*) to another person under section 46K(1) must notify the Secretary if the first person reasonably believes that the other person has ceased—
 - (a) to be a registered teacher; or
 - (b) to hold a current assessment notice under the **Working with Children Act 2005**.

S. 46O
inserted by
No. 11/2018
s. 10.

46O Use and disclosure of de-identified information derived from the Register

- (1) An authorised person may provide de-identified information derived from the Register to an employee of, or person engaged by, the Secretary or the Secretary to the Department of Health and Human Services for the purposes of developing, planning and reviewing policies, programs and services.
- (2) For the purposes of providing de-identified information under subsection (1), an authorised person may access confidential information that is identifying information contained in the Register.
- (3) In this section—

authorised person means a person—

- (a) employed or engaged by the Secretary who is authorised in writing by the Secretary for the purposes of this section; or
- (b) employed or engaged by the Secretary to the Department of Health and Human Services who is authorised in writing by the Secretary for the purposes of this section.

S. 46P
inserted by
No. 11/2018
s. 10.

46P Restrictions on access to confidential information

- (1) The Secretary may refuse to give an individual access to that individual's confidential information under a relevant privacy law if the Secretary believes on reasonable grounds that giving the individual access to the information would increase a risk to the safety of a child or group of children.

(2) In this section—

relevant privacy law means—

- (a) Health Privacy Principle 6; or
- (b) Information Privacy Principle 6; or
- (c) the Privacy Act 1988 of the Commonwealth; or
- (d) the Privacy Act 1988 of the Commonwealth applied as a law of Victoria by another Act.

46Q Person authorised to disclose confidential information despite specified provisions

A person is authorised to collect, use or disclose confidential information in accordance with this Part and the regulations despite anything to the contrary in a provision of an Act prescribed for the purposes of this section.

S. 46Q
inserted by
No. 11/2018
s. 10.

46R Application of Privacy and Data Protection Act 2014 to certain Child Link users

- (1) This section applies to a Child Link user that is not—
 - (a) an organisation within the meaning of the **Privacy and Data Protection Act 2014**; or
 - (b) subject to the Privacy Act 1988 of the Commonwealth, or that Act as applied as a law of Victoria by any other law.
- (2) The **Privacy and Data Protection Act 2014** applies to the handling of personal information or unique identifiers by the Child Link user under this Part as if the Child Link user were an organisation within the meaning of that Act.

S. 46R
inserted by
No. 11/2018
s. 10.

Division 5—Guidelines

S. 46S
inserted by
No. 11/2018
s. 10.

46S Guidelines

- (1) The Secretary may issue guidelines addressing the following matters—
 - (a) the recording of information in the Register;
 - (b) amending, deleting or creating entries in the Register under section 46D;
 - (c) the manner in which information is to be collected for the purposes of the Register under section 46G or 46H;
 - (d) the authorisation of Child Link users under Division 4, including circumstances and manner of authorisation;
 - (e) the removal of access to an entry or part of an entry in the Register and removal of a Child Link user's access to the Register;
 - (f) the provision of de-identified information under section 46O;
 - (g) systems security and integrity measures.
- (2) The Secretary must publish any guidelines issued under subsection (1) on an appropriate Internet site as soon as possible after the guidelines are issued.
- (3) The Secretary may review guidelines issued under subsection (1) at any time and may issue amended guidelines as the Secretary considers necessary.
- (4) Guidelines issued under subsection (1) are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**.

Division 6—Offences

46T Unauthorised access to the Register

S. 46T
inserted by
No. 11/2018
s. 10.

- (1) A person must not access the Register unless the person is—
- (a) a Child Link user; or
 - (b) a person who is otherwise authorised to access the Register under this Part.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person accessed the Register in good faith and with reasonable care.

46U Access to the Register for unauthorised purpose

S. 46U
inserted by
No. 11/2018
s. 10.

- (1) An authorised person must not access the Register other than in accordance with this Part.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person accessed the Register in good faith and with reasonable care.

- (3) In this section—

authorised person means—

- (a) a Child Link user; or
- (b) a person who is otherwise authorised to access the Register under this Part.

S. 46V
inserted by
No. 11/2018
s. 10.

46V Unauthorised use and disclosure of confidential information contained in the Register

- (1) An authorised person must not use or disclose confidential information contained in the Register other than in accordance with this Part.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person used or disclosed the confidential information in good faith and with reasonable care.
- (3) Subsection (1) does not apply to the following uses and disclosures of confidential information—
- (a) a use or disclosure made with the consent of the person to whom the information relates;
 - (b) if the information relates to a person who is incapable of giving consent to the use or disclosure, a use or disclosure made with the consent of the person's authorised representative;
 - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a use or disclosure made pursuant to an order of a court or tribunal;
 - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;

(g) a use or disclosure made as required or authorised by or under this Act or any other Act.

(4) In this section—

authorised person means—

- (a) a Child Link user; or
- (b) a person who is otherwise authorised to access the Register under this Part.

46W Intentional or reckless unauthorised use and disclosure of confidential information contained in the Register

S. 46W
inserted by
No. 11/2018
s. 10.

- (1) An authorised person must not use or disclose confidential information contained in the Register in a manner that is unauthorised under this Part and that the person—
- (a) knows is unauthorised under this Part; or
 - (b) is reckless as to whether the use or disclosure of the information is authorised under this Part.

Penalty: In the case of a natural person,
600 penalty units or imprisonment
for 5 years or both;

In the case of a body corporate,
3000 penalty units.

- (2) Subsection (1) does not apply to the following uses and disclosures of confidential information—
- (a) a use or disclosure made with the consent of the person to whom the information relates;
 - (b) if the information relates to a person who is incapable of giving consent to the use or disclosure, a use or disclosure made with the consent of the person's authorised representative;

- (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a use or disclosure made pursuant to an order of a court or tribunal;
 - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
 - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (3) In this section—
- authorised person* means—
- (a) a Child Link user; or
 - (b) a person who is otherwise authorised to access the Register under this Part.

Division 7—Review of operation of Part

46X Review of operation of Part within 2 years

- (1) The Minister must cause an independent review of the operation of this Part to be conducted within 2 years of the commencement of this Part.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months after the end of the period of the review.
- (3) The review must include consideration of any adverse effects of this Part.

S. 46X
inserted by
No. 11/2018
s. 10.

- (4) The review may include any recommendations on any matter addressed in the review.

Division 8—Transitional provisions

46Y Secretary may create entries in the Register

S. 46Y
inserted by
No. 11/2018
s. 10.

- (1) The Secretary may create an entry in the Register for, and allocate a Child Link identifier to, each child who is under 18 years of age on the commencement date and who—
- (a) was born in Victoria; or
 - (b) accessed, enrolled in, registered with or otherwise engaged with a relevant service, as applicable, before the commencement date; or
 - (c) was registered for home schooling before the commencement date under section 4.3.9 of the **Education and Training Reform Act 2006**; or
 - (d) was the subject of a child protection order before the commencement date.
- (2) The Secretary may collect and use information provided by the entities set out in section 46I for the purposes of creating the entries in the Register referred to in subsection (1) and verifying the accuracy of those entries.

- (3) In this section—

commencement date means the day on which this Part comes into operation.

46Z Appointed days for application of section 46M and Schedule 6 to Child Link users

S. 46Z
inserted by
No. 11/2018
s. 10.

- (1) Subject to subsection (3), section 46M and Schedule 6 do not apply to a specified class of Child Link users until a day appointed by the

Governor in Council under this section in relation to that class.

- (2) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette appoint a day (being a day not later than 31 December 2021) for the application of section 46M and Schedule 6 to a class of Child Link users specified in that Order.
- (3) If the Governor in Council has not appointed a day under subsection (2) before 31 December 2021 in relation to a class of Child Link users, section 46M and Schedule 6 are taken to apply to that class of Child Link user on and after that day.

Part 8—General

Division 1—Offences by bodies corporate

Pt 8 Div. 1
(Heading and
ss 46ZA,
46ZB)
inserted by
No. 11/2018
s. 11.

46ZA Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in by or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of employment or apparent authority of the employee, agent or officer, is conduct also engaged in by the body corporate.

S. 46ZA
inserted by
No. 11/2018
s. 11.

46ZB Criminal liability of officers of bodies corporate—accessorial liability

S. 46ZB
inserted by
No. 11/2018
s. 11.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
 - (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 41ZK(1);
 - (b) section 41ZL(1);
 - (c) section 41ZM(1);

- (d) section 46T;
 - (e) section 46U(1);
 - (f) section 46V(1);
 - (g) section 46W(1).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer*, in relation to a body corporate, means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (6) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958**.

Division 2—Regulations

Pt 8 Div. 2
(Heading)
inserted by
No. 11/2018
s. 11.

46ZC Information sharing and Child Link regulation making power

S. 46ZC
inserted by
No. 11/2018
s. 11.

- (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 Parts 6A and 7A.
- (2) Without limiting subsection (1), the Governor in Council may make regulations for or with respect to—
 - (a) prescribing a person to be an information sharing entity; and
 - (b) prescribing a body to be an information sharing entity; and
 - (c) prescribing a person or body to belong to a category of restricted information sharing entity; and
 - (d) prohibiting or regulating the type of information that may be used, disclosed or handled by an information sharing entity or a category of restricted information sharing entity; and
 - (e) prohibiting or regulating the type of information that may be requested or collected by an information sharing entity or a category of restricted information sharing entity; and
 - (f) prescribing information to be excluded information; and

- (g) prescribing the purposes for which an information sharing entity or a category of restricted information sharing entity may use or disclose confidential information; and
- (h) subject to subsection (6), prescribing specified persons employed or engaged by an information sharing entity or a restricted information sharing entity to perform specified functions or exercise specified powers on behalf of an information sharing entity or a restricted information sharing entity, including by specifying any of the following, to perform specified functions under Part 6A—
 - (i) the business unit, branch or area (however described) of an information sharing entity or a restricted information sharing entity;
 - (ii) the business unit, branch or area (however described) of an information sharing entity or a restricted information sharing entity operating at a specified geographical location;
 - (iii) the person's qualifications or experience;
 - (iv) the person's position description, classification or functions; and
- (i) enabling an information sharing entity that is a public sector body Head within the meaning of the **Public Administration Act 2004**—
 - (i) to delegate its powers, duties and functions under Part 6A or the regulations; and

- (ii) to sub-delegate any powers, duties and functions under Part 6A or the regulations that have been delegated to the information sharing entity; and
 - (j) prescribing the persons and bodies to which powers, duties and functions may be delegated or sub-delegated by an information sharing entity that is a public sector body Head within the meaning of the **Public Administration Act 2004**; and
 - (k) prohibiting or regulating the disclosure of confidential information between information sharing entities; and
 - (l) prohibiting or regulating the disclosure of confidential information between categories of restricted information sharing entity; and
 - (m) prescribing the information to be recorded by an information sharing entity or a category of restricted information sharing entity for the purposes of section 41ZC; and
 - (n) prescribing provisions of Acts for the purposes of section 41ZH; and
 - (o) prescribing the process by which a person may be authorised to be a Child Link user for the purposes of section 46K(1)(w) and prescribing a person to provide a written authorisation in accordance with that process.
- (3) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and

- (d) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person.
- (4) Regulations made for the purposes of subsection (2)(a) or (c) may prescribe a person or class of person who is engaged in a role that requires the handling of confidential information, including but not limited to any of the following persons—
- (a) a nurse;
 - (b) a midwife;
 - (c) a police officer;
 - (d) a registered medical practitioner;
 - (e) a disability service provider within the meaning of the **Disability Act 2006**;
 - (f) a psychologist within the meaning of the Health Practitioner Regulation National Law;
 - (g) a teacher;
 - (h) a principal of a registered school.
- (5) Regulations made for the purposes of subsection (2)(b) or (c) may prescribe a body or class of body that has a function that requires the handling of confidential information, including but not limited to any of the following bodies—
- (a) a community service organisation funded by the State government to provide services to individuals;
 - (b) a public sector body within the meaning of the **Public Administration Act 2004**;
 - (c) a health service provider within the meaning of section 3(1) of the **Health Records Act 2001**;

- (d) the office of the Disability Services Commissioner within the meaning of the **Disability Act 2006**;
 - (e) an education and care service or a children's service;
 - (f) a provider of education services to children;
 - (g) a school (whether a Government school or a non-Government school).
- (6) Regulations made for the purposes of subsection (2)(a), (b), (c) or (h) may prescribe a person or body specified in section 41T if the prescription of that person or body is in respect of a function other than a judicial or quasi-judicial function involving the handling of confidential information performed by that person or body.
- (7) Regulations made under this section may enable an information sharing entity or a restricted information sharing entity to disclose confidential information to a person or body that is not subject to the law of the State.
- (8) Nothing in Part 6A or regulations made under this section is taken to impose a requirement on a person or body who is not subject to the law of the State.

47 General regulation making power

- (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—
 - (a) be of general or limited application;

**S. 47
(Heading)
substituted by
No. 11/2018
s. 12.**

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

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

Child Wellbeing and Safety Act 2005
No. 83 of 2005
Part 8—General

- 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.
- * * * * *

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.

49 Children Legislation Amendment (Information Sharing) Act 2018

S. 49
inserted by
No. 11/2018
s. 13.

- (1) Nothing in section 46B or 46C requires the Secretary to take any action under or for the purposes of those sections before 31 December 2021.
- (2) Subsection (1) does not prevent the Secretary from taking any action under or for the purposes of section 46B or 46C before 31 December 2021.

Sch. 1
inserted by
No. 63/2015
s. 8,
amended by
No. 4/2018
s. 14.

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 licensee of 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 An applicable entity that is 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.

Child Wellbeing and Safety Act 2005
No. 83 of 2005
Schedule 1—Category 1 entities

- 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

- 1 A religious body within the meaning of section 81 of the **Equal Opportunity Act 2010**.
- 2 An applicable entity that is 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.

Sch. 2
inserted by
No. 63/2015
s. 8,
amended by
No. 4/2018
s. 15.

- 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

- 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.

Schedule 6—Child Link users and purposes of access, use and disclosure

Sch. 6
inserted by
No. 11/2018
s. 14.

	<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Child Link user</i>	<i>Purpose of access, use and disclosure</i>
1	The Secretary	To identify children who are not participating in services for which they may be eligible and to assist in the provision of education, care and services to those children.
2	The Secretary to the Department of Health and Human Services	To identify children who are not participating in services for which they may be eligible. For the purpose of the performance of the Secretary to the Department of Health and Human Services' functions, and the exercise of the Secretary's powers, under the Children, Youth and Families Act 2005 .
3	The Principal Commissioner within the meaning of the Commission for Children and Young People Act 2012	To perform the Principal Commissioner's statutory functions.
4	The Disability Services Commissioner within the meaning of the Disability Act 2006	To perform the Disability Services Commissioner's statutory functions.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
5	A person employed by the Secretary under Part 3 of the Public Administration Act 2004 or otherwise engaged by the Secretary who is authorised in writing by the Secretary	To identify children who are not participating in services for which they may be eligible and to assist in the provision of education, care and services to those children.
6	A person employed by the Secretary under Part 3 of the Public Administration Act 2004 or otherwise engaged by the Secretary who is authorised in writing by the Secretary	To perform functions relating to systems administration of the Register.
7	A person employed by the Secretary under Part 3 of the Public Administration Act 2004 or otherwise engaged by the Secretary who is authorised in writing by the Secretary	For the purpose of data management in accordance with section 46H.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
8	A person employed by the Secretary under Part 3 of the Public Administration Act 2004 or otherwise engaged by the Secretary who is authorised in writing by the Secretary	For the purpose of de-identifying confidential information and to provide that de-identified information under section 46O.
9	A person employed by the Secretary to the Department of Health and Human Services under Part 3 of the Public Administration Act 2004 or otherwise engaged by the Secretary who is authorised in writing by the Secretary	To identify children who are not participating in services for which they may be eligible. For the purpose of the performance of the Secretary to the Department of Health and Human Services' functions, and the exercise of the Secretary's powers, under the Children, Youth and Families Act 2005 .
10	A person employed or engaged by a council in relation to childhood services implementation or policy who is authorised in writing by the Chief Executive Officer of the council	To identify children in the municipal district who are not participating in services for which they may be eligible and to assist in the provision of education, care and services to children in the municipal district who may be eligible to participate in services. To monitor and plan council services for children residing in the municipal district.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
11	A nurse employed or engaged by a council to provide maternal and child health programs for a Maternal and Child Health service who is authorised in writing by the Chief Executive Officer of the council	To provide care and services to children attending the Maternal and Child Health service.
12	A nurse employed or engaged by an entity that provides maternal and child health programs on behalf of a council for a Maternal and Child Health service who is authorised in writing by the person who has overall management and control of the Maternal and Child Health service	To provide care and services to children attending the Maternal and Child Health service.
13	A nurse employed or engaged by the Secretary to provide maternal and child health advice through a state-wide telephone service who is authorised in writing by the Secretary	To provide care and services to children or families who access the state-wide telephone service.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
14	A person employed or engaged by the Victorian Aboriginal Health Service Co-operative Limited in relation to childhood services implementation or policy who is authorised in writing by the Chief Executive Officer of the Service	To identify children enrolled with the Service or entitled to services provided by the Service who are not participating in services for which they may be eligible and to assist in the provision of education, care and services to those children. To monitor and plan services for all children enrolled with the Service.
15	A registered medical practitioner, nurse or midwife employed or engaged by the Victorian Aboriginal Health Service Co-operative Limited engaged in providing maternal and child health programs who is authorised in writing by the Chief Executive Officer of the Service	To provide care and services to children attending the maternal and child health program.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
16	A registered early childhood teacher providing education and care to children at an approved education and care service who is authorised in writing by the approved provider	To provide education and care and related services to children enrolled at the education and care service.
17	A registered early childhood teacher providing education and care to children at a licensed children's service who is authorised in writing by the licensee of the service	To provide education and care and related services to children enrolled at the children's service.
18	A school nurse manager who is authorised in writing by the Secretary	To assist in the monitoring, planning and provision of care and services to children enrolled in schools within the geographic region for which the school nurse manager is responsible.
19	A school nurse who is authorised in writing by the Secretary	To provide care and services to children enrolled at the school to whom the nurse provides school nurse services.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
20	A principal of a Government school who is authorised in writing by the Secretary	To provide education and care and related services to children enrolled at the school. To monitor and plan services for children enrolled at the school.
21	A registered teacher employed or engaged by a Government school to provide instruction or other education services to students at the school or any other person employed or engaged by a Government school to provide health or welfare services for students at the school who is authorised in writing by the principal of the Government school	To provide education and care and related services to children enrolled at the school. To monitor and plan services for children enrolled at the school.
22	A principal of a non-Government school who is authorised in writing by the person or body responsible for the governance, conduct or management of the school	To provide education and care and related services to children enrolled at the school. To monitor and plan services for children enrolled at the school.

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Schedule 6—Child Link users and purposes of access, use and disclosure

<i>Item</i>	<i>Column 1</i> <i>Child Link user</i>	<i>Column 2</i> <i>Purpose of access, use and disclosure</i>
23	A registered teacher employed or engaged by a non-Government school to provide instruction or other education services to students at the school or any other person employed or engaged by a non-Government school to provide health or welfare services for students at the school who is authorised in writing by the principal of the non-Government school	To provide education and care and related services to children enrolled at the school. To monitor and plan services for children enrolled at the school.
24	A person employed by the Commission for Children and Young People under section 21(1) of the Commission for Children and Young People Act 2012 or otherwise engaged by the Commission who is authorised in writing by the Principal Commissioner within the meaning of that Act	To perform the functions of the Principal Commissioner for or on behalf of the Commissioner.

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Schedule 6—Child Link users and purposes of access, use and disclosure

	<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Child Link user</i>	<i>Purpose of access, use and disclosure</i>
25	A person employed to assist the Disability Services Commissioner under section 18(1) of the Disability Act 2006 who is authorised in writing by the Commissioner	To perform the functions of the Disability Services Commissioner on behalf of the Disability Services Commissioner.
26	A prescribed person who is authorised in writing in accordance with the regulations	The purpose prescribed in relation to the person.

Sch. 7
inserted by
No. 11/2018
s. 15.

Schedule 7—Specified provisions

- 1 Section 207(2) of the **Children, Youth and Families Act 2005**.
 - 2 Section 55 of the **Commission for Children and Young People Act 2012**.
 - 3 Section 140 of the **Confiscation Act 1997**.
 - 4 Sections 36 and 39 of the **Disability Act 2006**.
 - 5 Sections 5.3A.10 and 5.3A.14 of the **Education and Training Reform Act 2006**.
 - 6 Section 181 of the **Firearms Act 1996**.
 - 7 Section 23 of the **Human Services (Complex Needs) Act 2009**.
 - 8 Section 164 of the **Infringements Act 2006**.
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Endnotes

1 General information

See 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).

2 Table of Amendments

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

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); ss 3(2),
8–12(1), 13–15 on 1.11.18: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Child Wellbeing and Safety Act 2005**

Children Legislation Amendment (Information Sharing) Act 2018, No. 11/2018

Assent Date: 10.4.18
Commencement Date: Ss 4–9, 11, 12, 15 on 27.9.18: Special Gazette
(No. 405) 4.9.18 p. 1; ss 10, 13, 14 on 12.2.19: Special
Gazette (No. 37) 12.2.19 p. 1
Current State: This information relates only to the provision/s
amending the **Child Wellbeing and Safety Act 2005**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.