

## Authorised Version

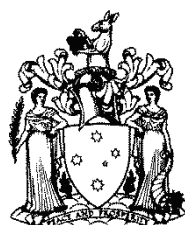
# Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015

No. 63 of 2015

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**Authorised Version**



**Victoria**

# **Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015<sup>†</sup>**

**No. 63 of 2015**

[Assented to 1 December 2015]

**The Parliament of Victoria enacts:**

## **Part 1—Preliminary**

### **1 Purposes**

The purposes of this Act are—

- (a) to amend the **Child Wellbeing and Safety Act 2005**—
  - (i) to provide for the Minister to make standards in relation to child safety with which certain entities must comply; and

- (ii) to otherwise improve the operation of that Act; and
- (b) to amend the **Commission for Children and Young People Act 2012** to improve the operation of that Act; and
- (c) to amend the **Education and Training Reform Act 2006** in relation to the definition of *child abuse*.

## **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2016, it comes into operation on that day.

## **3 Principal Act**

In this Act, the **Child Wellbeing and Safety Act 2005** is called the Principal Act.

## **Part 2—Amendment of Child Wellbeing and Safety Act 2005**

### **Division 1—Child Safe Standards**

#### **4 Purposes**

After section 1(c) of the Principal Act **insert**—

"(d) to provide for the Minister to make standards in relation to child safety with which certain entities must comply; and".

#### **5 Definitions**

(1) In section 3 of the Principal Act, in the definition of *nurse*, for "student)." **substitute** "student);".

(2) In section 3 of the Principal Act **insert** the following definitions—

**"applicable entity** means—

(a) an incorporated body or association; or

(b) an unincorporated body or association (however structured); or

(c) an individual who—

(i) carries on a business; and

(ii) engages contractors, employees or volunteers to assist the business in providing services or facilities;

**category 1 entity** means an applicable entity that is referred to in Schedule 1;

**category 2 entity** means an applicable entity that—

(a) is referred to in Schedule 2; and

(b) is not referred to in Schedule 1;

*child abuse* includes—

- (a) any act committed against a child involving—
  - (i) a sexual offence; or
  - (ii) an offence under section 49B(2) of the **Crimes Act 1958**; and
- (b) the infliction, on a child, of—
  - (i) physical violence; or
  - (ii) serious emotional or psychological harm; and
- (c) the serious neglect of a child;

*Child Safe Standards* means the standards made under section 17(1);

*State contract* has the same meaning as it has in the **Commission for Children and Young People Act 2012**."

(3) At the end of section 3 of the Principal Act **insert—**

"(2) A reference in this Act to the provision of a service or facility by an applicable entity applies, in relation to an applicable entity that is an individual carrying on a business, as a reference to the provision of the service or facility by the business."

## **6 New Part 6 inserted**

After Part 5 of the Principal Act **insert—**

### **"Part 6—Child Safe Standards**

#### **17 Minister may make Child Safe Standards**

- (1) The Minister may make standards to ensure that in the operations of applicable entities—
  - (a) the safety of children is promoted; and

- (b) child abuse is prevented; and
  - (c) allegations of child abuse are properly responded to.
- (2) The Minister must publish the Child Safe Standards in the Government Gazette.
- (3) An amendment to the Child Safe Standards has effect—
- (a) on the day that is 30 days after the day that the amendment is published in the Government Gazette; or
  - (b) on a later day that is specified in the amendment.

**18 Governor in Council may specify day for compliance with Child Safe Standards**

The Governor in Council may, by notice published in the Government Gazette, specify a day for the purposes of section 19.

**19 Category 1 and 2 entities must comply with Child Safe Standards**

- (1) A category 1 entity must comply with the Child Safe Standards on and after the specified day unless—
- (a) the entity is exempt under section 22; or
  - (b) the regulations provide that the entity is exempt from this requirement; or
  - (c) the entity is prescribed under section 20 or belongs to a class prescribed under section 21.

- (2) A category 2 entity must comply with the Child Safe Standards on and after the first anniversary of the specified day unless—
- (a) the entity is exempt under section 22; or
  - (b) the regulations provide that the entity is exempt from this requirement; or
  - (c) the entity is prescribed under section 20 or belongs to a class prescribed under section 21.
- (3) Regulations made for the purposes of subsection (1)(b) or (2)(b) may prescribe—
- (a) a class of applicable entity that is to be exempt from the requirement to comply with the Child Safe Standards; or
  - (b) an applicable entity (other than an individual) that is to be exempt from that requirement.
- (4) In this section—
- specified day* means the day specified by the Governor in Council under section 18.

**20 Prescribed applicable entity must comply with Child Safe Standards**

- (1) A prescribed applicable entity must comply with the Child Safe Standards on and after the date prescribed in respect of that entity.
- (2) Regulations made for the purposes of subsection (1) may only prescribe an applicable entity that is not an individual.

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

An applicable entity that belongs to a prescribed class must comply with the Child Safe Standards on and after the day prescribed in respect of that class unless the entity is exempt under section 22.

**22 Exemption from requirement to comply with Child Safe Standards**

An applicable entity is exempt from a requirement to comply with the Child Safe Standards under section 19(1) or (2) or 21 if the entity does not do any of the following—

- (a) provide any services specifically for children;
- (b) provide any facilities specifically for use by children who are under the entity's supervision;
- (c) engage a child as a contractor, employee or volunteer to assist the entity in providing services or facilities.

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

- (1) This section applies to an individual—
  - (a) who is not an applicable entity; and
  - (b) who carries on a business that belongs to a prescribed class and that provides—
    - (i) services specifically for children;
    - or



- (ii) facilities specifically for use by children who are under the individual's supervision.
- (2) The individual must comply with the Child Safe Standards on and after the day prescribed in respect of the prescribed class of business."

#### **7 Section 47 substituted**

For section 47 of the Principal Act **substitute**—

##### **"47 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) The regulations may—
  - (a) be of general or limited application; and
  - (b) differ according to differences in time, place or circumstances."

#### **8 New Schedules 1 and 2 inserted**

After Part 8 of the Principal Act **insert**—

##### **"Schedule 1—Category 1 entities**

- 1 An applicable entity that operates a registered school within the meaning of the **Education and Training Reform Act 2006**.
- 2 An applicable entity registered under Division 3 of Part 4.3 of the **Education and Training Reform Act 2006** in respect of an accredited senior secondary course or registered senior secondary qualification.

- 3 An applicable entity that is approved, under section 4.5.1 of the **Education and Training Reform Act 2006**, to provide a specified course to students from overseas.
- 4 An applicable entity that is approved, under section 4.5A.1 of the **Education and Training Reform Act 2006**, as suitable to operate a student exchange program.
- 5 An approved provider within the meaning of the Education and Care Services National Law (Victoria).
- 6 A children's service within the meaning of the **Children's Services Act 1996**.
- 7 An applicable entity that receives funding under a State contract to provide early therapeutic intervention specifically for children with a disability, additional needs or developmental delay.
- 8 An applicable entity that operates a Maternal and Child Health Centre.
- 9 A hospital listed in Schedule 1 to the **Health Services Act 1988** as a public hospital.
- 10 A public health service within the meaning of the **Health Services Act 1988**.
- 11 A hospital listed in Schedule 2 to the **Health Services Act 1988** as a denominational hospital.
- 12 An applicable entity that operates a private hospital within the meaning of the **Health Services Act 1988**.
- 13 An applicable entity that operates a day procedure centre within the meaning of the **Health Services Act 1988**.

- 14 A multi purpose service within the meaning of the **Health Services Act 1988**.
- 15 A registered community health centre within the meaning of the **Health Services Act 1988**.
- 16 A disability service provider within the meaning of the **Disability Act 2006**.
- 17 A mental health service provider within the meaning of the **Mental Health Act 2014**.
- 18 An applicable entity that receives funding under a State contract to provide drug or alcohol treatment services.
- 19 An applicable entity that receives funding under a State contract to provide services in relation to family violence or sexual assault.
- 20 An applicable entity that receives funding under a State contract to provide support services for parents and families.
- 21 An applicable entity that receives funding under a State contract to provide housing services or other assistance to homeless persons.
- 22 An applicable entity that receives funding under a State contract to provide youth services.
- 23 An applicable entity that receives funding under a State contract to provide child protection services.
- 24 An out of home care service within the meaning of the **Children, Youth and Families Act 2005**.
- 25 A Department within the meaning of the **Public Administration Act 2004**.

26 An applicable entity that is constituted by or under any Act and that has functions of a public nature.

27 A council.

## **Schedule 2—Category 2 entities**

1 A religious body within the meaning of section 81 of the **Equal Opportunity Act 2010**.

2 A charity.

3 A non-profit body within the meaning of the **Electronic Transactions (Victoria) Act 2000**.

4 A post-secondary education institution within the meaning of the **Education and Training Reform Act 2006**.

5 A post-secondary education provider within the meaning of the **Education and Training Reform Act 2006**.

6 An applicable entity that operates a school other than—  
(a) a registered school within the meaning of the **Education and Training Reform Act 2006**; or  
(b) a place at which home schooling takes place in accordance with a registration under section 4.3.9 of that Act.

7 An applicable entity that operates a residential facility for a boarding school.

8 An applicable entity that provides coaching or tuition services specifically for children.

9 An applicable entity that provides counselling or other support services specifically for children.

- 10 An applicable entity, other than a disability service provider within the meaning of the **Disability Act 2006**, that provides disability services.
- 11 A youth organisation—
- (a) in which children participate; or
  - (b) that provides activities in which children participate.

**Examples**

- 1 The Girl Guides Association of Victoria incorporated by section 3 of the **Girl Guides Association Act 1952**.
  - 2 The Boy Scouts Association, Victorian Branch incorporated by section 3 of the **Scout Association Act 1932**.
- 12 An applicable entity that provides cultural, sporting or recreational services specifically for children.
- 13 An applicable entity that provides gym or play facilities specifically for children.
- 14 An applicable entity that runs talent or beauty competitions in which children participate.
- 15 An applicable entity that provides overnight camps for children.
- 16 An applicable entity that provides photography services specifically for children.
- 17 An applicable entity that provides professional babysitting services.
- 18 An applicable entity that provides, on a publicly funded or commercial basis, a transport service specifically for children.

- 19 An applicable entity that provides entertainment and party services specifically for children.
- 20 An applicable entity that employs a child and that is required to hold a permit issued under the **Child Employment Act 2003** for that employment."

## **Division 2—Other amendments**

### **9 Role of the Secretary in relation to Aboriginal communities**

In section 7 of the Principal Act, for "Department of Human Services" **substitute** "Department of Health and Human Services".

### **10 Constitution of Council**

In section 9(3) of the Principal Act, for "subsection (1)(b)" **substitute** "subsection (1)".

### **11 Constitution of Board**

In section 14 of the Principal Act—

- (a) in paragraph (c), for "Department of Human Services" **substitute** "Department of Health and Human Services";
- (b) in paragraph (d), for "Department of Education and Early Childhood Development" **substitute** "Department of Education and Training";
- (c) in paragraph (e), for "Department of Justice" **substitute** "Department of Justice and Regulation";
- (d) paragraph (f) is **repealed**.

**12 Early notification of births**

In section 43(1)(c) of the Principal Act, for "Department of Education and Early Childhood Development" **substitute** "Department of Education and Training".

**13 What must be done once notice is received?**

In section 45(b) of the Principal Act, for "Department of Education and Early Childhood Development" **substitute** "Department of Education and Training".

### **Part 3—Amendments to other Acts**

#### **14 Commission for Children and Young People Act 2012**

In section 3 of the **Commission for Children and Young People Act 2012**, in the definition of *health service*, for paragraph (b) **substitute—**

"(b) a mental health service provider within the meaning of the **Mental Health Act 2014**; or".

#### **15 Education and Training Reform Act 2006**

In section 1.1.3(1) of the **Education and Training Reform Act 2006**, for the definition of *child abuse* **substitute—**

"*child abuse* has the same meaning as it has in the **Child Wellbeing and Safety Act 2005**";".



## **Part 4—Repeal of amending Act**

### **16 Repeal of amending Act**

This Act is **repealed** on 1 July 2017.

#### **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**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 21 October 2015*

*Legislative Council: 12 November 2015*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Child Wellbeing and Safety Act 2005** to provide for the Minister to make standards in relation to child safety with which certain entities must comply and to make amendments to the **Commission for Children and Young People Act 2012** and the **Education and Training Reform Act 2006** and for other purposes."