

Authorised Version

**Victims and Other Legislation Amendment
Act 2018**

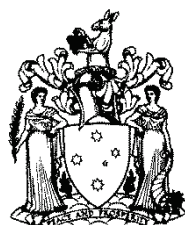
No. 42 of 2018

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Authorised Version



Victoria

**Victims and Other Legislation
Amendment Act 2018[†]**

No. 42 of 2018

[Assented to 11 September 2018]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Victims' Charter Act 2006**—
 - (i) in relation to requirements for communication with victims; and
 - (ii) in relation to victim impact statements; and
 - (iii) in relation to complaints; and

- (iv) to provide for a review of victims' experiences in summary proceedings for criminal offences; and
- (b) to amend the **Victims of Crime Commissioner Act 2015**—
 - (i) to provide for the review of certain complaints made by victims (within the meaning of the **Victims' Charter Act 2006**) about certain agencies; and
 - (ii) in relation to the Commissioner's monitoring and reporting functions; and
 - (iii) to provide for the review by the Commissioner of the **Victims' Charter Act 2006** and its benefits for victims (within the meaning of that Act); and
- (c) to amend the **Sentencing Act 1991** in relation to victim impact statements; and
- (d) to amend the **Jury Directions Act 2015** in relation to directions on the language and cognitive skills of child witnesses; and
- (e) to amend the **Children, Youth and Families Act 2005**—
 - (i) to clarify that relevant historical care and protection orders made by courts on the application of the State were not convictions or findings of guilt; and
 - (ii) to acknowledge the harm and distress caused by certain practices relating to relevant historical care and protection orders.

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 4 November 2019, it comes into operation on that day.

Part 2—Amendment of the Victims' Charter Act 2006

3 Definitions

In section 3(1) of the **Victims' Charter Act 2006**—

(a) **insert** the following definition—

"DPP means the Director of Public Prosecutions for Victoria;"

(b) in paragraph (a) of the definition of ***prosecuting agency***, for "Director of Public Prosecutions for Victoria" **substitute** "DPP".

4 Objects

After section 4(1)(b) of the **Victims' Charter Act 2006 insert**—

"(ba) to recognise that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, giving rise to the rights and entitlements set out in this Act, and to acknowledge the victim's role as a participant, but not a party, in proceedings for criminal offences;"

5 Heading to Part 2 amended

In the heading to Part 2 of the **Victims' Charter Act 2006**, after "**victims**" **insert** "**and persons adversely affected by crime**".

6 New sections 7A and 7B inserted

After section 7 of the **Victims' Charter Act 2006**
insert—

"7A Special treatment of victims

Investigatory agencies, prosecuting agencies
and victims' services agencies are to—

- (a) respect the rights and entitlements of
victims as participants in proceedings
for criminal offences; and
- (b) so far as is reasonably practicable,
take into account, and be responsive
to, the particular needs of victims
living in rural and regional locations.

7B Communication with victims

Investigatory agencies, prosecuting agencies
and victims' services agencies are to take
into account, and be responsive to, the
following matters when communicating
with a victim—

- (a) whether the victim wishes to be
contacted;
- (b) the victim's preferred method of
contact (which may vary at different
stages throughout the proceeding for
a criminal offence and according to
the topic of communication);
- (c) issues that affect the victim's ability
to understand the information being
communicated, including, but not
limited to—

- (i) the victim's understanding of English; and
- (ii) whether the victim has a disability; and
- (iii) whether the victim is a child."

7 Information to be given to victim about investigation

For section 8(1) of the **Victims' Charter Act 2006 substitute**—

"(1) An investigatory agency is to inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence unless the disclosure may jeopardise any investigation of a criminal offence."

8 Information regarding prosecution

In section 9 of the **Victims' Charter Act 2006**—

- (a) in paragraph (c)(ii), for "not to proceed with some or all" **substitute** "to discontinue the prosecution";
- (b) in paragraph (d), for "details" **substitute** "in the case of a prosecuting agency that is not the DPP, details";
- (c) in paragraph (e), for "the outcome" **substitute** "in the case of a prosecuting agency that is not the DPP, the outcome".

9 New sections 9A, 9B and 9C inserted

After section 9 of the **Victims' Charter Act 2006**
insert—

"9A Additional information regarding prosecution to be provided by DPP

The DPP is to take all reasonable steps to
advise a victim of—

- (a) the date, time and location of any
contested committal hearing, trial,
plea hearing, sentencing hearing and
appeal hearing; and
- (b) the progress of a prosecution, including
the outcome of any committal mention,
contested committal hearing, initial
directions hearing, trial, plea hearing,
sentencing hearing or appeal hearing,
or guilty plea.

9B Views of victim to be sought by DPP

- (1) The DPP is to seek the views of a victim
before the DPP makes a decision to—
 - (a) substantially modify the charges; or
 - (b) discontinue the prosecution of the
charges; or
 - (c) accept a plea of guilty to a lesser
charge; or
 - (d) appeal a sentence; or
 - (e) appeal an acquittal.
- (2) The DPP is to give a victim information
about the matters taken into account by
the DPP in making a decision to—
 - (a) agree to or oppose an application to
cross-examine the victim at a committal
hearing; or

- (b) apply for, agree to or oppose an application for summary jurisdiction.
- (3) The DPP is not required to seek the views of a victim under subsection (1) or inform a victim under subsection (2) if—
 - (a) the victim cannot be contacted after all reasonable attempts; or
 - (b) it is not practical to contact the victim given the speed or nature of the proceeding.

9C DPP to give reasons for certain decisions

- (1) The DPP is to give a victim, as soon as reasonably practicable, the reasons for any decision referred to in section 9(c).
- (2) The reasons referred to in subsection (1) may be given either orally or in writing.
- (3) Despite subsection (1), the DPP may decline to provide the reasons if the disclosure may jeopardise any investigation of a criminal offence or prejudice any other proceeding."

10 Information about court process

For section 11(2) of the **Victims' Charter Act 2006 substitute**—

- "(2) If a victim is to appear as a witness for the prosecution, the prosecuting agency is to ensure that—
 - (a) the victim is informed—
 - (i) about the process of the trial or hearing (as the case requires); and
 - (ii) about the victim's role as a witness for the prosecution; and

- (iii) that after the victim has given evidence, the victim may remain in the courtroom unless the court otherwise orders; and
- (iv) if relevant, about any special protections or alternative arrangements for giving evidence; and
- (b) if relevant, the court is informed about the victim's preferences for the use of any special protections or alternative arrangements for giving evidence.

Note

The **Criminal Procedure Act 2009** contains a number of special protections and alternative arrangements for giving evidence."

11 Victim impact statements

For section 13(2) of the **Victims' Charter Act 2006** substitute—

- "(2) If a victim expresses a wish to make a victim impact statement, a prosecuting agency is to—
- (a) refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement; and
 - (b) give the victim general information about the types of material in a victim impact statement that the court may rule inadmissible and the consequences that may occur from that ruling.
- (3) Despite subsection (2)(b), the prosecuting agency does not have a duty to advise the victim of the admissibility of a particular victim impact statement."

12 Heading to section 19 amended

In the heading to section 19 of the **Victims' Charter Act 2006**, after "process" insert "for persons adversely affected by crime".

13 New sections 19A and 19B inserted

After section 19 of the **Victims' Charter Act 2006** insert—

"19A Complaints system for victims

- (1) Each investigatory agency, prosecuting agency and victims' services agency must institute and operate a system to receive and resolve complaints from victims in respect of the agency's compliance with the Charter principles, including complaints made under section 19B.
- (2) A complaints system referred to in subsection (1) must—
 - (a) be accessible and transparent; and
 - (b) offer fair and reasonable remedies.

Note

Fair and reasonable remedies may include an apology, an acknowledgment that an error occurred, or an explanation as to why an error occurred and the steps being taken by the agency to prevent the error reoccurring.

- (3) An investigatory agency, a prosecuting agency or a victims' services agency that is dealing with a victim must inform the victim, as soon as is reasonably practicable after commencing to deal with that victim, of—
 - (a) the agency's complaints system referred to in subsection (1); and

- (b) the victim's right to have a complaint reviewed under the **Victims of Crime Commissioner Act 2015** if dissatisfied with the agency's response to the complaint.

19B Victim may complain to agency

A victim may complain to an investigatory agency, a prosecuting agency or a victims' services agency if the victim believes that the agency has not complied with the Charter principles.

Note

A victim may seek a review of the agency's response to the complaint under the **Victims of Crime Commissioner Act 2015**."

14 Report of operations

At the foot of section 21 of the **Victims' Charter Act 2006** insert—

"Note

Section 29A of the **Victims of Crime Commissioner Act 2015** requires the Victims of Crime Commissioner to commence a review of the operation of this Act and its benefits for victims by 4 November 2024."

15 New section 21A inserted

After section 21 of the **Victims' Charter Act 2006** insert—

"21A Review of victim experience in summary proceedings

- (1) The Attorney-General must cause a review to be conducted into legislative and non-legislative changes that are necessary and appropriate to improve the experience of victims participating in summary proceedings for criminal offences.

- (2) The Attorney-General must cause a copy of a report of the review to be laid before each House of Parliament on or before the second anniversary of the commencement of Part 2 of the **Victims and Other Legislation Amendment Act 2018**."

16 New Part 4 inserted

After Part 3 of the **Victims' Charter Act 2006**
insert—

"Part 4—Transitional provisions

24 Transitional provision—Victims and Other Legislation Amendment Act 2018

The amendments made to this Act by Part 2 of the **Victims and Other Legislation Amendment Act 2018** apply in respect of a person who was a victim immediately before the commencement of that Part and who is a victim on the day that Part commences."

Part 3—Amendment of the Victims of Crime Commissioner Act 2015

17 Definitions

In section 3 of the **Victims of Crime Commissioner Act 2015** insert the following definitions—

"agency means an investigatory agency, a prosecuting agency or a victims' services agency within the meaning of section 3(1) of the **Victims' Charter Act 2006**;

Charter principles has the same meaning as in section 3(1) of the **Victims' Charter Act 2006**;"

18 Functions and powers of the Commissioner

In section 13(1) of the **Victims of Crime Commissioner Act 2015**—

(a) in paragraph (d), for "crime." substitute "crime;"

(b) after paragraph (d) insert—

"(e) to perform any other functions conferred on the Commissioner by this Act or any other Act."

19 Commissioner may require access to records from the Secretary

In section 18 of the **Victims of Crime Commissioner Act 2015**, after "23" insert "and Division 3A".

20 New Division 3A inserted in Part 2

After Division 3 of Part 2 of the **Victims of Crime Commissioner Act 2015** insert—

"Division 3A—Complaints about compliance with the Charter principles

25A Making a complaint to the Commissioner

A person may make a complaint to the Commissioner in relation to an agency's compliance with the Charter principles if the person—

- (a) is a victim within the meaning of the **Victims' Charter Act 2006**; and
- (b) has first made a complaint to the agency under section 19B of the **Victims' Charter Act 2006** and is dissatisfied with the agency's response to that complaint.

25B How to make a complaint

- (1) Subject to subsection (2), a complaint may be made either orally or in writing.

Note

A complaint may be made by an electronic communication within the meaning of section 3(1) of the **Electronic Transactions (Victoria) Act 2000**.

- (2) A person who makes an oral complaint must confirm the complaint in writing as soon as practicable.
- (3) The Commissioner must take all reasonable steps to assist a person who has made an oral complaint to confirm that complaint in writing.

25C Time limit for making complaint

- (1) Subject to subsection (2), a complaint must be made—
 - (a) in the case of a complaint that concerns the failure by an agency to provide information or a document, not more than 12 months after the information or document was first sought by the person; or
 - (b) in any other case, not more than 12 months after the matter that is the subject of the complaint occurred.
- (2) The Commissioner may accept a complaint made at a later time if the Commissioner is satisfied that there is a good reason for the delay by the person making the complaint.

25D Withdrawal of complaint

- (1) A person who has made a complaint may withdraw the complaint at any time in writing.
- (2) The Commissioner must take reasonable steps to assist a person to withdraw a complaint in writing.

25E Information relating to complaint to be provided

The Commissioner may by written notice to the person who has made a complaint or the agency that is the subject of the person's complaint—

- (a) request specified information relating to the complaint; and
- (b) specify the time by which such information must be given to the Commissioner.

25F Preliminary assessment of complaint

- (1) The Commissioner must, as soon as practicable but no later than 28 days after receiving a complaint—
 - (a) agree to consider the complaint; or
 - (b) decline to consider the complaint.
- (2) The Commissioner must, not more than 14 days after agreeing to consider a complaint, give written notice of that decision and the particulars of the complaint to—
 - (a) the person who made the complaint; and
 - (b) the agency that is the subject of the complaint.
- (3) The Commissioner must, not more than 14 days after declining to consider a complaint, give written notice of that decision to the person who made the complaint.

25G Certain grounds on which Commissioner may decline to consider complaint

The Commissioner may decline to consider a complaint if—

- (a) the agency has not finalised its investigation of the complaint; or
- (b) the Commissioner refers the matter to—
 - (i) the IBAC under section 26; or
 - (ii) another person under section 27;or

- (iii) any other body, organisation, agency or entity under section 25H; or
- (c) the complaint forms the basis of an investigation currently being conducted by another body, organisation, agency or entity; or
- (d) the Commissioner is satisfied that the complaint—
 - (i) is frivolous, vexatious, misconceived, lacking in substance, or otherwise does not warrant action; or
 - (ii) is not made in good faith; or
 - (iii) is made for an improper purpose; or
- (e) in the circumstances, the Commissioner is satisfied that it is appropriate to do so.

25H Commissioner may refer complaint

- (1) The Commissioner may refer a complaint or part of a complaint to another body, organisation, agency or entity if the complaint raises issues that the Commissioner is satisfied would be more appropriately dealt with by that other body, organisation, agency or entity.
- (2) The Commissioner must, not more than 14 days after referring a complaint or part of a complaint to another body, organisation, agency or entity, give written notice of that decision to—

- (a) the person who made the complaint;
and
- (b) the agency that is the subject of the complaint.

25I Investigation of a complaint

- (1) If the Commissioner agrees to consider a complaint, the Commissioner must investigate the complaint.
- (2) The Commissioner may—
 - (a) review any findings, recommendations, determinations or other decisions of the agency in relation to the complaint; and
 - (b) consider the agency's response to the complaint, processes for dealing with complaints, and compliance with the **Victims' Charter Act 2006** and Charter principles.
- (3) For the avoidance of doubt, the Commissioner must not, in investigating a complaint—
 - (a) review a decision involving the exercise of prosecutorial discretion; or

Examples

- 1 A decision to discontinue a prosecution.
 - 2 A decision to accept a guilty plea in relation to particular charges.
- (b) intervene in a way that prejudices a proceeding for a criminal offence or the investigation of a criminal offence; or
 - (c) interfere with the exercise of the jurisdiction of a court.

25J Outcome of investigation

- (1) The Commissioner may, after investigating a complaint, recommend to the agency that is the subject of the complaint that it take any of the following actions—
 - (a) an apology, explanation or facilitated meeting;
 - (b) additional training;
 - (c) a change of policy;
 - (d) the provision of information.
- (2) The Commissioner must not, in making a recommendation under subsection (1)—
 - (a) require or direct any party to the complaint to do any act or thing; or
 - (b) make a determination that is binding on any party to the complaint.

25K Notice of investigation outcome

- (1) The Commissioner must, not more than 14 days after completing an investigation, give written notice of the outcome of the investigation to—
 - (a) the person who made the complaint; and
 - (b) the agency that is the subject of the complaint.
- (2) The notice under subsection (1) must include—
 - (a) the reasons for any decision by the Commissioner to uphold or dismiss the complaint or any part of the complaint; and

- (b) any recommendations made by the Commissioner under section 25J(1)."

21 Referral of matter to other persons

After section 27(1)(b) of the **Victims of Crime Commissioner Act 2015** insert—

- "(ba) the Victorian Legal Services Commissioner appointed under the **Legal Profession Uniform Law Application Act 2014**;"

22 Annual report

After section 28(1) of the **Victims of Crime Commissioner Act 2015** insert—

- "(1A) A report made under subsection (1) must include the following—
- (a) information about prescribed agencies' compliance with the **Victims' Charter Act 2006** in that year;
 - (b) the number, type and outcome of complaints made to, and processed by, the Commissioner in that year about prescribed agencies' compliance with the Charter principles."

23 New section 29A inserted

After section 29 of the **Victims of Crime Commissioner Act 2015** insert—

"29A Commissioner to review Victims' Charter Act 2006

- (1) By no later than 4 November 2024, the Commissioner must commence a review of the operation of the **Victims' Charter Act 2006** and its benefits for victims (within the meaning of that Act).

- (2) The Commissioner must give a report of the review to the Attorney-General on or before 7 September 2025.
- (3) The Attorney-General must cause a copy of the report to be laid before each House of Parliament within 10 sitting days of receiving that report."

24 Content of reports

In section 30(1) and (2) of the **Victims of Crime Commissioner Act 2015**, for "or 29" substitute ", 29 or 29A".

25 New Part 5 inserted

After Part 4 of the **Victims of Crime Commissioner Act 2015** insert—

"Part 5—Transitional provisions

48 Transitional provision—Victims and Other Legislation Amendment Act 2018

The amendments made to this Act by Part 3 of the **Victims and Other Legislation Amendment Act 2018** do not apply in relation to a complaint made to an agency before the day on which that Part comes into operation."

Part 4—Amendment of the Sentencing Act 1991

26 Contents of victim impact statement

After section 8L(3) of the **Sentencing Act 1991**
insert—

- "(4) It is the intention of Parliament that in interpreting and applying this section, courts have regard to the following—
- (a) the victim impact statement allows the victim to tell the court about the impact of the offence on the victim;
 - (b) the victim impact statement is not inadmissible merely because it contains subjective or emotive material.
- (5) The court may receive the whole of a victim impact statement despite—
- (a) an objection being taken to the statement or part of the statement; or
 - (b) the statement containing inadmissible material.
- (6) If the court receives a victim impact statement that contains inadmissible material, the court, in sentencing the offender—
- (a) is not to rely on the material that the court considers to be inadmissible; and
 - (b) need not specify which of the material is not being relied on.

Note

Section 8Q provides that only the admissible parts of a victim impact statement may be read aloud in open court."

27 Section 8N substituted

For section 8N of the **Sentencing Act 1991** substitute—

"8N Distribution of written statement

- (1) If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place, provide a copy to the prosecutor, and the copy must include a copy of any medical report attached to the victim impact statement.
- (2) If the victim provides a copy of a victim impact statement and any attached medical report to the prosecutor under subsection (1), the prosecutor, as soon as practicable after receiving it, must—
 - (a) file a copy of the victim impact statement and any attached medical report with the court; and
 - (b) provide a copy of the victim impact statement and any attached medical report to the offender or the legal practitioner representing the offender."

28 New section 169 inserted

At the end of Part 12 of the **Sentencing Act 1991** insert—

"169 Transitional provision—Victims and Other Legislation Amendment Act 2018

The amendments made to this Act by Part 4 of the **Victims and Other Legislation Amendment Act 2018** apply to the sentencing of an offender on or after the commencement of that Part, irrespective of when the offence was committed."

Part 5—Amendment of the Jury Directions Act 2015—language and cognitive skills of child witness

29 Heading to section 33 amended

In the heading to section 33 of the **Jury Directions Act 2015**, after "in relation to" insert "reliability of".

30 New Division 11 inserted in Part 4

After Division 10 of Part 4 of the **Jury Directions Act 2015** insert—

"Division 11—Language and cognitive skills of child witness

44N Direction on language and cognitive skills of child witness

- (1) If, before any evidence is adduced in the trial and after hearing submissions from the prosecution and defence counsel (or, if the accused is unrepresented, the accused), the trial judge considers that the reliability or credibility of a child witness is likely to be in issue, the trial judge—
- (a) must direct the jury in accordance with subsection (4) before any evidence by the child is adduced, unless there are good reasons for not doing so; and

Example

A good reason may be that the child is 17 years old and the trial judge considers that the direction is unnecessary because the child has well developed language and cognitive skills.

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cognitive skills of child witness

- (b) may give the direction before any evidence is adduced in the trial.
- (2) If, at any other time during the trial, the trial judge considers that the reliability or credibility of a child witness is likely to be in issue, the trial judge must direct the jury in accordance with subsection (4) as soon as is practicable, unless there are good reasons for not doing so.
- (3) The trial judge may repeat a direction under this section at any time in the trial.
- (4) In giving a direction under this section, the trial judge must inform the jury that—
 - (a) children can accurately remember and report past events; and
 - (b) children are developing language and cognitive skills, and this may affect—
 - (i) whether children give a detailed, chronological or complete account; and
 - (ii) how children understand and respond to the questions they are asked; and
 - (c) experience shows that, depending on a child's level of development, they—
 - (i) may have difficulty understanding certain language, whether because that language is complicated for children or complicated generally; and

Examples

- 1 Hypothetical, ambiguous, repetitive, multi-part or yes/no questions.
- 2 The use of the passive voice, negatives and double negatives.

- (ii) may have difficulty understanding certain concepts, whether because those concepts are complicated for children or complicated generally; and

Example

Relative concepts such as time, duration, measurement or frequency.

- (iii) may not request the clarification of a question they do not understand; and
- (iv) may not clarify an answer they have given that has been misunderstood.

- (5) This section does not limit what the trial judge may include in any other direction to the jury in relation to the evidence of a child witness."

31 Direction on delay in complaint or lack of complaint

In section 52(5) of the **Jury Directions Act 2015**, for "any direction that the trial judge may give the jury" **substitute** "what the trial judge may include in any other direction to the jury".

32 Direction on difference in complainant's account

In section 54D(4) of the **Jury Directions Act 2015**, for "any direction that the trial judge may give the jury" **substitute** "what the trial judge may include in any other direction to the jury".

33 Request for direction on family violence

In section 58(6) of the **Jury Directions Act 2015**, for "any direction that the trial judge may give the jury" **substitute** "what the trial judge may include in any other direction to the jury".

34 Schedule 1 amended

At the end of Schedule 1 to the **Jury Directions Act 2015** insert—

"5 **Victims and Other Legislation Amendment Act 2018**

- (1) The amendments made to this Act by a provision of the **Victims and Other Legislation Amendment Act 2018** apply to—
 - (a) a trial that commences (within the meaning of the **Criminal Procedure Act 2009**) on or after the day on which that provision comes into operation; and
 - (b) a summary hearing, committal proceeding, appeal, case stated or special hearing referred to in section 4A(1) for which the specified day is on or after the day on which that provision comes into operation.
- (2) In this section—

specified day means—

 - (a) for a committal proceeding under the **Criminal Procedure Act 2009**, the day on which the committal hearing commences; and
 - (b) for a case stated under the **Criminal Procedure Act 2009** or Part 5.4 of the **Children, Youth and Families Act 2005**, the day of the commencement of the hearing from which the question of law arises; and

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cognitive skills of child witness

- (c) in any other case, the day of the commencement of the summary hearing, the hearing of the appeal, or the special hearing (as the case requires)."

Part 6—Amendment of Children, Youth and Families Act 2005

35 New Chapter 7A inserted

After Chapter 7 of the **Children, Youth and Families Act 2005** insert—

"Chapter 7A—Relevant historical care and protection orders

Part 1—Recognition of matters relating to relevant historical care and protection orders

592A Statement of recognition

Historically, the child welfare and criminal justice systems in Victoria were not clearly differentiated. As a result, children often experienced historical care and protection applications made by the State as criminal proceedings, and care and protection orders made by courts were recorded by the State on criminal records.

The recording of relevant historical care and protection orders on criminal records occurred in cases where the child had not committed a crime, or been convicted or found guilty of a criminal offence, and in many instances before the child had reached the age of criminal responsibility. In many cases, crimes were committed against a child and instead of the perpetrator being held to account, the child was subject to a historical care and protection order, despite the child not having committed any crime. This has led to adverse life-long consequences for many of those children.

The Parliament recognises that Aboriginal children were disproportionately impacted by historical State welfare policies. As a result, Aboriginal children were also disproportionately affected by recording practices of the State.

592B Definitions

In this Part—

conviction, in respect of a criminal record, includes a finding of guilt by a court, whether or not a conviction is recorded;

criminal record, in relation to a person, means a document that sets out—

- (a) all the person's previous convictions; and
- (b) in relation to each previous conviction—
 - (i) the date of the conviction; and
 - (ii) the court in which the conviction took place; and
 - (iii) the place of sitting of that court; and
 - (iv) the offence committed; and
 - (v) the sentence imposed;

official record means—

- (a) a relevant historical care and protection order; or
- (b) a criminal record that contains a relevant historical care and protection order; or

- (c) a record held by a responsible agency containing information about an order or record specified in paragraph (a) or (b);

relevant historical care and protection order has the meaning given by section 592C;

responsible agency means any of the following with the care and control of official records or secondary records—

- (a) a public authority within the meaning of the **Charter of Human Rights and Responsibilities Act 2006**;
- (b) a community service;
- (c) a non-Government organisation that provides support or advocacy services to persons who were placed in Victorian orphanages, children's homes or foster care;
- (d) a prescribed entity;

secondary record means an official record that is a copy, duplicate or reproduction of, or extract from, another existing official record.

592C Meaning of *relevant historical care and protection order*

- (1) A ***relevant historical care and protection order***, in relation to a person, means an order, however expressed or described, in the nature of an order made by a court as a result of an application for an order for the care and protection of the person when the person was a child.

- (2) For the purposes of subsection (1)—
- (a) an order of the kind described in that subsection includes, but is not limited to, an order of a kind described in that subsection under any of the following—
 - (i) the **Neglected and Criminal Children's Act 1864**;
 - (ii) An Act to provide for the Protection and Management of Aboriginal Natives of Victoria (no. CCCXLIX (349) also known as the **Aborigines Protection Act 1869**;
 - (iii) the **Children's Court Act 1986**;
 - (iv) the **Children's Welfare Act 1928**;
 - (v) the **Community Welfare Services Act 1970**;
 - (vi) the **Children and Young Persons Act 1989**;
 - (vii) a prescribed Act; and
 - (b) a *relevant historical care and protection order* does not include an order, however expressed or described, for the care and protection of the person when the person was a child, or an order in relation to the welfare of the person when the person was a child, if—
 - (i) the child was found guilty of a criminal offence by the court; and

- (ii) the order was made as part of the sentence imposed by the court for that offence.

592D Application of this Part

This Part applies to a relevant historical care and protection order made by any court, including the several children's courts that existed immediately before the commencement of section 8 of the **Children and Young Persons Act 1989**.

592E Effect of relevant historical care and protection order in relation to matters concerning convictions, findings of guilt or criminal history

- (1) On and after the commencement of this section, the following have effect in relation to a relevant historical care and protection order.
- (2) A relevant historical care and protection order is not to be treated as a conviction or finding of guilt for any purpose.
- (3) A question about a person's criminal history (including one put in a legal proceeding and required to be answered under oath) is to be taken not to refer to a relevant historical care and protection order in respect of the person.
- (4) A person is not required to disclose to any other person for any purpose (including when giving evidence under oath in a legal proceeding) information concerning a relevant historical care and protection order in respect of the person.

- (5) In the application to a person of an Act, subordinate instrument or agreement—
- (a) a reference to a conviction or a finding of guilt, however expressed, is to be taken not to refer to a relevant historical care and protection order in respect of the person; and
 - (b) a reference to the person's character or fitness, however expressed, is not to be taken as allowing or requiring account to be taken of a relevant historical care and protection order in respect of the person.

592F Effect of relevant historical care and protection order in relation to an appointment, post, status or privilege

- (1) On and after the commencement of this section, a relevant historical care and protection order, or disclosure of the existence of, or information included in, a relevant historical care and protection order, in respect of a person, is not proper ground for—
- (a) refusing the person any appointment, post, status or privilege; or
 - (b) revoking any appointment, status or privilege held by the person; or
 - (c) dismissing the person from any post.
- (2) If, before the commencement of this section, a person referred to in subsection (1)—
- (a) was refused any appointment, post, status or privilege; or
 - (b) had any appointment, status or privilege revoked; or

(c) was dismissed from any post—
the person may re-apply, at any time, for the appointment, post, status or privilege irrespective of any minimum waiting period that would otherwise be required.

592G Obligations of responsible agencies, other than Victoria Police, in relation to the release of official records and secondary records

A responsible agency, other than Victoria Police, must take all reasonable steps to ensure that an official record or a secondary record released by the responsible agency is accompanied with information that—

- (a) addresses and corrects the apparent criminal nature of a relevant historical care and protection order; and
- (b) states that a relevant historical care and protection order is not a conviction or a finding of guilt.

592H Obligations of Victoria Police in relation to the release of official records and secondary records

Victoria Police must take all reasonable steps to ensure that an official record or a secondary record released by Victoria Police pursuant to a request under the **Freedom of Information Act 1982** is accompanied with information that—

- (a) addresses and corrects the apparent criminal nature of a relevant historical care and protection order; and
- (b) states that a relevant historical care and protection order is not a conviction or a finding of guilt.

592I Destruction of official records and secondary records

- (1) Subject to subsection (2), this Part does not authorise the destruction by or on behalf of a responsible agency of an official record or a secondary record.
- (2) For the purpose of preventing a relevant historical care and protection order being recorded on a criminal record, Victoria Police may remove secondary records that are relevant historical care and protection orders from any Victoria Police database, whether computerised or not, that contains criminal records.

592J No effect on entitlement to compensation or creation of entitlement to compensation

The amendments made by this Part are not intended to alter or affect an existing entitlement to compensation or create an entitlement to compensation arising from the circumstances in which a relevant historical care and protection order was made or carried out or the existence of a relevant historical care and protection order."

Part 7—Repeal of amending Act

36 Repeal of amending Act

This Act is **repealed** on 4 November 2020.

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: 25 July 2018

Legislative Council: 9 August 2018

The long title for the Bill for this Act was "A Bill for an Act to amend the **Victims' Charter Act 2006**, the **Victims of Crime Commissioner Act 2015** and the **Sentencing Act 1991** to further provide for the rights of victims and the obligations of investigatory agencies, prosecuting agencies and victims' services agencies in proceedings for criminal offences, and to amend the **Jury Directions Act 2015** in relation to directions on the language and cognitive skills of child witnesses, and to amend the **Children, Youth and Families Act 2005** in relation to historical care and protection orders, and for other purposes."