

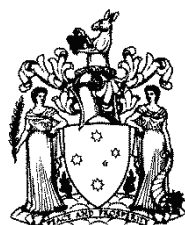
**Authorised Version**

**Wrongs Amendment (Organisational Child Abuse)  
Act 2017  
No. 12 of 2017**

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**Authorised Version**



**Victoria**

# **Wrongs Amendment (Organisational Child Abuse) Act 2017<sup>†</sup>**

**No. 12 of 2017**

[Assented to 27 March 2017]

**The Parliament of Victoria enacts:**

## **1 Purposes**

The purposes of this Act are—

- (a) to amend the **Wrongs Act 1958** to impose a duty of care that forms part of a cause of action in negligence on organisations exercising care, supervision or authority over children to prevent the physical abuse or sexual abuse of those children committed by individuals associated with those organisations; and

(b) to make consequential amendments to the  
**Victoria Police Act 2013.**

## **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 July 2017, it comes into operation on that day.

## **3 New Part XIII inserted**

After Part XII of the **Wrongs Act 1958** insert—

### **"Part XIII—Organisational liability for child abuse**

#### **88 Definitions**

In this Part—

*abuse* means physical abuse or sexual abuse;

*authority*, in relation to a relevant organisation, includes any authority or ostensible authority that an individual associated with the relevant organisation derives from the individual's association with the relevant organisation;

*child* means a person who is under the age of 18 years;

*delegation* includes sub-delegation;

*individual associated with a relevant organisation* has the meaning given in section 90;

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

*physical abuse* does not include an act or omission committed in circumstances that constitute—

- (a) a lawful justification or excuse to the tort of battery; or
- (b) any other lawful exercise of force;

*relevant organisation* means an entity (other than the State) organised for some end, purpose or work that exercises care, supervision or authority over children, whether as part of its primary functions or activities or otherwise, and is—

- (a) capable in law of being sued; or
- (b) not capable in law of being sued but nominates an associated legal person under section 92; or
- (c) the holder of a statutory office within the meaning of the **Public Administration Act 2004**; or
- (d) a Department or Administrative Office within the meaning of the **Public Administration Act 2004**; or
- (e) a body corporate established for public purposes; or
- (f) Victoria Police;

*sexual abuse* means sexual assault or other sexual misconduct;

*specified carer* means—

- (a) a foster carer of a child; or
- (b) an individual who is a family member of, or other person of significance to, a child with whom the child is currently placed in out of home care under the **Children, Youth and Families Act 2005**.

**89 Application of Part**

- (1) Part X applies to a claim brought in reliance on the duty in section 91.
- (2) Part XII does not apply to a claim brought in reliance on the duty in section 91.
- (3) This Part is subject to section 5.4.10 of the **Education and Training Reform Act 2006**.

**90 When is an individual associated with a relevant organisation?**

- (1) An individual associated with a relevant organisation—
  - (a) includes but is not limited to an individual who is an officer, office holder, employee, owner, volunteer or contractor of the relevant organisation; and
  - (b) if the relevant organisation is a religious organisation, includes but is not limited to a minister of religion, a religious leader, an officer or a member of the personnel of the religious organisation; and

- (c) if the relevant organisation has delegated, by means of contract or otherwise, the care, supervision or authority over the child to whom the claim relates to any organisation, includes but is not limited to an individual who is referred to in paragraph (a) or (b) in relation to the delegator organisation or the delegate organisation; and
  - (d) if the relevant organisation has delegated, by means of contract or otherwise, the care, supervision or authority over the child to whom the claim relates to a specified carer and a permanent care order in respect of the child has not been made, includes but is not limited to—
    - (i) an individual who is referred to in paragraph (a) or (b) in relation to the relevant organisation; and
    - (ii) the specified carer.
- (2) An individual is not associated with a relevant organisation solely because the relevant organisation wholly or partly funds or regulates another organisation.

### **91 Liability of organisations**

- (1) This section imposes a duty of care that forms part of a cause of action in negligence.
- (2) A relevant organisation owes a duty to take the care that in all the circumstances of the case is reasonable to prevent the abuse of a child by an individual associated with the relevant organisation while the child is under the care, supervision or authority of the relevant organisation.

**Note**

See section 90 as to when an individual is associated with a relevant organisation. In particular, section 90(1)(c) and (d) extend the meaning of that concept in the case of delegation of the care, supervision or authority over a child to—

- (a) another organisation; or
  - (b) a specified carer.
- (3) In a proceeding on a claim against a relevant organisation for damages in respect of the abuse of a child under its care, supervision or authority, on proof that abuse has occurred and that the abuse was committed by an individual associated with the relevant organisation, the relevant organisation is presumed to have breached the duty of care referred to in subsection (2) unless the relevant organisation proves on the balance of probabilities that it took reasonable precautions to prevent the abuse in question.

**Note**

Reasonable precautions will vary depending on factors including but not limited to—

- (a) the nature of the relevant organisation; and
  - (b) the resources that are reasonably available to the relevant organisation; and
  - (c) the relationship between the relevant organisation and the child; and
  - (d) whether the relevant organisation has delegated the care, supervision or authority over the child to another organisation; and
  - (e) the role in the organisation of the perpetrator of the abuse.
- (4) If a claim names 2 or more relevant organisations as defendants, subsection (3) applies to each relevant organisation separately.

- (5) In the case of a relevant organisation that is a public sector body within the meaning of the **Public Administration Act 2004** or another person or body acting on behalf of the State—
- (a) if the relevant organisation is capable in law of being sued, the relevant organisation is the appropriate defendant for the purposes of a claim brought in reliance on the duty in subsection (2); and
  - (b) if the relevant organisation is not capable in law of being sued, the State is the appropriate defendant for the purposes of a claim brought in reliance on the duty in subsection (2); and
  - (c) any liability incurred by the relevant organisation by reason of subsection (2) is incurred by the State.
- (6) Subsection (2) does not apply to abuse of a child committed by an individual associated with a relevant organisation in circumstances wholly unrelated to that individual's association with the relevant organisation.
- (7) If a relevant organisation has delegated, by means of contract or otherwise, the care, supervision or authority over a child to whom the claim relates to another organisation, subsection (2) does not apply to abuse of the child committed by an individual associated with the delegate organisation in circumstances wholly unrelated to that individual's association with the delegator organisation or the delegate organisation.



## **92 Entity may nominate body to be sued**

- (1) If an entity is not capable in law of being sued, it may nominate, with the consent of the nominee, a legal person that is so capable as the appropriate defendant for the purposes of a claim brought in reliance on the duty in section 91 and any liability incurred by the entity by reason of section 91(2) is incurred by the nominated legal person.
- (2) A nomination under subsection (1) may be made at any time, whether before or after abuse occurs.
- (3) If a nomination under subsection (1) is made after abuse occurs—
  - (a) the nominating entity is taken to be a relevant organisation at the time of the abuse; and
  - (b) any liability incurred by the entity by reason of section 91(2) is taken to have been incurred by the nominated legal person on and from the date of the abuse.

## **93 Transitional**

This Part applies to abuse of a child that occurs on or after the day on which the **Wrongs Amendment (Organisational Child Abuse) Act 2017** comes into operation."

## **4 Amendment of Victoria Police Act 2013**

- (1) In section 74(2) of the **Victoria Police Act 2013**, for "The State" substitute "Subject to subsection (5), the State".
- (2) In section 74(4) of the **Victoria Police Act 2013**, for "The State" substitute "Subject to subsection (5), the State".

(3) After section 74(4) of the **Victoria Police Act 2013** insert—

"(5) Subsections (2) and (4) do not apply to a claim brought in reliance on Part XIII of the **Wrongs Act 1958**."

(4) After section 81(2) of the **Victoria Police Act 2013** insert—

"(3) Nothing in this Division affects the operation of Part XIII of the **Wrongs Act 1958**."

## **5 Repeal of amending Act**

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

### **Note**

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

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 23 November 2016*

*Legislative Council: 7 February 2017*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Wrongs Act 1958** to impose a duty of care that forms part of a cause of action in negligence on organisations exercising care, supervision or authority over children to prevent the physical abuse or sexual abuse of those children committed by individuals associated with those organisations, to make consequential amendments to the **Victoria Police Act 2013** and for other purposes."