

Authorised Version

Sex Offenders Registration Amendment (Miscellaneous) Act 2017

No. 25 of 2017

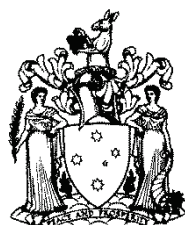
TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	2
3 Principal Act	2
Part 2—Amendment of the Sex Offenders Registration Act 2004	3
Division 1—Registration exemption orders	3
4 Definitions	3
5 New Division heading inserted	3
6 Who is a registrable offender?	3
7 New Division 2 of Part 2 inserted	4
8 New section 30A inserted	10
9 New section 35B inserted	10
10 New section 73H inserted	11
11 New Schedule 5 inserted	11
Division 2—Suspension of reporting obligations	16
12 Chief Commissioner may apply for suspension from reporting obligations	16
13 New section 39B inserted	17
14 Order for suspension	17
15 No costs to be awarded	18
16 Chief Commissioner may apply for revocation of suspension order	18
17 Chief Commissioner of Police may suspend reporting obligations	18
18 New section 73I inserted	19
Division 3—Investigative powers and procedures	19
19 Power to take fingerprints or fingerscan	19
20 Section 27 amended	21
21 Reasonable force may be used to obtain fingerprints	23
22 New sections 47A to 47C inserted	23

<i>Section</i>	<i>Page</i>
Division 4—Child-related employment and other amendments	26
23 Purpose and outline	26
24 Definitions	27
25 Who is a registrable offender?	27
26 What is a registrable offence?	27
27 Sex offender registration order	28
28 Initial report by registrable offender of personal details	30
29 Registrable offender must report annually	30
30 How reports to be made	31
31 Notice to be given to registrable offender	31
32 Notices may be given by Chief Commissioner	31
33 Explanation of interim prohibition order	32
34 Explanation of final prohibition order	32
35 Recording and register of seized things	32
36 Court may vary a prohibition order	32
37 Court may revoke a prohibition order	32
38 Court may extend a final prohibition order	32
39 Corresponding registrable offender to be notified of registration order	32
40 Court may vary a registration order	32
41 Revocation of a registration order	33
42 Heading to Part 5	33
43 Definitions	33
44 Registrable offender excluded from child-related employment	33
45 Registrable offender who is also subject to a supervision or detention order	33
46 Chief Commissioner of Police to report to Minister	34
47 New section 74A inserted	34
48 Repeal of item 8 of Schedule 1	34
49 Amendment of Schedule 2	34
Part 3—Amendment of the Crimes Act 1958	37
50 Definitions	37
51 Execution of authorisation or order	37
52 New section 464ZFAB inserted	37
53 Section 464ZFAB amended	39
54 Destruction of information following finding of guilt etc.	41
55 Victorian DNA database	42
Part 4—Amendment of the Criminal Procedure Act 2009	43
56 Definitions	43
Part 5—Amendment of the Serious Sex Offenders (Detention and Supervision) Act 2009	44
57 Sex offender registration order under Sex Offenders Registration Act 2004	44

<i>Section</i>	<i>Page</i>
Part 6—Amendment of the Working with Children Act 2005	45
58 Sex offenders not to apply for assessment notice	45
Part 7—Repeal of amending Act	46
59 Repeal of amending Act	46
Endnotes	47
1 General information	47

Authorised Version



Victoria

**Sex Offenders Registration Amendment
(Miscellaneous) Act 2017[†]**

No. 25 of 2017

[Assented to 20 June 2017]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Sex Offenders Registration Act 2004** in relation to—
 - (i) the exemption of certain young adult sex offenders from the requirements of that Act; and

- (ii) the suspension of reporting obligations under that Act; and
 - (iii) investigative powers and procedures under that Act; and
 - (iv) the prohibition on sex offenders from engaging in child-related employment; and
- (b) to make other miscellaneous and consequential amendments to that Act; and
 - (c) to amend the **Crimes Act 1958** to provide for the taking of DNA samples from sex offenders; and
 - (d) to make consequential amendments to the **Criminal Procedure Act 2009**, the **Serious Sex Offenders (Detention and Supervision) Act 2009** and the **Working with Children Act 2005**.

2 Commencement

- (1) Subject to subsection (4), this Act (other than sections 20 and 53) comes into operation on a day or days to be proclaimed.
- (2) Section 20 comes into operation 3 years after the day on which section 19 comes into operation.
- (3) Section 53 comes into operation 3 years after the day on which section 52 comes into operation.
- (4) If a provision of this Act (other than sections 20 and 53) does not come into operation before 1 March 2018, it comes into operation on that day.

3 Principal Act

In this Act, the **Sex Offenders Registration Act 2004** is called the Principal Act.

Part 2—Amendment of the Sex Offenders Registration Act 2004

Division 1—Registration exemption orders

4 Definitions

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

"registration exemption order means an order made under section 11B;

specified offence means a Class 1 or Class 2 offence referred to in Schedule 5;"

5 New Division heading inserted

After the heading to Part 2 of the Principal Act **insert**—

"Division 1—Registrable offenders".

6 Who is a registrable offender?

(1) In section 6(2) of the Principal Act, for "A person" **substitute** "Subject to subsection (2B), a person".

(2) After section 6(2) of the Principal Act **insert**—

"(2A) A person is not a registrable offender merely because the person committed a specified offence for which the person has been sentenced if a court declares, by order made under section 11B, that the person is not a registrable offender in respect of that offence.

Note

A person may become a registrable offender in respect of another offence—see section 11E(3).

(2B) A person is not a registrable offender merely because the person is a corresponding registrable offender or a New South Wales

registrable offender in respect of a specified offence committed in Victoria if a court declares, by order made under section 11B, that the person is not a registrable offender in respect of that offence."

7 New Division 2 of Part 2 inserted

After section 11 of the Principal Act **insert**—

"Division 2—Registration exemption orders

11A Application for registration exemption order

- (1) Subject to this section, a person who has been found guilty by a court of a registrable offence that is a specified offence may apply for a registration exemption order in respect of the offence if the person—
 - (a) at any time during the commission of the offence, was 18 or 19 years of age; and
 - (b) at all times during the commission of the offence, was not more than 19 years of age.
- (2) A person may not apply for a registration exemption order if the person—
 - (a) has been found guilty of another registrable offence that is not a specified offence; or
 - (b) has been found guilty of another specified offence for which an application for a registration exemption order has been refused; or

- (c) was a registrable offender at the time the person committed the specified offence to which the application relates; or
 - (d) is a corresponding registrable offender or a New South Wales registrable offender.
- (3) A person may not apply for a registration exemption order in respect of a specified offence against more than one victim unless the offence relates to the possession of child abuse material or child pornography.
- (4) An application may relate to more than one specified offence if—
- (a) each specified offence relates to the possession of child abuse material or child pornography; or
 - (b) each specified offence was committed against the same victim.

11B Determination of application

- (1) On the hearing of an application under section 11A, a court may, by order, declare that the applicant is not a registrable offender in respect of a specified offence if the court is satisfied on the balance of probabilities that—
- (a) at all times during the commission of the specified offence—
 - (i) any victim of the offence is of or over the age of 14 years; or
 - (ii) any person depicted or described in any material to which the offence relates is of or over the age of 14 years; and

- (b) the applicant poses no risk or a low risk to the sexual safety of one or more persons or of the community, having regard to—
 - (i) the seriousness of the specified offence; and
 - (ii) the ages of the applicant and any victim of the specified offence at the time of the commission of the specified offence; and
 - (iii) whether any victim of the specified offence was under the care, supervision or authority of the applicant at the time of the specified offence; and
 - (iv) whether any victim of the specified offence had a cognitive impairment or mental illness within the meaning of Subdivision (8E) of Division 1 of Part I of the **Crimes Act 1958** at the time of the commission of the specified offence; and
 - (v) where the application relates to more than one specified offence—the number and nature of those specified offences, including whether the specified offences arose out of the same set of circumstances; and
 - (vi) any other matter that the court considers relevant; and
- (c) but for the specified offence, the applicant would not be a registrable offender.

- (2) A court must refuse to make an order under subsection (1) if not satisfied as required by subsection (1).
- (3) A court may not make an order under subsection (1) in respect of an application referred to in section 11A(2) or (3).
- (4) For the purposes of subsection (1)(b), it is not necessary that the court be able to identify a risk posed by the registrable offender to the sexual safety of a particular person or a particular class of person.
- (5) In deciding whether to make an order under subsection (1), the court must take into account any submissions made by the Chief Commissioner of Police under section 11F.
- (6) An order under subsection (1) may relate to one or more specified offences.
- (7) An order under subsection (1) must contain the information, if any, prescribed by the rules of court.

11C When application may be made

An application under section 11A may be made not later than 6 months after the day on which the applicant is first given notice under section 50 or 54 of the applicant's reporting obligations.

11D How application is made

- (1) An application under section 11A is made by filing with the relevant court referred to in subsection (2) a document in writing—
 - (a) stating the grounds on which the application is made; and
 - (b) containing the information, if any, prescribed by the rules of court.

- (2) An application under section 11A is to be made—
 - (a) to the court that imposed the sentence at first instance for the specified offence to which the application relates; or
 - (b) if the application relates to more than one specified offence, to the court of the highest jurisdiction that imposed a sentence at first instance for any of the specified offences; or
 - (c) to the Magistrates' Court, if the application relates to a specified offence for which the applicant was sentenced by a court in a foreign jurisdiction.
- (3) A copy of an application must be served by the applicant on the Chief Commissioner of Police as soon as practicable after the application is filed.

11E Effect of registration exemption order

- (1) On the making of a registration exemption order, the person in respect of whom the order is made ceases to be a registrable offender for the purposes of this Act.
- (2) Nothing in this Division affects—
 - (a) any obligation or prohibition that applies to a registrable offender for any period during which the person is a registrable offender; or
 - (b) the consequences of a failure to comply with an obligation or prohibition referred to in paragraph (a).

- (3) A registration exemption order does not prevent a person becoming a registrable offender if—
- (a) the person is sentenced for another registrable offence in respect of which no registration exemption order is made; or
 - (b) the person becomes a corresponding registrable offender or a New South Wales registrable offender in respect of an offence other than an offence to which the registration exemption order relates.

11F Chief Commissioner of Police is party to application

The Chief Commissioner of Police is a party to an application under section 11A and may make any submission to the court in respect of the application.

11G Admissibility of evidence in hearing of application

- (1) Without limiting any other evidence that may be adduced, the following is admissible as evidence in the hearing of an application under section 11A—
- (a) the transcript or other record of the evidence given by a victim in the trial or sentencing hearing of the applicant for a specified offence to which the application relates;
 - (b) a victim impact statement tendered in the sentencing hearing of the applicant for a specified offence to which the application relates.

- (2) A court must not grant leave to cross-examine a victim referred to in subsection (1) in the hearing of an application under section 11A."

8 New section 30A inserted

After section 30 of the Principal Act **insert**—

"30A Retention of material when registration exemption order made

The Chief Commissioner of Police may retain for law enforcement, crime prevention or child protection purposes any of the following taken under this Division from, or recorded in relation to, a registrable offender who is made subject to a registration exemption order—

- (a) copies of any documents;
- (b) fingerprints or fingerscans;
- (c) photographs;
- (d) a forensic sample taken under section 464ZFAB of the **Crimes Act 1958** and any related material and information within the meaning of section 464(2) of that Act."

9 New section 35B inserted

After section 35A of the Principal Act **insert**—

"35B Reporting period to run while registration exemption order in force

If a court makes a registration exemption order in respect of a registrable offender and that order is set aside on appeal, the period during which the registration exemption order was in force is counted when calculating the remainder of the registrable offender's reporting period."

10 New section 73H inserted

After section 73G of the Principal Act **insert—**

"73H Transitional provision—Sex Offenders Registration Amendment (Miscellaneous) Act 2017—Application for registration exemption order

Despite section 11C, a person who was a registrable offender immediately before section 7 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** comes into operation may apply under section 11A for a registration exemption order before the later of—

- (a) the day which is 2 years after the day on which section 7 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** comes into operation; or
- (b) the day which is 2 years after the day on which the registrable offender is first given notice under section 50 or 54 of the registrable offender's reporting obligations."

11 New Schedule 5 inserted

After Schedule 4 to the Principal Act **insert—**

"Schedule 5—Specified offences

Section 3(1)

1. An offence against any of the following provisions of the **Crimes Act 1958—**
 - (a) section 49B(1) (sexual penetration involving a child under the age of 16);
 - (b) section 49D(1) (sexual assault of a child under the age of 16);

- (c) section 49F(1) (sexual activity in the presence of a child under the age of 16);
- (d) section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
- (e) section 49K(1) (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity);
- (f) section 51B(1) (involving a child in the production of child abuse material) except if the offence only relates to child abuse material that depicts or describes a person who is, or who appears or is implied to be, a child as a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual;
- (g) section 51C(1) (producing child abuse material) except if the offence only relates to child abuse material that depicts or describes a person who is, or who appears or is implied to be, a child as a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual;
- (h) section 51D(1) (distributing child abuse material) except if the offence only relates to child abuse material that depicts or describes a person who is, or who appears or is implied to be, a child as a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual;

- (i) section 51G(1) (possession of child abuse material) except if the offence only relates to child abuse material that depicts or describes a person who is, or who appears or is implied to be, a child as a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual;
 - (j) section 51H(1) (accessing child abuse material).
2. An offence against any of the following provisions of the **Crimes Act 1958**, as in force before the commencement of section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**—
- (a) section 45(1) (sexual penetration involving a child under the age of 16 years);
 - (b) section 47(1) (indecent act with child under the age of 16).
3. An offence against any of the following provisions of the **Crimes Act 1958**, as in force before the commencement of section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**—
- (a) section 68(1) (production of child pornography);
 - (b) section 70(1) (possession of child pornography).

4. An offence against the following provision of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**, as in force before the commencement of section 34 of the **Crimes Amendment (Sexual Offences) Act 2016**—
 - (a) section 57A (publication or transmission of child pornography).
5. An offence against any of the following provisions of the Criminal Code of the Commonwealth—
 - (a) section 272.8(1) (sexual intercourse with child outside Australia);
 - (b) section 272.9(1) (sexual activity (other than sexual intercourse) with child outside Australia);
 - (c) section 273.5(1) (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia);
 - (d) section 471.16(1) and (2) (using a postal or similar service for child pornography material);
 - (e) section 471.17(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service);
 - (f) section 471.26(1) (using a postal or similar service to send indecent material to person under 16);
 - (g) section 474.19(1) (using a carriage service for child pornography material);

- (h) section 474.20(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
 - (i) section 474.25A(1) (using a carriage service for sexual activity with a person under 16 years of age);
 - (j) section 474.27A(1) (using a carriage service to transmit indecent communication to person under 16 years of age).
6. Any offence under a law of a foreign jurisdiction that, if it had been committed in Victoria, would have constituted an offence of a kind referred to in this Schedule.
 7. An offence an element of which is an intention to commit an offence of a kind referred to in this Schedule.
 8. An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in this Schedule.
 9. An offence that, at the time it was committed, was referred to in this Schedule.
 10. An offence committed before the commencement of section 11 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** that was an offence of a kind referred to in this Schedule."

Division 2—Suspension of reporting obligations

12 Chief Commissioner may apply for suspension from reporting obligations

- (1) In section 39A of the Principal Act, for "the Supreme Court" **substitute** "a court".
- (2) At the end of section 39A of the Principal Act **insert—**
 - "(2) Subject to this section, an application under subsection (1) must be made—
 - (a) to the court that imposed the sentence at first instance for the registrable offence committed by the registrable offender; or
 - (b) if the registrable offender has been sentenced for more than one registrable offence in more than one court, to the court of the highest jurisdiction that imposed a sentence at first instance.
- (3) An application under subsection (1) must be made to the Magistrates' Court if the registrable offender—
 - (a) has been sentenced by the Children's Court for one or more registrable offences; and
 - (b) has not been sentenced for a registrable offence by any other court; and
 - (c) is of or over the age of 21 years at the time the application is made.
- (4) An application under subsection (1) that relates to a person who is a registrable offender because the person is a corresponding registrable offender or a New South Wales registrable offender or

was sentenced for an offence in a foreign jurisdiction must be made to—

- (a) the Supreme Court, if the person to whom the application relates is of or over the age of 18 years at the time the application is made; or
- (b) the Children's Court, if the person to whom the application relates is a child at the time the application is made."

13 New section 39B inserted

After section 39A of the Principal Act **insert**—

"39B How application is made

An application under section 39 or 39A is made by filing with the relevant court referred to in that section a document in writing—

- (a) stating the grounds on which the application is made; and
- (b) containing the information, if any, prescribed by the rules of court."

14 Order for suspension

(1) In section 40(1A) of the Principal Act, for "the Supreme Court" **substitute** "a court".

(2) For section 40(2) of the Principal Act **substitute**—

"(2) A court must not make an order under this section unless it is satisfied that—

- (a) the registrable offender poses no risk or a low risk to the sexual safety of one or more persons or of the community; and
- (b) it is in the public interest to suspend the registrable offender's reporting obligations."

- (3) In section 40(3) of the Principal Act—
- (a) for "the Court" (where first occurring) **substitute** "a court";
 - (b) in paragraph (f), for "the Court" **substitute** "the court".
- (4) In section 40(4) of the Principal Act, for "the Court" **substitute** "the Supreme Court".
- (5) In section 40(5) of the Principal Act, for "the Court" **substitute** "a court".

15 No costs to be awarded

In section 42 of the Principal Act, for "The Supreme Court" **substitute** "A court".

16 Chief Commissioner may apply for revocation of suspension order

In section 44A(1) of the Principal Act, for "the Supreme Court for the revocation of an order granted" **substitute** "a court for the revocation of an order made by that court".

17 Chief Commissioner of Police may suspend reporting obligations

- (1) In the heading to section 45A of the Principal Act, for "**12 months**" **substitute** "**5 years**".
- (2) In section 45A(1) of the Principal Act, for "12 months" **substitute** "5 years".
- (3) In section 45A(2) of the Principal Act, after "does not pose a risk" **insert** "or poses a low risk".

18 New section 73I inserted

Before section 74 of the Principal Act **insert—**

"73I Transitional provision—Sex Offenders Registration Amendment (Miscellaneous) Act 2017—Application for suspension from reporting obligations

An application under section 39A that has commenced but not concluded before the commencement of section 14 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** must be determined by the Supreme Court in accordance with section 40 as amended by section 14 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017**."

Division 3—Investigative powers and procedures

19 Power to take fingerprints or fingerscan

(1) For section 27(1) of the Principal Act **substitute—**

- "(1) A police officer may take, or may cause to be taken by a police custody officer within the meaning of section 3(1) of the **Victoria Police Act 2013**, the fingerprints or a fingerscan of a registrable offender if—
- (a) the fingerprints or a fingerscan of the registrable offender are not already held by the Chief Commissioner of Police; or
 - (b) the registrable offender is reporting under this Part and the police officer is not satisfied as to the identity of the registrable offender."

(2) After section 27(2) of the Principal Act **insert**—

"(3) A police officer of or above the rank of senior sergeant may serve, or may cause to be served, a notice on a registrable offender referred to in subsection (1) directing the registrable offender to attend at a police station specified in the notice within 28 days after service of the notice to have the fingerprints or a fingerscan of the registrable offender taken.

(4) A notice under subsection (3) must—

(a) state that if the registrable offender fails to comply with the notice, an application for a warrant to arrest the registrable offender may be made without further notice to the registrable offender; and

(b) state that the registrable offender may wish to seek legal advice as to the effect of the notice; and

(c) state the name, rank and telephone number of the police officer serving the notice or causing the notice to be served; and

(d) contain the prescribed information, if any.

(5) A notice under subsection (3) must be served by delivering a true copy of the notice to the registrable offender personally.

(6) Section 464ZFAA(6), (7) and (8) of the **Crimes Act 1958** apply to a notice served under subsection (3) as if it were a notice served under that section."

20 Section 27 amended

After section 27(6) of the Principal Act **insert**—

- "(7) Subject to subsection (8), a police officer may take the fingerprints or a fingerscan under subsection (1) of a registrable offender whose reporting obligations under this Act—
- (a) have been suspended under Division 6 of Part 3; or
 - (b) have been suspended under section 32(1)(b); or
 - (c) have expired under section 34(1)—
- only if a notice under subsection (3) has been served on the registrable offender.
- (8) A registrable offender referred to in subsection (7) may refuse to have fingerprints or a fingerscan taken and to attend at a police station in compliance with a notice under subsection (3) if the registrable offender demonstrates to the reasonable satisfaction of the police officer referred to in subsection (3)—
- (a) if the registrable offender was a registrable offender on the commencement of the initial period, that the registrable offender has been resident in Victoria for not less than 2 years and 6 months in aggregate during the initial period; or
 - (b) that the registrable offender has been resident in Victoria for a continuous period of 12 months at any time after the expiry of the initial period and was a registrable offender during the whole of that period of 12 months.

- (9) A person serving a notice under subsection (3) on a registrable offender referred to in subsection (7) must inform the registrable offender, in a manner likely to be understood by the offender, of the following matters—
- (a) that the offender may refuse to comply with the notice;
 - (b) the grounds on which the offender may refuse to comply; and
 - (c) that the offender may wish to seek legal advice as to the effect of the notice.
- (10) A police officer referred to in subsection (8) must take into account any information provided by the registrable offender.
- (11) Before a registrable offender referred to in subsection (7) has fingerprints or a fingerscan taken, a police officer must, in a manner likely to be understood by the offender—
- (a) inform the offender of the grounds on which the offender may refuse to have fingerprints or a fingerscan taken; and
 - (b) ask the offender whether the offender wishes to refuse.
- (12) If a registrable offender does not have a knowledge of the English language that is sufficient to enable the person to understand the matters referred to in subsection (9) or (11), the person informing the offender must arrange for the presence of a competent interpreter and defer the giving of the information until the interpreter is present.

(13) In this section—

initial period means the period of 3 years commencing on the day on which section 19 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** comes into operation."

21 Reasonable force may be used to obtain fingerprints

In section 28(1)(a) of the Principal Act, for "section 27" **substitute** "section 27(1)(b)".

22 New sections 47A to 47C inserted

After section 47 of the Principal Act **insert**—

"47A Search warrants

- (1) A police officer of or above the rank of senior sergeant may apply to a magistrate for the issue of a search warrant in relation to particular premises or a place (including a vehicle in or on the premises or the place) if the police officer suspects on reasonable grounds that—
 - (a) an offence against this Act has been, is being or is likely to be committed; and
 - (b) it is necessary to search the particular premises or the place (including a vehicle in or on the premises or the place) in order—
 - (i) to investigate or prevent the commission of that offence or the continuation of the commission of that offence; or
 - (ii) to enable evidentiary material to be obtained of the commission of that offence or of the identity or location of an offender.

- (2) In addition to any other requirement, an application for a search warrant under this section must state—
- (a) the name and rank of the applicant; and
 - (b) the particulars of the grounds on which the application is based; and
 - (c) the address or other description of the premises or place to be searched; and
 - (d) if the warrant is sought to search for a particular thing, a full description of that thing and, if known, its location; and
 - (e) if the warrant is sought to search for a particular kind of thing, a description of the kind of thing; and
 - (f) if a previous application for the same warrant was refused, details of the refusal; and
 - (g) any other prescribed information.
- (3) On an application under subsection (1), if a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that an offence against this Act has been, is being or is about to be committed, and that it is necessary to search the particular premises or a place (including a vehicle in or on the premises or the place) for a purpose specified in subsection (1)(b), the magistrate may issue a search warrant authorising the police officer named in the warrant and any assistants the police officer considers necessary—

- (a) to enter the particular premises or place or vehicle named or described in the warrant; and
 - (b) to search for and seize any evidence of the offence named or described in the warrant, including evidence of the identity or location of an offender.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the prescribed form under that Act.
- (5) The rules to be observed with respect to search warrants set out by or under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
- (6) In this section—
vehicle includes motor vehicle, aircraft and vessel.

47B Expiry of search warrant

A search warrant issued under section 47A ceases to have effect on the earliest of the following—

- (a) on the expiry date specified in the warrant;
- (b) if no expiry date is specified, at the end of the period of one month after its issue;
- (c) when it is executed.

47C Power to require assistance from person with knowledge of a computer or computer network

If a magistrate issues a warrant under section 47A, section 465AA (other than subsection (10A)) of the **Crimes Act 1958** applies as if—

- (a) a reference to the Magistrates' Court were a reference to a magistrate; and
- (b) a reference to a warrant under section 465 of the **Crimes Act 1958** were a reference to a warrant under section 47A; and
- (c) a reference to warrant premises were a reference to the particular premises or place (including a vehicle in or on the premises or place) specified in a warrant issued under section 47A; and
- (d) a reference to an indictable offence were a reference to an offence against this Act."

Division 4—Child-related employment and other amendments

23 Purpose and outline

In section 1(1)(b) and (2)(g) of the Principal Act, for "registered sex offenders" **substitute** "registrable offenders".

24 Definitions

- (1) In section 3 of the Principal Act, after paragraph (iv) of the definition of **government custody** insert—
 - "(iva) a person detained in a residential treatment facility in accordance with a residential treatment order made under section 82AA of the **Sentencing Act 1991**; or
 - (ivb) a child placed in a secure welfare service in accordance with section 173(2)(b) of the **Children, Youth and Families Act 2005**; or".
- (2) At the end of section 3 of the Principal Act insert—
 - "(2) A person who, on the day of commencement of section 24 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017**, is a person described in paragraph (iva) or (ivb) of the definition of **government custody** is taken to have entered government custody on that day."

25 Who is a registrable offender?

- (1) In section 6(1) of the Principal Act, for "subsections (3)" **substitute** "subsections (4)".
- (2) After section 6(1) of the Principal Act **insert**—
 - "(1A) Subject to subsection (5), a person who is subject to a sex offender registration order made under section 11(9) is also a registrable offender."
- (3) Section 6(3) of the Principal Act is **repealed**.

26 What is a registrable offence?

- (1) In section 7(1)(a) and (b) of the Principal Act, after "offence" **insert** "committed as an adult".

- (2) At the foot of section 7(1) of the Principal Act **insert**—

"Note

Any other offence committed as an adult or an offence committed as a child may result in the making of a sex offender registration order under section 11(1), (1A), (2) or (2A)."

27 Sex offender registration order

- (1) After section 11(1) of the Principal Act **insert**—

"(1A) On an application by a police officer, the Magistrates' Court may order that a person who is found guilty by a court of a foreign jurisdiction of an offence committed as an adult that is not a Class 1 or Class 2 offence (including a Class 3 or Class 4 offence) comply with the reporting obligations of this Act."

- (2) For section 11(2) and (2A) of the Principal Act **substitute**—

"(2) If a court finds a person guilty of an offence committed as a child (including a Class 1, Class 2, Class 3 or Class 4 offence), it may order that the person comply with the reporting obligations of this Act.

(2A) On an application by a police officer, a court may order that a person who is found guilty by a court of a foreign jurisdiction of an offence committed as a child (including a Class 1, Class 2, Class 3 or Class 4 offence) comply with the reporting obligations of this Act.

- (2AB) An application under subsection (2A) must be made to—
- (a) the Magistrates' Court, if the person to whom the application relates is an adult; or
 - (b) the Children's Court, if the person to whom the application relates is a child."
- (3) In section 11(2B) of the Principal Act, after "subsection" **insert** "(2) or".
- (4) In section 11(5) of the Principal Act, after "this section if it" **insert** "or a court of a foreign jurisdiction".
- (5) In section 11(6) of the Principal Act, after "under this section" **insert** "(other than an order referred to in subsection (1A) or (2A))".
- (6) Section 11(8) of the Principal Act is **repealed**.
- (7) In section 11(10) of the Principal Act—
- (a) in paragraph (b), for "years; and" **substitute** "years.";
 - (b) paragraph (c) is **repealed**.
- (8) After section 11(10) of the Principal Act **insert**—
- "(11) A registrable offender is subject to an order made under this section for the remainder of the registrable offender's life, regardless of the period for which the registrable offender must comply with the reporting obligations of this Act, unless the order is quashed or set aside by a court."

28 Initial report by registrable offender of personal details

(1) In section 14(1)(d) of the Principal Act **omit** "or, if he or she does not generally reside at any particular premises, the name of each of the localities in which he or she can generally be found".

(2) After section 14(1)(d) of the Principal Act **insert**—

"(daa) details that are sufficient to identify any place where the person sleeps on a regular basis;

Example

Relevant details may include the name and address of a refuge, shelter or similar premises at which the person sleeps, the details of a vehicle in which the person sleeps or the address of a park, beach or other outdoor location at which the person sleeps."

(3) In section 14(1)(dc) of the Principal Act **omit** "and business address".

(4) In section 14(1)(h) of the Principal Act, for "number of any motor vehicle" **substitute** "number (if any) of any motor vehicle or caravan".

(5) After section 14(2)(a) of the Principal Act **insert**—

"(b) a registrable offender sleeps at a place on a regular basis if the person sleeps at that place more than once in any period of 14 days; and".

29 Registrable offender must report annually

After section 16(4) of the Principal Act **insert**—

"(5) Despite subsection (2), a registrable offender who is residing in a residential facility as a condition of a supervision order made under

the **Serious Sex Offenders (Detention and Supervision) Act 2009** must make the report on the day specified by the Chief Commissioner of Police by written notice served on the registrable offender.

- (6) A notice under subsection (5) must specify a date that is within the calendar month in which the anniversary of the date on which the registrable offender first reported in accordance with this Act or a corresponding Act falls."

30 How reports to be made

For section 23(1)(c) of the Principal Act **substitute—**

- "(c) a report of a change of address of the premises at which the person generally resides; and
- (ca) a report of details that are sufficient to identify any place where the person sleeps on a regular basis; and"

31 Notice to be given to registrable offender

After section 50(1) of the Principal Act **insert—**

- "(1A) A notice under subsection (1) must include the details (if any) prescribed by the regulations."

32 Notices may be given by Chief Commissioner

At the end of section 54 of the Principal Act **insert—**

- "(2) A notice under subsection (1) must include the details (if any) prescribed by the regulations."

33 Explanation of interim prohibition order

In section 66F(1) of the Principal Act, paragraphs (b), (c) and (d) are **repealed**.

34 Explanation of final prohibition order

In section 66O(1) of the Principal Act, paragraphs (b), (c) and (d) are **repealed**.

35 Recording and register of seized things

For section 66Z(1) of the Principal Act **substitute**—

"(1) All things seized under section 66Y by a police officer must be photographed or otherwise recorded."

36 Court may vary a prohibition order

In section 66ZL(4)(b) of the Principal Act, paragraphs (ii) and (iii) are **repealed**.

37 Court may revoke a prohibition order

In section 66ZM of the Principal Act, subsections (2) and (3) are **repealed**.

38 Court may extend a final prohibition order

In section 66ZN(3)(b) of the Principal Act, paragraphs (ii) and (iii) are **repealed**.

39 Corresponding registrable offender to be notified of registration order

- (1) In section 66ZT(1) of the Principal Act, paragraphs (b), (c) and (d)(i) are **repealed**.
- (2) In section 66ZT(1)(e) of the Principal Act **omit** "sets out when the registration order ends, including".

40 Court may vary a registration order

In section 66ZZ(3) of the Principal Act, paragraphs (b) and (c) are **repealed**.

41 Revocation of a registration order

In section 66ZZA of the Principal Act, subsections (2) and (3) are **repealed**.

42 Heading to Part 5

In the heading to Part 5 of the Principal Act, for "**Registered sex offenders**" substitute "**Registrable offenders**".

43 Definitions

In section 67(1) of the Principal Act—

- (a) in paragraph (b) of the definition of *officer*, for "corporate;" substitute "corporate.";
- (b) the definition of *registered sex offender* is **repealed**.

44 Registrable offender excluded from child-related employment

- (1) In the heading to section 68 of the Principal Act, for "**Registered sex offender**" substitute "**Registrable offender**".
- (2) In section 68(1) of the Principal Act, for "registered sex offender" substitute "registrable offender".

45 Registrable offender who is also subject to a supervision or detention order

- (1) In the heading to section 70J of the Principal Act omit "**or extended supervision order**".
- (2) For section 70J(1) of the Principal Act substitute—

"(1) This section applies to a registrable offender who is also subject to a supervision order, detention order or interim order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

46 Chief Commissioner of Police to report to Minister

In section 70P(1)(a) of the Principal Act,
for "registered offenders" **substitute**
"registrable offenders".

47 New section 74A inserted

After section 74 of the Principal Act **insert**—

"74A Rules of court

- (1) Rules of court made by the authority having for the time being power to make rules regulating the practice and procedure of a court may include rules for or with respect to any matter for which provision is to be made under this Act by rules of court.
- (2) Rules of court made under this Act may regulate generally the practice and procedure under this Act."

48 Repeal of item 8 of Schedule 1

Item 8 of Schedule 1 to the Principal Act is
repealed.

49 Amendment of Schedule 2

- (1) In items 12, 13, 13A, 14, 14A, 15, 15A and 16 of Schedule 2 to the Principal Act, for "except if the offence only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of *child abuse material* in section 51A of the **Crimes Act 1958**, where the torture, cruelty or abuse is not sexual" **substitute** "except if the offence only relates to child abuse material that depicts or describes a person who is, or who appears or is implied to be, a child as a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual".

- (2) In item 28 of Schedule 2 to the Principal Act, after "child" **insert** "and in circumstances where the conduct causes the victim to be deceived about the matters set out in paragraph (c)(vi) of that section".
- (3) In item 28AB of Schedule 2 to the Principal Act—
- (a) in paragraph (v), after "Australia)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual";
 - (b) in paragraph (vi), after "people)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual".
- (4) In item 28AC of Schedule 2 to the Principal Act—
- (a) in paragraph (iii), after "material)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual";
 - (b) in paragraph (iv), after "service)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual";
 - (c) in paragraph (v), after "people)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be,

a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual".

- (5) In item 28A of Schedule 2 to the Principal Act—
- (a) in paragraph (iv), after "service)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual";
 - (b) in paragraph (iva), after "people)" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual".
- (6) In item 29 of Schedule 2 to the Principal Act, after "material" **insert** "except if the offence only relates to material that depicts, represents or describes a person who is, or appears to be, or is implied to be, a victim of cruelty or physical abuse, where the cruelty or physical abuse is not sexual".

Part 3—Amendment of the Crimes Act 1958

50 Definitions

In section 464(2) of the **Crimes Act 1958**, in paragraph (a) of the definition of *related material and information*, for "or 464ZFAAA" substitute ", 464ZFAAA or 464ZFAB".

51 Execution of authorisation or order

- (1) In the heading to section 464ZA of the **Crimes Act 1958**, for "authorisation or order" substitute "authorisation, direction or order".
- (2) In section 464ZA(1) of the **Crimes Act 1958**—
 - (a) in paragraph (c), for "procedure—" substitute "procedure; or";
 - (b) after paragraph (c) insert—

"(d) a police officer directs a person under section 464ZFAB to undergo a forensic procedure—".
- (3) In section 464ZA(6) of the **Crimes Act 1958**, after "464ZFAAA" insert "or a direction under section 464ZFAB".

52 New section 464ZFAB inserted

After section 464ZFAA of the **Crimes Act 1958** insert—

"464ZFAB Forensic procedure for registrable offenders under the Sex Offenders Registration Act 2004

- (1) In this section—

registrable offender has the same meaning as in section 3 of the **Sex Offenders Registration Act 2004**.

- (2) A police officer may, at any time, direct a person to undergo a forensic procedure for the taking of a sample from any part of the body if, at the time that the direction is given—
 - (a) the person is a registrable offender; and
 - (b) the Chief Commissioner of Police does not have a forensic sample from the person.
- (3) A senior police officer may serve, or may cause to be served, a notice on a person referred to in subsection (2) directing the person to attend at a police station specified in the notice within 28 days after service of the notice to undergo a forensic procedure.
- (4) A notice under subsection (3) must—
 - (a) state that if the person fails to comply with the notice, an application for a warrant to arrest the person may be made without further notice to the person; and
 - (b) state that the person may wish to seek legal advice as to the effect of the notice; and
 - (c) state the name, rank and telephone number of the senior police officer serving the notice or causing the notice to be served; and
 - (d) contain the prescribed information, if any.
- (5) A notice under subsection (3) must be served by delivering a true copy of the notice to the person personally.

- (6) Section 464ZFAA(6), (7) and (8) apply to a notice served under subsection (3) as if it were a notice served under that section.
- (7) If a forensic procedure is conducted on a person under this section, the sample taken and any related material and information may be retained indefinitely.
- (8) Subsection (7) does not apply if, on appeal against conviction, the finding of guilt of the registrable offender in respect of an offence is quashed or set aside and, but for that offence, the person would not be a registrable offender."

53 Section 464ZFAB amended

- (1) In section 464ZFAB(1) of the **Crimes Act 1958** **insert** the following definition—

"initial period means the period of 3 years commencing on the day on which section 52 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** comes into operation;"

- (2) After section 464ZFAB(8) of the **Crimes Act 1958** **insert**—

"(9) Subject to subsection (10), a police officer may give a direction under subsection (2) to a registrable offender whose reporting obligations under the **Sex Offenders Registration Act 2004**—

- (a) have been suspended under Division 6 of Part 3 of that Act; or
- (b) have been suspended under section 32(1)(b) of that Act; or

- (c) have expired under section 34(1) of that Act—
- only if a notice under subsection (3) has been served on the registrable offender.
- (10) A registrable offender referred to in subsection (9) may refuse to undergo a forensic procedure and to attend at a police station in compliance with a notice under subsection (3) if the registrable offender demonstrates to the reasonable satisfaction of the senior police officer referred to in subsection (3)—
- (a) if the registrable offender was a registrable offender on the commencement of the initial period, that the registrable offender has been resident in Victoria for not less than 2 years and 6 months in aggregate during the initial period; or
 - (b) that the registrable offender has been resident in Victoria for a continuous period of 12 months at any time after the expiry of the initial period and was a registrable offender during the whole of that period of 12 months.
- (11) A person serving a notice under subsection (3) on a registrable offender referred to in subsection (9) must inform the registrable offender, in a manner likely to be understood by the offender, of the following matters—
- (a) that the offender may refuse to comply with the notice;
 - (b) the grounds on which the offender may refuse to comply; and

- (c) that the offender may wish to seek legal advice as to the effect of the notice.
- (12) A senior police officer referred to in subsection (10) must take into account any information provided by the registrable offender.
- (13) Before a registrable offender referred to in subsection (9) undergoes a forensic procedure, a police officer must, in a manner likely to be understood by the offender—
 - (a) inform the offender of the grounds on which the offender may refuse to undergo the forensic procedure; and
 - (b) ask the offender whether the offender wishes to refuse.
- (14) If a registrable offender does not have a knowledge of the English language that is sufficient to enable the person to understand the matters referred to in subsection (11) or (13), the person informing the offender must arrange for the presence of a competent interpreter and defer the giving of the information until the interpreter is present."

54 Destruction of information following finding of guilt etc.

After section 464ZFC(1)(aa) of the **Crimes Act 1958** insert—

- "(ab) the finding of guilt of a registrable offender within the meaning of section 3(1) of the **Sex Offenders Registration Act 2004** is quashed or set aside on appeal and, but for that offence, the person would not be a registrable offender; or"

55 Victorian DNA database

In section 464ZFD(1) of the **Crimes Act 1958**,
for "or 464ZFAAA" **substitute** ", 464ZFAAA or
464ZFAB".

Part 4—Amendment of the Criminal Procedure Act 2009

56 Definitions

In section 3 of the **Criminal Procedure Act 2009**,
in paragraph (c) of the definition of *sentence*, after
"section 11" **insert** "or 11B".

**Part 5—Amendment of the Serious Sex
Offenders (Detention and Supervision)
Act 2009**

**57 Sex offender registration order under Sex Offenders
Registration Act 2004**

In section 6B(2) of the **Serious Sex Offenders
(Detention and Supervision) Act 2009**, for
"must be" **substitute** "must require that the
person comply with the reporting obligations
under that Act".

Part 6—Amendment of the Working with Children Act 2005

58 Sex offenders not to apply for assessment notice

For section 39A(a) of the **Working with
Children Act 2005** substitute—

"(a) a registrable offender within the meaning of
section 3 of the **Sex Offenders Registration
Act 2004**; or".

Part 7—Repeal of amending Act

59 Repeal of amending Act

This Act is **repealed** on the first anniversary of the first day on which all of its provisions are in operation.

Note

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

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 11 May 2017

Legislative Council: 25 May 2017

The long title for the Bill for this Act was "A Bill for an Act to make miscellaneous amendments to the **Sex Offenders Registration Act 2004**, to amend the **Crimes Act 1958** to provide for the taking of DNA samples from sex offenders, to make consequential amendments to the **Criminal Procedure Act 2009**, the **Serious Sex Offenders (Detention and Supervision) Act 2009** and the **Working with Children Act 2005** and for other purposes."