

Version No. 021
Working with Children Act 2005
No. 57 of 2005

Version incorporating amendments as at 3 June 2008

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Version No. 021
Working with Children Act 2005
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

- (1) The main purpose of this Act is to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body.
- (2) This Act amends the **Sentencing Act 1991** to prevent sentencing courts from having regard to any consequences that may arise under this Act and amends Schedule 1 to that Act to broaden the range of sexual offences which may cause an offender to be treated as a serious sexual offender under that Act.
- (3) This Act also makes minor amendments to—
 - (a) the **Sex Offenders Registration Act 2004** consistent with provisions of this Act; and
 - (b) the **Victorian Civil and Administrative Tribunal Act 1998** with respect to the procedure of VCAT on applications made to it under this Act; and
 - (c) the **Victorian Institute of Teaching Act 2001** to make further provision for certain notification requirements for the purposes of this Act.

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 July 2006, it comes into operation on that day.

3 Definitions

- (1) In this Act—

agency means a person that carries on (whether or not with a view to profit and whether or not in conjunction with any other business) the business of procuring child-related work for persons seeking such work, whether or not the business includes procuring any other kind of work for those persons or other persons;

assessment notice means an assessment notice given by the Secretary to an applicant for a working with children check under Part 2;

Australian legal practitioner has the same meaning as in the **Legal Profession Act 2004**;

carnal knowledge offence means an offence specified in clause 1(d)(viii) or (ix) of Schedule 1 to the **Sentencing Act 1991**;

child means a person under 18 years of age;

child pornography offence means—

- (a) an offence against section 68(1) (production of child pornography), 69 (procurement of minor for child pornography) or 70(1) (possession of child pornography) of the **Crimes Act 1958**; or

S. 3(1) def. of *carnal knowledge offence* inserted by No. 56/2007 s. 3(2).

- (b) an offence against section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** (publication or transmission of child pornography); or
- (c) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act; or
- (d) an offence referred to in subparagraphs (ii), (iii), (iv), (v), (vi) or (vii) of paragraph (df) of clause 1 of Schedule 1 to the **Sentencing Act 1991**;

child-related work has the meaning given by section 9;

direct contact means any contact between a person and a child that involves—

- (a) physical contact; or
- (b) face to face oral communication; or
- (c) physically being within eyeshot;

educational institution means—

- (a) any Government school or non-Government school within the meaning of the **Education and Training Reform Act 2006**; or
- (b) any of the following—
 - (i) a TAFE institute within the meaning of the **Education and Training Reform Act 2006**;

S. 3(1) def. of *educational institution* substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 48.1).

-
- (ii) a university with a TAFE division within the meaning of the **Education and Training Reform Act 2006** to the extent that the university provides technical or further education;
 - (iii) a provider of adult, community and further education, within the meaning of the **Education and Training Reform Act 2006**, that is eligible for funding under that Act;
 - (iv) an adult education institution within the meaning of the **Education and Training Reform Act 2006**;
 - (v) an education and training organisation registered on the State Register under the **Education and Training Reform Act 2006**—

to the extent that the college, university, provider, institution or organisation provides a program of study or training primarily for, or directed at, children and that leads to the award of a Senior Secondary Certificate of Education that is recognised by the AQF within the meaning of the **Education and Training Reform Act 2006**; or

- (c) any other institution that provides a program of study or training primarily for, or directed at, children—

but does not include—

-
- (d) except to the extent provided by paragraph (b), a university within the meaning of the **Education and Training Reform Act 2006**; or
 - (e) except to the extent provided by paragraph (b), a TAFE institute or an adult education institution within the meaning of the **Education and Training Reform Act 2006**—

even if that university, college or institution has a student under 18 years of age;

interim negative notice means an interim negative notice given by the Secretary under section 16(1)(b), including one given under that section as applied to a re-assessment by section 21(5);

negative notice means a negative notice given by the Secretary to an applicant for a working with children check under Part 2 or on revoking an assessment notice under section 23;

officer—

- (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
- (b) in relation to any other body corporate, means any person (by whatever name called) who is concerned or takes part in the management of the body corporate;

S. 3(1) def. of
parent
amended by
Nos 48/2006
s. 42(Sch.
item 39.1),
56/2007
s. 3(1)(a).

parent, in relation to a child, has the same meaning as in the **Children, Youth and Families Act 2005** but does not include a foster carer;

S. 3(1) def. of
registered medical practitioner
inserted by
No. 56/2007
s. 3(2).

person includes an unincorporated body or association and a partnership;

registered medical practitioner has the same meaning as it has in the **Health Professions Registration Act 2005**;

S. 3(1) def. of
relevant offence
amended by
No. 56/2007
s. 3(1)(b).

relevant finding means a finding of a kind referred to in section 14(1)(a);

relevant offence means an offence—

- (a) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences); or
- (b) specified in clause 2 of that Schedule (violent offences); or
- (c) specified in clause 4 of that Schedule or against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981** (drug offences); or
- (d) against section 46 or 47 or Part 5 of the **Sex Offenders Registration Act 2004** (other than section 70); or
- (e) against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or

-
- (f) specified in section 13(1)(f), (fa) or (fb) or section 14(1)(ba) or (bb); or
 - (g) against Part 4 of this Act (other than section 37 or 40);

Secretary means Secretary to the Department of Justice;

working with children check means the process under Part 2 for assessing or re-assessing whether a person is suitable to work in child-related work.

- (2) For the purposes of this Act a person is listed with an agency if he or she has entered into an agreement with the agency for the agency to procure child-related work for him or her, whether or not the agreement extends to any other kind of work.
- (3) For the purposes of this Act a person does not cease to be a volunteer merely because he or she has all or any of his or her out-of-pocket expenses reimbursed.

4 Meaning of finding of guilt

- (1) For the purposes of this Act, a reference to a finding of guilt in relation to an offence committed by a person is a reference to any of the following—
 - (a) a court making a formal finding of guilt in relation to the offence;
 - (b) a court accepting a plea of guilty from the person in relation to the offence;
 - (c) a court accepting an admission made under and for the purposes of section 100 of the **Sentencing Act 1991**, or under equivalent provisions of the laws of a jurisdiction other than Victoria;

- (d) a finding in relation to the offence under section 17(1)(b) or 17(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** or under section 17(1)(c) of that Act in relation to an offence available as an alternative or a finding under that Act of not guilty because of mental impairment, or a finding under equivalent provisions of the laws of a jurisdiction other than Victoria.
- (2) A reference to a finding of guilt in this Act does not include a finding of guilt that is subsequently quashed or set aside by a court.

5 Meaning of *charged with an offence*

For the purposes of this Act, a person is deemed to have been charged with an offence if—

- (a) a presentment has been made or an indictment has been laid for the offence; or
- (b) a charge has been filed against the person for the offence, whether or not—
- (i) a summons to answer to the charge; or
 - (ii) a warrant to arrest the person—
- has been issued and served.

6 When is a charge *pending*?

- (1) Subject to any regulations made under subsection (2), for the purposes of this Act a charge against a person for an offence is pending until the charge is finally dealt with in any of the following ways—
- (a) the charge is withdrawn or the person dies without the charge having been determined;
 - (b) the charge is dismissed by a court;
 - (c) the person is discharged by a court following a committal hearing;

-
- (d) the person is acquitted or found guilty of the offence by a court.
- (2) The regulations may prescribe circumstances in which a charge against a person for an offence is not to be taken to be pending for the purposes of this Act.
- (3) A reference in this Act to the withdrawing of a charge includes a reference to the entering of a nolle prosequi.

7 Act to bind the Crown

- (1) This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.
-

PART 2—WORKING WITH CHILDREN CHECK

8 Purpose of Part

- (1) The purpose of this Part is to establish a process for assisting in determining whether a person is suitable to work in child-related work.
- (2) Nothing in this Act takes away from, or removes the need to comply with, any requirement imposed by or under any other Act with respect to child-related work.

Note

Child-related work includes voluntary work and practical training as well as paid employment (see section 9).

9 What is child-related work?

- (1) For the purposes of this Act, child-related work is—
 - (a) work engaged in—
 - (i) under a contract of employment or a contract for services (whether written or unwritten); or
 - (ii) as a minister of religion or as part of the duties of a religious vocation; or
 - (iii) as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
 - (b) practical training undertaken as part of an educational or vocational course other than under an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**; or

S. 9(1)
amended by
No. 79/2006
s. 62(1).

S. 9(1)(b)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 48.2),
56/2007
s. 4(2).

- (c) work engaged in as a volunteer (including engaging in unpaid community work under a community-based order, a drug treatment order or an intensive correction order within the meaning of the **Sentencing Act 1991**) other than unpaid work engaged in for a private or domestic purpose—

that usually involves, or is likely usually to involve, regular direct contact with a child in connection with a service, body, place or activity specified in subsection (3) in circumstances where that contact is not directly supervised by another person.

Example

A is employed as a nurse in the Geriatric ward of a public hospital. One day, a nurse who usually works in the Paediatric ward is unwell and A works in that nurse's place for that day. A is not engaged in child-related work as A's work does not usually involve regular direct contact with children.

Example to s. 9(1) substituted by No. 56/2007 s. 4(1).

Notes

- 1 **Direct contact** is defined in section 3(1).
 - 2 Reimbursement for out-of-pocket expenses does not stop a person being regarded as a volunteer: see section 3(3).
- (2) For the purposes of this Act, direct supervision of a person requires immediate and personal supervision but does not require constant physical presence.

Example

A person who is directly supervising a worker leaves the room in which the worker is engaging in the work to make a phone call. The fact that the supervisor has left the room for a short period does not mean that the worker is no longer under direct supervision.

Note

Supervised has its ordinary, everyday meaning.

A supervisor is a person who has the role of overseeing the work of another person while that person engages in the work.

S. 9(3)
amended by
No. 79/2006
s. 62(2).

- (3) The services, bodies, places or activities in connection with which regular direct contact with a child may result in work, or practical training, of a kind referred to in subsection (1) being child-related work are—

S. 9(3)(e)
amended by
No. 48/2006
s. 42(Sch.
item 39.2).

- (a) child protection services;
- (b) child care services mentioned in section 194(1) of the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth;
- (c) children's services within the meaning of the **Children's Services Act 1996**;
- (d) educational institutions;
- (e) community services, remand centres, youth residential centres, youth supervision units or youth justice centres, within the meaning of the **Children, Youth and Families Act 2005** or probation services under that Act;
- (f) refuges or other residential facilities used by children;
- (g) paediatric wards of public hospitals within the meaning of the **Health Services Act 1988** or of private hospitals within the meaning of that Act;
- (h) clubs, associations or movements (including of a cultural, recreational or sporting nature) that provide services or conduct activities for, or directed at, children or whose membership is mainly comprised of children;
- (i) religious organisations;

- (j) baby sitting or child minding services arranged by a commercial agency;
- (k) fostering children;
- (l) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
- (m) coaching or tuition services of any kind for children;
- (n) counselling or other support services for children;
- (o) overnight camps for children regardless of the type of accommodation or of how many children are involved;
- (p) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
- (q) providing, on a commercial basis and not merely incidentally to or in support of other business activities, an entertainment or party service specifically for children;
- (r) providing, on a commercial basis and not merely incidentally to or in support of other business activities, gym or play facilities specifically for children;

S. 9(3)(m)
amended by
No. 56/2007
s. 4(3).

Example

The provision of play facilities for children by a fast-food business may be merely incidental to the business of providing food.

- (s) providing, on a commercial basis and not merely incidentally to or in support of other business activities, photography services specifically for children;

(t) talent or beauty competitions held for children on a commercial basis and not merely incidentally to or in support of other business activities.

S. 9(3A)
inserted by
No. 79/2006
s. 62(3).

(3A) Despite subsection (1), for the purposes of sections 33 and 35 to 37, child-related work is only work, or practical training, of a kind referred to in subsection (1) that is engaged in or undertaken, in connection with a service, body, place or activity specified in subsection (3), on or after the relevant date in relation to that service, body, place or activity or 1 July 2011 (whichever is the earlier date).

(4) For the purposes of this Act, *the relevant date*, in relation to a service, body, place or activity specified in subsection (3), means the date fixed for the purposes of that service, body, place or activity by an Order made under subsection (5).

(5) The Governor in Council may, by Order published in the Government Gazette, fix a date for the purposes of a service, body, place or activity specified in subsection (3).

(6) An Order under subsection (5) may fix different dates for the purposes of—

(a) different services, bodies, places or activities; and

(b) different classes of a specified service, body, place or activity.

(7) For the purposes of this Act, a person is engaged in child-related work if he or she is employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.

S. 9(8)
substituted by
No. 56/2007
s. 4(4).

(8) For the purposes of this Act, a person is not engaged in child-related work merely because he or she—

- (a) is participating in an activity with a child on the same basis as the child; or

Example

An adult playing in a cricket team alongside a child is not engaging in child-related work.

- (b) is supervising a child undertaking practical training as part of an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**.

10 Application for working with children check

- (1) A person may apply to the Secretary for a working with children check to be carried out on him or her and an assessment notice to be given to him or her on completion of that check.

- (2) An application must—

- (a) be in the form approved by the Secretary; and

S. 10(2)(a)
amended by
No. 27/2006
s. 23(1).

- (b) be—

S. 10(2)(b)
substituted by
No. 56/2007
s. 5.

- (i) signed by the applicant; or
- (ii) if the applicant is not able to sign the application because of an impairment within the meaning of the **Equal Opportunity Act 1995**, be accompanied by a statement from a registered medical practitioner certifying—
- (A) that the person suffers from such an impairment; and
- (B) that the person is not able to sign the application because of that impairment; and

s. 10

S. 10(2A)
inserted by
No. 27/2006
s. 23(2).

- (c) include any identifying information of a prescribed kind; and
- (d) be accompanied by the prescribed application fee.

(2A) The approved form must provide for the following particulars—

- (a) the full name of the applicant and any other names by which the applicant is or has been known; and
- (b) the date and place of birth of the applicant; and
- (c) the gender of the applicant; and
- (d) the residential address and telephone number of the applicant; and
- (e) the type of child-related work in which the applicant is engaged or intends to engage and whether it is for profit or gain; and
- (f) the name, address and telephone number of each person with whom the applicant is engaged in child-related work; and
- (g) any other information in relation to the applicant that the Secretary reasonably believes is appropriate.

S. 10(3)
amended by
No. 27/2006
s. 23(3).

- (3) The approved form is to include provision for—
- (a) authorising the conduct (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice remains in force) of a police record check on the applicant; and
 - (b) consenting to enquiries being made about the applicant to any relevant prescribed body (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice

remains in force) and authorising the disclosure by that body of any relevant information.

11 Consideration of application

- (1) In considering an application made under section 10, the Secretary—
 - (a) must arrange for the conduct of a police record check on the applicant; and
 - (b) may have regard to any notice given to the Secretary by, and make enquiries to, any relevant prescribed body; and
 - (c) may make any other enquiries to, or seek advice or information on the application from, the Director of Public Prosecutions or any other person or source that the Secretary thinks fit; and
 - (d) may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) Despite subsection (1)(a), the Secretary is not required to arrange for the conduct of a police record check on an applicant if—
 - (a) a check of a prescribed kind has previously been conducted on the applicant otherwise than under this Act; and
 - (b) notice of the result of that check has been provided to the Secretary in accordance with the regulations.
- (3) A person in responding to an enquiry or a request for advice or information from the Secretary under subsection (1) does not contravene any duty of confidentiality imposed on the person by or under any Act (including the **Judicial Proceedings**

S. 11(3)
amended by
No. 56/2007
s. 6.

Reports Act 1958) or agreement, despite anything to the contrary in that Act or agreement.

12 Category 1 application

- (1) An application is a category 1 application for the purposes of this Act if it is in respect of a person—
 - (a) who is subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
 - (c) who, as an adult, has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence (other than a child pornography offence or carnal knowledge offence) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) in circumstances where the person against whom the offence is committed is a child; or
 - (d) who, as an adult, has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a child pornography offence.
- (2) The Secretary must refuse to give an assessment notice on a category 1 application.
- (3) Despite subsection (2), the Secretary may give an assessment notice on a category 1 application if—
 - (a) the application is in respect of a person who has at any time been given an assessment notice because of an order made by VCAT under section 26(3); and

S. 12(1)(b)
amended by
No. 21/2008
s. 25(2)(a).

S. 12(1)(c)
amended by
No. 56/2007
s. 7(1).

S. 12(3)
inserted by
No. 56/2007
s. 7(2).

- (b) a relevant change in circumstances (as defined in section 20(2)) has not occurred with respect to the person; and
- (c) the Secretary is satisfied that exceptional circumstances do not exist with respect to the person that justify the refusal of the notice.

13 Category 2 application

(1) An application is a category 2 application for the purposes of this Act if it is in respect of a person—

- (a) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) other than in circumstances referred to in section 12(1)(c) or 12(1)(d); or
- (ab) who, as an adult, has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a carnal knowledge offence; or
- (b) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** (violent offences); or
- (c) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** (drug offences); or
- (d) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 71AB (trafficking in a drug of dependence to a child) or 71B (supply of a

S. 13(1)(ab)
inserted by
No. 56/2007
s. 8(a).

S. 13(1)(d)
amended by
No. 56/2007
s. 8(b).

drug of dependence to a child) of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 71AB or 71B of that Act; or

S. 13(1)(e)
amended by
No. 56/2007
s. 8(c).

- (e) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70) or against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)) or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70) or against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
- (f) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 271.4 (trafficking in children) or section 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section; or
- (fa) who, as an adult, has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 21A of the **Crimes**

S. 13(1)(fa)
inserted by
No. 56/2007
s. 8(d).

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- Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 21A of that Act, if the person against whom the offence is committed is a child; or
- (fb) who, as an adult, has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 60B of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 60B of that Act; or
- (g) against whom a charge of an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** or an offence covered by paragraph (b), (c), (d), (e), (f), (fa) or (fb) of this subsection is pending.
- (2) The Secretary must refuse to give an assessment notice on a category 2 application unless satisfied that doing so would not pose an unjustifiable risk to the safety of children, having regard to—
- (a) the nature and gravity of the offence or alleged offence and its relevance to child-related work; and
 - (b) the period of time since the applicant committed, or allegedly committed, the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
- S. 13(1)(fb) inserted by No. 56/2007 s. 8(d).
- S. 13(1)(g) amended by No. 56/2007 s. 8(e).

- (e) the ages of the applicant and of any victim at the time the applicant committed, or allegedly committed, the offence; and
- (f) whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the applicant committed, or allegedly committed, the offence; and
- (g) the applicant's behaviour since he or she committed, or allegedly committed, the offence; and
- (h) the likelihood of future threat to a child caused by the applicant; and
- (i) any information given by the applicant in, or in relation to, the application; and
- (j) any other matter that the Secretary considers relevant to the application.

14 Category 3 application

- (1) An application is a category 3 application for the purposes of this Act if it is in respect of a person—
 - (a) who has at any time (whether before, on or after the commencement of this section) been subject to a finding of a prescribed kind made by, or on behalf of, a prescribed body; or
 - (b) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against Part 4 of this Act (other than section 37 or 40); or
 - (ba) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 18 of the **Crimes Act 1958** or

S. 14(1)(ba)
inserted by
No. 56/2007
s. 9(a).

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- an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 18 of that Act; or
- (bb) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 19 of the **Summary Offences Act 1966** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 19 of that Act; or
- (c) against whom a charge of an offence covered by paragraph (b), (ba) or (bb) is pending.
- (2) The Secretary must give an assessment notice on a category 3 application unless satisfied, in the particular circumstances, that it is appropriate to refuse to do so.
- (3) In considering whether it is appropriate to refuse to give an assessment notice, the Secretary must have regard to—
- (a) the nature and gravity of the conduct and its relevance to child-related work; and
 - (b) the period of time since the applicant engaged, or allegedly engaged, in the conduct; and
 - (c) in the case of an offence, whether a finding of guilt or a conviction was recorded for it or a charge for it is still pending; and
 - (d) in the case of an offence, the sentence imposed for it; and
- S. 14(1)(bb) inserted by No. 56/2007 s. 9(a).
- S. 14(1)(c) amended by No. 56/2007 s. 9(b).

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- (e) the ages of the applicant and of any victim at the time the applicant engaged, or allegedly engaged, in the conduct; and
 - (f) whether or not the conduct has been decriminalised or has ceased to be subject to disciplinary charges since the applicant engaged, or allegedly engaged, in it; and
 - (g) the applicant's behaviour since he or she engaged, or allegedly engaged, in the conduct; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that the Secretary considers relevant to the application.

15 Withdrawal of application

- (1) An applicant for a working with children check may withdraw his or her application at any time before the first of the following to occur—
 - (a) the Secretary finally decides the application;
 - (b) the Secretary gives an interim negative notice under section 16(1)(b).
- (2) The Secretary must treat an application as having been withdrawn if the applicant does not provide any further information required under section 11(1)(d) within the period required under that section.

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- (3) If—
- (a) the Secretary is aware that the applicant is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency; and
 - (b) the application is withdrawn or treated as withdrawn under this section—

the Secretary, if he or she is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the withdrawal.

Note

Listed with an agency is defined in section 3(2).

16 Submission sought from applicant before giving negative notice

- (1) If the Secretary proposes, or is required under section 17(3), to give a negative notice on an application, the Secretary must before finally deciding the application—
 - (a) give a written notice to the applicant that—
 - (i) informs him or her of the proposal or requirement; and
 - (ii) states the information about him or her of which the Secretary is aware; and
 - (iii) invites him or her to make a submission to the Secretary, in writing or in another form approved by the Secretary, within the period specified in the notice (not being less than 28 days after the date of the notice) about his or her eligibility to be given an assessment notice; and

- (b) give an interim negative notice to the applicant.
- (2) Before finally deciding the application the Secretary must consider any submission made by the applicant in response to a notice under subsection (1)(a) and within the period required under that subsection.
- (3) The Secretary must give a negative notice to the applicant if he or she does not make a submission in response to a notice under subsection (1)(a) within the period required under that subsection.
- (4) Any information given by a person under subsection (1)(a)(iii) (including that subsection as applied to a re-assessment by section 21(5)) is not admissible in evidence against the person in—
 - (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty—
other than—
 - (c) proceedings in respect of an offence against this Act; or
 - (d) a proceeding in respect of the falsity or misleading nature of the information.

17 Outcome of application

- (1) Subject to sections 12(2) and (3), 13(2) and 14(2) and subsection (1A), the Secretary must give an assessment notice on an application.

S. 17(1)
amended by
No. 56/2007
s. 10(1).

Note to
s. 17(1)
repealed by
No. 56/2007
s. 10(2).

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- (1A) The Secretary may refuse to give an assessment notice if—
- (a) the applicant has at any time (whether before, on or after the commencement of this section) been charged with, convicted or found guilty of an offence (other than a relevant offence) or has had a charge for an offence (other than a relevant offence) finally dealt with (other than by the applicant being found not guilty of the offence); and
 - (b) the Secretary is satisfied that—
 - (i) exceptional circumstances exist with respect to the applicant that justify the refusal of the notice; and
 - (ii) there is a significant link between the charge, conviction, finding of guilt or final dealing and a risk to the safety of children posed by the applicant.
- (1B) In considering whether it is appropriate to refuse to give an assessment notice in the circumstances referred to in subsection (1A), the Secretary must have regard to—
- (a) whether because of that charge, conviction, finding of guilt or final dealing, the giving of the notice would pose an unjustifiable risk to the safety of children having regard to the matters set out in section 13(2)(a) to (i); and
 - (b) in the case of an applicant who has been charged with, convicted or found guilty of more than one offence of a kind to which subsection (1A) applies or has had more than one offence of that kind finally dealt with, the period of time between the commission, or alleged commission, of each of the offences.

S. 17(1A)
inserted by
No. 56/2007
s. 10(3).

S. 17(1B)
inserted by
No. 56/2007
s. 10(3).

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- (2) An assessment notice must—
- (a) state that the person in respect of whom it was issued has passed a working with children check; and
 - (b) if given on an application that did not specify an intention to engage in child-related work for profit or gain, state that the notice cannot be used in respect of child-related work engaged in for profit or gain.
- (3) The Secretary must give a negative notice on an application that is a category 1 application or to an applicant who is otherwise refused an assessment notice.
- (4) If the Secretary gives a negative notice to an applicant, he or she must give to the applicant with that notice a written notice that—
- (a) states the reasons for the decision on the application; and
 - (b) informs the applicant that he or she may apply to VCAT to have the decision reviewed or, in the case of a category 1 application, to have VCAT consider whether an assessment notice is to be given; and
 - (c) explains how an application may be made to VCAT.

18 Copy of notice to be given to employer or agency

If the Secretary—

- (a) gives an assessment notice, an interim negative notice or a negative notice to an applicant; and

- (b) is aware that the applicant is a person who—
- (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must also give a copy of that notice to that other person or that agency.

Note

Listed with an agency is defined in section 3(2).

19 Duration of assessment notice

- (1) An assessment notice remains in force for 5 years beginning on the date of the notice unless sooner revoked under section 23 or surrendered under section 24.
- (2) A person who has a current assessment notice may apply for the carrying out of a working with children check and a new assessment notice at any time within the period beginning 6 months before, and ending 3 months after, the expiry of the notice.
- (3) Despite subsection (1), for the purposes of Part 4 a person must be regarded as still having a current assessment notice at any time within 3 months after its expiry.

20 Holder of assessment notice to notify of relevant change in circumstances

- (1) If a relevant change in circumstances occurs with respect to a person who has a current assessment notice or who has applied for one and the application is still pending, that person must notify—
 - (a) the Secretary; and

(b) any person by whom he or she is engaged in child-related work; and

(c) any agency with which he or she is listed—
in writing of the change within 7 days after becoming aware of the change.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Listed with an agency is defined in section 3(2).

- (2) For the purposes of subsection (1) a relevant change in circumstances is—
- (a) the person being charged with a relevant offence; or
 - (b) the person being convicted or found guilty of a relevant offence or the charge being otherwise finally dealt with; or
 - (c) the person becoming subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (d) the person becoming subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
 - (e) a relevant finding being made against the person.
- (3) In a proceeding for an offence against subsection (1) constituted by not notifying the Secretary of how a charge of an offence was finally dealt with, it is a defence to the charge for the accused to prove that—
- (a) he or she notified the Secretary of the filing of the charge in accordance with subsection (1); and

S. 20(2)(d)
amended by
No. 21/2008
s. 25(2)(a).

- (b) the Secretary re-assessed under section 21 his or her eligibility to have an assessment notice; and
- (c) his or her assessment notice was not revoked following the re-assessment; and
- (d) he or she was not found guilty of the charge.

21 Re-assessment

- (1) The Secretary must re-assess a person's eligibility to have an assessment notice—
 - (a) if notified of a relevant change in circumstances under section 20; or
 - (b) if notified by a prescribed body of a relevant finding being made against the person; or
 - (c) if notified by the Chief Commissioner of Police under section 41 of a charge or of how a charge has been finally dealt with.
- (2) The Secretary is not required to re-assess a person's eligibility to have an assessment notice on being notified of a charge of an offence being finally dealt with without the person being found guilty if a re-assessment was carried out on the Secretary being notified of the filing of the charge and the assessment notice was not revoked following that re-assessment.
- (2A) The Secretary may at any time re-assess, in accordance with the provisions of this Act as amended by the **Working with Children Amendment Act 2007**, a person's eligibility to have an assessment notice that was in force immediately before the commencement of section 11 of that Act.
- (3) On a re-assessment the Secretary may do anything that he or she has power to do under section 11 in considering an application but is not required to

S. 21(2A)
inserted by
No. 56/2007
s. 11.

consider any matter other than the matter that has given rise to the re-assessment.

- (4) If an assessment notice is due to expire within 12 months after the date on which a re-assessment is required, the Secretary may invite the holder of the assessment notice to make a fresh application under section 10, despite section 19(2).
- (5) Sections 16 to 18 and 26 apply to a re-assessment in the same way that they apply to an application.
- (6) For the purposes of Part 4 a person must be regarded as still having a current assessment notice if—
 - (a) an interim negative notice has been given under section 16(1)(b) as applied to a re-assessment by subsection (5) of this section; and
 - (b) his or her assessment notice has not been—
 - (i) revoked under section 23 following the re-assessment; or
 - (ii) surrendered under section 24.

22 Notification requirements of holder of assessment notice

If a negative notice or an interim negative notice is given to a person, that person must notify—

- (a) any person by whom he or she is engaged in child-related work; and
- (b) any agency with which he or she is listed—

in writing of the giving of that notice within 7 days after being given it.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Listed with an agency is defined in section 3(2).

23 Revocation of assessment notice and surrender of document

- (1) The Secretary may at any time revoke an assessment notice—
- (a) following a re-assessment of the holder's eligibility to have the notice; or
 - (b) if the Secretary—
 - (i) becomes aware that the holder of the assessment notice has been charged with, convicted or found guilty of an offence (other than a relevant offence) or has had a charge for an offence (other than a relevant offence) finally dealt with (other than by the holder of the notice being found not guilty of the offence); and
 - (ii) the Secretary is satisfied that—
 - (A) exceptional circumstances exist with respect to the holder of the assessment notice that justify the revocation of the notice; and
 - (B) there is a significant link between the charge, conviction, finding of guilt or final dealing and a risk to the safety of children posed by the applicant.
- (1A) In considering whether it is appropriate to revoke an assessment notice in the circumstances referred to in subsection (1)(b), the Secretary must have regard to—
- (a) whether because of that charge, conviction, finding of guilt or final dealing, the holding of the assessment notice by the person poses an unjustifiable risk to the safety of children

S. 23(1)
substituted by
No. 56/2007
s. 12(1).

S. 23(1A)
inserted by
No. 56/2007
s. 12(1).

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- having regard to the matters set out in section 13(2)(a) to (i); and
- (b) in the case of a holder of an assessment notice who has been charged with, convicted or found guilty of more than one offence of a kind to which subsection (1)(b) applies or has had more than one offence of that kind finally dealt with, the period of time between the commission, or alleged commission, of each of the offences.
- (2) If the Secretary revokes an assessment notice, the Secretary must give a negative notice to the former holder of the assessment notice.
 - (3) The Secretary may give a notice to a person whose assessment notice is revoked or has been expired for more than 3 months requiring him or her to surrender to the Secretary in the manner specified in the notice and within the period for doing so specified in the notice—
 - (a) the assessment notice document; or
 - (b) a document in the prescribed form evidencing the giving of the assessment notice.
 - (4) A person must not, without reasonable excuse, refuse or fail to surrender a document as required by a notice given by the Secretary under subsection (3).

Penalty: Level 9 fine (60 penalty units maximum).
 - (5) If the Secretary—
 - (a) gives a notice under subsection (3) consequent on the expiry of an assessment notice; and
-

(b) is aware that the former holder of the notice is a person who—

(i) is, or is proposed to be, engaged in child-related work by another person; or

(ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the expiry.

Note

Listed with an agency is defined in section 3(2).

24 Surrender of assessment notice

- (1) The holder of a current assessment notice may at any time surrender the assessment notice document to the Secretary.
- (2) For the purposes of this Act, a person who surrenders his or her only current assessment notice document is to be regarded as not having a current assessment notice.
- (3) If the holder of a current assessment notice (*the first assessment notice*) applies for, and is given, another current assessment notice, the holder must not, without reasonable excuse, refuse or fail to surrender to the Secretary the current assessment notice document that was given to him or her in respect of the first assessment notice, within 7 days after being directed to do so by the Secretary.

S. 24(2)
amended by
No. 56/2007
s. 13(1).

S. 24(3)
inserted by
No. 56/2007
s. 13(2).

Penalty: 1 penalty unit.

25 Restriction on right to re-apply for working with children check

- (1) A person who has been given a negative notice is not entitled to make a further application under section 10 until 5 years have elapsed after the date of that notice unless, since that date, there has been a relevant change in circumstances.
- (2) For the purposes of subsection (1) a relevant change in circumstances is—
 - (a) a charge that was pending at the date of the notice being finally dealt with without the person being found guilty of the offence; or
 - (b) a finding of guilt being quashed or set aside by a court after the date of the notice; or
 - (c) the person ceasing to be subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (d) the person being no longer subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
 - (e) a relevant finding being quashed or set aside after the date of the notice.

S. 25(2)(d)
substituted by
No. 21/2008
s. 25(2)(b).

26 Jurisdiction of VCAT

- (1) A person who is refused an assessment notice on a category 1 application (other than a person referred to in paragraph (a) or (b) of section 12(1)) may apply to VCAT for an assessment notice to be given to him or her.

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- (1A) Pending the final determination of an application under subsection (1), VCAT may—
- (a) make an order staying the operation of the Secretary's decision to refuse to give an assessment notice; and
 - (b) make any other order it considers appropriate having regard to the matters set out in subsection (2).
- (2) VCAT must not make an order for the giving of an assessment notice on an application under subsection (1) unless it is satisfied that giving the notice would not pose an unjustifiable risk to the safety of children, having regard to—
- (a) the nature and gravity of the offence and its relevance to child-related work; and
 - (b) the period of time since the applicant committed the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
 - (e) the ages of the applicant and of any victim at the time the applicant committed the offence; and
 - (f) whether or not the conduct that constituted the offence has been decriminalised since the applicant engaged in it; and
 - (g) the applicant's behaviour since he or she committed the offence; and
 - (h) the likelihood of future threat to a child caused by the applicant; and

S. 26(1A)
inserted by
No. 56/2007
s. 14(1).

S. 26(5)(b)
amended by
No. 56/2007
s. 14(2)(a).

S. 26(5)(c)
inserted by
No. 56/2007
s. 14(2)(b).

S. 26(5)(d)
inserted by
No. 56/2007
s. 14(2)(b).

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- (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that VCAT considers relevant to the application.
- (3) Subject to subsection (2), VCAT may by order direct the Secretary to give an assessment notice to an applicant if it is satisfied that, in all the circumstances, it is in the public interest to do so.
- (4) The Secretary must comply with an order made by VCAT under subsection (3).
- (5) Subject to subsection (6), an applicant who has been given a negative notice—
- (a) on a category 1 application on the ground that he or she is a person referred to in paragraph (a) or (b) of section 12(1); or
 - (b) on a category 2 application or a category 3 application; or
 - (c) because of a decision of the Secretary to do so under section 17(1A); or
 - (d) because of a decision of the Secretary under section 23(1) to revoke an assessment notice—
- may apply to VCAT for review of the decision to give the notice.
- (6) A person who is given a negative notice in the circumstances described in subsection (5)(a) may only apply for review on the ground that he or she is not such a person.

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- (7) An application under subsection (1) or for review under subsection (5) must be made within 28 days after the later of—
- (a) the day on which the decision of the Secretary is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Note

VCAT has power, on an application under subsection (5), to affirm the decision to give the negative notice or set it aside and either give an assessment notice or send the matter back to the Secretary for re-consideration (see section 51 of the **Victorian Civil and Administrative Tribunal Act 1998**).

**PART 3—EXEMPTIONS FROM WORKING WITH
CHILDREN CHECK**

**27 Volunteer whose child is participating or ordinarily
participates in the relevant activity**

A parent engaging in work as a volunteer in relation to an activity in which his or her child is participating or ordinarily participates is exempt from a working with children check in respect of that activity.

Example 1

A parent who coaches a school football team in which his or her child ordinarily plays is exempt from a working with children check even if his or her child is not present on particular days due to sickness or some other reason. However, a parent who coaches a school football team whose child plays football for another team in the same school is not exempt from a working with children check.

Example 2

An athletics carnival is being held at a school. A parent of one of the participating children carries out the task of raking the sand in the long jump pit. That parent is exempt from a working with children check even if his or her child is not participating in the long jump competition.

28 Person working with closely related child

- (1) A person engaging in child-related work where each child with whom he or she is required to have direct contact during the work is a child who is closely related to him or her is exempt from a working with children check in respect of that work.

- (2) For the purposes of subsection (1), a person is closely related to a child if the person is the child's—
- (a) spouse (including domestic partner as defined in the **Crimes (Family Violence) Act 1987**);
 - (b) parent, step-parent, mother-in-law or father-in-law;
 - (c) grandparent;
 - (d) uncle or aunt;
 - (e) brother or sister (including half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law)—

and includes, in the case of domestic partners, a person who would be closely related to the child if the domestic partners were married to each other.

29 Children

- (1) A child is exempt from a working with children check.
- (2) An adult who has not attained the age of 20 years and who is a student at an educational institution is exempt from a working with children check in respect of any work engaged in as a volunteer at that institution or outside that institution under an arrangement entered into by that institution.

30 Teachers

- (1) A person who is a registered teacher under the **Education and Training Reform Act 2006** is exempt from a working with children check.

S. 30(1)
amended by
Nos 14/2006
s. 28¹, 19/2008
s. 18.

Note

Section 2.6.19 of the **Education and Training Reform Act 2006** provides that a teacher whose registration is suspended is deemed not to be registered for the period of that suspension.

Note to
s. 30(1)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 48.3(b)).

s. 31

S. 30(2)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 48.3(c)).

(2) A person who engages in child-related work (other than teaching in a school) and who relies on an exemption under subsection (1) in respect of that work must notify—

- (a) any person by whom he or she is engaged in that child-related work; and
- (b) any agency with which he or she is listed for child-related work (other than teaching in a school)—

in writing of the suspension or cancellation of the person's registration under the **Education and Training Reform Act 2006** within 7 days after receiving notice of the suspension or cancellation.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Note 1 to
s. 30(2)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 48.3(d)).

- 1 Section 2.6.51 of the **Education and Training Reform Act 2006** provides that if a teacher's registration is suspended or cancelled, the Victorian Institute of Teaching must notify that teacher's employer of the suspension or cancellation.
- 2 *Listed with an agency* is defined in section 3(2).

31 Police officers

- (1) A person who is a member of the force within the meaning of the **Police Regulation Act 1958** and who has taken and subscribed the oath referred to in section 13(1) of that Act (other than a member who is suspended from duty under that Act) is exempt from a working with children check.
- (2) A person referred to in subsection (1) who engages in child-related work (other than as a member of the force) and who relies on an exemption under subsection (1) in respect of that work must notify—

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- (a) any person by whom he or she is engaged in that child-related work; and
 - (b) any agency with which he or she is listed for child-related work—

in writing of the suspension or dismissal of the person as a member of the force under the **Police Regulation Act 1958** within 7 days after receiving notice of the suspension or dismissal.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Listed with an agency is defined in section 3(2)

32 Visiting workers

A person who is not ordinarily resident in Victoria is exempt from a working with children check in respect of child-related work in which he or she engages in Victoria if he or she does not ordinarily engage in that work in Victoria.

Note

A registered sex offender within the meaning of Part 5 of the **Sex Offenders Registration Act 2004** is prohibited under that Act from engaging in child-related employment as defined in that Part.

**PART 4—OFFENCES CONNECTED WITH CHILD-RELATED
WORK**

**33 Engaging in child-related work without an
assessment notice**

- (1) A person is guilty of an offence if—
- (a) he or she does not have a current assessment notice; and
 - (b) he or she engages in child-related work, knowing that it is child-related work; and
 - (c) he or she knows that he or she does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note to
s. 33(1)
inserted by
No. 79/2006
s. 62(4).

Note

See section 9(3A) for the meaning of *child-related work* in this section.

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she—
- (a) had applied for a working with children check and the application had not been finally decided or withdrawn and he or she—
 - (i) had not at any time been given a negative notice or, having been given a negative notice, had subsequently been given an assessment notice; and
 - (ii) was not subject to reporting obligations imposed by Part 3 of the **Sex Offenders Registration Act 2004** or subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or

S. 33(2)(a)(ii)
amended by
No. 21/2008
s. 25(2)(c).

(b) was exempt from a working with children check in respect of the work under Part 3 and he or she—

(i) had not at any time been given a negative notice or, having been given a negative notice, had subsequently been given an assessment notice; and

(ii) was not subject to reporting obligations imposed by Part 3 of the **Sex Offenders Registration Act 2004** or subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or

S. 33(2)(b)(ii)
amended by
No. 21/2008
s. 25(2)(c).

(c) unless engaging in the work as a volunteer or undertaking practical training—

(i) having applied for a working with children check and been given a negative notice, had notified his or her employer of the giving of that notice; and

(ii) his or her employer was in the process of—

(A) transferring him or her to work that was not child-related work; or

(B) terminating his or her employment in accordance with the requirements of the Workplace Relations Act 1996 of the Commonwealth.

(2A) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, he or she had been given a negative notice by the Secretary and had applied to VCAT—

S. 33(2A)
inserted by
No. 56/2007
s. 15.

- (a) under section 26(1) for an assessment notice to be given to him or her; or
- (b) under section 26(5) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

- (3) A person who is guilty of an offence against subsection (1) is liable to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

34 Offence for holder of negative notice to apply for child-related work

- (1) A person who has at any time been given a negative notice and does not have a current assessment notice must not apply for, or engage in, work that is child-related work.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she did not know that the work was child-related work.

- (2A) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, he or she had been given a negative notice by the Secretary and had applied to VCAT—

- (a) under section 26(1) for an assessment notice to be given to him or her; or

S. 34(2A)
inserted by
No. 56/2007
s. 16.

(b) under section 26(5) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

(3) For the purposes of this section, the definition of *child-related work* given by section 9 applies as if the words "in circumstances where that contact is not directly supervised by another person" did not appear in subsection (1) of that section.

35 Offence to engage in child-related work a person who does not have an assessment notice

(1) A person is guilty of an offence if—

- (a) the person engages, or continues to engage, another person (the worker) in child-related work, knowing that it is child-related work; and
- (b) the worker does not have a current assessment notice; and
- (c) the person engaging, or continuing to engage, the worker knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note

See section 9(3A) for the meaning of *child-related work* in this section.

Note to s. 35(1) inserted by No. 79/2006 s. 62(4).

(2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—

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- (a) the worker had applied for a working with children check and the application had not been finally decided or withdrawn; or
- (b) the worker was exempt from a working with children check in respect of the work under Part 3; or
- (c) having been notified that the worker (not being a worker who was engaging in the work as a volunteer or undertaking practical training) had been given a negative notice, the accused was in the process of—
- (i) transferring him or her to work that was not child-related work; or
 - (ii) terminating his or her employment in accordance with the requirements of the Workplace Relations Act 1996 of the Commonwealth.
- (3) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that he or she directly engaged the worker and the work was child-related work with a child of whom the accused is a parent, whether or not it also involved direct contact with other children.
- (3A) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the worker had been given a negative notice by the Secretary and had applied to VCAT—
- (a) under section 26(1) for an assessment notice to be given to him or her; or

S. 35(3A)
inserted by
No. 56/2007
s. 17.

(b) under section 26(5) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

(4) A person who is guilty of an offence against subsection (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

36 Offence for agency to offer the services of a person who does not have an assessment notice

(1) An agency is guilty of an offence if—

- (a) the agency, in the course of a business, offers to another person the services of a person (the worker) in child-related work, knowing that it is child-related work; and
- (b) the worker does not have a current assessment notice; and
- (c) the agency knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note

See section 9(3A) for the meaning of *child-related work* in this section.

**Note to
s. 36(1)
inserted by
No. 79/2006
s. 62(4).**

(2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—

S. 36(2A)
inserted by
No. 56/2007
s. 18.

- (a) the worker had applied for a working with children check and the application had not been finally decided or withdrawn; or
- (b) the worker was exempt from a working with children check in respect of the work under Part 3.

(2A) An agency is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the worker had been given a negative notice by the Secretary and had applied to VCAT—

- (a) under section 26(1) for an assessment notice to be given to him or her; or
- (b) under section 26(5) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

(3) An agency that is guilty of an offence against subsection (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

37 Using volunteer assessment notice for paid work

- (1) A person is guilty of an offence if—
- (a) he or she has a current assessment notice that was given to him or her on an application that did not specify an intention to engage in child-related work for profit or gain; and
 - (b) he or she engages in child-related work for profit or gain; and

- (c) he or she knows that his or her current assessment notice was given on an application of a kind referred to in paragraph (a); and
- (d) he or she knows that, or is reckless as to whether or not, the child-related work in which he or she is engaging is being engaged in for profit or gain.

Note

See section 9(3A) for the meaning of *child-related work* in this section.

**Note to
s. 37(1)
inserted by
No. 79/2006
s. 62(4).**

- (2) A person is guilty of an offence if—
 - (a) the person engages, or continues to engage, another person (the worker) in child-related work, knowing that it is child-related work; and
 - (b) the person knows that the worker has a current assessment notice that was given to him or her on an application that did not specify an intention to engage in child-related work for profit or gain; and
 - (c) the person engaging, or continuing to engage, the worker knows that, or is reckless as to whether or not, the child-related work in which the worker is engaging is being engaged in for profit or gain.
- (3) A person who is guilty of an offence against subsection (1) or (2) is liable to a level 11 fine (5 penalty units maximum).

Note

A person who has been given an assessment notice on an application that did not specify an intention to engage in child-related work for profit or gain may apply under section 10 for an assessment notice that may be used in respect of child-related work engaged in for profit or gain.

38 Offence to use false or other person's assessment notice

A person must not use in connection with his or her work, or an application for work—

- (a) a document purporting to be an assessment notice knowing that the document is false within the meaning of section 83A(6) of the **Crimes Act 1958**; or
- (b) a document purporting to be an assessment notice given to him or her knowing that the document is an assessment notice given to another person.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

39 False or misleading information

- (1) A person must not in, or in relation to, an application for the carrying out of a working with children check or in connection with a re-assessment under section 21 give information that is false or misleading in a material particular.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—
 - (a) in the case of false information—that the information was true; or
 - (b) in the case of misleading information—that the information was not misleading.

40 Confidentiality of information

- (1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person—
- (a) from, or in the carrying out of, a working with children check; or
 - (b) under section 18, 20(1), 22, 23(5), 30(2) or 31(2).

Penalty: Level 9 fine (60 penalty units maximum).

- (2) subsection (1) does not apply to the giving of information—
- (a) in good faith—
 - (i) for the purposes of this Act; or
 - (ii) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or
 - (iii) for the purpose of making employment-related decisions in respect of child-related work; or
 - (b) with the written authority of the person to whom the information relates or, if the person to whom the information relates is a child or a person with impaired mental functioning within the meaning of Subdivision (8D) of Division 1 of Part I of the **Crimes Act 1958**, with the written authority of a person authorised to act on that person's behalf; or
 - (c) to a court or tribunal in the course of legal proceedings; or
 - (d) pursuant to an order of a court or tribunal; or
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- (e) 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; or
 - (f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or
 - (g) as required or authorised by or under any other Act.
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PART 5—MISCELLANEOUS

41 Duty on police to notify Secretary of certain matters

- (1) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable after the Chief Commissioner becomes aware that a person to whom an assessment notice has been given has been charged with a relevant offence.
- (2) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable of how a charge of a relevant offence against a person who has a current assessment notice has been finally dealt with.

42 Secretary may notify police of certain matters

Nothing in this Act prevents the Secretary, if he or she suspects on reasonable grounds that a person has committed an offence against Part 4 of this Act or Part 5 of the **Sex Offenders Registration Act 2004**, immediately notifying the Chief Commissioner of Police of that suspicion.

43 Delegation

The Secretary, by instrument, may delegate to—

- (a) any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; or
- (b) another prescribed person or body—

any of the Secretary's powers under this Act or regulations made under this Act, other than this power of delegation.

S. 43
amended by
No. 56/2007
s. 19.

44 Offences by bodies corporate

- (1) In a proceeding against a body corporate for an offence against a provision of this Act, it is a defence to the charge for the body corporate to prove that, at the time the offence is alleged to have been committed, it had taken all reasonable steps to have systems in place within the body corporate to ensure compliance with the relevant provision.
- (2) If a body corporate contravenes any provision of this Act, each person who is an officer of the body corporate is to be taken to have contravened the same provision if the person knew of, or knowingly authorised or permitted, the contravention.
- (3) A person may be proceeded against and convicted or found guilty under a provision in accordance with subsection (2) whether or not the body corporate has been proceeded against or convicted or found guilty under that provision.
- (4) Nothing in subsection (2) or (3) affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.
- (5) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—
 - (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the officer had that state of mind.

**45 Offences by unincorporated bodies,
partnerships etc.**

- (1) If this Act provides that a person, being an unincorporated body or association or a partnership, is guilty of an offence, that reference to the person must—
 - (a) in the case of an unincorporated body or association—be read as a reference to each member of the committee of management of the body or association who knew of, or knowingly authorised or permitted, the commission of the offence; and
 - (b) in the case of a partnership—be read as a reference to each member of the partnership who knew of, or knowingly authorised or permitted, the commission of the offence.
- (2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an unincorporated body or association or a partnership in relation to particular conduct, it is sufficient to show that—
 - (a) the conduct was engaged in by an employee or agent of the unincorporated body or association or the partnership within the scope of his or her actual or apparent authority; and
 - (b) the employee or agent had that state of mind.

46 Giving of notices

If by or under this Act a notice, or a copy of a notice, is required or permitted to be given by the Secretary to a person, the notice may, unless the contrary intention appears, be given to the person—

- (a) by delivering it personally to the person; or

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- (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing there or (in the case of a place of business) apparently in charge of, or employed at, that place; or
 - (c) by sending it by post addressed to the person at the person's usual or last known place of residence or business.

47 Evidentiary provisions

- (1) A document purporting to be given by the Secretary or a delegate of the Secretary certifying as to—
 - (a) whether an application by a specified person for a working with children check was pending under Part 2 as at a specified date; or
 - (b) whether an interim negative notice was given to a specified person on a specified date; or
 - (c) whether a negative notice was given to a specified person on a specified date; or
 - (d) whether an assessment notice was given to a specified person on a specified date; or
 - (e) whether a copy of an assessment notice, an interim negative notice or a negative notice was given to a specified person on a specified date; or
 - (f) any other matter that appears in, or that can be determined from, the records kept by the Secretary under this Act—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the document.

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- (2) A document purporting to be given by the Secretary or a delegate of the Secretary under subsection (1) must be presumed in any proceedings, in the absence of evidence to the contrary, to have been given by the Secretary or a person who was, at that time, a delegate of the Secretary, as the case requires.
- (3) This section is in addition to, and does not affect the operation of, the **Evidence Act 1958**.

48 Immunity

- (1) The Secretary or an employee within the meaning of the **Public Administration Act 2004** is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Secretary or an employee within the meaning of the **Public Administration Act 2004** attaches instead to the State.

49 Regulations

- (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.

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- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
- (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
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- (c) so as to apply, adopt or incorporate any matter contained in any document published by any person whether—
- (i) wholly or partially or as amended by the regulations; or
 - (ii) as published at the time the regulations are made or at any time before then; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (e) so as to provide in a specified case or class of case 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 such an extent as is specified; and
- (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (e) the reduction, waiver or refund, in whole or in part, of the fees.
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(5) If under subsection (4)(e) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—

- (a) in respect of certain checks or classes of checks; or
- (b) when an event happens; or
- (c) in respect of certain persons or classes of persons; or
- (d) in respect of any combination of such checks, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

PART 6—TRANSITIONAL PROVISIONS

Pt 6 (Heading and ss 50–53) amended by Nos 93/2005 s. 16, 29/2006 s. 3(Sch. 1 item 40), substituted as Pt 6 (Heading and s. 50) by No. 79/2006 s. 63.

50 Transitional provision—Justice Legislation (Further Amendment) Act 2006

S. 50 substituted by No. 79/2006 s. 63.

- (1) The amendments of this Act made by section 62 of the **Justice Legislation (Further Amendment) Act 2006** do not affect any Order made under section 9(5) of this Act before the commencement of that section of that Act.
- (2) Nothing in subsection (1) limits section 14 of the **Interpretation of Legislation Act 1984**.

51 Transitional provision—Working with Children Amendment Act 2007

S. 51 repealed by No. 79/2006 s. 63², new s. 51 inserted by No. 56/2007 s. 20.

- (1) The amendments made to this Act by the **Working with Children Amendment Act 2007** apply to any application for a working with children check that was made but not finally decided or withdrawn immediately before the commencement of section 20 of that Act.
- (2) The Secretary must, immediately after the commencement of section 20 of the **Working with Children Amendment Act 2007**, notify each person who has made an application for a working with children check that was not finally decided or withdrawn immediately before that commencement that his or her application will be assessed in accordance with this Act as amended by that Act, and must give each person a

reasonable opportunity to withdraw his or her application if the person wishes to do so.

- (3) The amendments made to this Act by sections 12 and 13 of the **Working with Children Amendment Act 2007** apply to any assessment notice that was in force immediately before the commencement of those sections.
- (4) The amendments made to this Act by section 15, 16, 17 or 18 of the **Working with Children Amendment Act 2007** apply to offences committed before, on or after the commencement of that section of that Act.

Ss 52, 53
repealed by
No. 79/2006
s. 63.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 21 July 2005

Legislative Council: 16 August 2005

The long title for the Bill for this Act was "to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body, to amend the **Sentencing Act 1991**, the **Sex Offenders Registration Act 2004**, the **Victorian Civil and Administrative Tribunal Act 1998** and the **Victorian Institute of Teaching Act 2001** and for other purposes."

The **Working with Children Act 2005** was assented to on 13 September 2005 and came into operation on 3 April 2006: Government Gazette 30 March 2006 page 615.

Working with Children Act 2005
No. 57 of 2005

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Working with Children Act 2005** by Acts and subordinate instruments.

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 16 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes (Sexual Offences) Act 2006, No. 2/2006

Assent Date: 7.3.06
Commencement Date: S. 47 on 1.12.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: S. 28 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 48) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation (Further Miscellaneous Amendments) Act 2006, No. 27/2006

Assent Date: 6.6.06
Commencement Date: S. 23 on 30.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 40) on 13.9.05: s. 2(2)(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 39) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Act 2005
No. 57 of 2005

Endnotes

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 62, 63 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Working with Children Amendment Act 2007, No. 56/2007

Assent Date: 7.11.07
Commencement Date: S. 4 on 3.4.06: s. 2(2); ss 3, 5-20 on 8.11.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Education and Training Reform Amendment Act 2008, No. 19/2008

Assent Date: 21.5.08
Commencement Date: S. 18 on 22.5.08: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Justice Legislation Amendment Act 2008, No. 21/2008

Assent Date: 2.6.08
Commencement Date: S. 25(2) on 3.6.08: Special Gazette (No. 148) 3.6.08
p. 1
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

3. Explanatory Details

¹ S. 30(1): The amendment proposed by section 6.1.2(Schedule 7 item 48.3(a)) of the **Education and Training Reform Act 2006**, No. 24/2006 is not included in this publication because the words "section 11 of the **Victorian Institute of Teaching Act 2001**" do not appear in section 30(1). Schedule 7 item 48.3(a) reads as follows:

48.3 In section 30—

- (a) in subsection (1), for "section 11 of the **Victorian Institute of Teaching Act 2001**" substitute "section 2.6.9 of the **Education and Training Reform Act 2006**";

² S. 51 (*repealed*): The amendment proposed by section 47 of the **Crimes (Sexual Offences) Act 2006**, No. 2/2006 is not included in this publication due to the earlier repeal of section 51 by section 63 of the **Justice Legislation (Further Amendment) Act 2006**, No. 79/2006.