

Authorised Version No. 007
Commission for Children and Young People
Act 2012

No. 79 of 2012

Authorised Version incorporating amendments as at
16 March 2016

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Commission for Children and Young People
Act 2012

No. 79 of 2012

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16 March 2016

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to establish a Commission for Children and Young People; and
- (b) to provide for the functions, powers and duties of the Commission; and
- (c) to repeal and re-enact with amendments certain provisions of the **Child Wellbeing and Safety Act 2005**.

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 April 2013, it comes into operation on that day.

3 Definitions

In this Act—

authorised person means a person authorised by the Commission under section 22;

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S. 3 def. of
*central
register*
repealed by
No. 8/2016
s. 23.

* * * * *

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

child protection client has the meaning given by
section 4;

Commission means the Commission for Children
and Young People established by section 6;

Commissioner means an additional Commissioner
appointed under section 12;

S. 3 def. of
*community
service*
inserted by
No. 61/2014
s. 155.

community service has the same meaning as it
has in the **Children, Youth and Families
Act 2005**;

corrupt conduct has the same meaning as it has in
the **Independent Broad-based
Anti-corruption Commission Act 2011**;

Department of Justice means the Department of
Justice as established under the **Public
Administration Act 2004**;

education professional means—

- (a) a person who is registered as a teacher
under the **Education and Training
Reform Act 2006** or has been granted
permission to teach under that Act; or
- (b) the principal of a Government school or
a non-Government school within the
meaning of the **Education and
Training Reform Act 2006**; or

- (c) a person who is employed or engaged to provide care or education to children by—
 - (i) an education and care service within the meaning of the Education and Care Services National Law (Victoria); or
 - (ii) a children's service within the meaning of the **Children's Services Act 1996**;

function includes a duty;

health professional means—

- (a) a medical practitioner; or
- (b) a nurse; or
- (c) a psychologist; or
- (d) a midwife;

health service means—

- (a) a relevant health service within the meaning of section 141 of the **Health Services Act 1988**; or
- (b) a mental health service provider within the meaning of the **Mental Health Act 2014**; or
- (c) a Maternal and Child Health Centre; or
- (d) an entity that receives funding under a State contract to provide drug or alcohol treatment services;

S. 3 def. of
health service
amended by
No. 63/2015
s. 14.

human service means—

- (a) a children's service within the meaning of the **Children's Services Act 1996**;
or

- (b) an education and care service within the meaning of the Education and Care Services National Law (Victoria); or
- (c) an entity that receives funding under a State contract to provide disability services to a person with a disability within the meaning of the **Disability Act 2006**; or
- (d) an entity that receives funding under a State contract to provide services in relation to family violence or sexual assault; or
- (e) an entity that receives funding from the Secretary under a State contract to provide family support services; or
- (f) an entity that receives funding under a State contract to provide assistance in providing housing services or other assistance to homeless persons;

IBAC means the Independent Broad-based Anti-corruption Commission established under the **Independent Broad-based Anti-corruption Commission Act 2011**;

IBAC personnel has the same meaning as it has in the **Victorian Inspectorate Act 2011**;

Maternal and Child Health Centre means a centre where health advice is provided to parents and other caregivers of children under 6 years of age, including by outreach programs;

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

midwife means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and
- (b) in the register of midwives kept for that profession;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

out of home care service has the same meaning as it has in the **Children, Youth and Families Act 2005**;

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

S. 3 def. of ***police officer*** inserted by No. 37/2014 s. 10(Sch. item 22.1).

post-secondary qualification means a qualification from an institution, person or body providing or offering to provide (whether in or outside Victoria) post-secondary education as defined in the **Education and Training Reform Act 2006** (whether or not that institution, person or body has since ceased to exist) and includes a qualification from a post-secondary education provider as defined in that Act;

primary family carer, in relation to a child, means the child's parent or guardian, or another person, who has daily care and control of the

child, whether or not that care involves custody of the child;

Principal Commissioner means the Principal Commissioner appointed under section 11;

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

registered community service has the same meaning as it has in the **Children, Youth and Families Act 2005**;

school has the same meaning as it has in the **Education and Training Reform Act 2006**;

Secretary means the Secretary to the Department of Human Services established under the **Public Administration Act 2004**;

State contract means a contract entered into for or on behalf of the State;

vulnerable child or young person has the meaning given by section 5;

welfare practitioner means—

- (a) a person with a post-secondary qualification in youth, social or welfare work who works in the health, education, community or welfare services field in a capacity that requires that person to hold such a qualification; or
- (b) a person employed under Part 3 of the **Public Administration Act 2004** to perform the duties of a child, adolescent and family welfare officer; or

- (c) a person who is engaged in the provision of community or welfare services under a State contract;

youth justice centre has the same meaning as it has in the **Children, Youth and Families Act 2005**;

youth justice client means—

- (a) a person in respect of whom any of the following orders is in force—
- (i) a probation order under section 380 of the **Children, Youth and Families Act 2005**;
 - (ii) a youth supervision order within the meaning of the **Children, Youth and Families Act 2005**;
 - (iii) a youth attendance order within the meaning of the **Children, Youth and Families Act 2005**; or
- (b) a child who is detained awaiting—
- (i) trial; or
 - (ii) the hearing of a charge; or
 - (iii) sentence; or
- (c) a person who is detained—
- (i) in a youth justice centre; or
 - (ii) in a youth residential centre; or
- (d) a child awaiting sentence in respect of whom a pre-sentence report has been ordered under—
- (i) section 414(2), 430I or section 571 of the **Children, Youth and Families Act 2005**; or

(ii) Division 1A of Part 3 of the
Sentencing Act 1991;

youth justice unit has the same meaning as it has
in the **Children, Youth and Families
Act 2005;**

youth residential centre has the same meaning as
it has in the **Children, Youth and Families
Act 2005.**

4 Child protection client

In this Act, a person is a *child protection client*
if—

- (a) he or she is the subject of a report under
section 28, 33(2), 183 or 184 of the
Children, Youth and Families Act 2005;
and
- (b) the Secretary has not recorded that the
person's case is closed.

S. 4(b)
amended by
No. 8/2016
s. 24.

5 Vulnerable children and young persons

In this Act, *vulnerable child or young person*
includes—

- (a) a child or young person who is or was a child
protection client;
- (b) a youth justice client;
- (c) a person attending a youth justice unit in
accordance with an order of the Children's
Court;
- (d) a child who is receiving or has received
services from a registered community
service;
- (e) a child whose primary family carer is
receiving or has received services from a
registered community service;

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- (f) a child who has died from abuse or neglect;
- (g) a person under the age of 21 years who is leaving, or who has left, the care of the Secretary to live independently.

S. 5(g)
amended by
No. 61/2014
s. 156.

Note

See section 16(1)(g) of the **Children, Youth and Families Act 2005**.

Part 2—Commission for Children and Young People

Division 1—The Commission

6 Establishment of Commission

- (1) The Commission for Children and Young People is established.
- (2) The Commission is to be constituted by the Principal Commissioner.

7 Objective of Commission

The objective of the Commission is to promote continuous improvement and innovation in—

- (a) policies and practices relating to the safety and wellbeing of—
 - (i) vulnerable children and young persons; and
 - (ii) children and young persons generally; and
- (b) the provision of out of home care services for children.

8 Functions of Commission

- (1) The functions of the Commission are—
 - (a) to provide advice to Ministers, Government Departments, health services and human services about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young persons; and
 - (b) to promote the interests of vulnerable children and young persons in the Victorian community; and

- (c) to monitor and report to Ministers on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young persons; and
 - (d) to provide advice and recommendations to the Minister about child safety issues, at the request of the Minister; and
 - (e) to promote child-friendly and child-safe practices in the Victorian community; and
 - (f) the functions relating to working with children conferred by Part 3; and
 - (g) the functions relating to out of home care conferred by Part 4; and
 - (h) the functions relating to inquiries conferred by Part 5; and
 - (i) any other functions conferred on the Commission by or under this Act or any other Act.
- (2) The Commission must act independently and impartially in performing its functions.
- (3) The Commission must, when performing a function in relation to a vulnerable child or young person, perform the function for the purpose of promoting the best interests of the child or person.

9 Powers of Commission

Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under—

- (a) this Act; or

- (b) any other Act; or
- (c) regulations made under this Act or any other Act.

10 Functions of Principal Commissioner

- (1) The Principal Commissioner has—
 - (a) all the functions and powers of the Commission; and
 - (b) any other powers or functions conferred on the Principal Commissioner by or under this or any other Act.
- (2) Without limiting subsection (1), the Principal Commissioner may engage consultants, contractors or agents for or in connection with the performance of the Commission's functions.
- (3) All acts and things done by the Principal Commissioner in the name of or on behalf of the Commission are taken to have been done by the Commission.

Division 2—Principal Commissioner and additional Commissioners

11 Appointment of Principal Commissioner

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a person as Principal Commissioner.
- (2) The Minister must not recommend a person for appointment under subsection (1) unless the Minister is satisfied that the person is qualified for appointment as Principal Commissioner because of his or her knowledge and experience.
- (3) The Principal Commissioner must be appointed on a full-time basis.

12 Appointment of additional Commissioner

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a person as an additional Commissioner.
- (2) The Minister must not recommend a person for appointment under subsection (1) unless the Minister is satisfied that the person is qualified for appointment as a Commissioner because of his or her knowledge and experience.
- (3) A Commissioner may be appointed on a full-time or part-time basis.

13 Remuneration and allowances

- (1) The Principal Commissioner is entitled to be paid the remuneration and allowances that are determined from time to time by the Governor in Council.
- (2) A Commissioner is entitled to be paid the remuneration and allowances that are determined from time to time by the Governor in Council.

14 Terms and conditions of appointment

Subject to this Division, the Principal Commissioner or a Commissioner—

- (a) holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment; and
- (b) is eligible for re-appointment; and
- (c) holds office on the terms and conditions determined by the Governor in Council.

15 Vacancy and resignation

The Principal Commissioner or a Commissioner ceases to hold office if he or she—

- (a) resigns by notice delivered to the Minister;
or
- (b) becomes an insolvent under administration;
or
- (c) is convicted of—
 - (i) an indictable offence; or
 - (ii) an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
- (e) is removed from office under section 16.

16 Removal from office

The Governor in Council may, at any time, remove the Principal Commissioner or a Commissioner from office on any of the following grounds—

- (a) misconduct;
- (b) neglect of duty;
- (c) inability to perform the duties of his or her office;
- (d) engagement (whether direct or indirect) in any paid employment outside the duties of his or her office;

- (e) any other ground on which the Governor in Council is satisfied that the Principal Commissioner or the Commissioner is unfit to hold his or her office.

17 Acting Principal Commissioner

- (1) The Governor in Council may appoint a person as Acting Principal Commissioner during any period when—
 - (a) the office of Principal Commissioner is vacant; or
 - (b) the Principal Commissioner is absent from duty or is, for any reason, unable to perform the duties of the office.
- (2) An Acting Principal Commissioner has all the powers and may perform any of the functions of the Principal Commissioner.
- (3) An Acting Principal Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.
- (4) An Acting Principal Commissioner holds office on the terms and conditions determined by the Governor in Council.
- (5) The Governor in Council may revoke an appointment under subsection (1) at any time.

18 Acting Commissioner

- (1) The Governor in Council may appoint a person as an Acting Commissioner during any period when—
 - (a) the office of a Commissioner is vacant; or
 - (b) a Commissioner is absent from duty or is, for any reason, unable to perform the duties of the office.

- (2) An Acting Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.
- (3) An Acting Commissioner holds office on the terms and conditions determined by the Governor in Council.
- (4) The Governor in Council may revoke an appointment under subsection (1) at any time.

19 Application of Public Administration Act 2004

- (1) The **Public Administration Act 2004** does not apply to the Principal Commissioner in respect of his or her office except as provided in section 16 of that Act.
- (2) The **Public Administration Act 2004** does not apply to a Commissioner in respect of his or her office.

Division 3—General

20 Delegation

- (1) The Commission may by instrument delegate any power or function of the Commission under this or any other Act to a Commissioner (other than a power or function specified in subsection (3)).
- (2) The Commission may by instrument delegate any power or function of the Commission under this or any other Act (other than a power or function specified in subsection (3)) to a member of staff employed under section 21.

- (3) The following functions and powers of the Commission are not delegable—
- (a) the power to decide whether to conduct an inquiry under Part 5;
 - (b) the power to give a report to Parliament under section 50;
 - (c) the power to publish a report on an appropriate Internet site under section 52;
 - (d) a power of delegation under this section.

21 Staff

- (1) There may be employed under the **Public Administration Act 2004** any employees that are necessary to assist the Commission in performing its functions.
- (2) The Principal Commissioner may enter into agreements or arrangements for the use by the Commission of the services of any staff of a Department, statutory authority or other public body.

22 Authorised persons

- (1) The Commission may authorise any person to assist the Commission in performing its functions.
- (2) An authorisation may be general or limited to specified functions.
- (3) The Commission must not authorise a person under this section unless the Commission is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

23 Assistance to be provided

The Secretary must ensure that the Commission or an authorised person is provided with any assistance in connection with the reasonable performance of the Commission's functions that the Commission or the authorised person reasonably requires.

Part 3—Working with children

24 Functions in relation to working with children

The Commission has the following functions in relation to working with children—

- (a) to review and report on the administration of the **Working with Children Act 2005**;
- (b) in consultation with the Secretary to the Department of Justice, to educate and inform the community about that Act.

25 Review of administration of Working with Children Act 2005

- (1) The Commission must conduct an annual review of the administration of the **Working with Children Act 2005**.
- (2) The Commission must provide a report on the results of a review under subsection (1) to—
 - (a) the Minister; and
 - (b) the Minister administering the **Working with Children Act 2005**; and
 - (c) the Secretary to the Department of Justice.
- (3) A report must be made within 3 months after the end of each financial year.
- (4) A report may make any recommendations the Commission considers appropriate.
- (5) A report must not include any information that identifies or could lead to the identification of any person who has made an application or who has been issued with a notice under the **Working with Children Act 2005**.

26 Assistance to be provided

The Secretary to the Department of Justice must ensure that the Commission or an authorised person is provided with any assistance in connection with the reasonable performance of the Commission's functions under this Part that the Commission or the authorised person reasonably requires.

27 Access to records

- (1) The Commission or an authorised person may have, and must be given, access to the records kept by the Secretary to the Department of Justice under the **Working with Children Act 2005** in relation to the administration of that Act.
- (2) This section applies despite anything to the contrary in the **Working with Children Act 2005**.

Part 4—Monitoring out of home care services

28 Functions in relation to children in out of home care

The Commission has the following functions in relation to out of home care services for children, and in relation to children in out of home care—

- (a) to promote the provision of out of home care services that encourage the active participation of those children in the making of decisions that affect them;
- (b) to advise the Minister and the Secretary on the performance of out of home care services;
- (c) at the request of the Minister, to investigate and report on an out of home care service.

29 Assistance to be provided

A person in charge of an out of home care service must ensure that the Commission or an authorised person is provided with any assistance in connection with the reasonable performance of the Commission's functions under this Part that the Commission or the authorised person reasonably requires.

30 Access to records

- (1) This section applies if the Commission is investigating an out of home care service at the request of the Minister.
- (2) The Commission and an authorised person may have, and must be given, access to—

* * * * *

**S. 30(2)(a)
repealed by
No. 8/2016
s. 25(1)(a).**

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S. 30(2)(b)
amended by
No. 8/2016
s. 25(1)(b).

(b) any information, documents or records held in or by the Department relating to—

(i) the out of home care service; or

(ii) any child in out of home care to whom the out of home care service provides services.

S. 30(3)
amended by
No. 8/2016
s. 25(2).

(3) The Commission and an authorised person may have, and must be given, access to any documents or records held by the out of home care service relating to—

(a) the operation of the service; or

(b) any child to whom the out of home care service provides services.

Part 5—Inquiries

Division 1—Preliminary

31 Object of inquiries

The object of an inquiry under this Part is to promote continuous improvement and innovation in policies and practices relating to child protection and the safety and wellbeing of—

- (a) vulnerable children and young persons; and
- (b) children and young persons generally.

32 Avoiding unnecessary duplication

It is the intention of Parliament that the Commission should liaise with other investigative authorities, official bodies and statutory officers—

- (a) to avoid unnecessary duplication of inquiries; and
- (b) to facilitate the coordination and expedition of inquiries that are to be separately conducted by different authorities, bodies or officers.

33 Police and coronial powers and functions not limited

Nothing in this Part is intended to limit or affect any power or function of a coroner or a police officer to investigate the death of a child.

S. 33
amended by
No. 37/2014
s. 10(Sch.
item 22.2).

Division 2—Inquiries concerning death of child protection clients

34 Commission must conduct inquiry into death of child protection client

- (1) The Commission must conduct an inquiry in relation to a child who has died and who was a child protection client—

- (a) at the time of his or her death; or
 - (b) within 12 months before his or her death.
- (2) The inquiry must relate to the services provided, or omitted to be provided, to the child before his or her death.

35 Secretary must notify Commission of death of child protection client

The Secretary must advise the Commission of a death referred to in section 34 if the Secretary is aware of that death.

36 Date of death of child irrelevant

This Division applies to the death of a child whether that death occurred before, on or after the day on which this section comes into operation.

Division 3—Inquiries concerning children or young persons

37 Commission may conduct inquiry concerning child or young person

- (1) The Commission may, if it considers that it is appropriate to do so, conduct an inquiry in relation to a matter relating to the safety or wellbeing of—
- (a) a vulnerable child or young person; or
 - (b) a group of vulnerable children or young persons.
- (2) The inquiry must relate to the services provided, or omitted to be provided, to or in relation to—
- (a) the vulnerable child or young person who is the subject of the inquiry; or
 - (b) the group of vulnerable children or young persons who are the subject of the inquiry.
- (3) The inquiry may relate to a vulnerable child or young person who has died.

38 Minister may recommend inquiry

- (1) The Minister may recommend that the Commission conduct an inquiry under this Division.
- (2) The Commission must determine, in accordance with section 37, whether or not it will conduct the inquiry.
- (3) If the Commission determines not to conduct an inquiry as recommended by the Minister, the Commission must give the Minister a statement of the reasons for making that determination as soon as practicable.

Division 4—Inquiries concerning provision of services

39 Commission may conduct inquiry concerning provision of services

- (1) The Commission may conduct an inquiry in relation to the provision of services if the Commission—
 - (a) identifies a persistent or recurring systemic issue in the provision of those services; and
 - (b) considers that a review of those services will assist in the improvement of the provision of those services; and
 - (c) considers that the inquiry can be conducted within the resources of the Commission.
- (2) The inquiry must relate to—
 - (a) services provided, or omitted to be provided, by a community service, health service, human service or school; or

**S. 39(2)
substituted by
No. 61/2014
s. 157.**

(b) child protection services or youth justice services provided, or omitted to be provided, by the Secretary—

to or in relation to—

(c) a vulnerable child or young person; or

(d) a group of vulnerable children or young persons; or

(e) a child, if those services deal with matters affecting his or her safety or wellbeing; or

(f) a group of children, if those services deal with matters affecting their safety or wellbeing; or

(g) a primary family carer, if those services deal with matters affecting, or may otherwise affect, the safety or wellbeing of his or her child; or

(h) a group of primary family carers, if those services deal with matters affecting, or may otherwise affect, the safety or wellbeing of those carers' children.

(3) The Commission must not conduct an inquiry under this Division into the appropriateness or otherwise of the clinical decision-making of a registered health practitioner.

(4) In subsection (3), *registered health practitioner* means a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student);

40 Minister may recommend inquiry

(1) The Minister may recommend that the Commission conduct an inquiry under this Division.

- (2) The Commission must determine, in accordance with section 39, whether or not it will conduct the inquiry.
- (3) If the Commission determines not to conduct an inquiry as recommended by the Minister, the Commission must give the Minister a statement of the reasons for making that determination as soon as practicable.

Division 5—Conduct of inquiries

41 Commission to notify Ministers of certain inquiries

Before conducting an inquiry under Division 3 or 4, the Commission must notify—

- (a) the Minister; and
- (b) if the Commission considers that the inquiry may involve consideration of a matter that is the responsibility of another Minister—that other Minister.

42 Access to information

- (1) For the purposes of an inquiry under this Part, the Commission or an authorised person may have, and must be given, access to any of the following that the Commission or authorised person reasonably requires—

* * * * *

S. 42(1)(a)
repealed by
No. 8/2016
s. 26(1).

- (b) information, documents or records in relation to any person or service that is the subject of the inquiry held in or by—

S. 42(1)(b)
substituted by
No. 8/2016
s. 26(2).

- (i) the Department of Education and Training; or

- (ii) the Department of Health and Human Services; or
- (iii) the Department of Justice and Regulation;
- (c) other information, documents or records in relation to any person or service that is the subject of the inquiry held in or by—
 - (i) a registered community service; or
 - (ii) a health service; or
 - (iii) a human service; or
 - (iv) a school.
- (2) The person in charge of a registered community service, health service or human service must provide the access to information, documents or records held by that service.
- (3) The principal of a school must provide the access to information, documents or records held by that school.
- (4) This section applies despite anything to the contrary in the **Children, Youth and Families Act 2005**.

S. 42(4)
inserted by
No. 8/2016
s. 26(3).

43 Disclosures by relevant professionals

- (1) The Commission or an authorised person may request a relevant professional to provide any information that the Commission or authorised person reasonably requires in relation to any person or service that is the subject of the inquiry.
- (2) A relevant professional may disclose to the Commission or an authorised person any information that relates to any person or service that is the subject of the inquiry.

- (3) A relevant professional must have regard to the following matters in determining whether to disclose information under subsection (2)—
- (a) the object of an inquiry under this Part, as set out in section 31;
 - (b) the public interest in ensuring that—
 - (i) child protection systems are effective; and
 - (ii) the Commission can conduct effective inquiries under this Part.
- (4) In this section, *relevant professional* means—
- (a) a health professional; or
 - (b) a welfare practitioner; or
 - (c) an education professional.

44 Disclosers protected

A disclosure of information made under section 42 or 43 in good faith—

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

45 Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under section 42, or requested to do under section 43, if the giving of the information or the doing of that other thing would tend to incriminate the person.

Division 6—Reporting to Ministers and the Secretary

46 Commission must give report to Minister and Secretary

On completing an inquiry under this Part, the Commission must give a report of the inquiry to the Minister and the Secretary in accordance with this Division.

47 Commission must give report to other Minister

The Commission must also give a copy of the report to a Minister if the report considers a matter that is the responsibility of that Minister.

48 Commission must first give opportunity to respond to adverse comment or opinion

- (1) Despite any other provision of this Part, the Commission must not give a report of an inquiry to a Minister or the Secretary if—
 - (a) the report includes any comment or opinion that is adverse to any person; and
 - (b) the Commission has not given the person an opportunity to comment on the adverse comment or opinion.
- (2) Despite any other provision in this Part, the Commission must not give a report of an inquiry to a Minister or the Secretary if—

S. 48
substituted by
No. 61/2014
s. 158.

- (a) the report includes any comment or opinion that is adverse to—
 - (i) a community service; or
 - (ii) a health service; or
 - (iii) a human service; or
 - (iv) a school; or
 - (v) child protection services or youth justice services provided, or omitted to be provided by the Secretary; and
- (b) the Commission has not given the following an opportunity to comment on the adverse comment or opinion—
 - (i) the person in charge of the community service, health service or human service; or
 - (ii) the principal of the school; or
 - (iii) the Secretary, in relation to the child protection services or youth justice services.

Division 7—Reporting to Parliament

49 Application of Division

This Division applies if—

- (a) the Commission has conducted an inquiry under Division 4 other than on the recommendation of the Minister; and
- (b) the Commission has given the report of the inquiry, or a copy of the report, to the following persons in accordance with Division 6—
 - (i) the Minister;
 - (ii) the Secretary;

- (iii) any other Minister to whom the Commission must give the report in accordance with section 47; and
- (c) at least 14 days have elapsed since the persons referred to in paragraph (b) were given the report or a copy of the report.

**Note to s. 49
amended by
No. 61/2014
s. 159.**

Note

Section 48 prohibits the Commission from giving the report to a Minister or the Secretary under Division 6 unless the Commission has given an opportunity for comment to any person in relation to whom the report contains any adverse comment or opinion.

50 Giving the report to Parliament

- (1) The Commission may give a copy of the report to the clerk of each House of the Parliament.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House on—
 - (a) the day on which it is received; or
 - (b) the next sitting day of the House.
- (3) If the Commission proposes to give the report to Parliament when neither House of the Parliament is sitting, the Commission must—
 - (a) give one business day's notice of his or her intention to do so to the clerk of each House of the Parliament; and
 - (b) give the copy of the report to the clerk of each House on the day indicated in the notice; and
 - (c) cause the report to be published by the Government Printer.
- (4) The clerk of a House of the Parliament must notify each member of the House of the receipt of a notice under subsection (3)(a) on the same day that the clerk receives the notice.

- (5) On receiving a copy of the report under subsection (3)(b), the clerk of a House of the Parliament must—
- (a) as soon as practicable after the report is received, notify each member of the House of the receipt of the report and advise that the report is available on request; and
 - (b) give a copy of the report to any member of the House on request; and
 - (c) cause the copy of the report to be laid before the House on the next sitting day of the House.
- (6) A copy of a report that is given to the clerk of a House of the Parliament under subsection (1) or (3)(b) is taken to have been published by order, or under the authority, of that House.

51 Report containing identifying information must not be given to Parliament

The Commission must not give a copy of the report to the Parliament under section 50 if the report contains—

- (a) information that identifies—
 - (i) a child, young person or primary family carer to whom, or in relation to whom, the services that are the subject of the inquiry were provided; or
 - (ii) a member of the family of a child or young person to whom, or in relation to whom, the services that are the subject of the inquiry were provided; or
- (b) information from which the identity of a person referred to in paragraph (a) can be obtained.

52 Commission may publish report on Internet

- (1) The Commission may publish, on an appropriate Internet site, a copy of a report that the Commission gave to the Parliament in accordance with section 50.
- (2) The publication of a report by the Commission under this section is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

Division 8—Disclosing information to other authorities

53 Disclosing information to other authorities

- (1) Subject to subsection (2), the Commission may disclose to the following persons any information that is acquired by the Commission or an authorised person in performing functions under this Part—
 - (a) the Ombudsman;
 - (b) the IBAC;
 - (c) a coroner;
 - (d) the Disability Services Commissioner within the meaning of the **Disability Act 2006**;
 - (e) the Health Services Commissioner within the meaning of the **Health Services (Conciliation and Review) Act 1987**;

(f) the Commissioner for Privacy and Data Protection appointed under the **Privacy and Data Protection Act 2014**.

S. 53(1)(f)
amended by
No. 26/2014
s. 455(Sch.
item 3.1),
substituted by
No. 60/2014
s. 140(Sch. 3
item 7).

(g) the Mental Health Complaints Commissioner within the meaning of the **Mental Health Act 2014**.

S. 53(1)(g)
inserted by
No. 26/2014
s. 455(Sch.
item 3.2).

(2) The Commission must not disclose information to a person under subsection (1) unless the information is relevant to the performance of a function conferred on the person under an Act.

Part 6—Confidentiality

54 Definition

In this Part—

protected information means information acquired by a relevant person by reason of being a relevant person;

relevant person means—

- (a) a Commissioner; or
- (b) a delegate of the Commission; or
- (c) an authorised person; or
- (d) a member of the staff of the Commission.

55 Disclosure of information prohibited

A person who is or has been a relevant person must not disclose to any other person, whether directly or indirectly, any protected information except to the extent necessary to—

- (a) perform functions or exercise powers under this Act; or
- (b) give information that he or she is expressly authorised, permitted or required to give under this Act.

Penalty: 60 penalty units.

56 Disclosure to other relevant person permitted

A relevant person may disclose protected information to another relevant person in connection with the performance of the Commission's functions or the exercise of the Commission's powers under this Act.

57 Disclosure to court or tribunal permitted

A person who is or has been a relevant person may disclose protected information—

- (a) to a court or tribunal in the course of criminal legal proceedings; or
- (b) in accordance with an order of a court or tribunal made under another Act or law.

58 Disclosure for purpose of obtaining legal advice permitted

A person who is or has been a relevant person may disclose protected information to an Australian legal practitioner for the purpose of obtaining legal advice or representation.

59 Disclosure of Working with Children information

- (1) A relevant person may disclose information acquired under Part 3 if—
 - (a) the Minister responsible for administering the **Working with Children Act 2005** consents to the disclosure; and
 - (b) the relevant person complies with any conditions specified by that Minister.
- (2) The Minister responsible for administering the **Working with Children Act 2005** must not consent to a disclosure of information under subsection (1) unless the Minister is of the opinion that the disclosure is in the public interest.

60 Disclosure of information to Minister or Secretary

The Commission may disclose to the Minister or the Secretary any information acquired by the Commission in performing its functions and exercising its powers under this Act.

S. 60A
inserted by
No. 8/2016
s. 27.

60A Disclosure of information by Secretary

The Secretary must disclose to the Commission any information about an adverse event relating to a child in out of home care or a person detained in a youth justice centre or a youth residential centre if the information is relevant to the Commission's functions.

Part 7—General

61 Mandatory notification of corrupt conduct to IBAC

- (1) The Commission must notify the IBAC of any matter of which the Commission becomes aware in the performance of functions or the exercise of powers under this Act or any other Act that appears to involve corrupt conduct.
- (2) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.
- (3) This section does not apply to a matter that is the subject of a complaint or notification referred to the Commission by the IBAC under section 49C of the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (4) If the Commission considers at any time that a complaint or notification described in subsection (3) appears to involve conduct that is serious corrupt conduct, the Commission must inform the IBAC.

62 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) Regulations made under this Act may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body.

Part 8—Saving and transitional provisions

63 Definitions

In this Part—

Child Safety Commissioner has the same meaning as it had in the old Act;

commencement day means the day on which this Part comes into operation;

old Act means the **Child Wellbeing and Safety Act 2005** as in force immediately before the commencement day.

64 General savings provisions

- (1) This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a repealed provision of the **Child Wellbeing and Safety Act 2005** continues to apply by force of this Part, any other repealed provisions of that Act necessary to give effect to that continued provision also continue to apply.
- (3) This Part applies despite anything to the contrary in any other provision of this Act.

65 Child Safety Commissioner abolished

On the commencement day, the office of Child Safety Commissioner is abolished and the Child Safety Commissioner goes out of office.

66 References to the Child Safety Commissioner

On the commencement day any reference to the Child Safety Commissioner in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document whatever must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject matter, be construed as a reference to the Commission.

67 Old child death inquiries

If, immediately before the commencement day, the Child Safety Commissioner was conducting an inquiry under section 33 of the old Act, on and from the commencement day—

- (a) Division 4 of Part 6 of the old Act continues to apply to that inquiry despite its repeal; and
- (b) that Division applies as if a reference in that Division to the Child Safety Commissioner were a reference to the Commission.

68 New child death inquiries

- (1) The Commission is not required to conduct an inquiry under section 34 in relation to a child if an inquiry under section 33 of the old Act was conducted in relation to that child.
- (2) The Secretary is not required, under section 35, to advise the Commission of a death referred to in section 34 if the Secretary advised the Child Safety Commissioner of that death in accordance with section 33(4) of the old Act.
- (3) Section 34 applies in relation to a child whose death was the subject of advice given to the Child Safety Commissioner by the Secretary in accordance with section 33(4) of the old Act if, immediately before the commencement day, the Child Safety Commissioner had not commenced an inquiry in relation to that child under section 33 of the old Act.

69 Old child safety inquiries

- (1) If the Minister made a recommendation under section 33A(1) of the old Act before the commencement day and the Child Safety Commissioner had not commenced an inquiry in relation to that recommendation before that day, then on and from that day—

- (a) Division 4 of Part 6 of the old Act continues to apply to that recommendation despite its repeal; and
 - (b) that Division applies as if a reference in that Division to the Child Safety Commissioner were a reference to the Commission.
- (2) If, immediately before the commencement day, the Child Safety Commissioner was conducting an inquiry under section 33A of the old Act, on and from the commencement day—
- (a) Division 4 of Part 6 of the old Act continues to apply to that inquiry despite its repeal; and
 - (b) that Division applies as if a reference in that Division to the Child Safety Commissioner were a reference to the Commission.

70 Division 3 inquiries relating to provision of services before commencement day

The Commission must not conduct an inquiry under Division 3 of Part 5 in relation to services provided, or omitted to be provided, before the commencement day unless the Commission considers that the inquiry will assist in the improvement of the provision of those services.

71 Confidentiality

- (1) A reference in Part 6 to protected information includes a reference to—
- (a) information acquired under Division 2 of Part 6 of the old Act; and
 - (b) information acquired by reason of being a relevant person within the meaning of section 40 of the old Act if that information will or may identify a person who is or has been—
 - (i) a child in out of home care; or

- (ii) a child who is or whose death is the subject of an inquiry under Division 4 of Part 6 of the old Act; or
 - (iii) a family member of a person referred to in subparagraph (i) or (ii).
- (2) A reference in Part 6 to a relevant person includes a reference to a relevant person within the meaning of section 40 of the old Act.
- (3) A reference in Part 6 to this Act includes a reference to the old Act.

72 First annual report

The Commission must include in its first report of operations under Part 7 of the **Financial Management Act 1994** a report on the operation of Part 6 of the old Act between 1 July 2012 and the commencement day.

73 Transitional provision—Tabling of reports of certain inquiries under Division 3

New s. 73
inserted by
No. 61/2014
s. 160.

- (1) Division 7 of Part 5 applies to the report of an inquiry under Division 3 of that Part as if it were a report of an inquiry under Division 4 of that Part if—
- (a) the Commission had commenced the inquiry before the commencement day, other than on the recommendation of the Minister; and
 - (b) the inquiry is in relation to—
 - (i) services provided, or omitted to be provided, by a community service; or
 - (ii) child protection services or youth justice services provided, or omitted to be provided, by the Secretary; and
 - (c) the inquiry could have been undertaken under Division 4 of that Part if it had commenced after the commencement day.

Commission for Children and Young People Act 2012
No. 79 of 2012
Part 8—Saving and transitional provisions

(2) In this section—

commencement day means the day on which
Part 9 of the **Children, Youth and Families
Amendment (Permanent Care and Other
Matters) Act 2014** comes into operation.

Pt 9 (Heading
and ss 73–84)
repealed by
No. 79/2012
s. 84.

* * * * *

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: 13 November 2012

Legislative Council: 29 November 2012

The long title for the Bill for this Act was "A Bill for an Act to establish the Commission for Children and Young People and for other purposes."

The **Commission for Children and Young People Act 2012** was assented to on 18 December 2012 and comes into operation on 1 March 2013: Special Gazette (No. 27) 29 January 2013 page 1.

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 **Commission for Children and Young People Act 2012** by Acts and subordinate instruments.

Commission for Children and Young People Act 2012, No. 79/2012

Assent Date: 18.12.12
Commencement Date: S. 84 on 1.4.14: s. 84
Current State: This information relates only to the provision/s amending the **Commission for Children and Young People Act 2012**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 3) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Commission for Children and Young People Act 2012**

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

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 22) 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 **Commission for Children and Young People Act 2012**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 7) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Commission for Children and Young People Act 2012**

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, No. 61/2014

Assent Date: 9.9.14
Commencement Date: Ss 155–160 on 10.9.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Commission for Children and Young People Act 2012**

Commission for Children and Young People Act 2012
No. 79 of 2012
Endnotes

**Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015,
No. 63/2015**

Assent Date: 1.12.15
Commencement Date: S. 14 on 1.1.16: Special Gazette (No. 426) 22.12.15
p. 1
Current State: This information relates only to the provision/s
amending the **Commission for Children and
Young People Act 2012**

Children Legislation Amendment Act 2016, No. 8/2016

Assent Date: 15.3.16
Commencement Date: Ss 23–27 on 16.3.16: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Commission for Children and Young
People Act 2012**

3 Amendments Not in Operation

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

4 Explanatory details

No entries at date of publication.