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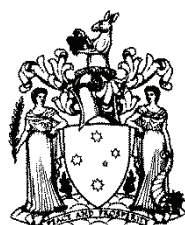
Crimes Amendment (Protection of Children) Act 2014

No. 36 of 2014

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Authorised Version



Victoria

Crimes Amendment (Protection of Children) Act 2014[†]

No. 36 of 2014

[Assented to 3 June 2014]

The Parliament of Victoria enacts:

1 Purposes

The purposes of this Act are—

- (a) to amend the **Crimes Act 1958** to insert new offences in relation to the sexual abuse of children and to make consequential amendments to other Acts; and
- (b) to amend the **Serious Sex Offenders (Detention and Supervision) Act 2009** to include an offence against section 49B of the **Crimes Act 1958** in Schedule 1 to that Act.

2 Commencement

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Section 7 comes into operation on the later of—
 - (a) the day on which section 4 comes into operation; or
 - (b) the day on which section 278 of the **Victoria Police Act 2013** comes into operation.
- (3) Section 8 comes into operation on the later of—
 - (a) the day on which section 4 comes into operation; or
 - (b) the day on which section 455 of the **Mental Health Act 2014** comes into operation.
- (4) Subject to subsection (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (5) If a provision referred to in subsection (4) does not come into operation before 1 July 2015, it comes into operation on that day.

3 New section 49C inserted

At the end of Subdivision (8C) of Division 1 of Part I of the **Crimes Act 1958** insert—

"49C Failure by person in authority to protect child from sexual offence

(1) In this section—

person associated with an organisation

includes but is not limited to a person who is an officer, office holder, employee, manager, owner, volunteer, contractor or agent of the organisation but does not include a person solely because the person receives services from the organisation;

relevant child means a child (whether identifiable or not) under the age of 16 years who is, or may come, under the care, supervision or authority of a relevant organisation;

relevant organisation means—

- (a) an organisation that exercises care, supervision or authority over children, whether as part of its primary functions or otherwise, and includes but is not limited to—
 - (i) a church; and
 - (ii) a religious body; and
 - (iii) a school; and
 - (iv) an education and care service within the meaning of the **Education and Care Services National Law (Victoria)**; and

See:
Act No.
6231.
Reprint No. 24
as at
1 July 2013
and
amending
Act Nos
16/2004,
27/2011,
60/2013,
70/2013,
72/2013,
77/2013,
7/2014 and
8/2014.
LawToday:
[www.
legislation.
vic.gov.au](http://www.legislation.vic.gov.au)

- (v) a children's service within the meaning of the **Children's Services Act 1996**; and
 - (vi) an out of home care service within the meaning of the **Children, Youth and Families Act 2005**; and
 - (vii) a hospital; and
 - (viii) a government department; and
 - (ix) a government agency; and
 - (x) a municipal council; and
 - (xi) a public sector body; and
 - (xii) a sporting group; and
 - (xiii) a youth organisation; and
 - (xiv) a charity or benevolent organisation; or
- (b) an organisation that, in accordance with an agreement or arrangement with an organisation referred to in paragraph (a), is required or permitted to engage in activities associated with the care, supervision or authority over children exercised by the organisation referred to in paragraph (a);

sexual offence means—

- (a) an offence under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) of Division 1 of Part I or under any corresponding previous enactment; or

-
- (b) an attempt to commit an offence referred to in paragraph (a); or
 - (c) an assault with intent to commit an offence referred to in paragraph (a).
- (2) A person who—
- (a) by reason of the position he or she occupies within a relevant organisation, has the power or responsibility to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person of or over the age of 18 years who is associated with the relevant organisation; and
 - (b) knows that there is a substantial risk that that person will commit a sexual offence against a relevant child—
- must not negligently fail to reduce or remove that risk.
- Penalty: Level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (2), a person negligently fails to reduce or remove a risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the circumstances.
- (4) For the avoidance of doubt, in a prosecution for an offence against subsection (2), it is not necessary to prove that a sexual offence has been committed.

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- (5) It is immaterial that some or all of the circumstances constituting an offence against subsection (2) occurred outside Victoria, so long as the relevant child was in Victoria at the time at which the substantial risk referred to in subsection (2)(b) occurred.
- (6) It is immaterial that both the accused and the child were outside Victoria at the time at which some or all of the circumstances constituting an offence against subsection (2) occurred, so long as the sexual offence was at risk of occurring in Victoria."

4 New sections 327, 328, 329 and 330 inserted

After section 326 of the **Crimes Act 1958**
insert—

"327 Failure to disclose sexual offence committed against child under the age of 16 years

- (1) In this section—

interests includes reputation, legal liability and financial status;

organisation includes a body corporate or an unincorporated body or association, whether the body or association—

- (a) is based in or outside Australia; or
(b) is part of a larger organisation;

sexual offence means—

- (a) an offence under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) of Division 1 of Part I or under any corresponding previous enactment; or

-
- (b) an attempt to commit an offence referred to in paragraph (a); or
 - (c) an assault with intent to commit an offence referred to in paragraph (a).
- (2) Subject to subsections (5) and (7), a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.
- Penalty: 3 years imprisonment.
- (3) For the purposes of subsection (2) and without limiting that subsection, a person has a reasonable excuse for failing to comply with that subsection if—
- (a) the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the sexual offence) were the person to disclose the information to police (irrespective of whether the fear arises because of the fact of disclosure or the information disclosed) and the failure to disclose the information to police is a reasonable response in the circumstances; or

-
- (b) the person believes on reasonable grounds that the information has already been disclosed to police by another person and the firstmentioned person has no further information.

Example

A person may believe on reasonable grounds that the information has already been disclosed to police by another person if the person has made a report disclosing all of the information in his or her possession in compliance with mandatory reporting obligations under the **Children, Youth and Families Act 2005**.

- (4) For the purposes of subsection (2) and without limiting that subsection, a person does not have a reasonable excuse for failing to comply with that subsection only because the person is concerned for the perceived interests of—
- (a) the person reasonably believed to have committed, or to have been involved in, the sexual offence; or
 - (b) any organisation.
- (5) A person does not contravene subsection (2) if—
- (a) the information forming the basis of the person's belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and
 - (b) the victim was of or over the age of 16 years at the time of providing that information to any person; and
 - (c) the victim requested that the information not be disclosed.

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- (6) Subsection (5) does not apply if—
- (a) at the time of providing the information, the victim of the alleged sexual offence—
 - (i) has an intellectual disability (within the meaning of the **Disability Act 2006**); and
 - (ii) does not have the capacity to make an informed decision about whether or not the information should be disclosed; and
 - (b) the person to whom the information is provided is aware, or ought reasonably to have been aware, of those facts.
- (7) A person does not contravene subsection (2) if—
- (a) the person comes into possession of the information referred to in subsection (2) when a child; or
 - (b) the information referred to in subsection (2) would be privileged under Part 3.10 of Chapter 3 of the **Evidence Act 2008**; or
 - (c) the information referred to in subsection (2) is a confidential communication within the meaning of section 32B of the **Evidence (Miscellaneous Provisions) Act 1958**; or
 - (d) the person comes into possession of the information referred to in subsection (2) solely through the public domain or forms the belief referred to in subsection (2) solely from information in the public domain; or

- (e) the person is a member of the police force acting in the course of his or her duty in respect of the victim of the alleged sexual offence; or
- (f) the victim of the alleged sexual offence has attained the age of 16 years before the commencement of section 4 of the **Crimes Amendment (Protection of Children) Act 2014**.

328 Protection of those who disclose under section 327

A disclosure made under section 327(2) in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
 - (i) section 141 of the **Health Services Act 1988**; or
 - (ii) section 120A of the **Mental Health Act 1986**.

329 Evidence and legal proceedings

- (1) In any legal proceeding evidence may be given as to the information contained in a disclosure under section 327(2).
- (2) However in a legal proceeding evidence that a particular matter is contained in information disclosed under section 327(2) or evidence that identifies the person who

made that disclosure, or is likely to lead to the identification of that person is only admissible in the proceeding if—

- (a) the court or tribunal grants leave for the evidence to be given; or
 - (b) the person who made the disclosure consents in writing to the admission of that evidence.
- (3) A witness appearing in a legal proceeding must not be asked and, if asked, is entitled to refuse to answer—
- (a) any question to which the answer would or might identify the person who made a disclosure under section 327(2) or would or might lead to the identification of that person; or
 - (b) any question as to whether a particular matter is contained in information disclosed under section 327(2)—

unless the court or tribunal grants leave for the question to be asked or the person who made the disclosure has consented in writing to the question being asked.

- (4) A court or tribunal may only grant leave under subsection (2) or (3) if it is satisfied that the interests of justice require that the evidence be given.

330 Confidentiality

- (1) If a disclosure is made under section 327(2), a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a member of the police force or the Secretary (within the meaning of the **Children, Youth and Families Act**

2005) or any other person to the extent reasonably required for law enforcement purposes—

- (a) the name of the person who made the disclosure; or
- (b) any information that is likely to lead to the identification of the person who made the disclosure.

Penalty: Level 8 imprisonment (1 year maximum).

- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 329.
- (3) Part 4.4 of Chapter 4 of the **Children, Youth and Families Act 2005** applies to information disclosed under subsection (1) to the Secretary (within the meaning of that Act) as if it were a report under Division 2 of that Part."

5 New section 622 inserted

At the end of Part 7 of the **Crimes Act 1958** insert—

"622 Transitional provision—Crimes Amendment (Protection of Children) Act 2014

- (1) Section 49C as inserted by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** applies to an offence alleged to have been committed on or after the commencement of section 3 of that Act, irrespective of when the risk was created.
- (2) Section 327 as inserted by section 4 of the **Crimes Amendment (Protection of Children) Act 2014** applies to a person if the victim of the alleged sexual offence is

still a child under the age of 16 years on the commencement of section 4 of that Act (irrespective of whether information is received or a reasonable belief is formed before or after the commencement of section 4 of that Act) unless the person has already disclosed the information referred to in section 327(2) to a member of the police force of Victoria before the commencement of section 4 of that Act."

6 Amendment of other Acts

(1) After section 13(1)(fb) of the **Working with Children Act 2005** insert—

"(fc) who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 49C or 327 of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 49C or 327 of that Act; or".

(2) In section 13(1)(g) of the **Working with Children Act 2005**, for "(fa) or (fb)" substitute "(fa), (fb) or (fc)".

(3) After section 187(2) of the **Children, Youth and Families Act 2005** insert—

"(3) If a report contains information that must be disclosed under section 327 of the **Crimes Act 1958**, the Secretary must report the information to a member of the police force of Victoria as soon as practicable after receiving the report."

(4) In Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009**—

(a) **omit** items 3 and 4;

(b) after item 7 **insert**—

"7A An offence against section 47A of the **Crimes Act 1958** (persistent sexual abuse of child under the age of 16).";

(c) after item 8 **insert**—

"8A An offence against section 49A of the **Crimes Act 1958** (facilitating sexual offences against children).

8B An offence against section 49B(2) of the **Crimes Act 1958** (grooming for sexual conduct with child under the age of 16 years)."

7 Amendments consequential on Victoria Police Act 2013

(1) In section 327 of the **Crimes Act 1958**—

(a) in subsection (2), for "member of the police force of Victoria" **substitute** "police officer";
and

(b) in subsection (7)(e), for "member of the police force" **substitute** "police officer".

(2) In section 330(1) of the **Crimes Act 1958**, for "member of the police force" **substitute** "police officer".

(3) In section 622(2) of the **Crimes Act 1958**, for "member of the police force of Victoria" **substitute** "police officer".

(4) In section 187(3) of the **Children, Youth and Families Act 2005**, for "member of the police force of Victoria" **substitute** "police officer".

8 Amendment consequential on Mental Health Act 2014

For section 328(c)(ii) of the **Crimes Act 1958** substitute—

"(ii) section 346 of the **Mental Health Act 2014**."

9 Repeal of amending Act

This Act is **repealed** on 1 July 2016.

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

- † *Minister's second reading speech—*
Legislative Assembly: 26 March 2014
Legislative Council: 8 May 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958**, the **Working with Children Act 2005**, the **Children, Youth and Families Act 2005** and the **Serious Sex Offenders (Detention and Supervision) Act 2009** in relation to the sexual abuse of children and for other purposes."