# Health and Child Wellbeing Legislation Amendment Act 2018

No. of 2018

## TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part 1—Preliminary</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Purposes</td>
<td>1</td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2</td>
</tr>
<tr>
<td><strong>Part 2—Amendment of the Child Wellbeing and Safety Act 2005</strong></td>
<td>3</td>
</tr>
<tr>
<td>3 Definitions</td>
<td>3</td>
</tr>
<tr>
<td>4 Exemption from whole of scheme</td>
<td>5</td>
</tr>
<tr>
<td>5 Head of entity to respond to reportable allegation</td>
<td>5</td>
</tr>
<tr>
<td>6 Disclosure of information to the Commission, the head of an entity, a regulator, Victoria Police and others</td>
<td>6</td>
</tr>
<tr>
<td>7 New section 16ZJA inserted</td>
<td>6</td>
</tr>
<tr>
<td>8 Minister may make Child Safe Standards</td>
<td>6</td>
</tr>
<tr>
<td>9 Category 1 and 2 entities must comply with Child Safe Standards</td>
<td>7</td>
</tr>
<tr>
<td>10 Prescribed applicable entity must comply with Child Safe Standards</td>
<td>7</td>
</tr>
<tr>
<td>11 Applicable entity belonging to a prescribed class must comply with Child Safe Standards</td>
<td>7</td>
</tr>
<tr>
<td>12 Exemption from requirement to comply with Child Safe Standards</td>
<td>8</td>
</tr>
<tr>
<td>13 Application of Child Safe Standards to businesses not carried on by applicable entities</td>
<td>8</td>
</tr>
<tr>
<td>14 Schedule 1—Category 1 entities</td>
<td>8</td>
</tr>
<tr>
<td>15 Schedule 2—Category 2 entities</td>
<td>8</td>
</tr>
<tr>
<td><strong>Part 3—Amendment of the Public Health and Wellbeing Act 2008</strong></td>
<td>9</td>
</tr>
<tr>
<td>16 Definitions</td>
<td>9</td>
</tr>
<tr>
<td>17 New section 3A inserted</td>
<td>9</td>
</tr>
<tr>
<td>18 New Division 3A of Part 8 inserted</td>
<td>10</td>
</tr>
<tr>
<td>19 Application of sections 143B, 143C and 143D</td>
<td>11</td>
</tr>
<tr>
<td>20 Section 143B substituted</td>
<td>12</td>
</tr>
<tr>
<td>21 New section 143E inserted</td>
<td>12</td>
</tr>
<tr>
<td>22 Sections 147 and 148 substituted</td>
<td>13</td>
</tr>
<tr>
<td>23 New section 149A inserted</td>
<td>14</td>
</tr>
<tr>
<td>Clause</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>------</td>
</tr>
<tr>
<td>24</td>
<td>Management and control of infectious disease, micro-organisms and medical conditions</td>
</tr>
</tbody>
</table>

**Part 4—Amendment of the Health Complaints Act 2016**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Power to delegate</td>
</tr>
<tr>
<td>26</td>
<td>Protection from liability for Commissioner and Assistant Commissioners</td>
</tr>
<tr>
<td>27</td>
<td>New section 156A inserted</td>
</tr>
</tbody>
</table>

**Part 5—Consequential amendment and repeal of amending Act**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Health Legislation Amendment (Quality and Safety) Act 2017</td>
</tr>
<tr>
<td>29</td>
<td>Repeal of amending Act</td>
</tr>
</tbody>
</table>

**Endnotes**

<table>
<thead>
<tr>
<th>Endnote</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General information</td>
</tr>
</tbody>
</table>
The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

(a) to make miscellaneous technical amendments to the Child Wellbeing and Safety Act 2005 in relation to the reportable conduct scheme and the operation of the Child Safe Standards; and
(b) to amend the **Public Health and Wellbeing Act 2008**—

(i) to align more closely the immunisation requirements under that Act with those under the Commonwealth immunisation scheme; and

(ii) to clarify what constitutes an immunisation status certificate; and

(iii) to require up to date immunisation status certificates to be provided to early childhood services; and

(iv) to require certain bodies to notify the Secretary about persons presenting with anaphylaxis; and

(c) to amend the **Health Complaints Act 2016**

   to provide that the Commissioner, a person acting as the Commissioner and any police officers may bring proceedings for offences under that Act; and

(d) to repeal sections 95 and 96 of the **Health Legislation Amendment (Quality and Safety) Act 2017**.

2 **Commencement**

   (1) This Act (except sections 3(2), 8, 9, 10, 11, 12(1), 13, 14, 15, 18, 19, 21 and 24) comes into operation on the day after the day on which this Act receives the Royal Assent.

   (2) Subject to subsection (3), sections 3(2), 8, 9, 10, 11, 12(1), 13, 14, 15, 18, 19, 21 and 24 come into operation on a day or days to be proclaimed.

   (3) If a provision referred to in subsection (2) does not come into operation before 1 November 2018, it comes into operation on that day.
Part 2—Amendment of the Child Wellbeing and Safety Act 2005

3 Definitions

(1) In section 3(1) of the Child Wellbeing and Safety Act 2005—

(a) in the definition of applicable entity, in paragraph (c)(ii), after "facilities" insert "or in producing or providing goods";

(b) in the definition of employee, for paragraph (d) substitute—

"(d) either—

(i) a foster carer approved by the entity under section 75 of the Children, Youth and Families Act 2005 with whom a child is or has been placed under that Act or in accordance with an order made under that Act; or

(ii) a family member or other person of significance to a child with whom the child is or has been placed in out of home care, or who is supervised in that care, by the entity, or the head of the entity, under the Children, Youth and Families Act 2005 or in accordance with an order made under that Act—

and—

(iii) a permanent care order has not been made in respect of the child; or
(iv) a permanent care order has been made in respect of the child and a reportable allegation in relation to the child is made concerning the permanent carer in respect of the period before the making of the order;";

(c) for the definition of head substitute—

"head, in relation to an entity to which the reportable conduct scheme applies, means—

(a) if the entity is a Department, the Secretary to the Department or the delegate of the Secretary; or

(b) if the regulations prescribe a person or a class of persons as the head of an entity, the prescribed person or a person belonging to the prescribed class of persons; or

(c) in any other case—

(i) the chief executive officer of the entity (however described); or

(ii) if there is no chief executive officer, the principal officer of the entity (however described); or

(iii) if there is no chief executive officer or principal officer, a person, or the holder of a position, in the entity nominated by the entity and approved by the Commission;".
Part 2—Amendment of the Child Wellbeing and Safety Act 2005

(2) In section 3(1) of the **Child Wellbeing and Safety Act 2005**—

(a) in the definition of *category 1 entity* omit "applicable";

(b) in the definition of *category 2 entity* omit "applicable";

(c) in the definition of *relevant entity*, in paragraph (a) omit "applicable".

(3) For section 3(2) of the **Child Wellbeing and Safety Act 2005 substitute**—

"(2) A reference in this Act to the provision of a service or facility or the production or provision of goods by a category 1 entity, category 2 entity or applicable entity is, in relation to an individual who carries on a business, a reference to the provision of the service or facility or the production or provision of goods by the business.".

4 **Exemption from whole of scheme**

At the end of section 16J of the **Child Wellbeing and Safety Act 2005 insert**—

"(2) The regulations may prescribe a part of an entity, or a part of a class of entities, to be exempt from the reportable conduct scheme.".

5 **Head of entity to respond to reportable allegation**

In section 16N(3)(b) and (c) of the **Child Wellbeing and Safety Act 2005**, for "head of the entity" **substitute** "entity".
6 Disclosure of information to the Commission, the head of an entity, a regulator, Victoria Police and others

In section 16ZC(2) of the Child Wellbeing and Safety Act 2005—

(a) in paragraph (f), for "matters." substitute "matters; and";

(b) after paragraph (f) insert—

"(g) any other prescribed person or body in relation to a prescribed matter, or a prescribed class of matters, if the information relates to the performance of a function conferred on the person or body by or under the laws of the Commonwealth, a State or a Territory.".

7 New section 16ZJA inserted

After section 16ZJ of the Child Wellbeing and Safety Act 2005 insert—

"16ZJA Delegation

The Secretary to a Department, as the head of an entity, by instrument, may delegate to a person employed under Part 3 of the Public Administration Act 2004 who is working in the Department any power, function or duty of the Secretary under this Part.".

8 Minister may make Child Safe Standards

In section 17(1) of the Child Wellbeing and Safety Act 2005, for "applicable" substitute "relevant".
9 Category 1 and 2 entities must comply with Child Safe Standards

In section 19(3) of the Child Wellbeing and Safety Act 2005—

(a) in paragraph (a), for "applicable entity" substitute "category 1 entity or category 2 entity";

(b) in paragraph (b), for "an applicable entity" substitute "a category 1 entity or category 2 entity".

10 Prescribed applicable entity must comply with Child Safe Standards

(1) In the heading to section 20 of the Child Wellbeing and Safety Act 2005 omit "applicable".

(2) In section 20(1) of the Child Wellbeing and Safety Act 2005, for "A prescribed applicable entity" substitute "A prescribed category 1 entity, category 2 entity or applicable entity".

(3) In section 20(2) of the Child Wellbeing and Safety Act 2005 omit "applicable".

11 Applicable entity belonging to a prescribed class must comply with Child Safe Standards

(1) In the heading to section 21 of the Child Wellbeing and Safety Act 2005, for "Applicable entity" substitute "Entity".

(2) In section 21 of the Child Wellbeing and Safety Act 2005, for "An applicable entity" substitute "A category 1 entity, category 2 entity or applicable entity".
12 Exemption from requirement to comply with Child Safe Standards

(1) In section 22 of the Child Wellbeing and Safety Act 2005, for "An applicable entity" substitute "A category 1 entity, category 2 entity or applicable entity".

(2) In section 22(c) of the Child Wellbeing and Safety Act 2005, after "facilities" insert "or in producing or providing goods".

13 Application of Child Safe Standards to businesses not carried on by applicable entities

(1) In the heading to section 23 of the Child Wellbeing and Safety Act 2005, for "applicable entities" substitute "certain entities".

(2) In section 23(1)(a) of the Child Wellbeing and Safety Act 2005, after "not" insert "a category 1 entity, a category 2 entity or".

14 Schedule 1—Category 1 entities

In Schedule 1 to the Child Wellbeing and Safety Act 2005—

(a) in item 6, for "A children's service" substitute "A licensee of a children's service";

(b) in item 16, for "A disability service provider" substitute "An applicable entity that is a disability service provider".

15 Schedule 2—Category 2 entities

In item 2 of Schedule 2 to the Child Wellbeing and Safety Act 2005, for "A charity" substitute "An applicable entity that is a charity".
Part 3—Amendment of the Public Health and Wellbeing Act 2008

16 Definitions

In section 3(1) of the Public Health and Wellbeing Act 2008, for the definition of age appropriately immunised substitute—

"age appropriately immunised in relation to a child means that—

(a) the child meets the immunisation requirements set out in section 6 of the A New Tax System (Family Assistance) Act 1999 of the Commonwealth; or

(b) the child meets the immunisation requirements declared by the Secretary under section 3A for the purposes of this definition;".

17 New section 3A inserted

After section 3 of the Public Health and Wellbeing Act 2008 insert—

"3A Secretary may declare immunisation requirements

(1) For the purposes of the definition of age appropriately immunised in section 3(1), the Secretary may declare immunisation requirements by notice published in the Government Gazette.

(2) The Secretary may vary or revoke the declaration at any time by notice published in the Government Gazette.

(3) A declaration, or variation or revocation of a declaration, has effect from the day notice of the declaration, or its variation or revocation,
18  New Division 3A of Part 8 inserted

After section 130 of the Public Health and Wellbeing Act 2008 insert—

"Division 3A—Notification of anaphylaxis presentation

130A  Definitions

In this Division—

anaphylaxis reporting body means—

(a) a public hospital; or

(b) a denominational hospital; or

(c) a private hospital; or

(d) a multi purpose service; or

(e) a privately-operated hospital within the meaning of the Health Services Act 1988;

person in charge means—

(a) in the case of an anaphylaxis reporting body that is a public hospital, denominational hospital, multi purpose service or privately-operated hospital, the chief executive officer of the body; and

(b) in the case of an anaphylaxis reporting body that is a private hospital, the proprietor of the private hospital.
130B Notification by anaphylaxis reporting body

(1) This section applies if a registered medical practitioner employed at, or otherwise engaged by, the anaphylaxis reporting body has reasonable grounds to believe that a person presenting for treatment at the anaphylaxis reporting body has anaphylaxis.

(2) An anaphylaxis reporting body must notify the Secretary in the prescribed manner of the prescribed notification details within the prescribed period.

(3) The person in charge of an anaphylaxis reporting body must implement processes to ensure that the anaphylaxis reporting body complies with subsection (2).

130C Secretary may provide anaphylaxis reporting information

If the Secretary considers that it is in the public interest to do so, the Secretary may provide information obtained under this Division to a person or class of person prescribed for the purposes of this section."

19 Application of sections 143B, 143C and 143D

(1) In the heading to section 143A of the Public Health and Wellbeing Act 2008, for "and 143D" substitute ", 143D and 143E".

(2) At the end of section 143A of the Public Health and Wellbeing Act 2008 insert—

"(2) Section 143E applies in relation to any child that attends an early childhood service.".
20 **Section 143B substituted**

For section 143B of the *Public Health and Wellbeing Act 2008* substitute—

"143B Obligation of person in charge of early childhood service

The person in charge of an early childhood service must ensure that the enrolment of a child at the early childhood service is not confirmed unless the parent of the child has provided to the early childhood service an immunisation status certificate which indicates, in relation to a date not more than 2 months immediately before the date on which the child first attends the early childhood service, that the child is age appropriately immunised.".

21 **New section 143E inserted**

After section 143D of the *Public Health and Wellbeing Act 2008* insert—

"143E Periodic production of immunisation status certificate

(1) The parent of a child who attends an early childhood service must provide to the person in charge of the early childhood service an immunisation status certificate indicating that the child is age appropriately immunised—

(a) within 2 months after the child attains a prescribed age; or

(b) at intervals not exceeding the prescribed period.
(2) The person in charge of an early childhood centre must take reasonable steps to ensure that a parent of a child who attends the early childhood service provides an immunisation status certificate in accordance with subsection (1).

(3) A parent of a child attending an early childhood service is not required to comply with subsection (1) if—

(a) section 143C(1) applies in relation to the child; and

(b) the relevant immunisation status certificate is to be provided during the 16 week period referred to in section 143C(2).

22 Sections 147 and 148 substituted

For sections 147 and 148 of the Public Health and Wellbeing Act 2008 substitute—

"147 Immunisation status certificate

An immunisation status certificate is—

(a) an extract of an entry in the Australian Immunisation Register kept under section 8 of the Australian Immunisation Register Act 2015 of the Commonwealth; or

(b) a document, or a combination of documents, of a class declared by the Secretary to be an immunisation status certificate for the purposes of this paragraph under section 148."
148 Secretary may declare documents to be immunisation status certificates

(1) For the purposes of section 147(b), the Secretary may declare a class of document, or a class of a combination of documents, to be an immunisation status certificate by notice published in the Government Gazette.

(2) The Secretary may vary or revoke the declaration at any time by notice published in the Government Gazette.

(3) A declaration, or variation or revocation of a declaration, has effect from the day notice of the declaration, or its variation or revocation, is published in the Government Gazette or any later day specified in the notice.

23 New section 149A inserted

After section 149 of the Public Health and Wellbeing Act 2008 insert—

"149A Review of provisions relating to immunisation of children attending or to attend early childhood services

(1) The Minister must arrange for a review to be conducted into the operation of sections 143B, 143C, 143D and 143E.

(2) The Minister must cause a copy of the review to be laid before each House of the Parliament before 30 November 2020.

(3) The review must give particular consideration to any unintended or adverse effects of sections 143B, 143C, 143D and 143E and may include recommendations on any matter addressed in the review.".
24 Management and control of infectious disease, micro-organisms and medical conditions

(1) After section 238(1)(k) of the Public Health and Wellbeing Act 2008 insert—

"(ka) for the purposes of Division 3A of Part 8—

(i) the manner of making a notification that a person has anaphylaxis;

(ii) the notification details for a person having anaphylaxis;

(iii) the period within which notification details for a person having anaphylaxis must be given;

(iv) the persons or classes of persons to whom the Secretary may provide information under section 130C;".

(2) In section 238(1)(o) of the Public Health and Wellbeing Act 2008, for "Part 8:" substitute "Part 8;".

25 Power to delegate

(1) In section 120(1)(a)(vi) of the Health Complaints Act 2016 omit "or".

(2) After section 120(1)(a)(vi) of the Health Complaints Act 2016 insert—

"(vii) section 156A; or".

26 Protection from liability for Commissioner and Assistant Commissioners

After section 122(3) of the Health Complaints Act 2016 insert—

"(4) In this section, Commissioner includes a person appointed to act as the Commissioner under section 114.".

27 New section 156A inserted

After section 156 of the Health Complaints Act 2016 insert—

"156A Power to bring proceedings

The following persons may bring proceedings for an offence against this Act or the regulations—

(a) the Commissioner;

(b) a person appointed to act as the Commissioner under section 114;

(c) a police officer.".
Part 5—Consequential amendment and repeal of amending Act

28 Health Legislation Amendment (Quality and Safety) Act 2017

Sections 95 and 96 of the Health Legislation Amendment (Quality and Safety) Act 2017 are repealed.

29 Repeal of amending Act

This Act is repealed on 1 November 2019.

Note

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

1 General information


† Minister’s second reading speech—

Legislative Assembly:

Legislative Council:

The long title for the Bill for this Act was "A Bill for an Act to amend the Child Wellbeing and Safety Act 2005, the Public Health and Wellbeing Act 2008, the Health Complaints Act 2016 and the Health Legislation Amendment (Quality and Safety) Act 2017 and for other purposes."