

Authorised Version No. 056
Working with Children Act 2005
No. 57 of 2005

Authorised Version incorporating amendments as at
1 March 2018

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Authorised Version No. 056
Working with Children Act 2005
No. 57 of 2005

Authorised Version incorporating amendments as at
1 March 2018

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

- (1) The main purpose of this Act is to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them are subject to a screening process.
- (2) This Act amends the **Sentencing Act 1991** to prevent sentencing courts from having regard to any consequences that may arise under this Act and amends Schedule 1 to that Act to broaden the range of sexual offences which may cause an offender to be treated as a serious sexual offender under that Act.
- (3) This Act also makes minor amendments to—
 - (a) the **Sex Offenders Registration Act 2004** consistent with provisions of this Act; and
 - (b) the **Victorian Civil and Administrative Tribunal Act 1998** with respect to the procedure of VCAT on applications made to it under this Act; and
 - (c) the **Victorian Institute of Teaching Act 2001** to make further provision for certain notification requirements for the purposes of this Act.

S. 1(1)
amended by
No. 66/2014
s. 4.

S. 1A
inserted by
No. 66/2014
s. 5.

1A Protection of children to be paramount

When the Secretary or VCAT makes a decision or takes an action under this Act, the protection of children from sexual and physical harm must be the paramount consideration.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2006, it comes into operation on that day.

3 Definitions

- (1) In this Act—

agency means a person that carries on (whether or not with a view to profit and whether or not in conjunction with any other business) the business of procuring child-related work for persons seeking such work, whether or not the business includes procuring any other kind of work for those persons or other persons;

assessment notice means an assessment notice given by the Secretary to an applicant for a working with children check under Part 2;

S. 3(1) def. of
*Australian
legal
practitioner*
repealed by
No. 17/2014
s. 160(Sch. 2
item 112).

* * * * *

carnal knowledge offence means an offence specified in clause 1(d)(viii) or (ix) of Schedule 1 to the **Sentencing Act 1991**;

S. 3(1) def. of *carnal knowledge offence* inserted by No. 56/2007 s. 3(2).

category A offence means an offence specified in Schedule 1;

S. 3(1) def. of *category A offence* inserted by No. 66/2014 s. 6(4).

category B offence means an offence specified in Schedule 2;

S. 3(1) def. of *category B offence* inserted by No. 66/2014 s. 6(4).

child means a person under 18 years of age;

child abuse material offence means—

- (a) an offence against any of the following provisions of the **Crimes Act 1958**—
 - (i) section 51B(1) (involving a child in the production of child abuse material);
 - (ii) section 51C(1) (producing child abuse material);
 - (iii) section 51D(1) (distributing child abuse material);
 - (iv) section 51E(1) (administering a website used to deal with child abuse material);
 - (v) section 51F(1) (encouraging use of a website to deal with child abuse material);
 - (vi) section 51G(1) (possession of child abuse material);

S. 3(1) def. of *child pornography offence* amended by No. 42/2015 s. 30, substituted as *child abuse material offence* by No. 47/2016 s. 49(1).

- (vii) section 51H(1) (accessing child abuse material);
- (viii) section 51I(1) (assisting a person to avoid apprehension); or
- (b) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act; or
- (c) an offence referred to in paragraphs (dam), (dama), (dan), (dao), (dao), (daob), (daq) or (df)(ii), (iii), (iv), (v), (vi) or (vii), of clause 1 of Schedule 1 to the **Sentencing Act 1991**;

child-related work has the meaning given by section 9;

S. 3(1) def. of *community or treatment order* inserted by No. 66/2014 s. 6(4).

community or treatment order means—

- (a) an old community-based order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
- (b) an old intensive correction order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
- (c) a drug treatment order within the meaning of the **Sentencing Act 1991**; or
- (d) a community correction order within the meaning of the **Sentencing Act 1991**; or
- (e) a fine conversion order within the meaning of the **Sentencing Act 1991**;

- (f) a fine default unpaid community work order within the meaning of the **Sentencing Act 1991**;

detention order means a detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim detention order under that Act;

S. 3(1) def. of *detention order* inserted by No. 91/2009 s. 219(Sch. 3 item 7.1(b)).

direct contact means any contact between a person and a child that involves—

S. 3(1) def. of *direct contact* amended by Nos 66/2014 s. 6(1), 72/2016 s. 4(1).

- (a) physical contact; or
- (b) face to face contact; or
- (c) contact by post or other written communication; or
- (d) contact by telephone or other oral communication; or
- (e) contact by email or other electronic communication;

educational institution means—

S. 3(1) def. of *educational institution* substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 48.1), amended by No. 76/2013 s. 21.

- (a) any Government school or non-Government school within the meaning of the **Education and Training Reform Act 2006**; or
- (b) any of the following—
 - (i) a TAFE institute within the meaning of the **Education and Training Reform Act 2006**;
 - (ii) a dual sector university within the meaning of the **Education and Training Reform Act 2006**;
 - (iii) a provider of adult, community and further education, within the meaning of the **Education and**

Training Reform Act 2006, that is eligible for funding under that Act;

(iv) an adult education institution within the meaning of the

Education and Training Reform Act 2006;

(v) an education and training organisation registered on the State Register under the

Education and Training Reform Act 2006—

to the extent that the college, university, provider, institution or organisation provides a program of study or training primarily for, or directed at, children and that leads to the award of a Senior Secondary Certificate of Education that is recognised by the AQF within the meaning of the **Education and Training Reform Act 2006**; or

(c) any other institution that provides a program of study or training primarily for, or directed at, children—

but does not include—

(d) except to the extent provided by paragraph (b), a university within the meaning of the **Education and Training Reform Act 2006**; or

(e) except to the extent provided by paragraph (b), a TAFE institute or an adult education institution within the meaning of the **Education and Training Reform Act 2006**—

even if that university, college or institution has a student under 18 years of age;

interim negative notice means an interim negative notice given by the Secretary under section 16(1)(b) or 21AE(1)(b);

S. 3(1) def. of *interim negative notice* amended by No. 66/2014 s. 6(2).

minister of religion means—

- (a) a person ordained or appointed as a recognised religious leader in an organised religious institution; or
- (b) the appointed leader of a local religious congregation in an organised religious institution who has general authority over the operations of that congregation within the institution;

S. 3(1) def. of *minister of religion* inserted by No. 66/2014 s. 6(4).

negative notice means a negative notice given by the Secretary to an applicant for a working with children check under Part 2 or on revoking an assessment notice under section 21C;

S. 3(1) def. of *negative notice* amended by No. 66/2014 s. 6(3).

officer—

- (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
- (b) in relation to any other body corporate, means any person (by whatever name called) who is concerned or takes part in the management of the body corporate;

parent, in relation to a child, has the same meaning as in the **Children, Youth and Families Act 2005** but does not include a foster carer;

S. 3(1) def. of *parent* amended by Nos 48/2006 s. 42(Sch. 56/2007 s. 3(1)(a).

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 187.1).

person includes an unincorporated body or association and a partnership;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *registered medical practitioner* inserted by No. 56/2007 s. 3(2), substituted by No. 13/2010 s. 51(Sch. item 61).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *relevant offence* amended by Nos 56/2007 s. 3(1)(b), 91/2009 s. 219(Sch. 3 item 7.1(a)), repealed by No. 66/2014 s. 6(5).

relevant finding means a finding of a kind referred to in section 14(1)(a);

* * * * *

S. 3(1) def. of *Secretary* amended by No. 72/2016 s. 4(2).

Secretary means Secretary to the Department of Justice and Regulation;

S. 3(1) def. of *supervision order* inserted by No. 91/2009 s. 219(Sch. 3 item 7.1(b)).

supervision order means a supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim supervision order under that Act;

work means—

- (a) work engaged in—
 - (i) under a contract of employment or a contract for services (whether written or unwritten); or
 - (ii) as a minister of religion or as part of the duties of a religious vocation; or
 - (iii) as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
- (b) practical training undertaken as part of an educational or vocational course other than under an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**; or
- (c) work engaged in as a volunteer, including engaging in unpaid community work under a community or treatment order—

S. 3(1) def. of *work* inserted by No. 66/2014 s. 6(4).

but does not include unpaid work engaged in for a private or domestic purpose;

working with children check means the process under Part 2 for assessing or re-assessing whether a person is suitable to work in child-related work.

- (2) For the purposes of this Act a person is listed with an agency if he or she has entered into an agreement with the agency for the agency to procure child-related work for him or her, whether or not the agreement extends to any other kind of work.

- (3) For the purposes of this Act a person does not cease to be a volunteer merely because he or she has all or any of his or her out-of-pocket expenses reimbursed.

4 Meaning of finding of guilt

- (1) For the purposes of this Act, a reference to a finding of guilt in relation to an offence committed by a person is a reference to any of the following—
- (a) a court making a formal finding of guilt in relation to the offence;
 - (b) a court accepting a plea of guilty from the person in relation to the offence;
 - (c) a court accepting an admission made under and for the purposes of section 100 of the **Sentencing Act 1991**, or under equivalent provisions of the laws of a jurisdiction other than Victoria;
 - (d) a finding in relation to the offence under section 17(1)(b) or 17(1)(c) or under section 38X(1)(b) or 38X(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** or under section 17(1)(c) or 38X(1)(c) of that Act in relation to an offence available as an alternative or a finding under that Act of not guilty because of mental impairment, or a finding under equivalent provisions of the laws of a jurisdiction other than Victoria;
 - (e) a verdict of not guilty on account of insanity in relation to the offence returned under—
 - (i) section 420 of the **Crimes Act 1958** (as then in force); or

S. 4(1)(d)
amended by
No. 55/2014
s. 154(1).

S. 4(1)(e)
inserted by
No. 55/2014
s. 154(2).

(ii) an equivalent provision of the laws of a jurisdiction other than Victoria—

before the day on which Schedule 3 to the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** came into operation.

(2) A reference to a finding of guilt in this Act does not include a finding of guilt that is subsequently quashed or set aside by a court.

5 Meaning of *charged with an offence*

For the purposes of this Act, a person is deemed to have been charged with an offence if—

(a) an indictment has been filed for the offence;
or

S. 5(a)
amended by
No. 68/2009
s. 97(Sch.
item 136.1).

(b) a charge-sheet charging the offence has been filed against the person, whether or not—

S. 5(b)
amended by
No. 68/2009
s. 97(Sch.
item 136.2).

(i) a summons to answer to the charge; or

(ii) a warrant to arrest the person—

has been issued and served.

6 When is a charge *pending*?

(1) Subject to any regulations made under subsection (2), for the purposes of this Act a charge against a person for an offence is pending until the charge is finally dealt with, including in any of the following ways—

S. 6(1)
amended by
No. 72/2016
s. 5.

(a) the charge is withdrawn or the person dies without the charge having been determined;

(b) the charge is dismissed by a court;

(c) the person is discharged by a court following a committal hearing;

S. 6(1)(d)
amended by
No. 51/2010
s. 3(1).

(d) the person is acquitted or found guilty of the offence by a court;

S. 6(1)(e)
inserted by
No. 51/2010
s. 3(2).

(e) the person is discharged by the Magistrates' Court after completing a diversion program under section 59 of the **Criminal Procedure Act 2009**.

(2) The regulations may prescribe circumstances in which a charge against a person for an offence is not to be taken to be pending for the purposes of this Act.

S. 6(3)
amended by
No. 68/2009
s. 97(Sch.
item 136.3).

(3) A reference in this Act to the withdrawing of a charge includes a reference to the discontinuance of a prosecution.

7 Act to bind the Crown

(1) This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

Part 2—Working with children check

Division 1—Preliminary

Pt 2 Div. 1
(Heading)
inserted by
No. 66/2014
s. 7.

8 Purpose of Part

- (1) The purpose of this Part is to establish a process to screen persons engaging or intending to engage in child-related work.
- (2) Nothing in this Act takes away from, or removes the need to comply with, any requirement imposed by or under any other Act with respect to child-related work.

S. 8(1)
amended by
No. 66/2014
s. 8(1).

Note

Child-related work includes voluntary work and practical training as well as paid employment (see the definition of *work* in section 3(1)).

Note to s. 8
amended by
No. 66/2014
s. 8(2).

9 What is child-related work?

- (1) For the purposes of this Act, child-related work is work—
 - (a) at or for a service, body or place, or that involves an activity, specified in subsection (3); and

S. 9(1)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 48.2),
79/2006
s. 62(1),
56/2007
s. 4(2),
65/2011
s. 107(Sch.
item 16),
substituted by
No. 66/2014
s. 9(1) (as
amended by
No. 20/2015
s. 40).

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S. 9(1)(b)
amended by
No. 72/2016
s. 6(1).

(b) that usually involves direct contact with a child.

Example to
s. 9(1)
substituted by
No. 56/2007
s. 4(1),
amended by
No. 66/2014
s. 9(2).

Example

A is employed as a nurse in the Geriatric ward of a public hospital. One day, a nurse who usually works in the Paediatric ward is unwell and A works in that nurse's place for that day. A is not engaged in child-related work as A's work does not usually involve direct contact with children.

Notes to
s. 9(1)
substituted
as Note by
No. 66/2014
s. 9(3).

Note

Direct contact is defined in section 3(1).

S. 9(1A)
inserted by
No. 66/2014
s. 9(4).

(1A) For the purposes of this Act, work is not child-related work by reason only of occasional direct contact with children that is incidental to the work.

S. 9(2)
amended by
Nos 51/2010
s. 4(1),
66/2014
s. 9(5)–(7),
repealed by
No. 72/2016
s. 6(2).

* * * * *

S. 9(3)
amended by
Nos 79/2006
s. 62(2),
66/2014
s. 9(8).

- (3) The services, bodies, places or activities referred to in subsection (1)(a) are—
- (a) child protection services;
 - (b) child care services mentioned in section 194(1) of the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth;
 - (c) children's services within the meaning of the **Children's Services Act 1996**;

- (ca) education and care services within the meaning of the Education and Care Services National Law (Victoria);
- (d) educational institutions;
- (e) out of home care services, remand centres, youth residential centres, youth supervision units or youth justice centres, within the meaning of the **Children, Youth and Families Act 2005** or probation services under that Act;
- (f) refuges or other residential facilities used by children;
- (fa) accommodation services specifically provided for students in connection with the operation of a student exchange program under Part 4.5A of the **Education and Training Reform Act 2006**, including the provision by a person of accommodation in the person's home;
- (g) paediatric wards of public hospitals within the meaning of the **Health Services Act 1988** or of denominational or private hospitals within the meaning of that Act;
- (h) clubs, associations or movements (including of a cultural, recreational or sporting nature) that provide services or conduct activities for, or directed at, children or whose membership is mainly comprised of children;
- (i) religious organisations;
- (j) baby sitting or child minding services arranged by a commercial agency;
- (k) fostering children;

S. 9(3)(ca)
inserted by
No. 80/2011
s. 79(Sch.
item 9).

S. 9(3)(e)
amended by
Nos 48/2006
s. 42(Sch.
item 39.2),
51/2010
s. 4(2)(a).

S. 9(3)(fa)
inserted by
No. 66/2014
s. 9(9).

S. 9(3)(g)
amended by
No. 51/2010
s. 4(2)(b).

S. 9(3)(m)
amended by
Nos 56/2007
s. 4(3),
66/2014
s. 9(10).

- (l) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
- (m) coaching or tuition services of any kind specifically for children;
- (n) counselling or other support services for children;
- (o) overnight camps for children regardless of the type of accommodation or of how many children are involved;
- (p) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
- (q) providing, on a commercial basis and not merely incidentally to or in support of other business activities, an entertainment or party service specifically for children;
- (r) providing, on a commercial basis and not merely incidentally to or in support of other business activities, gym or play facilities specifically for children;

Example

The provision of play facilities for children by a fast-food business may be merely incidental to the business of providing food.

- (s) providing, on a commercial basis and not merely incidentally to or in support of other business activities, photography services specifically for children;

(t) talent or beauty competitions held for children on a commercial basis and not merely incidentally to or in support of other business activities.

* * * * *

S. 9(3A)
inserted by
No. 79/2006
s. 62(3),
repealed by
No. 66/2014
s. 9(11).

(4) Subject to subsection (5) but despite any other provision of this section, for the purposes of this Act, work engaged in as a minister of religion is child-related work unless any direct contact with children during the work engaged in as a minister of religion is only occasional direct contact that is incidental to that work.

S. 9(4)
substituted by
No. 66/2014
s. 9(12).

(5) Despite any other provision of this section, if a minister of religion is the appointed leader of a local religious congregation in an organised religious institution and the congregation contains any children, work engaged in as a minister of religion is child-related work.

S. 9(5)
substituted by
No. 66/2014
s. 9(13).

(6) Despite any other provision of this section, a person is engaged in child-related work if—

S. 9(6)
repealed by
No. 66/2014
s. 9(14),
new s. 9(6)
inserted by
No. 72/2016
s. 22(1).

(a) the person is a family member or other person of significance to a child; and

(b) the child is or has been placed in the out of home care of that person under the **Children, Youth and Families Act 2005**.

(7) For the purposes of this Act, a person is engaged in child-related work if he or she is employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.

S. 9(8)
substituted by
No. 56/2007
s. 4(4).

(8) For the purposes of this Act, a person is not engaged in child-related work merely because he or she—

(a) is participating in an activity with a child on the same basis as the child; or

Example to
s. 9(8)(a)
amended by
No. 51/2010
s. 4(3).

Example

An adult playing in a cricket team whether on a professional or amateur basis alongside a child is not engaging in child-related work.

(b) is supervising a child undertaking practical training as part of an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**.

S. 9(9)
inserted by
No. 72/2016
s. 22(2).

(9) In this section—

out of home care means care of a child by a person other than a parent of the child.

Note to s. 9
inserted by
No. 26/2010
s. 36(1).

Note

Section 19A of the **Child Employment Act 2003** extends the application of this Act to the supervision of a child in employment that requires a permit under that Act as if the supervision were child-related work under this Act.

The **Child Employment Act 2003** applies to a child of or over 14 years of age and under 15 years of age undertaking a work experience arrangement referred to in section 5.4.11(4) of the **Education and Training Reform Act 2006**.

The operation of the **Child Employment Act 2003** and its application to this Act has the effect that the supervision of the employment of a child undertaking that work experience arrangement is child-related work within the meaning of this Act.

Section 19A of the **Child Employment Act 2003** provides that this is the case despite the general exclusions in sections 9(1)(b) and 9(8)(b) of this Act for work experience arrangements.

Division 2—Applications for working with children check

Pt 2 Div. 2
(Heading)
inserted by
No. 66/2014
s. 10.

10 Application for working with children check

(1) A person may apply to the Secretary for a working with children check to be carried out on him or her and an assessment notice to be given to him or her on completion of that check.

(2) An application must—

(a) be in the form approved by the Secretary;
and

S. 10(2)(a)
amended by
No. 27/2006
s. 23(1).

(b) be—

S. 10(2)(b)
substituted by
No. 56/2007
s. 5.

(i) signed by the applicant; or

(ii) if the applicant is not able to sign the application because of a disability within the meaning of the **Equal Opportunity Act 2010**, be accompanied by a statement from a registered medical practitioner certifying—

S. 10(2)(b)(ii)
amended by
No. 16/2010
s. 209(Sch.
item 10.1(a))
(as
amended by
No. 26/2011
s. 34(Sch.
item 10.4)).

(A) that the person suffers from such a disability; and

S. 10(2)
(b)(ii)(A)
amended by
No. 16/2010
s. 209(Sch.
item 10.1(b))
(as
amended by
No. 26/2011
s. 34(Sch.
item 10.4)).

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**S. 10(2)
(b)(ii)(B)
amended by
No. 16/2010
s. 209(Sch.
item 10.1(c))
(as
amended by
No. 26/2011
s. 34(Sch.
item 10.4)).**

(B) that the person is not able to sign the application because of that disability; and

**S. 10(2)(c)
amended by
No. 51/2010
s. 5(1).**

(c) include any identifying information of a kind approved by the Secretary; and

(d) be accompanied by the prescribed application fee.

**S. 10(2A)
inserted by
No. 27/2006
s. 23(2).**

(2A) The approved form must provide for the following particulars—

- (a) the full name of the applicant and any other names by which the applicant is or has been known; and
- (b) the date and place of birth of the applicant; and
- (c) the gender of the applicant; and
- (d) the residential address and telephone number of the applicant; and
- (e) the type of child-related work in which the applicant is engaged or intends to engage and whether it is for profit or gain; and
- (f) the name, address and telephone number of each person with whom the applicant is engaged in child-related work; and
- (g) any other information in relation to the applicant that the Secretary reasonably believes is appropriate.

- (3) The approved form is to include provision for—
- (a) authorising the conduct (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice remains in force) of a police record check on the applicant; and
 - (b) consenting to enquiries being made about the applicant to any relevant prescribed body (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice remains in force) and authorising the disclosure by that body of any relevant information.
- (4) The Secretary may consider an application that does not include all the identifying information of the approved kind referred to in subsection (2)(c).
- (5) If the Secretary receives an application that does not include all the information required by this section, the Secretary may require the applicant to provide the information in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (6) If an applicant has included identifying information of the approved kind to the Secretary for a previous application for a working with children check completed within 5 years and 3 months before the current application, the Secretary may exempt the applicant from the requirement to provide any identifying information under subsection (2)(c).
- (7) The Secretary may approve any form of application and any kind of identifying information and must publish a copy of that form and that information on an Internet site maintained by the Secretary.

S. 10(3)
amended by
No. 27/2006
s. 23(3).

S. 10(4)
inserted by
No. 51/2010
s. 5(2).

S. 10(5)
inserted by
No. 51/2010
s. 5(2).

S. 10(6)
inserted by
No. 51/2010
s. 5(2).

S. 10(7)
inserted by
No. 51/2010
s. 5(2).

S. 10(8)
inserted by
No. 72/2016
s. 23.

- (8) If an application specifies that the applicant is engaged or intends to engage in child-related work described in section 9(6), that application is taken not to specify an intention to engage in child-related work for profit or gain.

11 Consideration of application

S. 11(1)(c)
substituted by
No. 51/2010
s. 6.

- (1) In considering an application made under section 10, the Secretary—
- (a) must arrange for the conduct of a police record check on the applicant; and
 - (b) may have regard to any notice given to the Secretary by, and make enquiries to, any relevant prescribed body; and
 - (c) may make any other enquiries to, or seek information on the application from, any person or source that the Secretary thinks fit, including the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (d) may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) Despite subsection (1)(a), the Secretary is not required to arrange for the conduct of a police record check on an applicant if—
- (a) a check of a prescribed kind has previously been conducted on the applicant otherwise than under this Act; and
 - (b) notice of the result of that check has been provided to the Secretary in accordance with the regulations.

- (3) A person in responding to an enquiry or a request for advice or information from the Secretary under subsection (1) does not contravene any duty of confidentiality imposed on the person by or under any Act (including the **Judicial Proceedings Reports Act 1958**) or agreement, despite anything to the contrary in that Act or agreement. **S. 11(3) amended by No. 56/2007 s. 6.**
- (4) If a person who has applied for an assessment notice makes a further application for another assessment notice, the Secretary may refuse to consider the first application for the assessment notice and that first application is to be treated as being withdrawn on the date of receipt of the further application. **S. 11(4) inserted by No. 51/2010 s. 7.**
- (5) If a person who holds a current assessment notice applies for another assessment notice, the Secretary may refuse to consider the application for the further assessment notice until the holder surrenders to the Secretary the current assessment notice document that was given to him or her in respect of the first assessment notice. **S. 11(5) inserted by No. 51/2010 s. 7.**
- (6) If a person who has been given a negative notice applies for an assessment notice, the Secretary must not consider the application further unless the Secretary has been notified in writing that there has been a change of circumstances within the meaning of section 25 relating to the issue of the negative notice. **S. 11(6) inserted by No. 51/2010 s. 7.**
- (7) The Secretary may consider an application for a working with children check even though the applicant is exempt under this or any other Act from a working with children check. **S. 11(7) inserted by No. 51/2010 s. 7.**
- (8) Nothing in subsection (7) requires the Secretary to consider an application for a working with children check from an applicant who is exempt under this or any other Act from a working with children check. **S. 11(8) inserted by No. 51/2010 s. 7.**

S. 11(9)
inserted by
No. 51/2010
s. 7.

- (9) If the Secretary refuses to consider an application on the basis that the person applying is exempt from the requirement to have a working with children check under this or any other Act, the application is to be treated as being withdrawn.

S. 12
(Heading)
substituted by
No. 66/2014
s. 11(1).

12 Category A application

S. 12(1)
amended by
Nos 56/2007
s. 7(1),
21/2008
s. 25(2)(a),
91/2009
s. 219(Sch. 3
item 7.2),
61/2012 s. 3,
substituted by
No. 66/2014
s. 11(2).

- (1) An application is a category A application for the purposes of this Act if it is in respect of a person—

S. 12(1)(d)
substituted by
No. 72/2016
s. 7(1).

- (a) who is subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
- (b) who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
- (c) who is subject to a supervision order or a detention order; or
- (d) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category A offence specified in clause 1 or 2 of Schedule 1 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or

- (e) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category A offence other than an offence specified in clause 1 or 2 of Schedule 1.
- (2) The Secretary must refuse to give an assessment notice on a category A application. **S. 12(2) amended by No. 66/2014 s. 11(3).**
- (3) Despite subsection (2), the Secretary may give an assessment notice on a category A application if— **S. 12(3) inserted by No. 56/2007 s. 7(2), amended by No. 66/2014 s. 11(4)(a).**
- (a) the application is in respect of a person who has at any time been given an assessment notice because of an order made by VCAT under section 26A(5); and **S. 12(3)(a) amended by No. 66/2014 s. 11(4)(b).**
- (b) a relevant change in circumstances (as defined in section 20(2)) has not occurred with respect to the person; and
- (c) the Secretary is satisfied that exceptional circumstances do not exist with respect to the person that justify the refusal of the notice.
- (4) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult. **S. 12(4) inserted by No. 72/2016 s. 7(2).**

13 Category B application

S. 13
(Heading)
substituted by
No. 66/2014
s. 12(1).

S. 13(1)
amended by
Nos 56/2007
s. 8, 68/2009
s. 97(Sch
item 136.4),
91/2009
s. 219(Sch. 3
item 7.3),
61/2012
s. 4(1)(2),
substituted by
No. 66/2014
s. 12(2).

S. 13(1)(a)
amended by
Nos 74/2014
s. 36(1),
47/2016
s. 49(2),
substituted by
No. 72/2016
s. 8(1).

S. 13(1)(b)
amended by
Nos 20/2015
s. 25, 47/2016
s. 49(2).

S. 13(1)(c)
substituted by
No. 72/2016
s. 8(2).

- (1) An application is a category B application for the purposes of this Act if it is in respect of a person—
- (a) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category B offence specified in clause 2, 8, 9 or 14A of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (b) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category B offence other than an offence specified in clause 2, 8, 9, 14A or 17 of Schedule 2; or
 - (c) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category A offence specified in clause 1 or 2 of Schedule 1 if the conduct constituting or alleged to constitute that offence occurred when the person was a child.

- (2) The Secretary must refuse to give an assessment notice on a category B application unless satisfied that doing so would not pose an unjustifiable risk to the safety of children, having regard to—
- (a) the nature and gravity of the offence or alleged offence and its relevance to child-related work; and
 - (b) the period of time since the applicant committed, or allegedly committed, the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
 - (e) the ages of the applicant and of any victim at the time the applicant committed, or allegedly committed, the offence; and
 - (f) whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the applicant committed, or allegedly committed, the offence; and
 - (g) the applicant's behaviour since he or she committed, or allegedly committed, the offence; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that the Secretary considers relevant to the application.

S. 13(2)
amended by
No. 66/2014
s. 12(3).

S. 13(3)
inserted by
No. 61/2012
s. 4(3).

(3) In satisfying himself or herself that giving an assessment notice would not pose an unjustifiable risk to the safety of children, the Secretary must be satisfied that—

S. 13(3)(a)
amended by
No. 72/2016
s. 8(3).

- (a) a reasonable person would allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
- (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

S. 13(4)
inserted by
No. 72/2016
s. 8(4).

(4) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

S. 14
(Heading)
substituted by
No. 66/2014
s. 13(1).

14 Category C application

S. 14(1)
amended by
No. 66/2014
s. 13(2).

(1) An application is a category C application for the purposes of this Act if it is in respect of a person—

S. 14(1)(a)
substituted by
No. 51/2010
s. 8.

(a) who has at any time (whether before, on or after 3 April 2006) been subject to—

S. 14(1)(a)(i)
amended by
No. 4/2017
s. 11(1).

(i) a finding of a prescribed kind made by, or on behalf of, or referred to the Secretary by, a prescribed body; or

S. 14(1)(a)(ii)
amended by
No. 27/2012
s. 29(a).

(ii) a determination by VCAT under section 77(4)(g) or (h) or 77(5)(e) or (f) of the **Health Professions Registration Act 2005** as in force immediately before its repeal; or

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- | | |
|--|--|
| (iii) a determination under section 196(2)(d) or (e) or section 197(2)(b) of the Health Practitioner Regulation National Law by VCAT or by another responsible tribunal within the meaning of that Law; or | S. 14(1)(a)(iii) inserted by No. 27/2012 s. 29(b). |
| (b) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of a category B offence specified in clause 2, 8, 9 or 14A of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or | S. 14(1)(b) substituted by No. 66/2014 s. 13(3), amended by Nos 74/2014 s. 36(2), 47/2016 s. 49(2), substituted by No. 72/2016 s. 9(1). |
| * * * * * | S. 14(1)(ba) inserted by No. 56/2007 s. 9(a), substituted by No. 61/2012 s. 5(1), repealed by No. 66/2014 s. 13(4). |
| * * * * * | S. 14(1)(bb) inserted by No. 56/2007 s. 9(a), substituted by No. 61/2012 s. 5(2), repealed by No. 66/2014 s. 13(4). |
| (c) who is charged with or has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence other than a category A offence or category B offence; or | S. 14(1)(c) amended by Nos 56/2007 s. 9(b), 68/2009 s. 97(Sch item 136.5), substituted by No. 66/2014 s. 13(5), amended by No. 72/2016 s. 28(1). |

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S. 14(1)(d)
inserted by
No. 72/2016
s. 28(2).

- (d) who has at any time (whether before, on or after the commencement of this section) been charged with an offence specified in clause 2 of Schedule 3 if the charge has been finally dealt with other than by way of a conviction or a finding of guilt.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

S. 14(2)
substituted by
No. 66/2014
s. 13(6).

- (2) The Secretary must give an assessment notice on a category C application unless—

- (a) the Secretary is satisfied that giving the notice would pose an unjustifiable risk to the safety of children having regard to the factors set out in subsection (3); or

- (b) the Secretary is satisfied that—

- (i) a reasonable person would not allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; or

- (ii) the applicant's engagement in any type of child-related work would pose an unjustifiable risk to the safety of children.

S. 14(2)(b)(i)
amended by
No. 72/2016
s. 9(2).

S. 14(2A)
inserted by
No. 61/2012
s. 5(3),
repealed by
No. 66/2014
s. 13(7).

* * * * *

S. 14(3)
amended by
No. 61/2012
s. 5(4),
substituted by
No. 66/2014
s. 13(8).

- (3) For the purposes of subsection (2)(a), the Secretary must have regard to—

- (a) the nature and gravity of the conduct and its relevance to child-related work; and

- (b) the period of time since the applicant engaged, or allegedly engaged, in the conduct; and
 - (c) in the case of an offence, whether a finding of guilt or a conviction was recorded for it or a charge for it is still pending; and
 - (d) in the case of an offence, the sentence imposed for it; and
 - (e) the ages of the applicant and of any victim at the time the applicant engaged, or allegedly engaged, in the conduct; and
 - (f) whether or not the conduct has been decriminalised or has ceased to be subject to disciplinary charges since the applicant engaged, or allegedly engaged, in it; and
 - (g) the applicant's behaviour since he or she engaged, or allegedly engaged, in the conduct; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that the Secretary considers relevant to the application.
- (4) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

S. 14(4)
inserted by
No. 72/2016
s. 9(3).

15 Withdrawal of application

- (1) An applicant for a working with children check may withdraw his or her application at any time before the first of the following to occur—

- (a) the Secretary finally decides the application;
 - (b) the Secretary gives an interim negative notice under section 16(1)(b).
- S. 15(2)
amended by
No. 51/2010
s. 9(1).
- (2) The Secretary must treat an application as having been withdrawn if the applicant does not provide any information required under section 10 or further information required under section 11(1)(d) within the period required under that section.
- S. 15(2A)
inserted by
No. 51/2010
s. 9(2).
- (2A) Despite an application being withdrawn or treated as being withdrawn under this section, the Secretary may, if satisfied that the applicant wants to proceed with the application and has provided any information required under section 10 or any further information required under section 11(1)(d), reinstate the application as if it were an application under section 10.
- S. 15(3)
amended by
No. 51/2010
s. 9(3)(b).
- (3) If—
 - (a) the Secretary is aware that the applicant is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency; and
 - (b) the application is withdrawn or treated as withdrawn or reinstated under this section—
- S. 15(3)(b)
amended by
No. 51/2010
s. 9(3)(a).

the Secretary, if he or she is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the withdrawal or reinstatement.

Note

Listed with an agency is defined in section 3(2).

16 Submission sought from applicant before giving negative notice

- (1) If the Secretary proposes, or is required under section 17(3), to give a negative notice on an application, the Secretary must before finally deciding the application—
- (a) give a written notice to the applicant that—
 - (i) informs him or her of the proposal or requirement; and
 - (ii) states the information about him or her of which the Secretary is aware; and
 - (iii) invites him or her to make a submission to the Secretary, in writing or in another form approved by the Secretary, within the period specified in the notice about his or her eligibility to be given an assessment notice; and
 - (b) give an interim negative notice to the applicant.
- (1A) The period specified in a notice under subsection (1) must be not less than—
- (a) 14 days in the case of a category A application unless the applicant satisfies the Secretary that it is appropriate to allow the applicant further time to make a submission; and
 - (b) 28 days in the case of any other application.
- (2) Before finally deciding the application the Secretary must consider any submission made by the applicant in response to a notice under subsection (1)(a) and within the period required under subsection (1A) unless the applicant notifies

S. 16(1)(a)(iii)
amended by
No. 51/2010
s. 10(1).

S. 16(1A)
inserted by
No. 51/2010
s. 10(2).

S. 16(1A)(a)
amended by
No. 66/2014
s. 14(1).

S. 16(2)
amended by
No. 51/2010
s. 10(3).

the Secretary that he or she does not want to make a submission.

S. 16(3)
amended by
No. 51/2010
s. 10(3).

- (3) The Secretary must give a negative notice to the applicant if he or she does not make a submission in response to a notice under subsection (1)(a) within the period required under subsection (1A) unless the applicant notifies the Secretary that he or she does not want to make a submission.

S. 16(4)
amended by
No. 66/2014
s. 14(2).

- (4) Any information given by a person under subsection (1)(a)(iii) is not admissible in evidence against the person in—

- (a) a criminal proceeding; or
(b) a proceeding for the imposition of a penalty—

other than—

- (c) proceedings in respect of an offence against this Act; or
(d) a proceeding in respect of the falsity or misleading nature of the information.

Pt 2 Div. 3
(Heading)
inserted by
No. 66/2014
s. 15.

Division 3—Outcome of application for working with children check

17 Outcome of application

S. 17(1)
amended by
Nos 56/2007
s. 10(1),
66/2014
s. 16(1).

- (1) Subject to sections 12(2) and (3), 13(2) and 14(2), the Secretary must give an assessment notice on an application.

Note to
s. 17(1)
repealed by
No. 56/2007
s. 10(2).

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*	*	*	*	*	S. 17(1A) inserted by No. 56/2007 s. 10(3), amended by No. 51/2010 s. 11(a)(b), repealed by No. 66/2014 s. 16(2).
*	*	*	*	*	S. 17(1AB) inserted by No. 61/2012 s. 6(1), repealed by No. 66/2014 s. 16(2).
*	*	*	*	*	S. 17(1B) inserted by No. 56/2007 s. 10(3), amended by Nos 51/2010 s. 11(c)(d), 61/2012 s. 6(2), repealed by No. 66/2014 s. 16(2).

- (2) An assessment notice must—
- (a) state that the person in respect of whom it was issued has passed a working with children check; and
 - (b) if given on an application that did not specify an intention to engage in child-related work for profit or gain, state that the notice cannot be used in respect of child-related work engaged in for profit or gain.
- (3) The Secretary must give a negative notice on an application that is a category A application or to an applicant who is otherwise refused an assessment notice.

S. 17(3)
amended by
No. 66/2014
s. 16(3).

S. 17(4)(b)
amended by
No. 66/2014
s. 16(3).

- (4) If the Secretary gives a negative notice to an applicant, he or she must give to the applicant with that notice a written notice that—
- (a) states the reasons for the decision on the application; and
 - (b) informs the applicant that he or she may apply to VCAT to have the decision reviewed or, in the case of a category A application, to have VCAT consider whether an assessment notice is to be given; and
 - (c) explains how an application may be made to VCAT.

18 Copy of notice to be given to employer or agency

If the Secretary—

- (a) gives an assessment notice, an interim negative notice or a negative notice to an applicant; and
- (b) is aware that the applicant is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must also give a copy of that notice to that other person or that agency.

Note

Listed with an agency is defined in section 3(2).

19 Duration of assessment notice

S. 19(1)
amended by
No. 66/2014
s. 17(1).

- (1) An assessment notice remains in force for 5 years beginning on the date of the notice unless sooner revoked under section 21C or surrendered under section 24.

- (2) A person who has a current assessment notice may apply for the carrying out of a working with children check and a new assessment notice at any time within the period beginning 6 months before, and ending 3 months after, the expiry of the notice.

* * * * *

S. 19(3)
amended by
No. 51/2010
s. 12,
repealed by
No. 66/2014
s. 17(2).

Division 4—Further applications for working with children check

Pt 2 Div. 4
(Heading)
inserted by
No. 66/2014
s. 18.

19A Further applications

S. 19A
inserted by
No. 51/2010
s. 13.

If—

- (a) a person who has a current assessment notice applies for the carrying out of a working with children check in accordance with section 19(2); and
- (b) the Secretary has not been notified of any relevant change in circumstances under section 20(2)—

the Secretary may consider the application without having regard to any offence or conduct that was considered by the Secretary in relation to the giving of the current assessment notice.

19B Further application by holder of current volunteer assessment notice

S. 19B
inserted by
No. 61/2012
s. 7.

(1) If—

- (a) a person who has a current volunteer assessment notice applies for the carrying out of a working with children check; and

- (b) the application specifies that the child-related work that the person engages in or intends to engage in is for profit or gain; and
- (c) the Secretary has not been notified of any relevant change in circumstances under section 20(2)—

the Secretary may consider the application without having regard to any offence or conduct that was considered by the Secretary in relation to the giving of the current volunteer assessment notice.

- (2) In this section, *volunteer assessment notice* means an assessment notice, the application for which does not specify that the child-related work that the applicant engages in or intends to engage in is for profit or gain.

20 Holder of assessment notice to notify of relevant change in circumstances

- (1) If a relevant change in circumstances occurs with respect to a person who has a current assessment notice or who has applied for one and the application is still pending, that person must notify—
 - (a) the Secretary; and
 - (b) any person by whom he or she is engaged in child-related work; and
 - (c) any agency with which he or she is listed—

in writing of the change within 7 days after becoming aware of the change.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Listed with an agency is defined in section 3(2).

- (2) For the purposes of subsection (1) a relevant change in circumstances is—
- (a) the person being charged with a category A offence or a category B offence; or S. 20(2)(a) amended by No. 66/2014 s. 19(1).
 - (b) the person being convicted or found guilty of a category A offence or a category B offence or the charge being otherwise finally dealt with; or S. 20(2)(b) amended by No. 66/2014 s. 19(1).
 - (c) the person becoming subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (d) the person becoming subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or S. 20(2)(d) amended by No. 21/2008 s. 25(2)(a).
 - (da) the person becoming subject to a supervision order or a detention order; or S. 20(2)(da) inserted by No. 91/2009 s. 219(Sch. 3 item 7.4).
 - (e) a relevant finding being made against the person.
- (3) In a proceeding for an offence against subsection (1) constituted by not notifying the Secretary of how a charge for an offence was finally dealt with, it is a defence to the charge for the accused to prove that—
- (a) he or she notified the Secretary of the filing of the charge-sheet containing the charge in accordance with subsection (1); and S. 20(3)(a) amended by No. 68/2009 s. 97(Sch. item 136.7).

S. 20(3)(b)
amended by
No. 66/2014
s. 19(2).

- (b) the Secretary re-assessed under Division 5 his or her eligibility to have an assessment notice; and
- (c) his or her assessment notice was not revoked following the re-assessment; and
- (d) the charge was finally dealt with in any of the ways set out in section 6 other than by the accused being found guilty by a court.

S. 20(3)(d)
substituted by
No. 51/2010
s. 14.

S. 20A
inserted by
No. 51/2010
s. 15.

20A Notification of change of employer etc.

- (1) This section applies if—
 - (a) a person has a current assessment notice or has applied for an assessment notice and the application is still pending; and
 - (b) there is a change in any person by whom he or she is engaged in child-related work or any agency with which he or she is listed.

S. 20A(2)
amended by
No. 66/2014
s. 20(1).

- (2) The holder of or applicant for the assessment notice must notify the Secretary of the change and the name, address and telephone number of each person with whom the holder or applicant will be engaged in child-related work within 21 days after becoming aware of the change.

Penalty: 1 penalty unit.

S. 20A(3)
inserted by
No. 66/2014
s. 20(2).

- (3) If a holder of, or applicant for, an assessment notice notifies the Secretary that he or she is not, or is no longer, engaged in child-related work with a person or listed with an agency, the Secretary may notify that person or agency in writing of the information in the notification.

Division 5—Re-assessment

Pt 2 Div. 5
(Heading)
inserted by
No. 66/2014
s. 21.

21 Re-assessment

- (1) The Secretary must re-assess a person's eligibility to have an assessment notice—
- (a) if notified of a relevant change in circumstances under section 20; or
 - (b) if notified by a prescribed body of a relevant finding being made against the person; or
 - (c) if notified by the Chief Commissioner of Police under section 41 of a charge or of how a charge has been finally dealt with; or
 - (d) if notified by any Commonwealth, State or Territory law enforcement agency (or other organisation acting on behalf of a Commonwealth, State or Territory law enforcement agency) of a charge or of how a charge has been finally dealt with.
- (1A) For the purposes of subsection (1), *State* means a State of the Commonwealth.
- (2) The Secretary is not required to re-assess a person's eligibility to have an assessment notice on being notified of a charge for an offence being finally dealt with if—
- (a) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge; and
 - (b) the assessment notice was not revoked following that re-assessment.

Working with Children Act 2005
No. 57 of 2005
Part 2—Working with children check

S. 21(2A) inserted by No. 56/2007 s. 11, repealed by No. 51/2010 s. 16.	*	*	*	*	*
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S. 21(3) repealed by No. 66/2014 s. 22(2).	*	*	*	*	*
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S. 21(3A)(3B) inserted by No. 61/2012 s. 8, repealed by No. 66/2014 s. 22(2).	*	*	*	*	*
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(4) If an assessment notice is due to expire within 12 months after the date on which a re-assessment is required, the Secretary may invite the holder of the assessment notice to make a fresh application under section 10, despite section 19(2).

S. 21(5) repealed by No. 66/2014 s. 22(2).	*	*	*	*	*
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(6) For the purposes of Part 4 a person must be regarded as still having a current assessment notice if—

S. 21(6)(a) amended by No. 66/2014 s. 22(3).	(a) an interim negative notice has been given under section 21AE(1)(b); and
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S. 21(6)(b) substituted by No. 66/2014 s. 22(4).	(b) his or her assessment notice—
	(i) has not been revoked under section 21C following the re-assessment; or
	(ii) has not been surrendered under section 24; or
	(iii) has not expired.

21AA Consideration of re-assessment

S. 21AA
inserted by
No. 66/2014
s. 23.

- (1) On a re-assessment of a person's eligibility to hold an assessment notice, the Secretary—
 - (a) may have regard to any notice given to the Secretary by, and make enquiries to, any relevant prescribed body; and
 - (b) may make any other enquiries to, or seek information on the re-assessment from, any person or source that the Secretary thinks fit, including the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (c) may require the holder of the assessment notice to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) On a re-assessment of a person's eligibility to hold an assessment notice, the Secretary—
 - (a) is not required to consider any matter other than the matter that has given rise to the re-assessment; and
 - (b) may have regard to any offence or conduct that was considered by the Secretary in relation to the giving of the current assessment notice.
- (3) A person in responding to an enquiry or a request for advice or information from the Secretary under subsection (1) does not contravene any duty of confidentiality imposed on the person by or under any Act (including the **Judicial Proceedings Reports Act 1958**) or agreement, despite anything to the contrary in that Act or agreement.

S. 21AB
inserted by
No. 66/2014
s. 23.

21AB Determination of re-assessment—category A

- (1) A re-assessment is a category A re-assessment if the Secretary re-assesses a person's eligibility to have an assessment notice because the Secretary is notified that—
 - (a) the person has become subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) the person has become subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
 - (c) the person has become subject to a supervision order or a detention order; or
 - (d) the person has been charged with or convicted or found guilty of a category A offence specified in clause 1 or 2 of Schedule 1 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (e) the person has been charged with or convicted or found guilty of a category A offence other than an offence specified in clause 1 or 2 of Schedule 1.
- (2) The Secretary must determine to revoke an assessment notice on a category A re-assessment.
- (3) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

S. 21AB(1)(d)
substituted by
No. 72/2016
s. 10(1).

S. 21AB(3)
inserted by
No. 72/2016
s. 10(2).

21AC Determination of re-assessment—category B

- (1) A re-assessment is a category B re-assessment if the Secretary re-assesses a person's eligibility to have an assessment notice because the Secretary is notified that—
- (a) the person has been charged with or convicted or found guilty of a category B offence specified in clause 2, 8, 9 or 14A of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (b) the person has been charged with or convicted or found guilty of a category B offence other than an offence specified in clause 2, 8, 9, 14A or 17 of Schedule 2; or
 - (c) the person has been charged with or convicted or found guilty of a category A offence specified in clause 1 or 2 of Schedule 1 if the conduct constituting or alleged to constitute that offence occurred when the person was a child.
- (2) The Secretary must determine to revoke an assessment notice on a category B re-assessment unless the Secretary is satisfied that the person having the notice would not pose an unjustifiable risk to the safety of children, having regard to—
- (a) the nature and gravity of the offence or alleged offence and its relevance to child-related work; and
 - (b) the period of time since the holder of the assessment notice committed, or allegedly committed, the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and

S. 21AC
inserted by
No. 66/2014
s. 23.

S. 21AC(1)(a)
amended by
Nos 20/2015
s. 26, 47/2016
s. 49(2),
substituted by
No. 72/2016
s. 11(1).

S. 21AC(1)(b)
amended by
Nos 20/2015
s. 26, 47/2016
s. 49(2).

S. 21AC(1)(c)
substituted by
No. 72/2016
s. 11(2).

- (d) the sentence imposed for the offence; and
 - (e) the ages of the holder and of any victim at the time the holder committed, or allegedly committed, the offence; and
 - (f) whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the holder committed, or allegedly committed, the offence; and
 - (g) the holder's behaviour since he or she committed, or allegedly committed, the offence; and
 - (h) the likelihood of future threat to a child caused by the holder; and
 - (i) any information given by the holder in, or in relation to, the re-assessment; and
 - (j) any other matter that the Secretary considers relevant to the re-assessment.
- (3) In satisfying himself or herself that a person having an assessment notice would not pose an unjustifiable risk to the safety of children, the Secretary must be satisfied that—
- (a) a reasonable person would allow his or her child to have direct contact with the holder of the assessment notice while the holder was engaged in any type of child-related work; and
 - (b) the holder's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.
- (4) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an

S. 21AC(3)(a)
amended by
No. 72/2016
s. 11(3).

S. 21AC(4)
inserted by
No. 72/2016
s. 11(4).

adult, that conduct occurs when the person was an adult.

21AD Determination of re-assessment—category C

(1) A re-assessment is a category C re-assessment if the Secretary re-assesses a person's eligibility to have an assessment notice because the Secretary is notified that—

(a) the person has become subject to—

(i) a finding of a prescribed kind made by, or on behalf of, or referred to the Secretary by, a prescribed body; or

(ii) a determination by VCAT under section 77(4)(g) or (h) or 77(5)(e) or (f) of the **Health Professions Registration Act 2005** as in force immediately before its repeal; or

(iii) a determination under section 196(2)(d) or (e) or 197(2)(b) of the Health Practitioner Regulation National Law by VCAT or by another responsible tribunal within the meaning of that Law; or

(b) the person has been charged with or convicted or found guilty of a category B offence specified in clause 2, 8, 9 or 14A of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or

(c) the person has been charged with, convicted or found guilty of an offence other than a category A offence or category B offence; or

S. 21AD
inserted by
No. 66/2014
s. 23.

S.
21AD(1)(a)(i)
amended by
No. 4/2017
s. 11(2).

S. 21AD(1)(b)
amended by
Nos 20/2015
s. 27, 47/2016
s. 49(2),
substituted by
No. 72/2016
s. 12(1).

S. 21AD(1)(c)
amended by
No. 72/2016
s. 29(1).

S. 21AD(1)(d)
inserted by
No. 72/2016
s. 29(2).

- (d) the person has been charged with an offence specified in clause 2 of Schedule 3 and the charge has been finally dealt with other than by way of a conviction or a finding of guilt.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

- (2) The Secretary must determine not to revoke the assessment notice on a category C re-assessment unless—
- (a) the Secretary is satisfied that the person having the assessment notice would pose an unjustifiable risk to the safety of children having regard to the factors set out in subsection (3); or
- (b) the Secretary is satisfied that—
- (i) a reasonable person would not allow his or her child to have direct contact with the holder of the assessment notice while the holder was engaged in any type of child-related work; or
- (ii) the holder's engagement in any type of child-related work would pose an unjustifiable risk to the safety of children.
- (3) For the purposes of subsection (2)(a), the Secretary must have regard to—
- (a) the nature and gravity of the conduct and its relevance to child-related work; and
- (b) the period of time since the holder of the assessment notice engaged, or allegedly engaged, in the conduct; and

S. 21AD
(2)(b)(i)
amended by
No. 72/2016
s. 12(2).

- (c) in the case of an offence, whether a finding of guilt or a conviction was recorded for it or a charge for it is still pending; and
 - (d) in the case of an offence, the sentence imposed for it; and
 - (e) the ages of the holder and of any victim at the time the holder engaged, or allegedly engaged, in the conduct; and
 - (f) whether or not the conduct has been decriminalised or has ceased to be subject to disciplinary charges since the holder engaged, or allegedly engaged, in it; and
 - (g) the holder's behaviour since he or she engaged, or allegedly engaged, in the conduct; and
 - (h) the likelihood of future threat to a child caused by the holder; and
 - (i) any information given by the holder in, or in relation to, the re-assessment; and
 - (j) any other matter that the Secretary considers relevant to the re-assessment.
- (4) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

S. 21AD(4)
inserted by
No. 72/2016
s. 12(3).

21AE Submission sought from holder before determining to revoke assessment notice

S. 21AE
inserted by
No. 66/2014
s. 23.

- (1) If the Secretary proposes or is required under this Division to determine to revoke an assessment notice, the Secretary must, before finally deciding the re-assessment—

- (a) give a written notice to the holder of the assessment notice that—
 - (i) informs the holder of the proposal or requirement; and
 - (ii) states the information about the holder of which the Secretary is aware; and
 - (iii) invites the holder to make a submission to the Secretary, in writing or in another form approved by the Secretary, within the period specified in the notice about his or her eligibility to hold an assessment notice; and
 - (b) give an interim negative notice to the holder of the assessment notice.
- (2) The period specified under subsection (1)(a)(iii) must be not less than—
- (a) 14 days in the case of a category A re-assessment unless the holder of the assessment notice satisfies the Secretary that it is appropriate to allow the holder further time to make a submission; and
 - (b) 28 days in the case of any other re-assessment.
- (3) Before finally determining whether to revoke an assessment notice the Secretary must consider any submission made by the holder in response to a notice under subsection (1)(a) and within the period specified under subsection (2) unless the holder notifies the Secretary that he or she does not want to make a submission.
- (4) The Secretary must determine to revoke an assessment notice if the holder of that notice does not make a submission in response to an interim negative notice under subsection (1) within the

period specified under subsection (2) unless the holder notifies the Secretary that he or she does not want to make a submission.

(5) Any information given by a person under subsection (1)(a)(iii) is not admissible in evidence against the person in—

- (a) a criminal proceeding; or
- (b) a proceeding for the imposition of a penalty—

other than—

- (c) proceedings in respect of an offence against this Act; or
- (d) a proceeding in respect of the falsity or misleading nature of the information.

(6) If the Secretary—

- (a) gives the holder of an assessment notice an interim negative notice under subsection (1)(b); and
- (b) finally determines not to revoke that notice—

the Secretary must give notice in writing to the holder of the determination not to revoke the assessment notice.

21AF Copy of notice to be given to employer or agency

If the Secretary—

- (a) gives the holder of an assessment notice a negative notice under section 21C or an interim negative notice under section 21AE; and

S. 21AF
inserted by
No. 66/2014
s. 23.

- (b) is aware that the holder of the notice is a person who—
- (i) is, or is proposed to be, engaged in child-related work by another person; or

- (ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must also give a copy of that notice to that other person or that agency.

Note

Listed with an agency is defined in section 3(2).

Pt 2 Div. 6
(Heading)
inserted by
No. 66/2014
s. 24.

Division 6—Revocation and suspension of assessment notices

S. 21A
(Heading)
substituted by
No. 61/2012
s. 9(1),
amended by
No. 66/2014
s. 25(1).

21A Revocation powers on failure to provide information

S. 21A
inserted by
No. 51/2010
s. 17.

S. 21A(1)
amended by
Nos 66/2014
s. 25(2),
20/2015 s. 28.

- (1) Despite section 21(6), if a person being re-assessed under section 21 fails to provide information to the Secretary in accordance with section 21AA(1)(c), the Secretary may revoke the person's assessment notice in accordance with this section.

S. 21A(2)
amended by
No. 66/2014
s. 25(3).

- (2) The Secretary must notify the person referred to in subsection (1) of the Secretary's intention to revoke the person's assessment notice at least 28 days before the Secretary revokes the notice.

- (3) The Secretary is not required to continue to carry out or complete the re-assessment of the person whose assessment notice has been revoked under subsection (1).
- S. 21A(3)
repealed by
No. 66/2014
s. 25(4), new
s. 21A(3)
inserted by
No. 72/2016
s. 13.
- * * * * *
- S. 21A(4)–(6)
repealed by
No. 66/2014
s. 25(4).
- * * * * *
- S. 21A(7)
inserted by
No. 61/2012
s. 9(2),
repealed by
No. 66/2014
s. 25(4).
- (8) The Secretary must notify the person whose assessment notice has been revoked under subsection (1) as soon as possible after the revocation of the notice.
- S. 21A(8)
inserted by
No. 61/2012
s. 9(2),
amended by
No. 66/2014
s. 25(5).
- (9) If the Secretary is aware that the person whose assessment notice has been revoked under subsection (1) is a person who—
- S. 21A(9)
inserted by
No. 61/2012
s. 9(2),
amended by
No. 66/2014
s. 25(5).
- (a) is, or is proposed to be, engaged in child-related work by another person; or
- (b) is listed with an agency—
- the Secretary, if he or she is aware of the identity of that other person or that agency, must notify the person or agency in writing of the revocation of the person's assessment notice.
- (10) Nothing in this section prevents the former holder of an assessment notice applying for another assessment notice under this Act.
- S. 21A(10)
inserted by
No. 61/2012
s. 9(2).

21B Suspension powers on re-assessment

S. 21B
(Heading)
amended by
No. 66/2014
s. 26(1).

S. 21B
inserted by
No. 61/2012
s. 10.

S. 21B(1)
amended by
No. 66/2014
s. 26(2).

(1) Despite section 21(6) and subject to subsection (1A), if the Secretary becomes aware that a person who has an assessment notice has become subject to an obligation or order specified in clause 1 of Schedule 3 or has been charged with or been convicted or found guilty of an offence specified in clause 2 of Schedule 3, the Secretary must suspend the person's assessment notice in accordance with this section pending the carrying out and completion of a re-assessment under Division 5.

S. 21B(1A)
inserted by
No. 66/2014
s. 26(3).

(1A) The Secretary is not required to suspend a person's assessment notice pending the carrying out and completion of a re-assessment of that person's eligibility to have an assessment notice if—

- (a) the person is being re-assessed because the Secretary was notified of a charge for an offence being finally dealt with; and
- (b) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge.

S. 21B(2)
amended by
No. 66/2014
s. 26(4).

(2) If the person is being re-assessed because the Secretary was notified that the person has been charged with an offence specified in clause 2 of Schedule 3, the Secretary may reinstate that person's assessment notice if, after the suspension of the notice—

- (a) the charge against the person is withdrawn;
or
 - (b) the charge is dismissed by a court; or
 - (c) the person is acquitted of the offence by a court.
- (3) A person whose assessment notice has been suspended is to be treated for the purposes of this Act as not having a current assessment notice for the period of the suspension of his or her notice.
- (4) The Secretary must notify the person whose assessment notice has been suspended under this section as soon as possible after the suspension of the notice.
- (5) If the Secretary is aware that the person whose assessment notice has been suspended is a person who—
- (a) is, or is proposed to be, engaged in child-related work by another person; or
 - (b) is listed with an agency—
- the Secretary, if he or she is aware of the identity of that other person or that agency, must notify the person or agency in writing of the suspension of the person's notice.
- (6) If the Secretary—
- (a) has notified a person or agency under subsection (5) that a person's assessment notice has been suspended; and
 - (b) finally determines not to revoke that assessment notice—
- the Secretary must give notice in writing to that person or that agency of the determination not to revoke the assessment notice.

S. 21B(6)
inserted by
No. 66/2014
s. 26(5).

S. 21C
inserted by
No. 66/2014
s. 27.

21C Revocation of assessment notice and surrender of document

- (1) The Secretary may revoke an assessment notice following a re-assessment under Division 5 of the holder's eligibility to have the notice.
- (2) If the Secretary revokes an assessment notice under this section, the Secretary must give a negative notice to the former holder of the assessment notice.
- (3) If the Secretary gives a negative notice under subsection (2), the Secretary must give to the holder with that notice a written notice that—
 - (a) states the reasons for the decision to revoke the holder's assessment notice; and
 - (b) informs the holder that he or she may apply to VCAT to have the decision reviewed or, in the case of a category A re-assessment, to have VCAT consider whether an assessment notice is to be given; and
 - (c) explains how an application may be made to VCAT.
- (4) The Secretary may give a notice to a person whose assessment notice is revoked or has expired requiring him or her to surrender to the Secretary in the manner specified in the notice and within the period for doing so specified in the notice—
 - (a) the assessment notice document; or
 - (b) a document in the prescribed form evidencing the giving of the assessment notice.

(5) A person must not, without reasonable excuse, refuse or fail to surrender a document as required by a notice given by the Secretary under subsection (4).

Penalty: Level 9 fine (60 penalty units maximum).

- (6) If the Secretary—
- (a) gives a notice under subsection (4) consequent on the expiry of an assessment notice; and
 - (b) is aware that the former holder of the notice is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the expiry.

Note

Listed with an agency is defined in section 3(2).

Division 7—General

22 Notification requirements of holder of assessment notice

If a negative notice or an interim negative notice is given to a person, that person must notify—

- (a) any person by whom he or she is engaged in child-related work; and

Pt 2 Div. 7
(Heading)
inserted by
No. 66/2014
s. 27.

(b) any agency with which he or she is listed—
in writing of the giving of that notice within
7 days after being given it.

Penalty: Level 9 fine (60 penalty units
maximum).

Note

Listed with an agency is defined in section 3(2).

S. 23
amended
by Nos
56/2007 s. 12,
51/2010 s. 18,
61/2012 s. 11,
repealed by
No. 66/2014
s. 28.

* * * * *

24 Surrender of assessment notice

- (1) The holder of a current assessment notice may at any time surrender the assessment notice document to the Secretary.
- (2) For the purposes of this Act, a person who surrenders his or her only current assessment notice document is to be regarded as not having a current assessment notice.
- (3) If the holder of a current assessment notice (*the first assessment notice*) applies for, and is given, another current assessment notice, the holder must not, without reasonable excuse, refuse or fail to surrender to the Secretary the current assessment notice document that was given to him or her in respect of the first assessment notice, within 7 days after being directed to do so by the Secretary.

S. 24(2)
amended by
No. 56/2007
s. 13(1).

S. 24(3)
inserted by
No. 56/2007
s. 13(2).

Penalty: 1 penalty unit.

(4) If—

- (a) a person surrenders an assessment notice document to the Secretary under subsection (1); and
- (b) the Secretary is aware that the former holder of the notice is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency—

the Secretary, if he or she is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the surrender.

S. 24(4)
inserted by
No. 51/2010
s. 19.

25 Restriction on right to re-apply for working with children check

- (1) A person who has been given a negative notice is not entitled to make a further application under section 10 until 5 years have elapsed after the date of that notice unless, since that date, there has been a relevant change in circumstances.
- (2) For the purposes of subsection (1) a relevant change in circumstances is—
 - (a) a charge that was pending at the date of the notice being finally dealt with without the person being found guilty of the offence; or
 - (b) a finding of guilt being quashed or set aside by a court after the date of the notice; or
 - (c) the person ceasing to be subject to reporting obligations imposed on him or her by Part 3 of the **Sex Offenders Registration Act 2004**; or

S. 25(2)(d)
substituted by
No. 21/2008
s. 25(2)(b).

(d) the person being no longer subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or

S. 25(2)(da)
inserted by
No. 91/2009
s. 219(Sch. 3
item 7.5).

(da) the person being no longer subject to a supervision order or detention order; or

S. 25(2)(e)
amended by
No. 51/2010
s. 20(1).

(e) a relevant finding being quashed or set aside expressly or impliedly after the date of the notice.

S. 25(3)
inserted by
No. 51/2010
s. 20(2).

(3) If a person who has been given a negative notice is subsequently given an assessment notice under a further application made under section 10, the negative notice is deemed to be void and of no effect from the date the assessment notice is given.

S. 26
amended
by Nos
56/2007 s. 14,
61/2012 s. 12,
substituted by
No. 66/2014
s. 29.

26 Jurisdiction of VCAT—general

- (1) Subject to subsections (2) and (3), a person who has been given a negative notice—
- (a) on a category A application on the ground that he or she is a person referred to in paragraph (a), (b) or (c) of section 12(1); or
 - (b) on a category B application or a category C application; or
 - (c) because of a decision of the Secretary under section 21C(1) to revoke an assessment notice following a category A re-assessment required because of circumstances referred to in paragraph (a), (b) or (c) of section 21AB(1); or

(d) because of a decision of the Secretary under section 21C(1) to revoke an assessment notice following a category B re-assessment or a category C re-assessment—

may apply to VCAT for review of the decision to give the negative notice.

- (2) A person who is given a negative notice in the circumstances described in subsection (1)(a) may only apply for review on the ground that he or she is not such a person.
- (3) A person who is given a negative notice in the circumstances described in subsection (1)(c) may only apply for review on the ground that that the circumstances referred to in paragraph (a), (b) or (c) of section 21AB(1) did not occur.
- (4) An application for review under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision of the Secretary to give the negative notice is made; and
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Note

VCAT may, on an application under subsection (1), affirm the decision to give a negative notice or set that decision aside and either give an assessment notice or send the matter back to the Secretary for re-consideration (see section 51 of the **Victorian Civil and Administrative Tribunal Act 1998**).

S. 26A
inserted by
No. 66/2014
s. 29.

26A Jurisdiction of VCAT—category A

(1) A person who has been given a negative notice—

- (a) on a category A application (other than a person referred to in paragraph (a), (b) or (c) of section 12(1)); or
- (b) because of a decision of the Secretary under section 21C(1) to revoke an assessment notice following a category A re-assessment (other than on the ground that the circumstances that required the re-assessment are those referred to in paragraph (a), (b) or (c) of section 21AB(1))—

may apply to VCAT for an assessment notice to be given to him or her.

(2) Pending the final determination of an application under subsection (1), VCAT may—

- (a) make an order staying the operation of the Secretary's decision; and
- (b) make any other order it considers appropriate having regard to the matters set out in subsection (3).

(3) VCAT must not make an order for the giving of an assessment notice on an application under subsection (1) unless it is satisfied that giving the notice would not pose an unjustifiable risk to the safety of children, having regard to—

- (a) the nature and gravity of the offence and its relevance to child-related work; and
- (b) the period of time since the applicant committed the offence; and
- (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and

- (d) the sentence imposed for the offence; and
 - (e) the ages of the applicant and of any victim at the time the applicant committed the offence; and
 - (f) whether or not the conduct that constituted the offence has been decriminalised since the applicant engaged in it; and
 - (g) the applicant's behaviour since he or she committed the offence; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that VCAT considers relevant to the application.
- (4) For the purposes of subsection (3), in satisfying itself that giving an assessment notice would not pose an unjustifiable risk to the safety of children, VCAT must be satisfied that—
- (a) a reasonable person would allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.
- (5) If, in accordance with this section, VCAT is satisfied that giving an assessment notice would not pose an unjustifiable risk to the safety of children, VCAT may by order direct the Secretary to give the assessment notice to the applicant if it is satisfied that, in all the circumstances, it is in the public interest to do so.

S. 26A(4)(a)
amended by
No. 72/2016
s. 14.

- (6) The Secretary must comply with an order made by VCAT under subsection (5).
- (7) An application under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision of the Secretary to give the negative notice is made; and
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 26B
inserted by
No. 66/2014
s. 29.

26B Jurisdiction of VCAT—category B

- (1) In a review of a decision to give a negative notice on a category B application or in relation to a category B re-assessment, VCAT must determine that it is appropriate to refuse to give an assessment notice unless satisfied that giving the assessment notice would not pose an unjustifiable risk to the safety of children, having regard to any matters to which the Secretary must have regard under section 13(2).
- (2) In satisfying itself that giving an assessment notice would not pose an unjustifiable risk to the safety of children, VCAT must be satisfied that—
 - (a) a reasonable person would allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

S. 26B(2)(a)
amended by
No. 72/2016
s. 15.

- (3) Even if VCAT is satisfied under subsections (1) and (2) that giving an assessment notice would not pose an unjustifiable risk to the safety of children, VCAT must determine that it is appropriate to refuse to give the assessment notice unless it is satisfied that it is in the public interest to give the assessment notice.

26C Jurisdiction of VCAT—category C

- (1) In a review of a decision to give a negative notice on a category C application or in relation to a category C re-assessment, VCAT must determine whether in the particular circumstances it would be appropriate to refuse to give an assessment notice, having regard to any matters to which the Secretary must have regard under section 14(3).
- (2) VCAT must determine that it is appropriate to refuse to give an assessment notice unless VCAT is satisfied that—
- (a) a reasonable person would allow his or her child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; or
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.
- (3) Even if VCAT does not determine under subsection (1) or (2) that it would be appropriate to refuse to give an assessment notice, VCAT must determine that it is appropriate to refuse to give the assessment notice unless it is satisfied that it is in the public interest to give the assessment notice.

S. 26C
inserted by
No. 66/2014
s. 29.

S. 26C(2)(a)
amended by
No. 72/2016
s. 16.

Part 3—Exemptions from working with children check

27 Volunteer whose child is participating or ordinarily participates in the relevant activity

A parent engaging in work as a volunteer in relation to an activity in which his or her child is participating or ordinarily participates is exempt from a working with children check in respect of that activity.

Example 1

A parent who coaches a school football team in which his or her child ordinarily plays is exempt from a working with children check even if his or her child is not present on particular days due to sickness or some other reason. However, a parent who coaches a school football team whose child plays football for another team in the same school is not exempt from a working with children check.

Example 2

An athletics carnival is being held at a school. A parent of one of the participating children carries out the task of raking the sand in the long jump pit. That parent is exempt from a working with children check even if his or her child is not participating in the long jump competition.

28 Person working with closely related child

- (1) A person engaging in child-related work (other than a person who engages in child-related work described in section 9(6)) where each child with whom he or she is required to have direct contact during the work is a child who is closely related to him or her is exempt from a working with children check in respect of that work.
- (2) For the purposes of subsection (1), a person is closely related to a child if the person is the child's—
 - (a) spouse (including domestic partner as defined in the **Relationships Act 2008**);

S. 28(1)
amended by
No. 72/2016
s. 24.

S. 28(2)(a)
amended by
No. 52/2008
s. 270.

- (b) parent, step-parent, mother-in-law or father-in-law;
- (c) grandparent;
- (d) uncle or aunt;
- (e) brother or sister (including half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law)—

and includes, in the case of domestic partners, a person who would be closely related to the child if the domestic partners were married to each other.

29 Children

- (1) A child is exempt from a working with children check.
- (2) An adult who has not attained the age of 20 years and who is a student at an educational institution is exempt from a working with children check in respect of any work engaged in as a volunteer at that institution or outside that institution under an arrangement entered into by that institution.

30 Teachers

- (1) A person who is a registered teacher or registered early childhood teacher under the **Education and Training Reform Act 2006** is exempt from a working with children check.

Note

Section 2.6.54K of the **Education and Training Reform Act 2006** provides that a teacher whose registration is suspended is deemed not to be registered for the period of that suspension.

S. 30(1)
amended by
Nos 14/2006
s. 28¹, 19/2008
s. 18, 19/2014
s. 92(1).

Note to
s. 30(1)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 48.3(b)),
7/2015 s. 14,
9/2016
s. 13(1),
38/2017 s. 97.

S. 30(2)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 48.3(c)),
19/2014
s. 92(2)(a)(b).

(2) A person who engages in child-related work (other than teaching in a school or an early childhood service) and who relies on an exemption under subsection (1) in respect of that work must notify—

(a) any person by whom he or she is engaged in that child-related work; and

S. 30(2)(b)
amended by
No. 19/2014
s. 92(2)(a).

(b) any agency with which he or she is listed for child-related work (other than teaching in a school or an early childhood service)—

in writing of the suspension or cancellation of the person's registration as a teacher or an early childhood teacher under the **Education and Training Reform Act 2006** within 7 days after receiving notice of the suspension or cancellation.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Note 1 to
s. 30(2)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 48.3(d)),
substituted by
No. 9/2016
s. 13(2).

1 The Victorian Institute of Teaching must notify a teacher's employer of the suspension or cancellation of the teacher's registration: see sections 2.6.27(7), 2.6.28B and 2.6.51 of the **Education and Training Reform Act 2006**.

2 *Listed with an agency* is defined in section 3(2).

S. 30(3)
inserted by
No. 19/2014
s. 92(3).

(3) In this section, *early childhood service* has the meaning given in section 1.1.3 of the **Education and Training Reform Act 2006**.

31 Police officers

S. 31(1)
substituted by
No. 37/2014
s. 10(Sch.
item 187.2(a)).

(1) A person who is a police officer (other than a police officer who is suspended from duty under the **Victoria Police Act 2013**) is exempt from a working with children check.

(2) A person referred to in subsection (1) who engages in child-related work (other than as a police officer) and who relies on an exemption under subsection (1) in respect of that work must notify—

S. 31(2)
amended by
No. 37/2014
s. 10(Sch.
item 187.2(b)).

(a) any person by whom he or she is engaged in that child-related work; and

(b) any agency with which he or she is listed for child-related work—

in writing of the suspension or dismissal of the person as a police officer under the **Victoria Police Act 2013** within 7 days after receiving notice of the suspension or dismissal.

Penalty: Level 9 fine (60 penalty units maximum).

Note

Listed with an agency is defined in section 3(2)

31A Federal police officers

S. 31A
inserted by
No. 51/2010
s. 21.

(1) A person who is a member of the Australian Federal Police within the meaning of the Australian Federal Police Act 1979 of the Commonwealth (other than a member who is suspended from duty under that Act) is exempt from a working with children check.

(2) A person referred to in subsection (1) who engages in child-related work (other than as a member of the Australian Federal Police) and who relies on an exemption under subsection (1) in respect of that work must notify in writing—

(a) any person by whom he or she is engaged in that child-related work; and

- (b) any agency with which he or she is listed for child-related work—

of the suspension or termination of the employment of the person as a member of the Australian Federal Police within 7 days after receiving notice of the suspension or termination.

Penalty: Level 9 fine (60 penalty units maximum).

S. 32
substituted by
No. 66/2014
s. 30.

32 Visiting workers

- (1) A person who is not ordinarily resident in Victoria is exempt from a working with children check in respect of child-related work in which he or she engages in Victoria if—
- (a) the period during which the person engages in that work is not more than 30 days; and
 - (b) the person does not engage in any other child-related work in Victoria within the same calendar year.
- (2) A person who is not ordinarily resident in Victoria is exempt from a working with children check in respect of child-related work in which he or she engages in Victoria if—
- (a) the person holds the equivalent of an assessment notice given under the provisions of the laws of the Australian jurisdiction in which the person is ordinarily resident; and
 - (b) the person engages in not more than 30 days of child-related work in Victoria within the same calendar year.

32A Exemptions subject to negative notice

A person is not exempt under this Part from a working with children check if the person has been given a negative notice and has not subsequently been given an assessment notice.

S. 32A
(Heading)
substituted by
No. 19/2010
s. 35(1).
S. 32A
inserted by
No. 85/2008
s. 17,
amended by
No. 6/2010
s. 203(1)
(Sch. 6
item 53) (as
amended by
No. 45/2010
s. 22), 19/2010
s. 35(2)–(4),
26/2010
s. 36(2),
34/2011 ss
104(1)–(3),
127(1)–(3),
61/2012 s. 13,
substituted by
No. 66/2014
s. 31.

* * * * *

S. 32B
inserted by
No. 19/2010
s. 36,
amended by
No. 34/2011
ss 104(4),
127(4),
repealed by
No. 66/2014
s. 32.

Part 4—Offences connected with child-related work

33 Engaging in child-related work without an assessment notice

- (1) A person is guilty of an offence if—
- (a) he or she does not have a current assessment notice; and
 - (b) he or she engages in child-related work, knowing that it is child-related work; and
 - (c) he or she knows that he or she does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note to
s. 33(1)
inserted by
No. 79/2006
s. 62(4),
substituted by
No. 66/2014
s. 33(1).

Note

See section 9(1) for the meaning of *child-related work*.

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she—
- (a) had applied for a working with children check and the application had not been finally decided or withdrawn and he or she—
 - (i) had not at any time been given a negative notice or, having been given a negative notice, had subsequently been given an assessment notice; and

S. 33(2)(a)(ia)
inserted by
No. 61/2012
s. 14,
repealed by
No. 66/2014
s. 33(2).

* * * * *

- (ii) was not subject to an obligation or order specified in clause 1 of Schedule 3; and
- (iii) was not charged with or had not been convicted or found guilty of an offence specified in clause 2 of Schedule 3; or
- (b) was exempt from a working with children check in respect of the work under Part 3 and he or she—
- (i) had not at any time been given a negative notice or, having been given a negative notice, had subsequently been given an assessment notice; and
- (ii) was not subject to an obligation or order specified in clause 1 of Schedule 3; or
- (c) unless engaging in the work as a volunteer or undertaking practical training—
- (i) having applied for a working with children check and been given a negative notice, had notified his or her employer of the giving of that notice; and
- (ii) his or her employer was in the process of—
- (A) transferring him or her to work that was not child-related work; or

S. 33(2)(a)(ii) amended by Nos 21/2008 s. 25(2)(c), 91/2009 s. 219(Sch. 3 item 7.6), substituted by No. 66/2014 s. 33(3).

S. 33(2)(a)(iii) inserted by No. 66/2014 s. 33(3).

S. 33(2)(b)(ii) amended by Nos 21/2008 s. 25(2)(c), 91/2009 s. 219(Sch. 3 item 7.7), substituted by No. 66/2014 s. 33(4).

S. 33(2)
(c)(ii)(B)
amended by
No. 74/2009
s. 20(1).

(B) terminating his or her
employment in accordance with
the requirements of the Fair Work
Act 2009 of the Commonwealth.

S. 33(2A)
inserted by
No. 56/2007
s. 15.

(2A) A person is not guilty of an offence against
subsection (1) if, at the time the offence is alleged
to have been committed, he or she had been given
a negative notice by the Secretary and had applied
to VCAT—

S. 33(2A)(a)
amended by
No. 66/2014
s. 33(5).

(a) under section 26A(1) for an assessment
notice to be given to him or her; or

S. 33(2A)(b)
substituted by
No. 66/2014
s. 33(6).

(b) under section 26(1) for review of a decision
of the Secretary to give him or her a negative
notice—

and the decision of the Secretary was the subject
of an order by VCAT staying the operation of the
decision.

S. 33(2B)
inserted by
No. 72/2016
s. 25.

(2B) A person is not guilty of an offence against
subsection (1) if—

(a) at the time the offence is alleged to have
been committed, the work engaged in is
child-related work described in section 9(6);
and

(b) the person applies, within 21 days after first
engaging in that work, for a working with
children check to be carried out.

(3) A person who is guilty of an offence against
subsection (1) is liable to level 7 imprisonment
(2 years maximum) or a level 7 fine (240 penalty
units maximum) or both.

34 Offence for holder of negative notice to apply for child-related work

(1) A person who has at any time been given a negative notice and does not have a current assessment notice must not apply for, or engage in, work that is child-related work.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

(2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she did not know that the work was child-related work.

(2A) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, he or she had been given a negative notice by the Secretary and had applied to VCAT—

S. 34(2A) inserted by No. 56/2007 s. 16.

(a) under section 26A(1) for an assessment notice to be given to him or her; or

S. 34(2A)(a) amended by No. 66/2014 s. 34(1).

(b) under section 26(1) for review of a decision of the Secretary to give him or her a negative notice—

S. 34(2A)(b) substituted by No. 66/2014 s. 34(2).

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

* * * * *

S. 34(3) substituted by No. 66/2014 s. 34(3), repealed by No. 72/2016 s. 17.

35 Offence to engage in child-related work a person who does not have an assessment notice

- (1) A person is guilty of an offence if—
- (a) the person engages, or continues to engage, another person (the worker) in child-related work, knowing that it is child-related work; and
 - (b) the worker does not have a current assessment notice; and
 - (c) the person engaging, or continuing to engage, the worker knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note to
s. 35(1)
inserted by
No. 79/2006
s. 62(4),
substituted by
No. 66/2014
s. 35(1).

Note

See section 9(1) for the meaning of *child-related work*.

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—

S. 35(2)(a)
amended by
No. 61/2012
s. 15,
substituted by
No. 66/2014
s. 35(2).

- (a) the worker had applied for a working with children check and the application had not been finally decided or withdrawn; or
- (b) the worker was exempt from a working with children check in respect of the work under Part 3; or

- (c) having been notified that the worker (not being a worker who was engaging in the work as a volunteer or undertaking practical training) had been given a negative notice, the accused was in the process of—
- (i) transferring him or her to work that was not child-related work; or
 - (ii) terminating his or her employment in accordance with the requirements of the Fair Work Act 2009 of the Commonwealth. **S. 35(2)(c)(ii) amended by No. 74/2009 s. 20(2).**
- (2A) The accused may not rely on the defence set out in subsection (2)(a) if, at the time the offence is alleged to have been committed, the accused—
- (a) knew or ought reasonably to have known that the worker was subject to an obligation or order specified in clause 1 of Schedule 3; or
 - (b) knew or ought reasonably to have known that the worker had been charged with or convicted or found guilty of an offence specified in clause 2 of Schedule 3. **S. 35(2A) inserted by No. 66/2014 s. 35(3).**
- (3) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that he or she directly engaged the worker and the work was child-related work with a child of whom the accused is a parent, whether or not it also involved direct contact with other children.
- (3A) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the worker had been given a negative notice by the Secretary and had applied to VCAT— **S. 35(3A) inserted by No. 56/2007 s. 17.**

S. 35(3A)(a)
amended by
No. 66/2014
s. 35(4).

(a) under section 26A(1) for an assessment notice to be given to him or her; or

S. 35(3A)(b)
substituted by
No. 66/2014
s. 35(5).

(b) under section 26(1) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

(4) A person who is guilty of an offence against subsection (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

36 Offence for agency to offer the services of a person who does not have an assessment notice

(1) An agency is guilty of an offence if—

- (a) the agency, in the course of a business, offers to another person the services of a person (the worker) in child-related work, knowing that it is child-related work; and
- (b) the worker does not have a current assessment notice; and
- (c) the agency knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.

Note to
s. 36(1)
inserted by
No. 79/2006
s. 62(4),
substituted by
No. 66/2014
s. 36(1).

Note

See section 9(1) for the meaning of *child-related work*.

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—
- (a) the worker had applied for a working with children check and the application had not been finally decided or withdrawn; or
 - (b) the worker was exempt from a working with children check in respect of the work under Part 3.
- (2AA) The accused may not rely on the defence set out in subsection (2)(a) if, at the time the offence is alleged to have been committed, the accused—
- (a) knew or ought reasonably to have known that the worker was subject to an obligation or order specified in clause 1 of Schedule 3; or
 - (b) knew or ought reasonably to have known that the worker had been charged with or convicted or found guilty of an offence specified in clause 2 of Schedule 3.
- (2A) An agency is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the worker had been given a negative notice by the Secretary and had applied to VCAT—
- (a) under section 26A(1) for an assessment notice to be given to him or her; or

S. 36(2)(a)
amended by
No. 61/2012
s. 16,
substituted by
No. 66/2014
s. 36(2).

S. 36(2AA)
inserted by
No. 66/2014
s. 36(3).

S. 36(2A)
inserted by
No. 56/2007
s. 18.

S. 36(2A)(a)
amended by
No. 66/2014
s. 36(4).

S. 36(2A)(b)
substituted by
No. 66/2014
s. 36(5).

(b) under section 26(1) for review of a decision of the Secretary to give him or her a negative notice—

and the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

(3) An agency that is guilty of an offence against subsection (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

37 Using volunteer assessment notice for paid work

(1) A person is guilty of an offence if—

- (a) he or she has a current assessment notice that was given to him or her on an application that did not specify an intention to engage in child-related work for profit or gain; and
- (b) he or she engages in child-related work for profit or gain; and
- (c) he or she knows that his or her current assessment notice was given on an application of a kind referred to in paragraph (a); and
- (d) he or she knows that, or is reckless as to whether or not, the child-related work in which he or she is engaging is being engaged in for profit or gain.

Note to
s. 37(1)
inserted by
No. 79/2006
s. 62(4),
substituted by
No. 66/2014
s. 37.

Note

See section 9(1) for the meaning of *child-related work*.

- (2) A person is guilty of an offence if—
- (a) the person engages, or continues to engage, another person (the worker) in child-related work, knowing that it is child-related work; and
 - (b) the person knows that the worker has a current assessment notice that was given to him or her on an application that did not specify an intention to engage in child-related work for profit or gain; and
 - (c) the person engaging, or continuing to engage, the worker knows that, or is reckless as to whether or not, the child-related work in which the worker is engaging is being engaged in for profit or gain.
- (3) A person who is guilty of an offence against subsection (1) or (2) is liable to a level 11 fine (5 penalty units maximum).

Note

A person who has been given an assessment notice on an application that did not specify an intention to engage in child-related work for profit or gain may apply under section 10 for an assessment notice that may be used in respect of child-related work engaged in for profit or gain.

38 Offence to use false or other person's assessment notice

A person must not use in connection with his or her work, or an application for work—

- (a) a document purporting to be an assessment notice knowing that the document is false within the meaning of section 83A(6) of the **Crimes Act 1958**; or

- (b) a document purporting to be an assessment notice given to him or her knowing that the document is an assessment notice given to another person.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

39 False or misleading information

S. 39(1)
amended by
No. 66/2014
s. 38.

- (1) A person must not in, or in relation to, an application for the carrying out of a working with children check or in connection with a re-assessment under Division 5 of Part 2 give information that is false or misleading in a material particular.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—

- (a) in the case of false information—that the information was true; or
(b) in the case of misleading information—that the information was not misleading.

S. 39A
inserted by
No. 51/2010
s. 22.

39A Sex offenders not to apply for assessment notice

A person who is any of the following must not apply for a working with children check under this Act—

S. 39A(a)
substituted by
No. 25/2017
s. 58.

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

(b) a person subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or

(c) a person subject to a detention order or a supervision order.

Penalty: 240 penalty units or imprisonment for 2 years.

40 Confidentiality of information

(1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person—

(a) from, or in the carrying out of, a working with children check; or

(b) under section 18, 20(1), 22, 21C(6), 30(2) or 31(2).

S. 40(1)(b)
amended by
No. 66/2014
s. 39.

Penalty: Level 9 fine (60 penalty units maximum).

(2) Subsection (1) does not apply to the giving of information—

(a) in good faith—

(i) for the purposes of this Act; or

(ii) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or

(iii) for the purpose of making employment-related decisions in respect of child-related work; or

S. 40(2)(a)(iv)
inserted by
No. 4/2017
s. 11(3).

(iv) to the Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) for the purposes of an investigation of a reportable allegation under Part 5A of the **Child Wellbeing and Safety Act 2005**; or

S. 40(2)(b)
amended by
No. 47/2016
s. 49(3).

- (b) with the written authority of the person to whom the information relates or, if the person to whom the information relates is a child or a person with a cognitive impairment or mental illness within the meaning of Subdivision (8E) of Division 1 of Part I of the **Crimes Act 1958**, with the written authority of a person authorised to act on that person's behalf; or
- (c) to a court or tribunal in the course of legal proceedings; or
- (d) pursuant to an order of a court or tribunal; or
- (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or

S. 40(2)(ea)
inserted by
No. 51/2010
s. 23.

- (ea) to a person or body established under a law of the Commonwealth or another State or Territory with functions or powers that correspond with the functions or powers of the Secretary or the Chief Commissioner of Police under this Act; or
- (f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or

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(g) as required or authorised by or under any other Act.

Note

Under the **Child Employment Act 2003**, the supervision of children under the age of 15 years in employment requiring a permit under that Act is child-related work for the purposes of this Act with the modifications set out in that Act. Section 19A(2) and (3) of the **Child Employment Act 2003** modifies the application of the defences in Part 4 of this Act in respect of supervisors of those children.

**Note to s. 40
inserted by
No. 26/2010
s. 36(3).**

Part 5—Miscellaneous

41 Duty on police to notify Secretary of certain matters

S. 41(1)
amended by
No. 51/2010
s. 24,
substituted by
No. 66/2014
s. 40(1).

(1) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable after the Chief Commissioner becomes aware that a person to whom an assessment notice has been given or who has applied for a working with children check has been charged with a category A offence or a category B offence or any other offence of a type of which the Secretary has requested to be notified by the Chief Commissioner.

S. 41(2)
amended by
No. 68/2009
s. 97(Sch.
item 136.9),
substituted by
No. 66/2014
s. 40(2).

(2) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable of how a charge for a category A offence, a category B offence or an offence of a type of which the Secretary has requested to be notified against a person who has a current assessment notice or who has applied for a working with children check has been finally dealt with.

S. 41A
inserted by
No. 72/2016
s. 18.

41A Secretary may require production of information

(1) If the Secretary suspects that a person has committed an offence against this Act or the regulations or Part 5 of the **Sex Offenders Registration Act 2004**, the Secretary may, by notice in writing, require any person to provide any information that the Secretary thinks necessary to determine whether that suspicion is reasonable.

(2) A person who receives a notice under subsection (1) must not, without reasonable excuse, fail to provide the information specified in the notice to the Secretary within 28 days or any longer period specified in the notice.

Penalty: 60 penalty units.

- (3) In responding to a notice under subsection (1), a person does not contravene any duty of confidentiality imposed on the person by or under any Act (including the **Judicial Proceedings Reports Act 1958**) or agreement, despite anything to the contrary in that Act or agreement.
- (4) For the purposes of subsection (2), it is a reasonable excuse for a natural person to refuse or fail to provide information that the person is required to provide under subsection (1) if the provision of the information would tend to incriminate the person.

42 Secretary may notify police of certain matters

Nothing in this Act prevents the Secretary, if he or she suspects on reasonable grounds that a person has committed an offence against this Act or the regulations or Part 5 of the **Sex Offenders Registration Act 2004**, immediately notifying the Chief Commissioner of Police of that suspicion.

S. 42
amended by
No. 72/2016
s. 19.

42A Secretary may request information during review

If a person who has been refused an assessment notice or been given a negative notice makes an application under section 26(1) or 26A(1), the Secretary, pending the final determination of that application and for the purposes of assisting VCAT in relation to the application, may make enquires to, or seek information from, any person or source that the Secretary thinks fit, including the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**.

S. 42A
inserted by
No. 66/2014
s. 41.

42B Secretary may notify Department of Health and Human Services of certain matters

- (1) Nothing in this Act prevents the Secretary notifying the Secretary to the Department of Health and Human Services of the following

S. 42B
inserted by
No. 72/2016
s. 26.

in relation to a current assessment notice, the application for which specifies that the applicant is engaged or intends to engage in child-related work described in section 9(6)—

- (a) if the holder surrenders the assessment notice;
 - (b) if the Secretary revokes or suspends the assessment notice;
 - (c) if the holder notifies the Secretary of a change in any person by whom the holder is engaged in child-related work.
- (2) Nothing in this Act prevents the Secretary notifying the Secretary to the Department of Health and Human Services of the following in relation to an application for an assessment notice that specifies that the applicant is engaged or intends to engage in child-related work described in section 9(6)—
- (a) if the application is made, withdrawn or reinstated;
 - (b) if the Secretary gives an assessment notice, an interim negative notice or a negative notice in relation to the application;
 - (c) if the applicant notifies the Secretary of a change in any person by whom the applicant is engaged in child-related work.

S. 42C
inserted by
No. 72/2016
s. 26.

42C Disclosure of information by the Department of Health and Human Services to the Secretary

Nothing in this Act or the **Children, Youth and Families Act 2005** prevents the Secretary to the Department of Health and Human Services disclosing to the Secretary information relating to a person who is engaged in child-related work described in section 9(6) if the disclosure is made for the purposes of the administration or execution

of this Act or the **Children, Youth and Families Act 2005**.

43 Delegation

S. 43
amended by
No. 56/2007
s. 19.

The Secretary, by instrument, may delegate to—

- (a) any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; or
- (b) another prescribed person or body—

any of the Secretary's powers under this Act or regulations made under this Act, other than this power of delegation.

44 Offences by bodies corporate

- (1) In a proceeding against a body corporate for an offence against a provision of this Act, it is a defence to the charge for the body corporate to prove that, at the time the offence is alleged to have been committed, it had taken all reasonable steps to have systems in place within the body corporate to ensure compliance with the relevant provision.
- (2) If a body corporate contravenes any provision of this Act, each person who is an officer of the body corporate is to be taken to have contravened the same provision if the person knew of, or knowingly authorised or permitted, the contravention.
- (3) A person may be proceeded against and convicted or found guilty under a provision in accordance with subsection (2) whether or not the body corporate has been proceeded against or convicted or found guilty under that provision.
- (4) Nothing in subsection (2) or (3) affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

- (5) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the officer had that state of mind.

45 Offences by unincorporated bodies, partnerships etc.

- (1) If this Act provides that a person, being an unincorporated body or association or a partnership, is guilty of an offence, that reference to the person must—
- (a) in the case of an unincorporated body or association—be read as a reference to each member of the committee of management of the body or association who knew of, or knowingly authorised or permitted, the commission of the offence; and
 - (b) in the case of a partnership—be read as a reference to each member of the partnership who knew of, or knowingly authorised or permitted, the commission of the offence.
- (2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an unincorporated body or association or a partnership in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by an employee or agent of the unincorporated body or association or the partnership within the scope of his or her actual or apparent authority; and
 - (b) the employee or agent had that state of mind.

46 Giving of notices

If by or under this Act a notice, or a copy of a notice, is required or permitted to be given by the Secretary to a person, the notice may, unless the contrary intention appears, be given to the person—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing there or (in the case of a place of business) apparently in charge of, or employed at, that place; or
- (c) by sending it by post addressed to the person at the person's usual or last known place of residence or business.

47 Evidentiary provisions

- (1) A document purporting to be given by the Secretary or a delegate of the Secretary certifying as to—
 - (a) whether an application by a specified person for a working with children check was pending under Part 2 as at a specified date; or
 - (b) whether an interim negative notice was given to a specified person on a specified date; or
 - (c) whether a negative notice was given to a specified person on a specified date; or
 - (d) whether an assessment notice was given to a specified person on a specified date; or
 - (e) whether a copy of an assessment notice, an interim negative notice or a negative notice was given to a specified person on a specified date; or

(f) any other matter that appears in, or that can be determined from, the records kept by the Secretary under this Act—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the document.

(2) A document purporting to be given by the Secretary or a delegate of the Secretary under subsection (1) must be presumed in any proceedings, in the absence of evidence to the contrary, to have been given by the Secretary or a person who was, at that time, a delegate of the Secretary, as the case requires.

S. 47(3)
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 68.1).

* * * * *

48 Immunity

(1) The Secretary or an employee within the meaning of the **Public Administration Act 2004** is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Secretary or an employee within the meaning of the **Public Administration Act 2004** attaches instead to the State.

49 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
 - (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or

- (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as published at the time the regulations are made or at any time before then; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;

- (d) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (e) the reduction, waiver or refund, in whole or in part, of the fees.
- (5) If under subsection (4)(e) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain checks or classes of checks; or
 - (b) when an event happens; or
 - (c) in respect of certain persons or classes of persons; or
 - (d) in respect of any combination of such checks, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

Part 6—Transitional provisions

Pt 6 (Heading and ss 50–53) amended by Nos 93/2005 s. 16, 29/2006 s. 3(Sch. 1 item 40), substituted as Pt 6 (Heading and s. 50) by No. 79/2006 s. 63.

S. 50 substituted by No. 79/2006 s. 63.

50 Transitional provision—Justice Legislation (Further Amendment) Act 2006

- (1) The amendments of this Act made by section 62 of the **Justice Legislation (Further Amendment) Act 2006** do not affect any Order made under section 9(5) of this Act before the commencement of that section of that Act.
- (2) Nothing in subsection (1) limits section 14 of the **Interpretation of Legislation Act 1984**.

51 Transitional provision—Working with Children Amendment Act 2007

S. 51 repealed by No. 79/2006 s. 63², new s. 51 inserted by No. 56/2007 s. 20.

- (1) The amendments made to this Act by the **Working with Children Amendment Act 2007** apply to any application for a working with children check that was made but not finally decided or withdrawn immediately before the commencement of section 20 of that Act.
- (2) The Secretary must, immediately after the commencement of section 20 of the **Working with Children Amendment Act 2007**, notify each person who has made an application for a working with children check that was not finally decided or withdrawn immediately before that commencement that his or her application will be assessed in accordance with this Act as amended by that Act, and must give each person a reasonable opportunity to withdraw his or her application if the person wishes to do so.

- (3) The amendments made to this Act by sections 12 and 13 of the **Working with Children Amendment Act 2007** apply to any assessment notice that was in force immediately before the commencement of those sections.
- (4) The amendments made to this Act by section 15, 16, 17 or 18 of the **Working with Children Amendment Act 2007** apply to offences committed before, on or after the commencement of that section of that Act.

52 Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

Section 47(3), as in force immediately before the commencement of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, continues to apply in respect of a hearing that commenced before the day that Act commences and that—

- (a) continued on or after that day; or
- (b) was adjourned until that day or a day after that day.

53 Transitional provision—Working with Children Amendment (Ministers of Religion and Other Matters) Act 2014

Despite the amendments made by the **Working with Children Amendment (Ministers of Religion and Other Matters) Act 2014**, this Act and the **Victorian Civil and Administrative Tribunal Act 1998** as in force immediately before the commencement of Parts 2 and 3 of that 2014 Act continue to apply to—

- (a) any application under section 10 or 19(2) for an assessment notice made before that commencement that is not finally determined before that commencement; and

S. 52
repealed by
No. 79/2006
s. 63,
new s. 52
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 68.2).

S. 53
repealed by
No. 79/2006
s. 63,
new s. 53
inserted by
No. 66/2014
s. 42.

- (b) any re-assessment of a person's eligibility to have an assessment notice if the Secretary receives the notification referred to in section 21(1) requiring the re-assessment before that commencement; and
- (c) applications to VCAT if the application was made before that commencement; and
- (d) proceedings in VCAT if the application to VCAT for those proceedings was made before the commencement of that Part.

S. 54
inserted by
No. 72/2016
s. 27.

54 Transitional provision—Working with Children Amendment Act 2016

A person is not guilty of an offence against section 33(1) if—

- (a) at the time the offence is alleged to have been committed, the work engaged in is child-related work described in section 9(6); and
- (b) the person was engaged in that work immediately before the commencement of Part 3 of the **Working with Children Amendment Act 2016**; and
- (c) the person applies, within 3 months after that commencement, for a working with children check to be carried out.

Schedules

Schs
(Heading)
inserted by
No. 66/2014
s. 43.

Schedule 1—Category A offences

Section 3(1)

Sch. 1
inserted by
No. 66/2014
s. 43.

- 1 An offence (other than a child abuse material offence, a carnal knowledge offence or an offence specified in clause 4, 5, 6, 7, 8, 9 or 10) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) in circumstances where the person against whom the offence is committed is a child.
- 2 A child abuse material offence or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted a child abuse material offence.
- 3 An offence specified in clause 2(a) of Schedule 1 to the **Sentencing Act 1991** (murder).
- 4 The common law offence of rape.
- 5 An offence against section 38 of the **Crimes Act 1958** (rape).
- 6 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**—
 - (a) section 40 (rape);
 - (b) section 41 (rape with aggravating circumstances).

Sch. 1 cl. 1
amended by
Nos 47/2016
s. 49(4),
72/2016
s. 20(1).

Sch. 1 cl. 2
amended by
Nos 47/2016
s. 49(4),
72/2016
s. 20(2).

- 7 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**—
- (a) section 45(1) (rape);
 - (b) section 45(3) (rape with aggravating circumstances).
- 8 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**—
- (a) section 44(1) (rape);
 - (b) section 44(2) (rape with mitigating circumstances).
- 9 An offence of attempting to commit an offence specified in clause 3, 4, 5, 6, 7 or 8.
- 10 An offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence specified in clause 3, 4, 5, 6, 7, 8 or 9.

Sch. 1 cl. 10
inserted by
No. 72/2016
s. 20(3).

Schedule 2—Category B offences

Section 3(1)

Sch. 2
inserted by
No. 66/2014
s. 43.

- 1 An offence (other than a child abuse material offence, a carnal knowledge offence or an offence specified in clause 4, 5, 6, 7, 8 or 9 of Schedule 1) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) in circumstances where the person against whom the offence is committed is not a child.
- 2 A carnal knowledge offence.
- 3 An offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** (violent offences) other than murder or attempted murder.
- 4 An offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** (drug offences).
- 5 An offence against section 71AB (trafficking in a drug of dependence to a child) or 71B (supply of a drug of dependence to a child) of the **Drugs, Poisons and Controlled Substances Act 1981** 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 71AB or 71B of that Act.
- 6 An offence—
 - (a) against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70); or
 - (b) against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
 - (c) against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186); or

Sch. 2 cl. 1
amended by
No. 47/2016
s. 49(5).

(d) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70) or against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)) or against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186).

7 An offence against section 271.4 (trafficking in children) or 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section.

8 An offence against section 21A 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 21A of that Act, in circumstances where the person against whom the offence is committed is a child.

9 An offence against section 49N(1) 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 49N(1) of that Act.

9A An offence against section 49O(1) 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 49O(1) or 327 of that Act.

10 An offence against Part 4 of this Act (other than section 37 or 40).

Sch. 2 cl. 9
amended by
No. 47/2016
s. 49(6).

Sch. 2 cl. 9A
inserted by
No. 20/2015
s. 29,
amended by
No. 47/2016
s. 49(7).

11 An offence—

- (a) against section 18 of the **Crimes Act 1958**;
or
- (b) against section 19 or 37 of the **Crimes Act 1958** if the offence was committed before the commencement of the **Crimes (Amendment) Act 1985**; or
- (c) 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 18 of the **Crimes Act 1958**; or
- (d) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Crimes (Amendment) Act 1985**, would have constituted an offence against section 19 or 37 of the **Crimes Act 1958**.

12 An offence—

- (a) against section 19 of the **Summary Offences Act 1966**; or
- (ab) against section 19 of the **Summary Offences Act 1966** if the offence was committed before the commencement of section 25 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
- (b) against section 17(1) of the **Summary Offences Act 1966** constituted by indecent behaviour if the offence was committed before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**; or

Sch. 2
cl. 12(ab)
inserted by
No. 47/2016
s. 49(8).

- (c) against section 7(1)(c) of the **Vagrancy Act 1966** if the offence was committed before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**; or
- (d) under a law of a jurisdiction other than Victoria that, if committed in Victoria, would constitute an offence against section 19 of the **Summary Offences Act 1966**; or
- (e) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**, would have constituted an offence against section 17(1) of the **Summary Offences Act 1966** constituted by indecent behaviour; or
- (f) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**, would have constituted an offence against section 7(1)(c) of the **Vagrancy Act 1966**.

13 An offence—

- (a) against any of the following sections of the **Crimes Act 1958**—
 - (i) section 63 (child stealing);
 - (ii) section 75A (armed robbery); or
- (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Crimes Act 1958** specified in paragraph (a).

14 An offence against Division 4A of Part I of the **Summary Offences Act 1966** (upskirting offences) 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 that Division.

14A An offence against section 41DA or 41DB of the **Summary Offences Act 1966** 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 41DA or 41DB of that Act.

Sch. 2 cl. 14A
inserted by
No. 74/2014
s. 36(3),
amended by
No. 20/2015
s. 30.

15 An offence—

- (a) against any of the following sections of the **Children, Youth and Families Act 2005**—
 - (i) section 493 (failing to protect a child from harm);
 - (ii) section 494 (leaving a child unattended); or
- (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Children, Youth and Families Act 2005** specified in paragraph (a).

16 An offence—

- (a) against the following sections of the **Surveillance Devices Act 1999**—
 - (i) section 7 (installing, using or maintaining a device to record or observe a private activity);
 - (ii) section 9B (employer installing, using or maintaining a device to record or observe a private activity of a worker); or

(b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Surveillance Devices Act 1999** specified in paragraph (a).

Sch. 2 cl. 17
inserted by
No. 47/2016
s. 49(9).

17 An offence against section 49C(2) of the **Crimes Act 1958** (failure by person in authority to protect child from sexual offence) inserted in the **Crimes Act 1958** on 1 July 2015 by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** 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(2) of the **Crimes Act 1958**.

Sch. 2 cl. 18
inserted by
No. 47/2016
s. 49(9).

18 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** 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 60B(2) of the **Crimes Act 1958**.

Schedule 3—Obligations and orders and offences

Sch. 3
inserted by
No. 66/2014
s. 43.

Sections 21B, 33, 35 and 36

1 Obligations and orders

- 1.1 Reporting obligations imposed on a person by Part 3 of the **Sex Offenders Registration Act 2004**.
- 1.2 An extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**.
- 1.3 A supervision order or a detention order.

2 Offences

- 2.1 An offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) other than a carnal knowledge offence.
- 2.1A A carnal knowledge offence where the conduct constituting the offence occurs when the person committing the offence is an adult.
- 2.2 An offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** (violent offences).
- 2.3 An offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** (drug offences).
- 2.4 An offence—
 - (a) against section 71AB (trafficking in a drug of dependence to a child) or 71B (supply of a drug of dependence to a child) of the **Drugs, Poisons and Controlled Substances Act 1981**; or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 71AB or 71B of the **Drugs,**

Sch. 3 cl. 2.1
substituted by
No. 72/2016
s. 21(1).

Sch. 3 cl. 2.1A
inserted by
No. 72/2016
s. 21(1).

**Poisons and Controlled Substances
Act 1981.**

2.5 An offence—

- (a) against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70); or
- (b) against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
- (c) against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186); or
- (d) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70) or against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)) or against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186).

2.6 An offence against section 271.4 (trafficking in children) or 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section.

2.7 An offence against section 21A 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 21A of that Act, in circumstances where—

- (a) the person against whom the offence is committed is a child; and
- (b) the conduct constituting the offence occurred when the person committing the offence is an adult.

Sch. 3
cl. 2.7(b)
substituted by
No. 72/2016
s. 21(2).

2.8 An offence against section 49N(1) 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 49N(1) of that Act, in circumstances where the conduct constituting the offence occurs when the person committing the offence is an adult.

Sch. 3 cl. 2.8
amended by
Nos 47/2016
s. 49(10),
72/2016
s. 21(3).

2.9 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** 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 60B(2), in circumstances where the conduct constituting the offence occurs when the person committing the offence is an adult.

Sch. 3 cl. 2.9
inserted by
No. 47/2016
s. 49(11),
amended by
No. 72/2016
s. 21(4).

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: 21 July 2005

Legislative Council: 16 August 2005

The long title for the Bill for this Act was "to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body, to amend the **Sentencing Act 1991**, the **Sex Offenders Registration Act 2004**, the **Victorian Civil and Administrative Tribunal Act 1998** and the **Victorian Institute of Teaching Act 2001** and for other purposes."

The **Working with Children Act 2005** was assented to on 13 September 2005 and came into operation on 3 April 2006: Government Gazette 30 March 2006 page 615.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Working with Children Act 2005** by Acts and subordinate instruments.

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 16 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes (Sexual Offences) Act 2006, No. 2/2006

Assent Date: 7.3.06
Commencement Date: S. 47 on 1.12.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: S. 28 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 48) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation (Further Miscellaneous Amendments) Act 2006, No. 27/2006

Assent Date: 6.6.06
Commencement Date: S. 23 on 30.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 40) on 13.9.05: s. 2(2)(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 39) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Act 2005
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Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 62, 63 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Amendment Act 2007, No. 56/2007

Assent Date: 7.11.07
Commencement Date: S. 4 on 3.4.06: s. 2(2); ss 3, 5–20 on 8.11.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Education and Training Reform Amendment Act 2008, No. 19/2008

Assent Date: 21.5.08
Commencement Date: S. 18 on 22.5.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation Amendment Act 2008, No. 21/2008

Assent Date: 2.6.08
Commencement Date: S. 25(2) on 3.6.08: Special Gazette (No. 148) 3.6.08 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: S. 270 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Transport Legislation Amendment (Driver and Industry Standards) Act 2008, No. 85/2008

Assent Date: 11.12.08
Commencement Date: S. 17 on 12.12.08: s. 2
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation Further Amendment Act 2009, No. 55/2009

Assent Date: 22.9.09
Commencement Date: S. 63 on 31.5.10: s. 2(4)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 136) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

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Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 68) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Fair Work (Commonwealth Powers) Amendment Act 2009, No. 74/2009

Assent Date: 1.12.09
Commencement Date: S. 20 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Serious Sex Offenders (Detention and Supervision) Act 2009, No. 91/2009

Assent Date: 15.12.09
Commencement Date: S. 219(Sch. 3 item 7) on 1.1.10: Government Gazette 24.12.09 p. 3397
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 53) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 61) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Equal Opportunity Act 2010, No. 16/2010 (as amended by No. 26/2011)

Assent Date: 27.4.10
Commencement Date: S. 209(Sch. item 10) on 1.8.11: s. 2(4)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010

Assent Date: 18.5.10
Commencement Date: Ss 35, 36 on 1.7.11: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Child Employment Amendment Act 2010, No. 26/2010

Assent Date: 8.6.10
Commencement Date: S. 36 on 31.12.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

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Endnotes

Working with Children Amendment Act 2010, No. 51/2010

Assent Date: 24.8.10
Commencement Date: Ss 3–15, 17–24 on 25.8.10: s. 2(1); s. 16 on 8.11.12:
s. 2(2)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

**Transport Legislation Amendment (Taxi Services Reform and Other Matters)
Act 2011, No. 34/2011**

Assent Date: 5.7.11
Commencement Date: S. 104 on 1.8.11: Special Gazette (No. 236) 19.7.11
p. 1; s. 127 on 1.7.13: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011

Assent Date: 22.11.11
Commencement Date: S. 107(Sch. item 16) on 16.1.12: Special Gazette
(No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Children's Services Amendment Act 2011, No. 80/2011

Assent Date: 21.12.11
Commencement Date: S. 79(Sch. item 9) on 1.1.12: Special Gazette
(No. 423) 21.12.11 p. 2
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Health Professions Registration (Repeal) Act 2012, No. 27/2012

Assent Date: 29.5.12
Commencement Date: S. 29 on 1.7.12: s. 2
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Working with Children Amendment Act 2012, No. 61/2012

Assent Date: 23.10.12
Commencement Date: Ss 3–16 on 31.12.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

**Education and Training Reform Amendment (Dual Sector Universities)
Act 2013, No. 76/2013**

Assent Date: 17.12.13
Commencement Date: S. 21 on 1.1.14: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 112) on 1.7.15: Special Gazette
(No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s
amending the **Working with Children Act 2005**

Working with Children Act 2005
No. 57 of 2005
Endnotes

Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014, No. 19/2014

Assent Date: 1.4.14
Commencement Date: S. 92 on 30.9.15: Special Gazette (No. 278) 22.9.15 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes Amendment (Protection of Children) Act 2014, No. 36/2014³

Assent Date: 3.6.14
Commencement Date: S. 6(1)(2) on 27.10.14: Special Gazette (No. 350) 7.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 187) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Criminal Organisations Control and Other Acts Amendment Act 2014, No. 55/2014

Assent Date: 26.8.14
Commencement Date: S. 154(2) on 27.8.14: s. 2(1); s. 154(1) on 31.10.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Amendment (Ministers of Religion and Other Matters) Act 2014, No. 66/2014 (as amended by No. 20/2015)

Assent Date: 9.9.14
Commencement Date: Ss 4–43 on 26.10.14: Special Gazette (No. 330) 23.9.14 p. 2
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes Amendment (Sexual Offences and Other Matters) Act 2014, No. 74/2014

Assent Date: 21.10.14
Commencement Date: S. 36 on 3.11.14: Special Gazette (No. 400) 29.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Education and Training Reform Amendment (Child Safe Schools) Act 2015, No. 7/2015

Assent Date: 21.4.15
Commencement Date: S. 14 on 22.4.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Act 2005
No. 57 of 2005
Endnotes

Justice Legislation Amendment Act 2015, No. 20/2015

Assent Date: 16.6.15
Commencement Date: Ss 25–30 on 17.6.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes Amendment (Child Pornography and Other Matters) Act 2015, No. 42/2015

Assent Date: 22.9.15
Commencement Date: S. 30 on 1.12.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Education and Training Reform Amendment (Victorian Institute of Teaching) Act 2016, No. 9/2016

Assent Date: 15.3.16
Commencement Date: S. 13 on 16.3.16: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Crimes Amendment (Sexual Offences) Act 2016, No. 47/2016

Assent Date: 6.9.16
Commencement Date: S. 49 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Working with Children Amendment Act 2016, No. 72/2016

Assent Date: 29.11.16
Commencement Date: Ss 22–27 on 1.5.17: Special Gazette (No. 111) 4.4.17 p. 2; ss 4–21, 28, 29 on 1.8.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Children Legislation Amendment (Reportable Conduct) Act 2017, No. 4/2017

Assent Date: 28.2.17
Commencement Date: S. 11 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Sex Offenders Registration Amendment (Miscellaneous) Act 2017, No. 25/2017

Assent Date: 20.6.17
Commencement Date: S. 58 on 1.3.18: s. 2(4)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date: 29.8.17
Commencement Date: S. 97 on 30.8.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Working with Children Act 2005**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ S. 30(1): The amendment proposed by section 6.1.2 (Schedule 7 item 48.3(a)) of the **Education and Training Reform Act 2006**, No. 24/2006 is not included in this publication because the words "section 11 of the **Victorian Institute of Teaching Act 2001**" do not appear in section 30(1). Schedule 7 item 48.3(a) reads as follows:

48.3 In section 30—

- (a) in subsection (1), for "section 11 of the **Victorian Institute of Teaching Act 2001**" substitute "section 2.6.9 of the **Education and Training Reform Act 2006**";

² S. 51 (*repealed*): The amendment proposed by section 47 of the **Crimes (Sexual Offences) Act 2006**, No. 2/2006 is not included in this publication due to the earlier repeal of section 51 by section 63 of the **Justice Legislation (Further Amendment) Act 2006**, No. 79/2006.

³ Table of Amendments: The amendments proposed by section 6(1)(2) of the **Crimes Amendment (Protection of Children) Act 2014**, No. 36/2014 are not included in this publication due to the earlier repeal of section 13(1)(fb)(g) by section 12(2) of the **Working with Children Amendment (Ministers of Religion and Other Matters) Act 2014**, No. 66/2014.