

PARLIAMENT OF VICTORIA

Children Legislation Amendment Bill 2019

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

**Children Legislation Amendment
Bill 2019**

A Bill for an Act to amend the **Children, Youth and Families Act 2005**, the **Children Legislation Amendment (Information Sharing) Act 2018**, the **Crimes Act 1958**, the **Evidence Act 2008**, the **Privacy and Data Protection Act 2014**, the **Working with Children Act 2005** and the **Limitation of Actions Act 1958** and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

(1) The main purposes of this Act are—

(a) to amend the **Children, Youth and Families Act 2005**—

(i) to include persons in religious ministry as mandatory reporters under that Act; and

5

- 5 (ii) to clarify that a mandatory reporter is not able to rely on the religious confession privilege in the **Evidence Act 2008** to avoid the reporting requirement imposed by section 184 of the **Children, Youth and Families Act 2005**; and
- 10 (b) to amend the **Crimes Act 1958** to provide that information that would be privileged under the religious confessions privilege in the **Evidence Act 2008** is no longer exempt for the purposes of section 327; and
- 15 (c) to amend the **Evidence Act 2008** to provide that the religious confessions privilege does not apply in proceedings for an offence against section 184 of the **Children, Youth and Families Act 2005** or section 327(2) of the **Crimes Act 1958**.
- 20 (2) The other purposes of this Act are—
- (a) to amend the **Children, Youth and Families Act 2005**—
- 25 (i) to confer powers on the Secretary to make authorisations in relation to non-Aboriginal children in certain circumstances; and
- (ii) to amend powers to share information between the Secretary and community-based child and family services; and
- 30 (iii) to clarify that routine medical care includes immunisation in certain circumstances; and
- (iv) to clarify the persons who are protected when disclosing information in good faith; and
- 35 (v) to make other minor amendments; and
-

- 5 (b) to amend the **Children Legislation Amendment (Information Sharing) Act 2018** in relation to the amendment of a definition in the **Children, Youth and Families Act 2005**; and
- 10 (c) to amend the **Privacy and Data Protection Act 2014** to clarify an exemption in relation to information sharing under the **Child Wellbeing and Safety Act 2005**; and
- 15 (d) to amend the **Working with Children Act 2005**—
- 20 (i) to clarify and limit the grounds on which a person who has been given a negative notice on a Category A application or a Category A re-assessment may apply to VCAT for review of the negative notice or for an assessment notice to be given to the person; and
- 25 (ii) to amend Schedule 1 to that Act to clarify the offences specified as category A offences; and
- 30 (iii) to make minor miscellaneous amendments to that Act; and
- (e) to amend the **Limitation of Actions Act 1958** to allow for certain actions in relation to death or personal injury arising from child abuse to be brought despite being dismissed due to the expiry of a limitation period or settled prior to the removal of limitation periods on 1 July 2015 and to provide for certain judgments and settlement agreements to be set aside.

2 Commencement

- 5
- (1) This Act (except sections 3(2), 9 and 10 and Parts 4, 5 and 7) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), sections 3(2), 9 and 10 and Parts 4, 5 and 7 come into operation on a day or days to be proclaimed.
- 10
- (3) If a provision referred to in subsection (2) does not come into operation before 1 September 2020, it comes into operation on that day.

Part 2—Amendment of Children, Youth and Families Act 2005

3 Definitions

- 5 (1) In section 3(1) of the **Children, Youth and Families Act 2005**—
- (a) **insert** the following definition—
- 10 "*pharmacist* means a person registered under the Health Practitioner Regulation National Law to practice in the pharmacy profession as a pharmacist (other than as a student);";
- (b) in the definition of *major long-term issue*, for paragraphs (c) and (d) **substitute**—
- 15 "(c) the child's health (but does not include routine medical care, for example immunisation on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession); and
- 20 (d) the child's name;".
- (2) In section 3(1) of the **Children, Youth and Families Act 2005** **insert** the following definitions—
- 25 "*person in religious ministry* means a person appointed, ordained or otherwise recognised as a religious or spiritual leader in a religious institution;
- Examples**
- 30 Church elder, deacon, granthi, imam, religious minister, monk, nun, pastor, priest, pujari, rabbi, religious brother or sister and Salvation Army officer.

religious institution means an entity that—

- (a) operates under the auspices of any faith; and
- 5 (b) provides activities, facilities, programs or services of any kind through which adults interact with children;".

4 Secretary may authorise principal officer of Aboriginal agency to act

- 10 (1) For section 18(1) of the **Children, Youth and Families Act 2005** substitute—

"(1) The Secretary may in writing authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under this Act in relation to a protection order in respect of—

- 15 (a) an Aboriginal child; or
- (b) a non-Aboriginal child who is a sibling of an Aboriginal child subject to an authorisation under this subsection."

- 20 (2) After section 18(7) of the **Children, Youth and Families Act 2005** insert—

"(8) Despite the revocation of an authorisation in respect of an Aboriginal child or if a protection order in respect of the Aboriginal child is no longer in force, an authorisation under this section in respect of a non-Aboriginal child who is a sibling of that Aboriginal child continues to have effect until revoked or until a protection order in respect of the non-Aboriginal child is no longer in force."

5 Powers and functions of acting principal officer

In section 18A(2) of the **Children, Youth and Families Act 2005**, for "the Aboriginal child" substitute "a child".

5 **6 Disclosure of information by Secretary to principal officer of Aboriginal agency**

In section 18C(4) of the **Children, Youth and Families Act 2005**, for "an Aboriginal child" substitute "a child".

10 **7 Identity of reporter or referrer confidential**

(1) In section 41(1) of the **Children, Youth and Families Act 2005** omit "to which the matter is referred under section 30".

15 (2) In section 41(1A) of the **Children, Youth and Families Act 2005**, for "or that" substitute "or a".

(3) In section 41(2) of the **Children, Youth and Families Act 2005**, for "Subsection (1) does" substitute "Subsections (1) and (1A) do".

20 (4) After section 41(2) of the **Children, Youth and Families Act 2005** insert—

"(3) To avoid doubt, the name of a person who made a report or who made a referral may be shared between—

25 (a) the Secretary and any community-based child and family service; and

(b) a community-based child and family service and any other community-based child and family service."

8 Secretary may specify certain issues

5 In section 175A(1) of the **Children, Youth and Families Act 2005**, in the example at the foot of the subsection, for "the child" substitute "the child, including immunisation on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession".

9 Who is a mandatory reporter?

10 After section 182(1)(e) of the **Children, Youth and Families Act 2005** insert—
"(ea) a person in religious ministry;"

10 Mandatory reporting

15 (1) After section 184(2) of the **Children, Youth and Families Act 2005** insert—

"(2A) To avoid doubt, a person is not exempt from the requirement to report under subsection (1) merely because the information would be privileged under section 127 of the **Evidence Act 2008**."

(2) After section 184(3) of the **Children, Youth and Families Act 2005** insert—

25 "(3A) The requirement imposed by subsection (1) applies to a person in religious ministry, even if the person's belief was first formed before the commencement of section 9 of the **Children Legislation Amendment Act 2019**, provided the person continues to hold that belief on or after that commencement."

30

11 Disclosure and use of information under this Act

For section 192(3)(c) of the **Children, Youth and Families Act 2005** substitute—

- 5 "(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 346 of the **Mental Health Act 2014**; or
- 10 (iii) Part 6A of the **Child Wellbeing and Safety Act 2005**."

12 Internal review

15 In section 331(3) of the **Children, Youth and Families Act 2005**, for "an Aboriginal child" substitute "a child".

13 Internal review—decision of principal officer of Aboriginal agency

20 In section 332(1) of the **Children, Youth and Families Act 2005**, for "an Aboriginal child" substitute "a child".

14 Powers of Secretary in relation to medical services and operations

- 25 (1) In section 597(4)(a) of the **Children, Youth and Families Act 2005**, for "declared hospital" substitute "secure welfare service, declared hospital".
- (2) In section 597(4)(a)(i) of the **Children, Youth and Families Act 2005** omit "291(4)".

Part 3—Amendment of Children Legislation Amendment (Information Sharing) Act 2018

15 Definitions

5 In section 16 of the **Children Legislation
Amendment (Information Sharing) Act 2018**,
after "**Child Wellbeing and Safety Act 2005**"
(where twice occurring) **insert** "other than a
person or body specified in section 41T of that
Act (whether or not that person or body is
10 exercising a judicial or quasi-judicial function)".

Part 4—Amendment of Crimes Act 1958

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

5 In section 327(7)(b) of the **Crimes Act 1958**, after "Part 3.10" insert "(other than section 127)".

17 New section 636 inserted

After section 635 of the **Crimes Act 1958** insert—

"636 Transitional provision—Children Legislation Amendment Act 2019

- 10
- 15
- 20
- 25
- (1) The amendment to section 327 of this Act made by section 16 of the **Children Legislation Amendment Act 2019** applies to an offence alleged to have been committed on or after the commencement of that section of that Act.
 - (2) For the purposes of subsection (1), if any of the conduct constituting the offence set out in section 327(2) of this Act is alleged to have occurred between 2 dates, one before and one on or after the commencement of section 16 of the **Children Legislation Amendment Act 2019**, all of the conduct constituting the offence is taken to have occurred before that commencement."

Part 5—Amendment of Evidence Act 2008

18 Religious confessions

For section 127(2) of the **Evidence Act 2008**
substitute—

5

"(2) Subsection (1) does not apply—

10

- (a) if the communication involved in the religious confession was made for a criminal purpose; or
- (b) in a proceeding for an offence against section 184 of the **Children, Youth and Families Act 2005**; or
- (c) in a proceeding for an offence against section 327(2) of the **Crimes Act 1958**."

Part 6—Amendment of Privacy and Data Protection Act 2014

19 Exemption—information sharing under the Child Wellbeing and Safety Act 2005

5

In section 15B(5) of the **Privacy and Data Protection Act 2014**, for "collection" (where first occurring) **substitute** "collection, use or disclosure".

Part 7—Amendment of Working with Children Act 2005

20 Outcome of application for working with children check

5 In section 17(4)(b) of the **Working with Children Act 2005**, after "the applicant that" insert ", in limited circumstances,".

21 Determination of re-assessment—category A

10 After section 21AB(1)(c) of the **Working with Children Act 2005** insert—
 "(ca) the person has become subject to an emergency detention order; or".

22 Revocation of assessment notice and surrender of document

15 In section 21C(3)(b) of the **Working with Children Act 2005**, after "the holder that" insert ", in limited circumstances,".

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

20 After section 25(2)(da) of the **Working with Children Act 2005** insert—
 "(db) the person being no longer subject to an emergency detention order; or".

24 Jurisdiction of VCAT—general

- 25 (1) In section 26(1)(a) and (c) of the **Working with Children Act 2005**, for "(a), (b) or (c)" substitute "(a), (b), (c) or (ca)".
- 30 (2) In section 26(3) of the **Working with Children Act 2005**, for "(a), (b) or (c)" substitute "(a), (b), (c) or (ca)".

25 Jurisdiction of VCAT—category A

(1) In section 26A(1) of the **Working with Children Act 2005**—

- 5
- (a) for "A person" **substitute** "Subject to subsection (1A), a person";
 - (b) in paragraphs (a) and (b), for "(a), (b) or (c)" **substitute** "(a), (b), (c) or (ca)".

(2) After section 26A(1) of the **Working with Children Act 2005** insert—

- 10
- "(1A) Despite subsection (1), a person who has been given a negative notice referred to in that subsection may not apply to VCAT for an assessment notice to be given to the person if the person has at any time been charged with or convicted or found guilty of a category A offence and the person was an adult at the time of the commission or alleged commission of the offence.
- 15
- (1B) For the purposes of subsection (1A), if an offence occurred or is alleged to have occurred between two dates, one on which the person was a child and one on which the person was an adult, the offence is taken to have occurred when the person was an adult."
- 20
- 25

26 Sex offenders not to apply for assessment notice

(1) In the heading to section 39A of the **Working with Children Act 2005**, after "**Sex offenders**" insert "**and serious offenders**".

30

(2) In section 39A of the **Working with Children Act 2005**—

- (a) in paragraph (c), for "supervision order." **substitute** "supervision order; or";

(b) after paragraph (c) **insert**—

"(d) a person subject to an emergency detention order.".

27 New section 56 inserted

5 At the end of Part 6 of the **Working with Children Act 2005 insert**—

"56 Transitional provision—Children Legislation Amendment Act 2019

10 (1) Section 26A as amended by section 25(1)(a) and (2) of the **Children Legislation Amendment Act 2019** applies to an application to VCAT made after the commencement of section 25(1)(a) and (2) of that Act.

15 (2) Section 26A as in force immediately before the commencement of section 25(1)(a) and (2) of the **Children Legislation Amendment Act 2019** continues to apply to an application to VCAT that was made but
20 not finally determined before that commencement.".

28 Schedule 1 amended

In Schedule 1 to the **Working with Children Act 2005**—

25 (a) in clause 1—

(i) for "7, 8, 9 or 10" **substitute** "7 or 8";

(ii) after "child" (where secondly occurring) **insert** "or, in the case of an offence of bestiality, against an
30 animal";

(b) in clauses 9 and 10, for "3" **substitute** "1, 3".

29 Schedule 3 amended

In Schedule 3 to the **Working with Children Act 2005**, after clause 1.3 **insert—**

"1.4 An emergency detention order."

5

30 Statute law revision amendment

In section 3(1) of the **Working with Children Act 2005**, in the definition of *Secretary*, for "Department of Justice and Regulation" **substitute** "Department of Justice and Community Safety".

10

Part 8—Amendment of Limitation of Actions Act 1958

31 New section 270A inserted

5 After section 270 of the **Limitation of Actions Act 1958** insert—

"270A Definitions for this Division

In this Division—

10 *previous judgment* means a judgment or an order in a previously barred cause of action;

15 *previously barred cause of action* means a cause of action to which this Division applies for which any applicable limitation period expired before 1 July 2015;

Note

1 July 2015 is the date of the commencement of the **Limitation of Actions Amendment (Child Abuse) Act 2015**.

20 *previously settled cause of action* means a cause of action to which this Division applies that was settled and given effect by a settlement agreement before 1 July 2015;

25 *settlement agreement* means an agreement giving effect to the settlement of a cause of action to which this Division applies."

32 New sections 27QA to 27QF inserted

After section 27Q of the **Limitation of Actions Act 1958 insert—**

- 5 **"27QA Action may be brought on previously
barred cause of action or previously
settled cause of action**
- (1) An action may be brought on a previously
barred cause of action even if an action on
the cause of action was dismissed—
- 10 (a) on the ground that the action was
brought after the expiry of any
applicable limitation period; or
- (b) by refusing to extend any applicable
limitation period.
- 15 (2) An action may be brought on a previously
settled cause of action.
- (3) This section does not apply to—
- 20 (a) any deed of release or accepted offer of
redress under the National Redress
Scheme for Institutional Child Sexual
Abuse Act 2018 of the Commonwealth;
or
- 25 (b) any settlement that has been taken into
account in any deed of release or
accepted offer of redress under the
National Redress Scheme for
Institutional Child Sexual Abuse
Act 2018 of the Commonwealth.

27QB Application to court to set aside previous judgments

- 5
- (1) This section applies to an action referred to in section 27QA(1).
- (2) In a proceeding to which this section applies, application may be made to the court for a previous judgment to be set aside.
- 10 (3) A court other than the Supreme Court may not set aside a previous judgment of another court.

27QC Court's powers—set aside previous judgments

- 15 (1) On an application under section 27QB or otherwise in a proceeding on an action referred to in section 27QA(1), the court, if satisfied that it is just and reasonable to do so—
- 20 (a) may make an order setting aside the previous judgment, whether wholly or in part; and
- (b) may make any other order that it considers appropriate in the circumstances.
- 25 (2) In hearing and determining any action to which this Division applies in relation to which there is a previous judgment which has been set aside, the court, if satisfied that it is just and reasonable to do so—
- 30 (a) when awarding damages in relation to the action, may take into account any amounts paid or payable under that previous judgment; and

(b) when awarding costs in relation to the action, may take into account any amounts paid or payable under that previous judgment.

5

27QD Application to court to set aside previously settled causes of action

(1) This section applies to an action referred to in section 27QA(2).

10

(2) In a proceeding to which this section applies, application may be made to the court for the settlement agreement and any judgment or order giving effect to the settlement of the previously settled cause of action to be set aside.

15

(3) A court other than the Supreme Court may not set aside a judgment or an order of another court.

27QE Court's powers—previously settled causes of action

20

(1) On an application under section 27QD or otherwise in a proceeding on an action referred to in section 27QA(2), the court, if satisfied that it is just and reasonable to do so—

25

(a) may make an order setting aside the settlement agreement and any judgment or order giving effect to the settlement of the previously settled cause of action, whether wholly or in part; and

30

(b) may make any other order that it considers appropriate in the circumstances.

- 5
- (2) In hearing and determining any action to which this Division applies on a previously settled cause of action, the court, if satisfied that it is just and reasonable to do so—
- 10
- (a) when awarding damages in relation to the action, may take into account any consideration (whether monetary or non-monetary) paid, payable or given or to be given under—
- 15
- (i) a settlement agreement set aside under this section; or
- (ii) any other agreement related to the settlement that has been set aside under this section; and
- 20
- (b) when awarding costs in relation to the action, may take into account any amounts paid or payable as costs under—
- 25
- (i) a settlement agreement set aside under this section; or
- (ii) any other agreement related to the settlement that has been set aside under this section.
- 27QF Recovery of amounts under previous judgment or previous settlement agreement which is set aside**
- 30
- (1) If the court makes an order under section 27QC setting aside a previous judgment (whether wholly or in part), any person or entity who paid an amount under that previous judgment is not entitled to seek to recover the amount on the basis that the previous judgment has been set aside.

- 5 (2) If the court makes an order under section 27QE setting aside a settlement agreement (whether wholly or in part)—
- (a) the settlement agreement and any other agreement related to the settlement (other than a contract of insurance) ceases to have effect to the extent specified in that order; and
- 10 (b) in accordance with the terms of that order, any party to that settlement agreement and any other agreement related to the settlement (other than a contract of insurance) is not entitled to seek to recover any money paid by, or for, that party under that settlement agreement or other agreement."
- 15

33 Provisions as to actions already barred and pending actions

20 At the end of section 35 of the **Limitation of Actions Act 1958** insert—

"(2) Subsection (1) does not apply to an action to which sections 27QA to 27QF, as inserted by the **Children Legislation Amendment Act 2019**, apply."

25 **34 New section 38C inserted**

After section 38B of the **Limitation of Actions Act 1958** insert—

"38C Regulations

- 30 (1) The Governor in Council may make regulations for or with respect to any matter or thing required to be prescribed by this Act or necessary to be prescribed to give effect to this Act.

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Part 8—Amendment of Limitation of Actions Act 1958

(2) The regulations—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstance."

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Part 9—Repeal of this Act

35 Repeal of this Act

This Act is **repealed** on 1 September 2021.

Note

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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

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.