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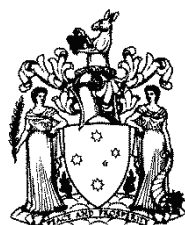
Family Violence Reform Implementation Monitor Act 2016

No. 74 of 2016

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	2
3 Definitions	2
4 Determination of agency	4
5 Publication of the Implementation Plan	5
Part 2—The Family Violence Reform Implementation Monitor	6
6 Establishment	6
7 Appointment	6
8 Remuneration and allowances	6
9 Terms and conditions	6
10 Acting appointment	7
11 Vacancy, resignation or suspension	7
12 Suspension and removal	8
13 Independence of the Implementation Monitor	9
14 Functions of the Implementation Monitor	9
15 Ministerial request for advice	11
16 Powers of the Implementation Monitor	11
17 Power to require information to be given	11
18 Power of entry and inspection	12
19 Duty to cooperate	13
20 Constraints on access to information not to apply	13
21 Use and disclosure of information	14
22 Secretary may provide assistance	15
Part 3—Reporting	16
23 Reports prepared by the Family Violence Reform Implementation Monitor	16
24 Publication of reports	17
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Endnotes	20
1 General information	20

Authorised Version



Victoria

Family Violence Reform Implementation Monitor Act 2016[†]

No. 74 of 2016

[Assented to 13 December 2016]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to establish the position of the Family Violence Reform Implementation Monitor;
and
- (b) to provide for the functions, powers and duties of the Family Violence Reform Implementation Monitor.

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 March 2017, it comes into operation on that day.

3 Definitions

In this Act—

agency means any of the following that are required to carry out an implementation action—

- (a) a public service body;
- (b) a public entity;
- (c) a special body, other than the following—
 - (i) a department of the Parliament of Victoria;
 - (ii) the IBAC within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
 - (iii) the Electoral Boundaries Commission established under section 3 of the **Electoral Boundaries Commission Act 1982**;
 - (iv) the office of the Ombudsman within the meaning of the **Ombudsman Act 1973**;
 - (v) the Victorian Auditor-General's Office within the meaning of the **Audit Act 1994**;

(vi) the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;

(vii) the Victorian Inspectorate established under section 8 of the **Victorian Inspectorate Act 2011**;

(d) an entity or body specified in a determination made by the Governor in Council under section 4;

agency Head means—

(a) in relation to an agency that is an entity or body specified in a determination made by the Governor in Council under section 4—a person employed as Chief Executive Officer of that entity or body (however described); or

(b) in relation to an agency that is a public service body, a public entity or a special body—a public sector body Head (within the meaning of the **Public Administration Act 2004**);

Department means the Department of Premier and Cabinet;

implementation action means an action specified in the Implementation Plan to implement or give effect to a reform initiative identified in the Plan;

Implementation Monitor means the Family Violence Reform Implementation Monitor appointed under section 7;

Implementation Plan means the plan or plans under section 5;

Implementation Report means a report prepared by the Implementation Monitor under section 23;

public entity has the same meaning as it has in section 5 of the **Public Administration Act 2004**;

public service body has the same meaning as it has in section 4 of the **Public Administration Act 2004**;

RCFV recommendation means a recommendation made in the Report of the Royal Commission into Family Violence delivered to the Governor on 29 March 2016;

Royal Commission into Family Violence means the inquiry conducted by the Commissioners appointed under section 5 of the **Inquiries Act 2014** by the Letters Patent dated 22 February 2015, a copy of which was published in the Government Gazette on that date;

Secretary means Secretary to the Department of Premier and Cabinet;

special body has the same meaning as it has in section 6 of the **Public Administration Act 2004**.

4 Determination of agency

- (1) The Governor in Council may, by written determination published in the Government Gazette, specify an entity or body to be an agency.
- (2) The Governor in Council must not make a determination under subsection (1) unless the Governor in Council is satisfied that the Minister has—

- (a) obtained the consent of the entity or body to be specified; and
- (b) consulted the Implementation Monitor.

5 Publication of the Implementation Plan

- (1) The Minister must publish the Implementation Plan or Plans, or any amendment or variation made to the Plan or Plans, on the Internet site of the Department.
- (2) The Minister must notify the Implementation Monitor of—
 - (a) any Implementation Plan published under subsection (1); and
 - (b) any amendment or variation made to an Implementation Plan that is published under subsection (1).

Part 2—The Family Violence Reform Implementation Monitor

6 Establishment

There is to be a Family Violence Reform Implementation Monitor.

7 Appointment

- (1) Subject to subsection (2), the Governor in Council may, on the recommendation of the Minister, appoint a person as the Family Violence Reform Implementation Monitor.
- (2) A person is qualified to be the Implementation Monitor if the Minister is satisfied that the person has—
 - (a) relevant senior executive management experience in the public sector, particularly in an operational environment; and
 - (b) a strong understanding of complex multi-agency environments.

8 Remuneration and allowances

- (1) The Implementation Monitor is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.
- (2) The remuneration of the Implementation Monitor cannot be reduced during the Implementation Monitor's term of office unless the Implementation Monitor consents to the reduction.

9 Terms and conditions

The Implementation Monitor holds office—

- (a) for the term specified in the Implementation Monitor's instrument of appointment not exceeding 4 years; and

- (b) on the terms and conditions determined by the Governor in Council.

10 Acting appointment

- (1) On the recommendation of the Minister, having regard to the eligibility criteria under section 7(2), the Governor in Council may appoint a person to act as the Implementation Monitor if—
 - (a) the office of the Implementation Monitor is vacant; or
 - (b) for any period the Implementation Monitor is absent; or
 - (c) the Implementation Monitor is for any other reason unable to perform the functions or duties of the office.
- (2) The Implementation Monitor may appoint a suitable person to act as the Implementation Monitor if, for a period not exceeding one month, the Implementation Monitor—
 - (a) is absent; or
 - (b) is for any other reason unable to perform the duties of the office.

Note

Section 41AA of the **Interpretation of Legislation Act 1984** provides for the powers in relation to an acting appointment.

11 Vacancy, resignation or suspension

The Implementation Monitor ceases to hold office if the Implementation Monitor—

- (a) resigns by notice in writing delivered to the Governor in Council; or
- (b) becomes an insolvent under administration;
or

- (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
- (e) is suspended or removed from office under section 12.

12 Suspension and removal

- (1) On the recommendation of the Minister, the Governor in Council may suspend the Implementation Monitor from office on any of the following grounds—
 - (a) misconduct;
 - (b) neglect of duty;
 - (c) inability to perform the duties of the office;
 - (d) any other ground on which the Governor in Council is satisfied that the Implementation Monitor is unfit to hold office.
- (2) The Minister must cause to be laid before each House of Parliament a full statement of the grounds of suspension within 7 sitting days of that House after the suspension.
- (3) The Implementation Monitor must be removed from office by the Governor in Council if each House of Parliament, within 20 sitting days after the day when the statement is laid before it, declares by resolution that the Implementation Monitor ought to be removed from office.
- (4) The Governor in Council must remove the suspension and restore the Implementation Monitor to office unless each House makes a

declaration of the kind specified in subsection (3) within the time specified in that subsection.

- (5) If the Implementation Monitor is suspended from office under subsection (1), the Implementation Monitor is taken not to be the Implementation Monitor during the period of suspension.

13 Independence of the Implementation Monitor

- (1) Subject to subsection (2), the Implementation Monitor is subject to the general direction or control of the Minister in respect of the performance or exercise of the Implementation Monitor's functions, powers or duties.
- (2) Subject to this Act and other laws of the State, the Implementation Monitor has complete discretion in respect of the content of each Implementation Report.

14 Functions of the Implementation Monitor

- (1) The Implementation Monitor has the following functions—
- (a) to monitor and review the progress of an agency against the Implementation Plan, including by assessing—
- (i) the progress of the agency in completing an implementation action, including any implementation action relating to diverse communities; and
- (ii) the effectiveness of the method used by the agency in carrying out an implementation action;
- (b) to monitor and review the implementation of the RCFV recommendations;
- (c) to consult and engage with agencies in the performance of the Implementation Monitor's functions;

- (d) to produce written reports on the findings and conclusions of the Implementation Monitor following the performance of the Implementation Monitor's functions.
- (2) The Implementation Monitor has any other function conferred on the Implementation Monitor by or under this or any other Act.
- (3) The Implementation Monitor must, in performing the Implementation Monitor's functions—
 - (a) have regard to—
 - (i) the Implementation Plan; and
 - (ii) the RCFV recommendations; and
 - (b) if the Implementation Monitor considers it necessary, engage in activities with, or require demonstrations of systems by, or obtain documents from any agency as required to produce an accurate assessment of how an implementation action is being carried out or has been carried out; and
 - (c) establish appropriate consultation arrangements with any agency Head and any advisory body to Government that the Implementation Monitor considers has an interest in the carrying out of an implementation action to—
 - (i) facilitate the effective monitoring and review of progress in the carrying out of an implementation action; and
 - (ii) obtain the information necessary to perform the monitoring and assessment function of the Implementation Monitor.

15 Ministerial request for advice

- (1) The Minister may request the Implementation Monitor to provide written or oral advice on any issue relating to an implementation action.
- (2) The Implementation Monitor must comply with a request under subsection (1).

16 Powers of the Implementation Monitor

The Implementation Monitor has all the powers necessary to perform the Implementation Monitor's functions.

17 Power to require information to be given

- (1) For the purposes of carrying out functions or exercising powers under this Act the Implementation Monitor may, by written notice, require any agency to give to the Implementation Monitor any information that the Implementation Monitor reasonably believes is necessary to perform the Implementation Monitor's functions.
- (2) The agency must give the information to the Implementation Monitor within 7 days after receiving a notice under subsection (1) unless—
 - (a) a lesser period is specified under subsection (3); or
 - (b) the Implementation Monitor has agreed to allow an extension of time for the giving of the information; or
 - (c) the Implementation Monitor has agreed that the agency is not able to give the information.
- (3) If the Implementation Monitor reasonably believes that it is urgent that information (specified in a written notice given under subsection (1)) be given within a lesser period than the period specified in subsection (2), the

Implementation Monitor may specify a lesser period for the giving of the information and the information must be given within the period so specified.

18 Power of entry and inspection

- (1) Subject to subsection (3), the Implementation Monitor or any persons authorised by the Implementation Monitor may, if the Implementation Monitor considers it necessary for the purposes of performing the functions of the Implementation Monitor—
 - (a) enter any place of an agency during ordinary business hours and inspect that place and any document, thing or activity in that place that the Implementation Monitor reasonably considers to be relevant; and
 - (b) make a copy of any relevant document, or any document that the Implementation Monitor reasonably considers to be relevant.
- (2) The Implementation Monitor may, if the Implementation Monitor considers it necessary for the purposes of performing the functions of the Implementation Monitor, require any agency—
 - (a) to allow the Implementation Monitor, or any persons authorised by the Implementation Monitor, to observe the operation of a system, procedure or thing; and
 - (b) to demonstrate the operation of a system, procedure or other thing to the Implementation Monitor, or any persons authorised by the Implementation Monitor.

- (3) The Implementation Monitor must give an agency reasonable notice of an intention—
 - (a) to enter any place of an agency for the purposes specified in subsection (1); and
 - (b) to require an agency to perform an action specified under subsection (2).

19 Duty to cooperate

An agency must comply with any reasonable request made by the Implementation Monitor, or any person assisting the Implementation Monitor, that has been made for the purposes of performing the functions or exercising the powers of the Implementation Monitor.

20 Constraints on access to information not to apply

- (1) An obligation to maintain secrecy or any other restriction on the disclosure of information by an agency, imposed by or under an Act or rule of law, does not apply—
 - (a) to the disclosure of information required by the Implementation Monitor under section 17; or
 - (b) to information obtained by the Implementation Monitor under section 18.
- (2) The Implementation Monitor or any other person must not divulge or communicate, except to another person performing duties under this Act, any information which has come to the knowledge of the Implementation Monitor by reason, directly or indirectly, of subsection (1) if the person who had possession of that information could not, but for that subsection, lawfully have divulged that information to the Implementation Monitor or the other person.

- (3) Despite subsection (2) or any other law to the contrary, the Implementation Monitor may include in an Implementation Report any information obtained in the course of the Implementation Monitor's performance of functions under this or any other Act (other than information that would disclose a deliberation or decision of Cabinet that has not been officially published) if the Implementation Monitor considers that—
- (a) the information is relevant to the subject matter of the Report; and
 - (b) following consultation with the Minister (if any) responsible for the agency that provided the information—the inclusion of the information in the Report is in the public interest.
- (4) In considering whether the inclusion of the information is in the public interest for the purposes of subsection (3)(b), the Implementation Monitor must have regard to—
- (a) the nature and sensitivity of family violence issues; and
 - (b) the importance of protecting the privacy of victims and survivors of family violence.

21 Use and disclosure of information

The Information Monitor must not use or disclose confidential information obtained or received in the course of, or as a result of, the performance of the functions of the Implementation Monitor except as permitted by this Act.

22 Secretary may provide assistance

The Implementation Monitor may request the Secretary to provide any assistance that is reasonably necessary for the Implementation Monitor to perform the Implementation Monitor's functions under this Act, including the provision of staff and facilities.

Part 3—Reporting

23 Reports prepared by the Family Violence Reform Implementation Monitor

- (1) The Implementation Monitor must prepare an Implementation Report as at—
 - (a) 1 November 2017; and
 - (b) 1 November 2018; and
 - (c) 1 November 2019; and
 - (d) 1 November 2020.
- (2) Each Implementation Report must be published in accordance with section 24.
- (3) Each Implementation Report must specify or include—
 - (a) the agency with lead responsibility for carrying out each implementation action; and
 - (b) the agencies with which the lead agency will collaborate in carrying out each implementation action; and
 - (c) the progress of the agency in completing an implementation action, including any implementation action relating to diverse communities; and
 - (d) the progress of implementation of the RCFV recommendations; and
 - (e) information on—
 - (i) the compliance by an agency with timelines specified in the Implementation Plan for the completion of an implementation action; and

- (ii) any method developed by an agency in carrying out an implementation action that demonstrates best practice; and
 - (iii) if the Implementation Monitor has consulted with the Secretary and the relevant agency Head and provided the Secretary and the relevant agency Head a reasonable period to respond, any corrective action that the Implementation Monitor considers necessary to address a concern of the Implementation Monitor in relation to the carrying out of an implementation action or the implementation of an RCFV recommendation.
- (4) In reporting on the progress of implementation of the RCFV recommendations under subsection (3)(d), the Implementation Monitor must have regard to any relevant implementation action.
- (5) The Implementation Monitor must ensure that an Implementation Report does not include any information that is likely to lead to the identification of any person unless—
- (a) the information is already in the public domain; or
 - (b) the person has consented to the disclosure of the information.

24 Publication of reports

- (1) The Implementation Monitor must give a copy of each Implementation Report to the Minister at least 28 days before the Implementation Report is tabled in Parliament.

- (2) The Implementation Monitor must give a copy of each Implementation Report to—
 - (a) the clerk of each House of the Parliament;
and
 - (b) the Secretary.
- (3) The clerk of each House of the Parliament must cause each Implementation Report to be laid before the House on the next sitting day of the House.
- (4) If the Implementation Monitor proposes to give a copy of each Implementation Report to Parliament when Parliament is in recess, the Implementation Monitor must—
 - (a) give one business day's notice of the Implementation Monitor's intention to do so to the clerk of each House of the Parliament;
and
 - (b) give each Implementation Report to the clerk of each House on the day indicated in the notice; and
 - (c) cause each Implementation Report to be published by the Government Printer.
- (5) The clerk of each House must—
 - (a) notify each member of the House of the receipt of a notice under subsection (4)(a) on the same day that the clerk receives that notice; and
 - (b) give a copy of each Implementation Report to each member of the House as soon as practicable after each Implementation Report is received under subsection (4)(b); and
 - (c) cause each Implementation Report to be laid before the House on the next sitting day of the House.

- (6) Each Implementation Report that is given to the clerks under subsection (4)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (7) The Secretary must publish each Implementation Report on an appropriate Internet site as soon as practicable after—
 - (a) each Implementation Report has been laid before each House of the Parliament under subsection (3); or
 - (b) each Implementation Report has been given to the clerk of each House of the Parliament by the Implementation Monitor under subsection (4)(b).
- (8) The publication under this section of each Implementation Report is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of that report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.
- (9) For the purposes of this section, Parliament is in recess when each House stands adjourned to a date to be fixed by the presiding officer of that House.

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: 26 October 2016

Legislative Council: 24 November 2016

The long title for the Bill for this Act was "A Bill for an Act to establish the position of the Family Violence Reform Implementation Monitor, to provide for the functions, powers and duties of the Family Violence Reform Implementation Monitor and for other purposes."