

Authorised Version

Children Legislation Amendment (Reportable Conduct) Act 2017

No. 4 of 2017

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Authorised Version



Victoria

Children Legislation Amendment (Reportable Conduct) Act 2017[†]

No. 4 of 2017

[Assented to 28 February 2017]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Child Wellbeing and Safety Act 2005** to establish a scheme which requires that—
 - (i) an allegation of reportable conduct, or misconduct that may involve reportable conduct, committed by an employee

within or connected to certain entities be reported by that entity to the Commission for Children and Young People for investigation, or oversight of the investigation, of the allegation; and

(ii) information be shared with the Commission for Children and Young People, the head of the relevant entity, the relevant regulator, Victoria Police, the Secretary to the Department of Justice and Regulation and any other prescribed person or body, as necessary; and

(iii) the Commission for Children and Young People administer the reportable conduct scheme; and

(b) to make consequential and other amendments to other Acts.

2 Commencement

(1) This Part and section 17 come into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day to be proclaimed.

(3) If a provision referred to in subsection (2) does not come into operation before 1 September 2017, it comes into operation on that day.

3 Principal Act

In this Act, the **Child Wellbeing and Safety Act 2005** is called the Principal Act.

Part 2—Amendment of the Child Wellbeing and Safety Act 2005

4 Amendment of purposes

After section 1(f) of the Principal Act **insert**—

"(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".

5 Definitions

(1) In section 3(1) of the Principal Act **insert** the following definitions—

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

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) on and after a prescribed date, if the entity has placed a child in the care of a foster carer or a person who engages in child-related work described in section 9(6) of the **Working with Children Act 2005** and—
 - (i) a permanent care order has not been made in respect of the child; or
 - (ii) 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—

the foster carer of the child or the person who so engages in child-related work in relation to the child;

entity to which the reportable conduct scheme applies means—

- (a) on and after the commencement of Part 5A, an entity referred to in Schedule 3; and
- (b) on and after 6 months after the commencement of Part 5A, an entity referred to in Schedule 4; and

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

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

- (a) the chief executive officer or principal officer of the entity; or
- (b) if the entity is a Department—
the Secretary to the Department or the delegate of the Secretary; or
- (c) a person, or a person belonging to a class of persons, prescribed as the head of an entity;

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

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

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

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

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;

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

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

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

reportable conduct means—

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

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

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

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

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;

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

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

- (2) In section 3(1) of the Principal Act, in the definition of *State contract*, for "2012." substitute "2012;".

6 New Part 5A inserted

After Part 5 of the Principal Act insert—

"Part 5A—Reportable conduct scheme

16A Definition

In this Part—

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

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;
 - (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.

16D Administration, oversight and monitoring of scheme

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

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

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.

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.

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—
 - (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.

16J Exemption from whole of scheme

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

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.

16L Disclosure to Commission of reportable allegation

Any person may disclose a reportable allegation to the Commission.

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.
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(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 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 head of the entity proposes to take in relation to the employee and the reasons for that action; and
 - (c) if the head of 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.

160 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.

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.

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.

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.

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.

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.
- (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.

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.

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.

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
- (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**.

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.

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.

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

- (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.

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.
- (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.

(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

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

- (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).

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.

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.

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.
- (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.

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.

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."

7 Regulations

In section 47(2) of the Principal Act—

- (a) in paragraph (a) **omit** "and";
- (b) in paragraph (b), for "circumstances." **substitute** "circumstances;";
- (c) after paragraph (b) **insert**—
 - "(c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person;
 - (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."

8 New Part 9 inserted

After Part 8 of the Principal Act **insert—**

"Part 9—Transitional provisions

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

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."

9 New Schedules 3, 4 and 5 inserted

After Schedule 2 to the Principal Act **insert—**

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

- 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.
- 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

- 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.

**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."

Part 3—Amendment of other Acts

10 Commission for Children and Young People Act 2012

In the Commission for Children and Young People Act 2012—

(a) after section 20(3)(a) **insert—**

"(ab) the power to decide whether to conduct an investigation under section 16O of the **Child Wellbeing and Safety Act 2005**";

(b) after section 20(3)(b) **insert—**

"(ba) the power to give a report to Parliament under section 16ZM of the **Child Wellbeing and Safety Act 2005**";

(c) in section 22(1) **omit** "written";

(d) in section 22(4)(b), for "2005." **substitute** "2005";

(e) after section 22(4)(b) **insert—**

"(c) making an application to the Magistrates' Court under section 16ZH of the **Child Wellbeing and Safety Act 2005**.";

(f) in section 54, for the definition of *protected information* **substitute—**

"protected information means information acquired by a relevant person under this Act or under Part 5A of the **Child Wellbeing and Safety Act 2005** by reason of being a relevant person;"

(g) in section 54, in the definition of *relevant person*, before paragraph (a) **insert—**

"(aa) the Principal Commissioner;"

(h) in section 55(b), after "this Act" **insert**
"or under any other Act";

(i) in section 60, after "this Act" **insert**
"or under any other Act".

11 Working with Children Act 2005

(1) In section 14(1)(a)(i) of the **Working with Children Act 2005**, after "on behalf of," **insert** "or referred to the Secretary by,".

(2) In section 21AD(1)(a)(i) of the **Working with Children Act 2005**, after "on behalf of," **insert** "or referred to the Secretary by,".

(3) After section 40(2)(a)(iii) of the **Working with Children Act 2005 insert—**

"(iv) to the Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) for the purposes of an investigation of a reportable allegation under Part 5A of the **Child Wellbeing and Safety Act 2005**; or".

12 Education and Training Reform Act 2006

(1) In section 2.6.7(3A) of the **Education and Training Reform Act 2006—**

(a) in paragraph (b), for "applicant." **substitute** "applicant; and";

(b) after paragraph (b) **insert—**

"(c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding.".

- (2) After section 2.6.9(2)(c) of the **Education and Training Reform Act 2006** insert—
- "(ca) that the applicant has been found, under Part 5A of the **Child Wellbeing and Safety Act 2005**, to have committed reportable conduct;"
- (3) In section 2.6.12A(6) of the **Education and Training Reform Act 2006**—
- (a) in paragraph (b), for "applicant." substitute "applicant; and";
- (b) after paragraph (b) insert—
- "(c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding."
- (4) In section 2.6.12B(3) of the **Education and Training Reform Act 2006**—
- (a) in paragraph (b), for "2.6.7(4)." substitute "2.6.7(4); and";
- (b) after paragraph (b) insert—
- "(c) may take into account a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct."
- (5) After section 2.6.12D(2)(c) of the **Education and Training Reform Act 2006** insert—
- "(ca) that the applicant has been found, under Part 5A of the **Child Wellbeing and Safety Act 2005**, to have committed reportable conduct;"

- (6) In section 2.6.13(2B) of the **Education and Training Reform Act 2006**—
- (a) in paragraph (b), for "applicant." **substitute** "applicant; and";
 - (b) after paragraph (b) **insert**—
 - "(c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding."
- (7) In section 2.6.13A(3) of the **Education and Training Reform Act 2006**—
- (a) in paragraph (b), for "2.6.12A(7)." **substitute** "2.6.12A(7); and";
 - (b) after paragraph (b) **insert**—
 - "(c) may take into account a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding."
- (8) After section 2.6.18(1D) of the **Education and Training Reform Act 2006** **insert**—
- "(1E) In considering an application for renewal of registration, the Institute may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding."
- (9) After section 2.6.31(4) of the **Education and Training Reform Act 2006** **insert**—
- "(5) The Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) must immediately notify

the Institute if the Commission becomes aware that a registered teacher is the subject of a reportable allegation or a finding of reportable conduct under Part 5A of the **Child Wellbeing and Safety Act 2005**".

**13 Children, Youth and Families Act 2005—
consequential amendments**

- (1) In section 74 of the **Children, Youth and Families Act 2005** insert the following definition—

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

- (2) In section 104(3) of the **Children, Youth and Families Act 2005**, after "served" insert "in accordance with section 593".
- (3) In section 107(1) of the **Children, Youth and Families Act 2005**—
- (a) after "Secretary" insert "and the Commission for Children and Young People"; and
- (b) after "allegation" insert "and may provide reasons for the findings and determinations".
- (4) In section 107(2) of the **Children, Youth and Families Act 2005**, after "disqualified" insert "and may provide reasons for the finding".
- (5) In section 107(3) of the **Children, Youth and Families Act 2005**, after "allegation" (where secondly occurring) insert "and reasons, if any,".

- (6) In section 113(1) of the **Children, Youth and Families Act 2005**—
- (a) after "Secretary" **insert** "and the Commission for Children and Young People"; and
 - (b) after "Division" **insert** "and may provide reasons for the determination".
- (7) In section 113(2) of the **Children, Youth and Families Act 2005**, after "removed" **insert** "and may provide reasons for the finding".
- (8) In section 113(3) of the **Children, Youth and Families Act 2005**, after "determination" (where first occurring) **insert** "and reasons, if any,".
- (9) At the end of section 125 of the **Children, Youth and Families Act 2005 insert**—
- "(2) The Secretary may disclose to the Commission for Children and Young People the matters referred to in subsection (1)(a), (b) and (c) if the allegation to be investigated is a reportable allegation within the meaning of Part 5A of the **Child Wellbeing and Safety Act 2005**."
- (10) In section 130 of the **Children, Youth and Families Act 2005**, for "or the Suitability Panel" **substitute** ", the Suitability Panel or, if the investigation relates to a reportable allegation, the Commission for Children and Young People".
- (11) At the end of section 130 of the **Children, Youth and Families Act 2005 insert**—
- "(2) In this section, reportable allegation has the same meaning as in the **Child Wellbeing and Safety Act 2005**."

14 New section 132A inserted in Children, Youth and Families Act 2005

After section 132 of the **Children, Youth and Families Act 2005** insert—

"132A Immunity

- (1) A member of the Suitability Panel is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the Suitability Panel attaches instead to the Crown."

15 Disability Act 2006

- (1) After section 39(4)(k) of the **Disability Act 2006** insert—

"(ka) to the Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) if the information is a reportable allegation within the meaning of the **Child Wellbeing and Safety Act 2005**;"

- (2) In section 128(1)(a) of the **Disability Act 2006**, after "under this Act" insert "or any other Act".

16 Ombudsman Act 1973

In Schedule 3 to the **Ombudsman Act 1973**, after item 2 **insert**—

"2A The Commission for Children and Young People".

17 Statute law revision amendments

(1) In the **Education and Training Reform Act 2006**—

- (a) in section 4.3.16(2A)(b)(iii), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**";
- (b) in section 4.3.21(3)(e)(iii), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**";
- (c) in section 4.3.47(1)(g)(ii), for "Department" substitute "department";
- (d) in section 4.9.4(1AA), for "Department" substitute "department";
- (e) in section 4.9.4(3), in paragraph (g) of the definition of *prescribed person or body*, for "Department" substitute "department";
- (f) in section 5.5.26(1)(c), for "Department" substitute "department";
- (g) in clause 1.8(c) of Schedule 8, for "government and non-government" substitute "Government and non-Government".

(2) Section 19(1)(b) of the **Children, Youth and Families Act 2005** is repealed.

Part 4—Repeal of amending Act

18 Repeal of amending Act

This Act is **repealed** on 1 September 2018.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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: 7 December 2016

Legislative Council: 9 February 2017

The long title for the Bill for this Act was "A Bill for an Act to amend the **Child Wellbeing and Safety Act 2005** to establish a reportable conduct scheme, to make consequential and other amendments to the **Commission for Children and Young People Act 2012**, the **Working with Children Act 2005**, the **Education and Training Reform Act 2006**, the **Children, Youth and Families Act 2005**, the **Disability Act 2006** and the **Ombudsman Act 1973** and for other purposes."