

Working with Children Bill 2005

Discussion Paper

December 2004

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Introduction

1. Purpose of the Working with Children Check

The Working with Children Check is a screening process intended to reduce the risk of sexual or physical harm to children. Under the proposed check, if a person has a relevant criminal record or has had an adverse finding made against them by a professional disciplinary body, then this information will be assessed to determine whether that person should be prohibited from working or volunteering with children. If a person does not have a relevant history, or it is found that their history is not relevant, then they will be issued with an 'assessment notice' that will allow them to work or volunteer with children.

An assessment notice is not a guarantee that a person is 'safe'. Instead, it is merely a declaration that the person has been assessed and has been declared eligible on the basis of their criminal, or professional disciplinary, history.

It will still be the responsibility of employers and volunteer organisations to determine whether someone is suitable for their role. This includes conducting referee checks and general character assessments, as well as ensuring that the business or organisation adopts practices that help protect children from harm.

In this sense, the Working with Children Check is only one part of a much broader process to help protect Victoria's children. Protecting children is the responsibility not just of the Government, but also of business, community organisations and the general community. Together with the Working with Children Check, the Government will conduct community education campaigns to ensure that everybody can help contribute to protecting Victoria's children.

There are a number of competing policy interests that need to be considered in establishing a Working with Children Check. These include:

- *Natural justice.* This means ensuring that people have a right to know about, and contest, any information that is held about them and could be used to declare them ineligible to work with children. It also means allowing a person to appeal a decision declaring them ineligible.
- *Privacy.* Criminal record histories, and outcomes of professional disciplinary proceedings, involve personal information that is sensitive and should be treated with respect. This information should be protected from disclosure as much as possible.
- *Encouraging volunteering.* Volunteers are the lifeblood of a large number of community organisations across Victoria. Any check should attempt to minimise the inconvenience caused to these groups, and should not become a barrier that discourages volunteering.

- *Protecting children.* Obviously, the paramount consideration in establishing a Working with Children Check is helping to protect children from sexual or physical harm.

In some respects, it is natural that minimising the risk of sexual or physical harm to children will outweigh the other considerations listed above. However, natural justice, privacy and encouraging volunteering cannot be ignored. This Exposure Draft Bill represents an attempt to balance these competing interests in a responsible and effective way.

2. Background and Context

The Victorian Government is committed to introducing a best-practice Working with Children Check. This means taking into account existing and proposed interstate schemes.

Queensland and New South Wales have existing Working with Children Checks. Some of the key features of those States' schemes are outlined below:

Queensland

The Queensland scheme was set up under the *Commission for Children and Young People Act 2000*. It applies to employees, self-employed persons and volunteers in defined categories of child-related employment. The Queensland scheme takes into account convictions and charges for serious sexual and violent offences. It also includes consideration of professional disciplinary proceedings before bodies such as the Teachers Registration Board. Following assessment, a person is either issued with a positive suitability notice (commonly referred to as a 'blue card') or a negative notice.

The Queensland scheme was reviewed in early 2004. As a result of this review, additional categories of professional disciplinary proceedings have been added (including nurses and other health professionals) in the *Commission for Children and Young People and Child Guardian Amendment Act 2004*. Otherwise, the main features of the Queensland scheme have been preserved. The Victorian proposal incorporates some of the major elements of Queensland's Working with Children Check.

New South Wales

The New South Wales scheme was set up under the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*. In contrast to Queensland, NSW only screens employees. The NSW scheme also takes into account a different range of information, including not just convictions and charges for serious sexual offences, but also Apprehended Violence Orders where children are involved, and general employment information (for example, where an employer terminates an employee's employment for alleged sexual misconduct). The outcome of the NSW check is also different to the Queensland check, with an employer being provided with a 'risk assessment' of the potential employee. It is then

up to the employer to decide whether to employ that person, and in what capacity. The NSW scheme is currently being reviewed.

Western Australia

Western Australia is also in the process of establishing a check through the Working with Children (Criminal Record Checking) Act 2004 (WA).

The Western Australian scheme is broadly similar to Queensland. It proposes to screen employees, self-employed persons and volunteers in defined categories of employment. The WA scheme will take into account convictions and charges for serious sexual and violent offences. However, unlike Queensland, it will not include consideration of professional disciplinary proceedings. Following assessment, the WA scheme will involve issuing either an 'assessment notice', which allows that person to work or volunteer with children, or a negative notice.

Overall, the proposal in this Exposure Draft Bill has been developed taking these various schemes into account. It has attempted to incorporate the best elements of each scheme, and learn from the experiences of other jurisdictions. The Bill has also been prepared keeping in mind the longer-term goal to achieve a level of national consistency.

3. Structure of the Working with Children Check

Who will be checked?

The Working with Children Check will apply to all employees, self-employed persons and volunteers who are engaged in defined categories of 'child-related work'. Child-related work, including unpaid volunteering, involves contact with a child in connection with activities or occupations such as pre-schools, kindergartens, and child-care centres; educational institutions for children; religious organisations; fostering children; and providing coaching or private tuition services for children. The complete list of categories of child-related employment can be found in section 9 of the Exposure Draft Bill.

Given this list of categories, the Working with Children Check will apply to a large number of Victorian employees, self-employed persons and volunteers. As a result, it would be impractical to check everybody in the first year of operation. Instead, it is proposed that the scheme will be phased-in over a five year period. This could be done by screening people according to which category they fall into, and whether they are a new or existing employee or volunteer. The phasing-in of the check will be developed during the consultation period, and will be announced by the Government before the scheme is introduced.

Who will do the checking?

The Working with Children Check will be carried out by a new agency to be created within the Department of Justice. The checking agency will therefore be the responsibility of the Secretary of the Department of Justice. As a result, the Exposure

Draft refers to the Secretary as being responsible for the checks, although day-to-day responsibility will be delegated to the agency.

What will be checked for?

The Working with Children Check will involve examination of a person's criminal record, and history of relevant professional disciplinary proceedings.

When examining a person's criminal record, the Secretary will look for:

- *Convictions or findings of guilt for serious sexual offences.* These offences are defined in clause 1 of Schedule 1 of the *Sentencing Act 1991*, and include offences such as rape and indecent act with child under the age of 16. Convictions for these offences will result in the issuing of a negative notice to the person, meaning they are ineligible to work or volunteer with children.
- *Convictions or findings of guilt for other serious offences that are related to children or where the victim is a child.* This includes offences such as murder, manslaughter, kidnapping or inflicting grievous bodily harm, where the victim is a child. It will be presumed that a conviction for these offences will result in a negative notice unless exceptional circumstances apply.
- *Pending charges for serious sexual, or other serious child-related, offences.* A 'pending' charge is a charge that is still valid, that is, a charge that has not been withdrawn, dismissed, discharged at committal or where the person has been acquitted of the offence. Again, if a person has a pending charge for a serious sexual, or other serious offence, it will be presumed to result in a negative notice unless exceptional circumstances apply.

As indicated above, the Secretary will also look at relevant professional disciplinary proceedings. In the Exposure Draft Bill, this explicitly includes findings of the Victorian Institute of Teaching (VIT). As these findings could include matters that are unrelated to children (for example, fraud), it is presumed that a finding of VIT would not automatically result in the issuing of a negative notice. However, to take account of situations where the finding does relate to children, it allows the Secretary to issue a negative notice in certain circumstances.

The proposed Bill does not include other professional registration boards at this stage. However, it is possible that the scheme will be expanded to include other boards, such as those that cover various health professionals, as is the case in Queensland. This issue is discussed later in this paper.

What is the result of the check?

People who are checked will receive either a:

- *Negative notice.* This means that, following examination of their criminal record or history of professional disciplinary proceedings, the Secretary has found that that person should be ineligible to work or volunteer with children; or an

- *Assessment notice.* This notice will indicate that the person's criminal, and professional disciplinary, history has been assessed and that there is no relevant information justifying the issuing of a negative notice. This notice will be valid for up to five years.

The term 'assessment notice' is preferred to the alternatives 'positive' or 'suitability notice'. The check is not a guarantee that a person is safe or suitable to work with children. For example, a person could present a risk to children even if they have no current criminal record or professional disciplinary history. Instead, an assessment notice means exactly what it says - that the person has been assessed and there is no criminal record or professional disciplinary information that makes them ineligible to work with children.

In this way, the term 'assessment notice' reinforces the fact that the Working with Children Check is merely one part of a broader process to protect Victoria's children. Employers and community organisations should still check people's references, and conduct general character assessments to determine whether a person is suitable to work with children. Businesses and organisations should also maintain or develop practices that help protect children from harm. The Government will assist this process through community education campaigns and ongoing assistance.

4. Where to from here?

The Victorian Government invites your comments on the Exposure Draft Bill. Specific questions are posed in this discussion paper accompanying the Bill, which may assist you in making your comments. However, you should not feel constrained by these questions, and should feel free to comment on any aspect of the Bill.

Comments on the Exposure Draft Bill may be sent to:

Criminal Law Policy
Department of Justice
55 St Andrews Place
MELBOURNE VIC 3002

Comments may also be e-mailed to legalpolicysubmissions@justice.vic.gov.au or faxed to Criminal Law Policy on (03) 9651 0577. [Please note that email submissions above 3MB may not be received and may need to be sent via hard copy to the above address instead.]

If you would like more copies of this paper, please contact Criminal Law Policy on (03) 9651 0373. Alternatively, you can download a copy of the Bill from the Department's website at www.justice.vic.gov.au.

Please note that all comments on the Exposure Draft Bill will be treated as public documents unless you have requested otherwise. If you do not want your name to be identified or if you do not want your comments to be quoted or sourced to you, please make this clear on the document.

Closing date for comments: Friday 25 February 2005

The Government will consider submissions received as it continues to develop a Working with Children Check scheme.

The Government currently plans to introduce a final Working with Children Check Bill into Parliament in 2005. Once enacted, the scheme would then be established as soon as possible, in order to help minimise the risk of sexual and physical harm to children. As noted earlier, the number of employees and volunteers affected by the scheme will mean that some phasing-in of its introduction will be necessary.

Detail of Draft Working with Children Legislation

1 What is 'child-related work'?

“Child-related work” for the purposes of this Bill is set out at section 9 and includes:

- Standard employment under a contract – whether written or unwritten;
- Work as a minister of religion or as part of a religious vocation;
- Practical training as part of a course, such as teacher training; and
- Volunteer work.

The inclusion of volunteer work in the scheme is particularly significant. It means that all people who volunteer in a child-related area will be covered by this scheme. There are some exemptions, which will be discussed later, but this Bill aims to ensure that people who volunteer to work with children in sporting, social and charitable areas will be covered by the Working with Children Check.

The types of industries that are included in “child-related work” are:

- (a) child protection services;
- (b) pre-schools or kindergartens;
- (c) child care services mentioned in section 194(1) of the *A New Tax System (Family Assistance) Administration Act 1999* of the Commonwealth;
- (d) educational institutions for children;
- (e) juvenile detention centres;
- (f) refuges or other residential facilities used by children;
- (g) wards of public or private hospitals in which children are ordinarily patients;
- (h) clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement;
- (i) religious organisations;
- (j) baby sitting or child minding services arranged by a commercial agency;
- (k) fostering children;
- (l) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
- (m) coaching or private tuition services of any kind for children;
- (n) counselling or other support services for children;
- (o) overnight camps for children regardless of the type of accommodation or of how many children are involved;

- (p) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
- (q) providing, on a commercial basis and not merely incidentally to or in support of other business activities, an entertainment or party service specifically for children;
- (r) providing, on a commercial basis and not merely incidentally to or in support of other business activities, gym or play facilities specifically for children;
- (s) providing, on a commercial basis and not merely incidentally to or in support of other business activities, photography services specifically for children;
- (t) talent or beauty competitions held for children on a commercial basis and not merely incidentally to or in support of other business activities.

Obviously, this covers a wide range of activities and, when combined with the fact that volunteering is included as 'work', will mean that many people will require a Working with Children Check.

The Bill contains criminal offences to enforce the scheme. It will be an offence to engage in child-related work without having successfully completed a Working with Children Check, (ie: received an assessment notice). It will also be an offence to employ a person in child-related work who does not have an assessment notice. These are discussed in more detail (see part 6, below). In considering what types of activities are included in the Bill, it is important to remember that, for those people who are involved in these activities, there will be criminal consequences for failing to comply with the proposed *Working with Children Bill*.

Questions:

Is the definition of child-related work appropriate?

Are there any other areas you would like to see included?

Is the definition too broad?

2. Who should be exempt from the Working with Children Check?

The proposed *Working with Children Bill* will impose significant obligations and costs on employers and voluntary organisations. The Bill attempts to minimise the hurdles to employers and voluntary organisations while still ensuring an effective scheme that checks people who work or volunteer with children.

To this end, there are some proposed exemptions from the Working with Children Check in the Bill. If the work a person does falls within one of these exemptions that person will not need to undergo a Working with Children Check to engage in the child-related activity (ie: will not be required to have an assessment notice). However, a person who has previously failed a Working with Children Check or who is on the Sex Offenders Register will **not** be able to work within these areas, regardless of the exemption.

Section 29 – A volunteer whose child ordinarily participates in the activity

The *Working with Children Bill* defines ‘parent’ in the same way as the *Children and Young Persons Act 1989* defines parent. Parent includes any person who has the custody of a child.

This exemption recognises that, in many areas, parents of children involve themselves in their child’s activities. If parents were to be discouraged from participating in their children’s sporting teams, it may be difficult for many of these teams to continue to participate in their sport.

Also, parents who involve themselves in their child’s activities spend time with the other children involved both as part of the activity and in the normal course of their child’s life, as friends come to the home etc. There is little point in prohibiting a parent from participating in an organised activity, while they still spend time with the other children involved outside that organised activity.

Therefore, as long as a child is involved in an activity, their parent may volunteer in relation to that activity without requiring a Working with Children Check. However, when their child stops being involved in that activity the parental exemption will no longer operate.

The Bill provides an example of the way this will work at section 29:

Example

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

Section 30 – Person working with closely related child

The exemption recognises that members of a child's family, beyond the child's parents, play an important role in the child's life. Also, as with the previous exemption, there is little practical point in preventing family members from working with children, while they will still have many opportunities to spend time with those children outside the child-related work.

Close relatives are defined in subsection (2) and include the members of a child's extended family.

This exemption will ensure that, for example, a child's aunt can teach her the piano without needing to apply for a Working with Children Check.

Section 31 – Volunteers with limited contact

Obviously, this Bill will have a significant impact on volunteers and volunteer organisations. However, not all volunteers who work with children do so regularly, or do so in situations where a child is particularly vulnerable, such as on an overnight camp.

Therefore, the Bill has created an exemption from the Working with Children Check for volunteers who, although performing child-related work, have limited contact with children.

A volunteer who:

- volunteers less than 4 times over 12 months and no more than twice in once month; and
 - is supervised at all times by a person who has passed a Working with Children Check; and
 - does not have overnight contact with children
- does not need to pass a Working with Children Check.

This exemption will require volunteer organisations to keep records on how often a person volunteers for them and, once a person has volunteered four times in a twelve month period, the organisation must require the volunteer to apply for a Working with Children Check.

However, it will allow people who have not had a Working with Children Check to fill in for regular volunteers on an infrequent basis and it will allow people to participate in special events (such as a children's sports carnival) that may only be held annually.

Section 32– Exemption for Children

In some situations, children volunteer to work with other children. Older children may, for example, help to coach a sports team of younger children. Older children may also work in businesses such as private play centres for small children.

The working with children check will apply to children who themselves engage in child-related work. However, children are assumed not to be capable of committing crimes until they are 14 years old, therefore, the Working with Children Check will only apply to children aged 14 and over.

Within schools, especially within schools that cover all the grades from kindergarten through to year 12, there is potential for older children to, for example, be tutors for other children or to work in other ways with their fellow students. The Government does not want to regulate programs that schools may run that involve students helping each other. Therefore, if a child is engaged in child-related work within their own school, they will not need to undergo a Working with Children Check.

Questions:

What do you think about these exemptions?

Are the exemptions too broad?

Are there any other exemptions you would like to see included?

3 How will the application process work?

The checking agency

The body that carries out the Working with Children Check will be a unit within the Department of Justice. The checking agency will therefore be the responsibility of the Secretary of that Department.

For this reason, the proposed *Working with Children Bill* describes the decision maker as ‘the Secretary’. When the Working with Children Check is established, the Secretary will have the power to set up an agency within the Department of Justice and delegate her decision making powers to that agency. For the purposes of this Bill and Discussion Paper, the decision maker is described as ‘the Secretary’.

The Government intends that the Working with Children Check will be accompanied by a community education scheme that will cover:

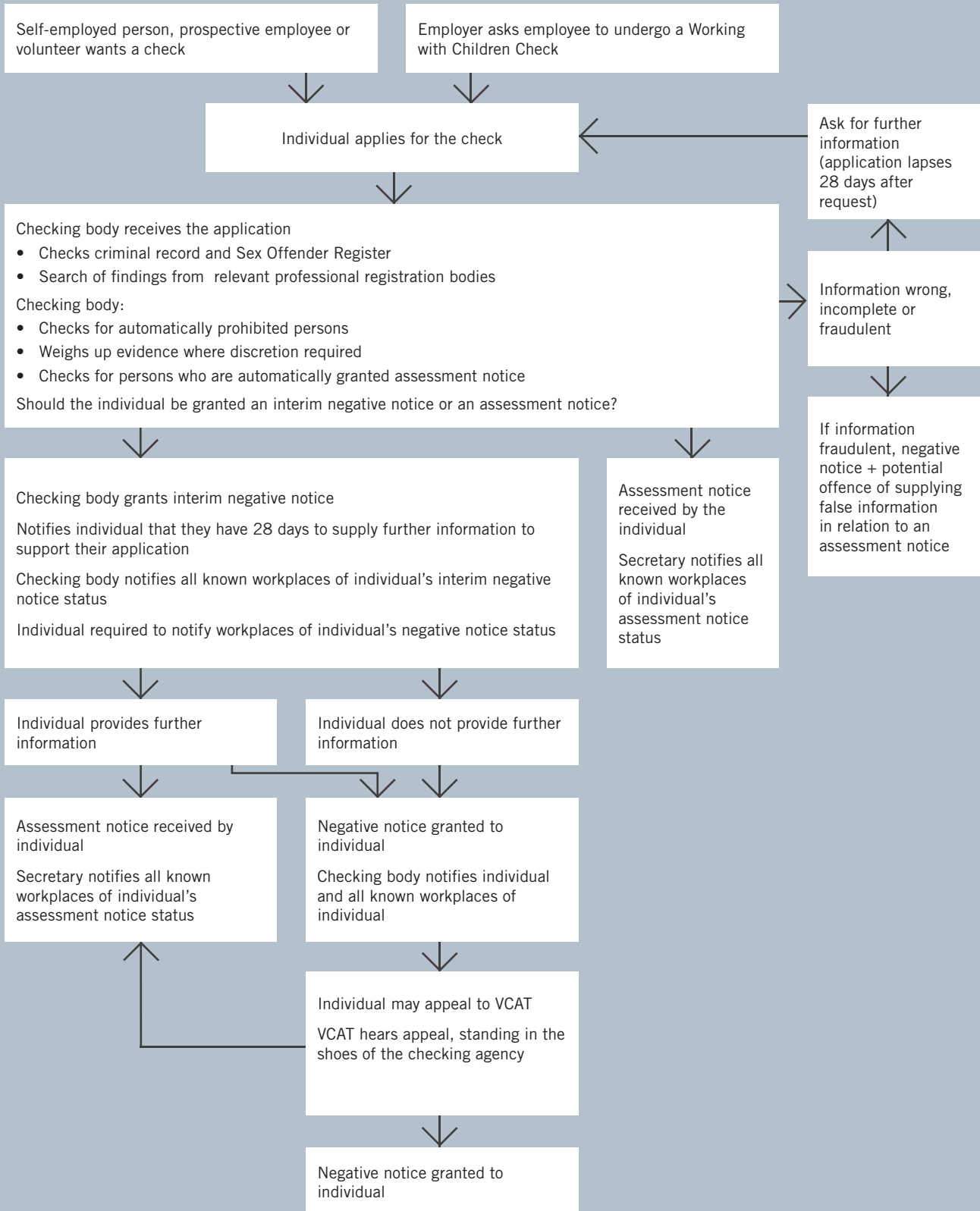
- the requirements of the Working with Children Check; and
- how to promote “child safe” organisations.

While the primary function of Secretary and checking agency will be administering the Working with Children Check, the agency will also contribute to the Government education campaign supporting the Working with Children Check.

Any information that the checking agency receives will be confidential. Section 37 of the Bill ensures that any information received because of the conduct of a Working with Children Check cannot be passed on, except in limited circumstances.

The application process will work as set out in the flowchart ‘Application and decision-making process’ on the following page.

Application and decision-making process



Lodging an application

The process will start when an individual decides to apply for a Working with Children Check. The individual will fill out an application form and send it to the Secretary. The form will ask the individual to, among other things:

- consent to a police record check for the purposes of the Working with Children Check;
- consent to checking relevant professional bodies for relevant information about the individual;
- consent to ongoing checks of the individual's police record and relevant professional body information throughout the period of the assessment notice;
- provide identifying information with the application; and
- pay a prescribed fee.

Proof of Identity

It will be essential that a person who applies for a Working with Children Check proves their identity when they apply for the check. Obviously, if a person is able to hide his or her true identity from the Secretary, the check will not uncover any relevant past convictions or other information.

The Government is aware of the risks posed by false identities and will continue to work to ensure that people are unable to avoid the check by hiding their identity. While requiring people to apply for a Working with Children Check in person (perhaps to a government agency) could avoid these risks, this must be balanced against the difficulties that would pose for people who live in rural and remote areas. Further consideration is being given to this question.

Payment of a prescribed fee

The Government is aware of the large number of people who will require a Working with Children Check, and that the establishment and operation of the Working with Children Check will involve significant costs. As a result, a proportion of these costs may be borne by the people who will be subject to the check. These people benefit from the check by being able to show that they have been assessed and are able to work or volunteer with children. Once a person has received an assessment notice, this will be valid for a period of up to 5 years.

It is intended that the Working with Children Check will operate with a reasonable contribution from employees to complement Government funding. The exact fees have yet to be determined, but based on preliminary costings of the check, the fee for employees could range from \$50 to \$120, with a significantly reduced fee for volunteers. The Government is aware of the importance of encouraging volunteering, as well as the need to make the fees affordable for employees and self-employed persons. The Government will keep these factors in mind, consider the issue of fees as part of its deliberation about the 2005-6 Budget, and publicly announce fees before the scheme is implemented.

Incomplete Information?

Once the Secretary receives an application, it will be checked to ensure that the applicant has provided enough information to allow the application to be fully assessed. If more information is needed, the Secretary will write to the applicant, giving him or her 28 days to supply the necessary information. If the information is not received, then the application will be taken to have lapsed.

Working while the application is pending?

Although it is anticipated that it will be five years before all those who engage in child-related work will need to have a Working with Children Check, there is a possibility that from time to time the checking agency will take some time to process applications. These delays should not penalise people who are waiting on a check before they can start work – or who need a check to continue in the work they are in.

People will not be prohibited from working with children while their application is pending unless they have previously failed a check and received a negative notice, or are on the Sex Offender Register. As long as an application has been lodged and has not yet been finalised, there will be no criminal consequences for a person who works with children, nor for the organisation for whom they are working.

What information will be considered by the Secretary?

The core of the proposed *Working with Children Bill* is the assessment of a person's application by the Secretary, and the Secretary's decision whether or not to grant that person an assessment notice.

In making that decision, the Secretary is required to consider whether a person:

- has been convicted of any of a range of serious sexual offences;
- is on the Sex Offender Register;
- has been convicted of any of a range of other serious criminal offences involving children;
- has any charges for any of these offences pending against him or her; or
- has had any relevant disciplinary findings made against him or her.

The Secretary's decision will be governed by what, if any, information is revealed about the applicant.

People with no relevant history

The majority of applications for a Working with Children Check will be from people who have no criminal record and who have never been the subject of formal disciplinary hearings.

In these cases, the Secretary *must* issue the applicant with an **assessment notice**. An assessment notice (the details of which are described below) will certify that the person has passed the Working with Children Check and will allow him or her to participate in any area of child-related work, subject to any other conditions that employers or volunteer agencies may have.

Category 1 Applications – Mandatory refusal of an assessment notice

If a person has been found guilty or convicted of a serious sexual offence or is on the Sex Offender Register, the Secretary *must* issue a negative assessment. The checker will have no discretion in this decision

A serious sexual offence is defined as any offence that is in clause 1 of Schedule 1 of the *Sentencing Act 1991*. A full list of these offences, including updates that will be made by the *Working with Children Bill*, is at **annex A**. The list contains all serious sexual offences against adults and children including:

- sexual penetration of child under the age of 16;
- indecent act with child under the age of 16;
- sexual relationship with child under the age of 16;
- sexual penetration of a 16 or 17 year old child; and
- indecent act with 16 year old child.

The 2004 *Sex Offenders Registration Act* created the Sex Offender Register. A person who, after the commencement of that Act, was convicted of a serious sexual crime may be placed on that register for a period of time from 8 years to life (juvenile offenders will be on the register for a lesser period). Any person who is on the Sex Offender Register will be prohibited from working with children while they remain on the register.

However, most offences that can cause a person to be registered are also in clause 1 of Schedule 1 of the *Sentencing Act 1991* and so, even if the person comes off the Sex Offender Register, they will still be prohibited from working with children.

All the people who fall into this category will receive a **negative notice**. A person who receives a negative notice may not apply for or engage in child-related work – even if that work falls within one of the exemptions in the *Working with Children Bill*. (The process for the issue of a negative notice is described later.)

Category 2 Applications – Discretionary refusal of an assessment notice

If a person has been found guilty or convicted of a serious criminal offence against a child, or has a charge pending for either a serious sexual offence or a serious criminal offence against a child, the Secretary *must* issue a negative notice unless she considers that granting the person an assessment notice will not pose an unjustifiable risk to the safety of children.

A serious criminal offence against a child is defined to be:

- an offence in clause 2 of Schedule 1 of the *Sentencing Act 1991* (serious violent offences), where a child was a victim of the offence; or
- Trafficking in a drug of dependence to a child contrary to s71AB of the *Drugs, Poisons and Controlled Substances Act 1981*; or
- Supplying a drug of dependence to a child contrary to s71B of the *Drugs, Poisons and Controlled Substances Act 1981*.

A full list of the serious violent offences in clause 2 of Schedule 1 of the *Sentencing Act 1991* is at **annex B**.

The Secretary will have some discretion in this decision, which is to be guided by criteria set out at section 13 of the Bill. If a person's application falls into this category, the Secretary *must* issue a **negative notice** unless, considering the factors listed in the Bill, the Secretary considers that granting the person an assessment notice will not pose an unjustifiable risk to the safety of children. The factors that the Secretary must consider are:

- (a) the nature and gravity of the relevant offence and its relevance to child-related employment; and
- (b) the period of time since the applicant committed the relevant offence; and
- (c) the ages of the applicant and of the victim or victims at the time the applicant committed the relevant offence; and
- (d) the applicant's behaviour since he or she committed the relevant offence; and
- (e) the likelihood of future threat to a child caused by the applicant; and
- (f) any information given by the applicant in, or in relation to, the application; and
- (g) any other matter the Secretary considers relevant to the application.

This will allow the Secretary to balance the individual's criminal record or the charges pending against an individual against all the other factors that are relevant to making the decision whether a person should be granted an assessment notice. It is only when the Secretary concludes that the person's criminal record is outweighed by other factors (for example, an offence may have happened 20 years ago and the person may have not reoffended at any time during that 20 years) that an assessment notice may be issued.

The individual will have the right to make a submission to the Secretary before the assessment is completed.

Category 3 Applications – Discretionary issue of an assessment notice

If a person has had formal disciplinary findings made against them by a relevant professional body, or has been convicted of an offence against the proposed *Working with Children Bill*, the Secretary *must* issue an assessment notice unless she is satisfied, in the particular circumstances, that it would be inappropriate to issue an assessment notice. The Secretary will again have some discretion in this decision, which is to be guided by criteria set out at section 14 of the Bill.

The Working with Children Check will include some forms of information outside the criminal law. Findings from disciplinary bodies will also be considered in some

circumstances. Many people who work with children are also members of a professional body which may have made findings about that person as part of a disciplinary hearing. Teachers, for example, can be found by the Victorian Institute of Teaching to have been guilty of serious misconduct. In some cases this misconduct may be relevant to the Secretary's decision whether to grant the individual an assessment notice.

The role of professional disciplinary bodies is discussed at part 8 below. However, as an example of the way in which information they hold can be incorporated into the Working with Children Check, the Victorian Institute of Teaching has been included as a relevant professional body.

As the misconduct that the Secretary is considering is less serious than the misconduct in Category 2 applications, the presumption is that people who are in this category *will* receive an **assessment notice** unless the Secretary is satisfied that it is appropriate to issue a negative notice.

All Other Applications – mandatory issue of an assessment notice.

As noted above, most members of the community, of course, will not fall into categories one, two or three. Where this is the case, the Secretary *must* issue an assessment notice.

Notification of the outcome of the Working with Children Check

Whatever type of notice the Secretary issues, she must notify the individual of the outcome, and, where it is known, any person who currently engages, or proposes to engage, the individual in child-related work must also be notified of the outcome.

The scheme as it is currently drafted does not require people with assessment notices or who are applying for assessment notices to tell the Secretary where they are working or proposing to work. When the database that will support the Working with Children Check is developed, it is intended to require people to keep the database up to date so that the Secretary will always know where an individual is working. However, until that facility is available, the Secretary will only be required to tell a workplace of the issue of any type of notice if the Secretary is aware that the individual works at a particular workplace.

4. Issue of a Notice

What happens when an assessment notice is issued?

When a person receives an assessment notice, the Secretary will notify them of this and send them a card. The details of the card are yet to be finalised, but it is expected that the card will identify the holder of the card as a person who has received an assessment notice, and will contain an expiry date five years from the issue of the card. The card will also have an individual identifying number.

As noted above, the database that will support the Working with Children Check has not yet been developed. However, it is expected that the identifying number on the card will be able to be used, along with an individual password, to check the individual's status on the database. This will ensure that, even if the person has had their assessment notice revoked and has ignored the requirement to return their card, a prospective employer will be able to check their details against the database and be able to determine that the person no longer holds an assessment notice.

The card will last for five years. A person may apply to renew their card anytime six months before the expiry date, or three months after. If the card is not renewed within that time then the assessment notice will lapse, and the Secretary may require the individual to return their card. If the Secretary requires the return of the card she will notify any known employers that the card has lapsed.

Issue of an interim negative notice?

If the Secretary is required to issue, or is considering issuing, a negative notice, she must issue an **interim negative notice** to an individual. This notice will be accompanied by a document setting out the information that may lead to the issue of a negative notice and inviting the individual to make a submission to the Secretary about his or her case for an assessment notice. An individual will have 28 days to respond to the Secretary.

As well as notifying an individual of the issue of an interim negative notice, the Secretary will, where possible, notify any person who engages, or proposes to engage, the individual in child-related work. She will also notify any agency that lists the individual as a person who is available to perform child-related work.

The individual will also be required to tell any person who engages, or proposes to engage, the individual in child-related work, or an agency with which he or she is listed, that he or she has been issued with an interim negative notice.

The *Working with Children Bill* will not, however, prohibit that person from continuing in child-related work while they hold an interim negative notice. They will legally be able to continue to work unless and until they are issued with a negative notice. It will be up to individual employers to decide how best to treat an individual employee while they have an interim negative notice. This could include imposing conditions on their employment, or moving that person to another, non-child-related area of the business or organisation.

Issue of a Negative Notice

In some cases, after the issue of an interim negative notice the Secretary will issue a **negative notice**. A person with a negative notice will **not** be permitted to work with children or to apply for any child-related work. These prohibitions are supported by criminal offences, which are described in Part 6 below. In brief, it will be an offence to:

- Engage in child-related work without an assessment notice;
- Apply for child-related work if you hold a negative notice;
- Engage people in child-related work if they do not have an assessment notice; or
- Offer the services of a person who does not have an assessment notice.

When the Secretary issues a negative notice to an individual she will also, where possible, notify any person who engages, or proposes to engage, the individual in child-related work. She will also notify any agency that lists the individual as a person who is available to perform child-related work.

The Bill does not require the individual to also notify these bodies, because the Bill instead requires the individual to stop engaging in child-related work. (The discussion of offences that follows details how this requirement will operate so as not to conflict with an employer's responsibilities under the Commonwealth *Workplace Relations Act 1996*).

Once a negative notice is issued, it will last for life. A person who has been issued with a negative notice may, however, re-apply for an assessment notice when:

- five years have passed since the issue of the negative notice; or
- a charge that was pending at the date of the issue of the notice has resulted in an acquittal; or
- a finding of guilt has been quashed or set aside by a court; or
- a finding of a professional registration body has been quashed or set aside after the date of the issue of the notice; or
- the person has ceased to be a registrable offender within the meaning of the *Sex Offenders Registration Act 2004*. (However, an application on this ground is unlikely to succeed, as almost all of the offences that can cause an offender to become registered are also Category One offences under the *Working with Children Bill*.)

Appeal against the issue of a negative notice

The issue of a negative notice will have serious ramifications for the recipient. As well as potentially requiring them to leave their job, it will carry an unavoidable stigma. In many cases this will be warranted, as negative notices will be issued to people who do have serious criminal offences on their record. However, they may also be issued to people who have charges pending against them and so have had no

allegations proved against them or on the basis of serious professional disciplinary proceedings.

In order to minimise the potential for the Working with Children Check to operate unfairly, and to uphold the principles of natural justice, the *Working with Children Bill* allows people to appeal the issue of a negative notice.

An applicant who has received a negative notice may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision. VCAT has the power to stand in the shoes of the original decision maker, and again issue a negative notice, or instead issue an assessment notice, or send the whole application back to the Secretary for reconsideration.

If the individual is unhappy with VCAT's decision, further avenues of appeal are available from VCAT through to the Supreme Court.

5. Keeping an Assessment Notice Current

The strength of the Working with Children Check is that it does not end when an assessment notice is issued. Once a database of people who hold an assessment notice is established, Victoria Police will be able to continually check that database against new charges and convictions, and notify the Secretary of any cases where an assessment notice needs to be reconsidered. Also, prescribed professional bodies will be obliged to tell the Secretary when they make certain serious findings against a person.

The *Working with Children Bill* ensures that existing assessment notices are reconsidered by the Secretary when a person holding an assessment notice:

- is charged with a relevant offence; or
- is found guilty of a relevant offence; or
- is the subject of an adverse finding being made against them in a disciplinary proceeding conducted by a prescribed body.

A relevant offence is any offence that could lead to a person being granted a negative notice: ie an offence:

- specified in clause 1 of Schedule 1 to the *Sentencing Act 1991* (serious sexual offences); or
- specified in clause 2 of that Schedule (serious violent offences) in circumstances where the person against whom the offence is committed is a child; or
- of either trafficking or supplying drugs to children, against section 71AB or 71B of the *Drugs, Poisons and Controlled Substances Act 1981*.

The *Working with Children Bill* will also require any person who holds an assessment notice to inform the Secretary and, where they are engaged in child-related work, an employer, if he or she is charged or convicted of a relevant criminal offence or has a serious disciplinary finding made against him or her. This will help to prevent any new charges from slipping through the net. It will also reinforce the idea that people who hold an assessment notice have a responsibility to continue to be suitable to work with children – it is not enough to pass the application procedure once every 5 years.

The maximum penalty for failing to make such a notification will be a fine of 60 penalty units – the same as for failing to notify an employer of a registrable charge under the *Sex Offenders Registration Act*.

Reassessment of an Assessment Notice

When the Secretary is notified of a change in the status of a person who holds an assessment notice as outline above, she must reassess the person's suitability to continue to hold an assessment notice.

The reassessment of an existing assessment notice will follow the same path as the assessment of the original application – the only difference will be that the Secretary

is entitled to only consider the *new* information rather than repeat full criminal history checks of the individual. The Secretary will therefore:

- issue an interim negative notice to the individual if she is considering issuing a negative notice;
- notify, where possible, any person who engages the individual in child-related work of this interim negative notice;
- consider any submission made by the individual;
- decide whether to issue an assessment notice or a negative notice; and
- notify both the individual and, where possible, any person who engages the individual in child-related work of the issue of an assessment or negative notice.

If a negative notice is issued, the individual will have to stop working with children. The Secretary will also require the individual to return their card, and it will be an offence for the individual to fail to return their card.

If an assessment notice is re-issued, the individual can continue on as before and the expiry date of their assessment notice will be, as it was before, five years from the date of the original issue of the assessment notice.

Occasionally a reassessment may coincide with the time at which the five-yearly assessment will fall due. If this is the case, the Secretary has the option to invite the individual to apply for a full assessment. If the individual agrees and is ultimately re-issued with an assessment notice, that assessment notice will last for five years from the date it is issued.

6 What offences will exist?

As was stated earlier, in considering the scope and operation of the Working with Children Check, it is important to remember that the scheme will be underpinned by criminal offences. Under the *Working with Children Bill*, it will be a criminal offence to:

- Engage in child-related work without an assessment notice;
- Apply for child-related work if you hold a negative notice;
- Engage people in child-related work if they do not have an assessment notice; or
- Offer the services of a person who does not have an assessment notice.

The offences complement existing offences in the *Sex Offenders Registration Act 2004*, which make it an offence for a person on the Sex Offender Register to apply for or engage in child-related employment. When the *Working with Children Bill* is introduced, it is expected that the parts of the *Sex Offenders Registration Act* that deal with child-related employment will be moved into the *Working with Children Bill* to ensure that they operate consistently.

Not all the offences in the Bill will apply to all people as soon as the Bill becomes law. The Government realises that many people in Victoria are already engaged in child-related work and that it will take time for everyone to go through the Working with Children Check. People will not be expected to stop working with children until they have passed the Working with Children Check. The application of the Bill to various classes of employees and volunteers will be staged, to ensure that everyone has time to comply with the legislation, before there is any possibility that they could be subject to a criminal offence.

Engaging in child-related work without an assessment notice (section 33)

If a person who does not have an assessment notice engages in child-related work, they will be guilty of a criminal offence *if* they knew that the work was child-related *and* they knew or were reckless about whether they had an assessment notice.

The maximum penalty for engaging in child-related employment without an assessment notice will be 2 years imprisonment and a fine of up to 240 penalty units. (Penalty units are currently \$102.25).

The penalty is set to give the courts sufficient discretion to sentence for the worst form of breach, which in this case could involve someone deliberately attempting to avoid the Working with Children Check because he or she has criminal convictions for serious sexual offences.

Qualifications on the offence

Criminal offences are made up of both a person's actions, and the intention or mental state with which they did the actions. This offence has been designed to ensure that it

operates fairly, and that people will only be guilty when they deliberately or recklessly breach the law.

Firstly, a person must **know** that they are engaging in child-related work. For example, a person without an assessment notice may volunteer with a yachting club and teach people how to sail. They genuinely may not realise that their yachting club has a significant child membership and that, when there are children in their classes, they are technically engaging in child-related employment.

Also a person must **know** that they do not have an assessment notice or be **reckless** about whether they actually have an assessment notice. For example, a person who has an assessment notice may not work with children for some time and simply forget to renew their assessment notice when it expires after 5 years. If they have moved house they may not receive notices telling them that their card has expired. The assessment notice may lapse and the person may genuinely not realise that it has lapsed and volunteer at their local school. The person will not be guilty of an offence if he or she genuinely did not know that their notice had lapsed, and was not reckless about it.

Working while an assessment notice is pending

The operation of the *Working with Children Bill* will require many people to hold an assessment notice before they start a particular job. However, some people may not hold an assessment notice before they apply for child-related work and need to get a notice before they can actually start work.

To avoid the situation where people are denied a job because the Secretary cannot make a decision on their Working with Children Check application quickly enough, this offence will *not* apply to people who have applied for an assessment notice and are waiting to hear if they have been granted a notice. However, so that this exception does not create a loophole, it will *not* operate if the person has already received a negative notice or is on the Sex Offender Register.

This can be explained by some examples:

Example 1

Jane has applied for a job as a private tutor for primary school students. Previously she has tutored adults, and so has never applied for an assessment notice. Her employers will only give her the job if she can start within a week. As long as Jane applies for an assessment notice she can start the tutoring job. If she is granted an assessment notice she can simply continue in the job, but if she is issued with a negative notice she will have to resign.

Example 2

However, if Jane had applied for an assessment notice some years ago and was issued with a negative notice, she may not start the tutoring job, as she knows that she is not considered to be an appropriate person to work with children. She can only work in child-related employment if she is (for example) later acquitted on appeal of the

offence that led to the issue of the negative notice and is re-assessed by the Secretary and then receives an assessment notice.

Termination of Employment and the Workplace Relations Act 1996

The termination of employment in Victoria is governed by the Commonwealth *Workplace Relations Act 1996*. The *Working with Children Bill* must not conflict with this Act in the way it requires employers to deal with existing paid employees who receive a negative notice. Therefore it will *not* be a criminal offence for an employee to continue to work with children while an employer takes the steps necessary to meet his/her obligations under the *Workplace Relations Act* or instrument of employment made under that Act.

If an employee is engaged in child-related work and receives a negative notice, the employer may need to give the individual the prescribed period of notice of termination under the *Workplace Relations Act* or, where possible, to find the individual work within the organisation that is not “child-related”. There will, however, be situations in which the worker will resign immediately, take wages in lieu of notice or, where there has been serious misconduct in the individual’s workplace, the employment may be terminated immediately.

Applying for child-related work while holding a negative notice (section 34)

People who are issued with a negative notice know that they are not considered to be suitable people to work with children. For this reason, once a person has been issued with a negative notice, he or she **may not apply** for child-related work.

The maximum penalty for this offence will be 2 years imprisonment and a fine of up to 240 penalty units.

As discussed in Part 3 of this Discussion Paper, a person’s negative notice can only be revoked in certain specified circumstances. If these circumstances do not exist, a negative notice will remain for life. People on the Sex Offender Register are also prohibited from applying for child-related employment, although this is governed by the *Sex Offenders Registration Act*. As mentioned above, it is expected that these provisions of the *Sex Offenders Registration Act* will be moved into the *Working with Children Bill* before it becomes law.

The treatment of people who have a negative notice or who are on the Sex Offender Register contrasts with the position discussed above, where people who simply have never applied for an assessment notice can *apply* for child-related work, but must not *engage* in the work unless they are actually in the process of having their suitability for an assessment notice considered. People with a negative notice or who are on the Sex Offender Register will commit a criminal offence merely by *applying* for child-related work.

Qualifications

For a person to be guilty of this offence, he or she must know that the work they are applying for is child-related work. For example, someone who is on the Sex Offender Register may apply for an advertised maintenance job, without realising that the job is at a primary school and is therefore child-related employment. In situations such as this, it would be unfair to subject a person to criminal penalties.

Engaging a person in child-related work who does not have an assessment notice (section 35)

The *Working with Children Bill* places responsibility on employers as well as on workers. For the purposes of this Bill, “employers” includes people who accept volunteers into their organisations. This offence does not merely apply to employer/employee relationships, but to any person or organisation that takes on a worker.

This offence largely mirrors the offence at section 33 and so it is an offence for an person to engage a person in child-related work, *if* that person knew that the work was child-related *and* they knew or were reckless about whether the worker had an assessment notice.

The maximum penalty for this offence will be 2 years imprisonment and a fine of up to 240 penalty units.

Qualifications on the Offence

Again, there are qualifications on the offence to ensure that it operates fairly. A person will only be guilty if he or she *knew* that the work to be performed was child-related. It would be possible for an organisation to accept a person as a volunteer in a large charity, not knowing that in the region that that particular volunteer will be working, the volunteer will be involved in child-related work.

Also, the person employing or accepting a worker will only be guilty of an offence if he or she knew that the worker did not have an assessment notice, or was reckless about that fact. The worker may, for example, have presented a forged assessment notice that the employer could not be expected to detect. (In this case, of course, the worker will be guilty of an offence.)

Working while an assessment notice is pending

As workers are allowed to begin work while their application for an assessment notice is pending, it will not be an offence to accept a worker who has applied for an assessment notice and is waiting for the outcome of that assessment.

Termination of Employment and the Workplace Relations Act 1996

As discussed in relation to section 33, the termination of employment in Victoria is governed by the Commonwealth *Workplace Relations Act 1996* and the *Working with Children Bill* must not conflict with this Act in the way it requires employers to deal

with existing paid employees who receive a negative notice. Therefore it will *not* be a criminal offence for an employer to allow an employee to continue to work in this capacity, while the employer takes the steps necessary to meet his/her obligations under the *Workplace Relations Act* or under any instrument of employment made under that Act.

The employer may need to give the individual the prescribed period of notice of termination under the *Workplace Relations Act* or find the individual work within the organisation that is not “child-related”. There will, however, be situations in which the worker will resign immediately, take wages in lieu of notice or, where there has been serious misconduct in the individual’s workplace, their employment may be terminated immediately.

Parents as ‘employers’

One important difference between this offence and the offence in section 33 is the treatment of parents. Parents, of course, will occasionally employ people in child related employment for their *own* children. For example, hiring a music teacher, a tutor or a sporting coach for a person’s own child will bring a parent within the terms of this section.

As noted above, the *Working with Children Bill* defines ‘parent’ in the same way as the *Children and Young Persons Act 1989*. Parent therefore includes any person who has the custody of a child.

The Government recognises that, in the context of the *Working with Children Bill*, it is not appropriate to impose criminal sanctions on parents for the choices they make in relation to their own children. Therefore, if a parent has directly engaged a person to work with their own child, the parent will *not* have committed an offence. This will be the case even if other children are also involved.

For example, if a parent hires a party entertainer for their child’s party, despite the fact that there will be other children at the party, the parent will not come within the scope of this offence. This exemption does **not**, however, extend to workers, who will still have committed an offence if they engage in child related work without an assessment notice, even if it was a parent who asked the worker to perform that child related work.

This can be further explained through some examples:

Example 1

Shelley wants to hire a clown for her son Richard’s birthday party. She chooses a clown from the advertisements in ‘Melbourne’s Child’, who comes to the party and entertains Richard and his friends. That clown has not however, had a working with children check and so should not be performing any child related work.

While the clown may be guilty of an offence under section 33, Shelley will not be guilty of an offence for having engaged the clown.

Example 2

David has custody of his granddaughter Thea. David wants Thea to have some additional language tutoring outside her school lessons. David hires Liza to give lessons to Thea at home. Liza has not had a working with children check and so should not be performing any child related work.

While Thea may be guilty of an offence under section 33, David is a 'parent' for the purposes of the *Working with Children Bill* and so has not committed the offence of engaging in child related work a person who does not have an assessment notice.

Part of the purpose of the Working with Children Check is to establish a community education program to ensure that everyone is aware of the check, the purpose of the check and their responsibilities in relation to the check. Although parents will not commit offences when engaging workers for their own children, they will be encouraged to be aware of the Working with Children Check and to only engage workers who do have an assessment notice.

For example, if the clown in example one who was advertising in "Melbourne's Child" *did* have an assessment notice, the advertisement could feature a statement that the clown had passed the Working with Children Check. That would allow Shelley to choose that particular clown because she knew he had been assessed as being suitable to work with children. Shelley can confirm the clown's status under the Working with Children Check by asking the clown for his individual number so she could check that against his details on the website that will be established to support the Working with Children Check.

Offering the services of a person who does not have an assessment notice (section 36)

As well as workers, employers and those who organise volunteers, the *Working with Children Bill* aims to cover agencies that offer the services of other people. For example, a nanny service may have a list of eligible nannies that they put in contact with parents who are looking for a nanny. The agency does not engage in child-related work itself, nor does it employ the individual nannies. To ensure that agencies in this position are also responsible for ensuring that the people they hold out as being suitable to work with children have passed the Working with Children Check, it will be an offence for an agency to offer the services of engage a person in child-related work, *if* the agency knows that the work is child-related *and* the agency knows or is reckless about whether the worker had an assessment notice.

Qualifications on the Offence

As for employers, there are qualifications on the offence to ensure that it operates fairly. An agency will only be guilty if it knows that the work to be performed is child-related.

Also, the agency will only be guilty of an offence if it knows that the worker did not have an assessment notice, or was reckless about that fact. The worker may, for example, have presented a forged assessment notice to the agency that the agency could not be expected to have detected. (In this case, of course, the worker will be guilty of an offence.)

Working while an assessment notice is pending

As workers are allowed to begin work while their application for an assessment notice is pending, it will not be an offence for an agency to offer the services of a person who has applied for an assessment notice and is waiting for the outcome of that assessment.

Other Relevant Offences

The offences described above are the central offences in the *Working with Children Bill* and work to ensure that the scheme operates effectively. However, they are not the only offences in the Bill. Other offences include:

Using a false assessment notice (section 27)

It will be an offence to use an assessment notice that has been altered, or that was issued to another person, either in connection with work or in applying for work. The maximum penalty for this offence will be 2 years imprisonment and a fine of 240 penalty units.

False or misleading information (section 28)

It will be an offence to make a false or misleading statement in relation to an application for a Working with Children Check. This will cover, for example, giving the Secretary a false name, or providing other false information that may make it difficult to verify the applicant's identity. The maximum penalty for this offence will be 2 years imprisonment and a fine of 240 penalty units.

Confidentiality of information (section 37)

Those who administer the Working with Children Check will necessarily have access to personal information about applicants for assessment notices. In order to ensure that this information remains private, it will be an offence for anyone to give out any information he or she obtained through the Working with Children Check process. Information may only be given out for the purposes of the *Working with Children Bill*, or for other limited purposes, which are listed at section 36(2).

The maximum penalty for this offence will be a fine of 60 penalty units.

7 Recognition of existing employers' policies

A number of employers already require police checks for people who wish to work with children. For example, child care services regulated under the *Children's Services Act* are required to undertake police checks on employees and volunteers who care for or educate children. Similarly, teachers must undergo a criminal record check in order to gain registration with the Victorian Institute of Teaching. Many other employers require police record checks as part of their employment process.

The Working with Children Check will create a centralised process for screening employees and volunteers in child-related work for a range of offences, pending charges and professional disciplinary outcomes. The Working with Children Check will therefore ensure that a minimum standard of screening is undertaken for individuals who participate in any kind of child-related work.

The Working with Children Check will be regularly updated, meaning that the checking body will be notified if an individual working in child-related employment is charged with a relevant offence or has a relevant adverse professional disciplinary outcome at any time during the life of an assessment notice. This will be more effective than schemes in which an individual may undergo a police record check at the beginning of their employment, but could be later charged with a relevant offence without their employer being aware.

Some employers and organisations may wish to continue to request that employees and volunteers undergo a criminal record check, in addition to the Working with Children Check. This may be because employers and organisations wish to screen for other criminal record information apart from sexual, violent and drug offences, for example, for fraud and other dishonesty offences. Employers will still be permitted to request that a criminal record check be undertaken on prospective employees and volunteers, with their consent.

However, this does raise the problems for individuals who have already obtained an assessment notice or passed some other check imposed by an employer and who are required to pass even more checks if they want to apply for other jobs or volunteer in other organisations.

The *Working with Children Bill* attempts to address this problem by allowing for other schemes to be recognised through the regulations to the Act. Other schemes will be recognised if they are as detailed and as reliable as the Working with Children Check. Further work will be done to identify these schemes before the Bill is finalised, but schemes such as the one administered by the Victorian Institute of Teaching may be recognised.

Once a scheme is prescribed, a person who has passed the check imposed by the prescribed scheme (for example, has been registered with the Victorian Institute of Teaching) will not have to go through a police check again in order to qualify for an assessment notice. The Secretary will, however, still have the right to conduct other checks that are required by the Working with Children Check to ensure that any gaps

between the two schemes are covered and that the individual is an appropriate person to be working with children.

The Government is also aware that the Working with Children Check will need to interact with the *Child Employment Act 2003*. As the Working with Children Bill is further developed, the Government will ensure that these schemes are complementary.

8 Recognition of Professional Disciplinary Proceedings

The Exposure Draft allows the Secretary to take professional disciplinary proceedings into account. This means that, when assessing an application, the Secretary will check whether the person has been the subject of an adverse finding by a relevant professional disciplinary body, such as the Victorian Institute of Teaching. The Secretary will then examine this information to determine whether it should preclude the person concerned from working with children.

An initial presumption operates in favour of the person who has been subject of these proceedings; that is, it is presumed that a disciplinary proceeding will not make someone ineligible to work with children. This presumption is in place because professional disciplinary proceedings may bear no relevance to whether someone can work with children (for example, where someone is accused of fraud).

However, professional disciplinary proceedings can result in the issuing of a negative notice in particular circumstances. These circumstances could include where there are findings against an individual on the basis of serious misconduct involving children. In this case, an adverse finding could indicate that this person presents a risk to children.

In determining whether professional disciplinary proceedings should make someone ineligible from working with children, the Secretary will have regard to a number of criteria, including the nature and gravity of the conduct; the time elapsed since the conduct; the age of the person and the victim(s); and the person's behaviour since the conduct.

Which professional disciplinary proceedings?

At this stage, the proposed Bill will include findings by the Victorian Institute of Teaching. This is a similar approach to Queensland, which included the findings of its Teachers Registration Board when it commenced its checking scheme in 2001.

It is proposed that other professional registration boards could be incorporated in future. These could include health professional boards such as the Medical Practitioners Board and the Nurses Board. Again, Queensland has recently moved to incorporate information from health professional boards.

Criteria for inclusion

Before professional disciplinary proceedings are included, a number of criteria should be met. These include that:

- the process involved is a formal one, with satisfactory standards of proof;
- the person concerned is fully informed of any allegation made against them;
- the person concerned has an opportunity to contest any allegation before an independent body; and
- the person has the right to appeal against an adverse finding.

Questions:

Should professional disciplinary proceedings be included in the Working with Children Check?

Should the Victorian Institute of Teaching be included in the scheme?

What other professional disciplinary bodies, such as health professional boards, should be included in the scheme?

Sentencing Act 1991

SCHEDULES

SCHEDULE 1

SERIOUS OFFENDER OFFENCES

1. Sexual offences

This clause applies to the following offences—

- (a) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
 - (i) section 38 (rape);
 - (ii) [section 39 \(indecent assault\)](#):
 - (A) immediately before or during or immediately after the commission of the offence and at, or in the vicinity of, the place where the offence was committed, the offender inflicted serious personal violence on the victim or did an act which was likely seriously and substantially to degrade or humiliate the victim, whether or not the serious personal violence or that act constituted or formed part of the indecent assault; or
 - (B) the offender was aided or abetted by another person who was present; or
 - (C) the victim was under 16 years of age at the time of the commission of the offence;
 - (iii) section 40 (assault with intent to rape);
 - (iv) section 44(1), (2) or (4) (incest) but not section 44(4) if both people are aged 18 or older and each consented (as defined in section 36 of the **Crimes Act 1958**) to engage in the sexual act;
 - (v) section 45(1) (sexual penetration of child under the age of 16);
 - (vi) section 47(1) (indecent act with child under the age of 16);
 - (vii) section 47A(1) (sexual relationship with child under the age of 16);
 - (viii) [section 48\(1\) \(sexual penetration of a 16 or 17 year old child\)](#);
 - (viii) [section 49\(1\) \(indecent act with 16 year old child\)](#);
 - (ix) section 49A(1) (facilitating sexual offences against children);
 - (x) section 51 (sexual offences against people with impaired mental functioning);
 - (xi) section 52 (sexual offences against residents of residential facilities);
 - (xii) section 53 (administration of drugs, etc.);
 - (xiii) [section 54 \(occupier etc. permitting unlawful sexual penetration\)](#);
 - (xiv) section 55 (abduction or detention);
 - (xv) section 56 (abduction of child under the age of 16);

- (xv) section 57 (procuring sexual penetration by threats or fraud);
 - (xvi) section 58 (procuring sexual penetration of child under the age of 16);
 - (xvii) section 59(1) (bestiality);
 - (xviii) section 60 (soliciting acts of sexual penetration or indecent acts);
 - (xix) section 68(1) (production of child pornography);
 - (xx) section 69 (procurement of minor for child pornography);
 - (xxi) section 70(1) (possession of child pornography);
 - (xxii) section 60AB(2), (3) or (4) (sexual servitude);
 - (xxiii) section 60AC (aggravated sexual servitude);
 - (xxiv) section 60AD (deceptive recruiting for commercial sexual services);
 - (xxv) section 60AE (aggravated deceptive recruiting for commercial sexual services);
 - (xxvi) section 76 (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;
 - (xxvii) section 77 (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;
- (ab) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;
- (ac) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;
- (b) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**:
- (i) section 40 (rape);
 - (ii) section 41 (rape with aggravating circumstances);
 - (iii) section 43 (indecent assault with aggravating circumstances);
- (c) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**:
- (i) section 44(1) (indecent assault);
 - (ii) section 44(2) (indecent assault with aggravating circumstances);
 - (iii) section 45(1) (rape);
 - (iv) section 45(2) (attempted rape);
 - (v) section 45(2) (assault with intent to commit rape);
 - (vi) section 45(3) (rape with aggravating circumstances);
 - (vii) section 45(4) (attempted rape with aggravating circumstances);

- (viii) section 45(4) (assault with intent to commit rape with aggravating circumstances);
 - (ix) section 47(1) (sexual penetration of child under the age of 10);
 - (x) section 47(2) (attempted sexual penetration of child under the age of 10);
 - (xi) section 47(2) (assault with intent to take part in act of sexual penetration with child under the age of 10);
 - (xii) section 48(1) (sexual penetration of child aged between 10 and 16);
 - (xiii) section 48(2) (attempted sexual penetration of child aged between 10 and 16);
 - (xiv) section 48(2) (assault with intent to take part in act of sexual penetration with child aged between 10 and 16);
 - (xv) section 50(1) (gross indecency with child under the age of 16);
 - (xvi) section 51 (sexual penetration of mentally ill or intellectually defective person);
 - (xvii) section 51 (attempted sexual penetration of mentally ill or intellectually defective person);
 - (xviii) section 51 (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);
 - (xix) section 52 (incest) but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration;
 - (xx) section 54 (procuring persons by threats or fraud);
 - (xxi) section 55 (administration of drugs, etc.);
 - (xxii) section 56 (abduction and detention);
 - (xxiii) section 61 (unlawful detention for purposes of sexual penetration);
- (d) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**:
- (i) section 44(1) (rape);
 - (ii) section 44(2) (rape with mitigating circumstances);
 - (iii) section 45 (attempted rape);
 - (iv) section 45 (assault with intent to rape);
 - (v) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);
 - (vi) section 47 (attempting to unlawfully and carnally know and abuse girl under the age of 10);
 - (vii) section 47 (assault with intent to unlawfully and carnally know and abuse girl under the age of 10);
 - (viii) section 48(1) (unlawfully and carnally knowing and abusing girl aged between 10 and 16);
 - (ix) section 48(2) (attempting to unlawfully and carnally know and abuse girl aged between 10 and 16);
 - (x) section 48(2) (assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16);
 - (xi) section 52 (incest) but not section 52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal

knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister;

- (xii) section 54 (carnal knowledge of female mentally ill or intellectually defective person);
 - (xiii) section 54 (attempted carnal knowledge of female mentally ill or intellectually defective person);
 - (xiv) section 54 (assault with intent to carnally know female mentally ill or intellectually defective person);
 - (xv) section 55(1) (indecent assault);
 - (xvi) section 55(3) (felonious indecent assault);
 - (xvii) section 57(1) or (2) (procuring defilement of woman by threats or fraud or administering drugs);
 - (xviii) section 62 (forcible abduction of woman);
 - (xix) section 68(1) (buggery);
 - (xx) section 68(3A) or (3B) (indecent assault on male person);
 - (xxi) section 69(1) (act of gross indecency with girl under the age of 16);
 - (da) an offence against section 57A of the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 (publication or transmission of child pornography);
 - (db) an offence against any of the following sections of the Prostitution Control Act 1994:
 - (i) section 5(1) (causing or inducing a child to take part in prostitution);
 - (ii) section 6(1) (obtaining payment for sexual services provided by a child);
 - (iii) section 7(1) (agreement for provision of sexual services by a child);
 - (iv) section 11(1) (allowing child to take part in prostitution);
 - (dc) an offence against any of the following sections of the Crimes Act 1914 of the Commonwealth:
 - (i) section 50BA(1) (sexual intercourse with child under 16);
 - (ii) section 50BB(1) (inducing child under 16 to engage in sexual intercourse);
 - (iii) section 50BC(1) (sexual conduct involving child under 16);
 - (iv) section 50BD(1) (inducing child under 16 to be involved in sexual conduct);
 - (v) section 50DA(1) (benefiting from offence against Part IIIA);
 - (vi) section 50DB(1) (encouraging offences against Part IIIA);
 - (dd) an aggravated offence against any of the following sections of the Criminal Code of the Commonwealth:
 - (i) section 270.6 (sexual servitude offences);
 - (ii) section 270.7 (deceptive recruiting for sexual services);
- Note: The Criminal Code of the Commonwealth is contained in the Schedule to the Criminal Code Act 1995 of the Commonwealth.
- (de) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act;

- (df) an offence against any of the following sections of the Criminal Code of the Commonwealth:
 - (i) section 474.19(1) (using a carriage service for child pornography material);
 - (ii) 474.20(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
 - (iii) section 474.22(1) (using a carriage service for child abuse material);
 - (iv) section 474.23(1) (possessing, controlling, producing, supplying or obtaining child abuse material through a carriage service);
 - (v) section 474.26 (using a carriage service to procure persons under 16 years of age);
 - (vi) section 474.27 (using a carriage service to "groom" persons under 16 years of age)";
- (e) any of the following common law offences:
 - (i) rape;
 - (ii) attempted rape;
 - (iii) assault with intent to rape;
- (f) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (e);.
- (g) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (f).

2. Violent offences

This clause applies to the following offences—

- (a) murder;
- (b) manslaughter;
- (c) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
 - (i) section 16 (causing serious injury intentionally);
 - (ii) section 17 (causing serious injury recklessly);
 - (iii) section 19A (intentionally causing a very serious disease);
 - (iv) section 20 (threats to kill);
 - (v) section 21 (threats to inflict serious injury);
 - (vi) section 63A (kidnapping);
- (d) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:
 - (i) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);
 - (ii) section 19A (inflicting grievous bodily harm);
 - (iii) section 20 (attempting to choke, etc, in order to commit an indictable offence);
 - (iv) section 35B (making demand with threat to kill or injure or endanger life);
- (e) the common law offence of kidnapping;
- (f) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (e).

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PART 1—PRELIMINARY

1. Purpose

- (1) The main purpose of this Act is to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body.
- (2) The Act also amends Schedule 1 to the **Sentencing Act 1991** to broaden the range of sexual offences which may cause an offender to be treated as a serious sexual offender under that Act.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

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Part 1—Preliminary

3. Definitions

(1) In this Act—

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

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

"child" means a person under 18 years of age;

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

"contact" means any form of contact between a person and a child and includes—

- (a) any form of physical contact;
- (b) any form of oral communication, whether face to face or by telephone;
- (c) any form of written communication, including electronic communication;

"educational institutions for children" includes any State school established under section 21 of the **Education Act 1958** and any school registered under Part III of that Act but does not include—

- (a) a university specified in Schedule 1 to the **Tertiary Education Act 1993**;
- (b) a TAFE college or a TAFE institution within the meaning of the **Vocational Education and Training Act 1990**;

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(c) an adult education institution within the meaning of the **Adult, Community and Further Education Act 1991**—

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

"interim negative notice" means an interim negative notice given by the Secretary under section 16(1)(b), including one given under that section as applied to a re-assessment by section 21(5);

"negative notice" means a negative notice given by the Secretary to an applicant for a working with children check under Part 2 or on revoking an assessment notice under section 23;

"officer"—

(a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

(b) in relation to any other body corporate, means any person (by whatever name called) who is concerned or takes part in the management of the body corporate;

"parent", in relation to a child, has the same meaning as in the **Children and Young Persons Act 1989**;

"person" includes an unincorporated body or association and a partnership;

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"relevant offence" means an offence—

- (a) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991**; or
- (b) specified in clause 2 of that Schedule in circumstances where the person against whom the offence is committed is a child; or
- (c) against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981**;

"Secretary" means Secretary to the Department of Justice;

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

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

4. Meaning of finding of guilt

- (1) For the purposes of this Act, a reference to a finding of guilt in relation to an offence committed by a person is a reference to any of the following—
 - (a) a court making a formal finding of guilt in relation to the offence;
 - (b) a court accepting a plea of guilty from the person in relation to the offence;

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- (c) a court accepting an admission made under and for the purposes of section 100 of the **Sentencing Act 1991**, or under equivalent provisions of the laws of a jurisdiction other than Victoria;
 - (d) a finding in relation to the offence under section 17(1)(b) or (c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** or under section 17(1)(c) of that Act in relation to an offence available as an alternative or a finding under that Act of not guilty because of mental impairment, or a finding under equivalent provisions of the laws of a jurisdiction other than Victoria.
- (2) A reference to a finding of guilt in this Act does not include a finding of guilt that is subsequently quashed or set aside by a court.

5. Meaning of "charged with an offence"

- (1) For the purposes of this Act, a person is deemed to have been charged with an offence if—
- (a) a presentment has been made or an indictment has been laid for the offence; or
 - (b) a charge has been filed against the person for the offence, whether or not—
 - (i) a summons to answer to the charge; or
 - (ii) a warrant to arrest the person—has been issued and served.
- (2) A reference in this Act to the withdrawing of a charge includes a reference to the entering of a nolle prosequi.
-

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Part 1—Preliminary

6. When is a charge "pending"?

For the purposes of this Act, a charge against a person for an offence is "pending" until the charge is finally dealt with in any of the following ways—

- (a) the charge is withdrawn or the person dies without the charge having been determined;
- (b) the charge is dismissed by a court;
- (c) the person is discharged by a court following a committal hearing;
- (d) the person is acquitted or found guilty of the offence by a court.

7. Act to bind the Crown

- (1) This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.
-

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Part 2—Working with Children Check

PART 2—WORKING WITH CHILDREN CHECK

8. Purpose of Part

- (1) The purpose of this Part is to establish a process for assisting in determining whether a person is suitable to work in child-related work.
- (2) A working with children check is additional to other checks available to persons engaging others in child-related work.

Note: Child-related work includes voluntary work and practical training as well as paid employment (see section 9).

9. What is child-related work?

- (1) For the purposes of this Act, child-related work is—
 - (a) work performed—
 - (i) under a contract of employment or a contract for services (whether written or unwritten); or
 - (ii) as a minister of religion or as part of the duties of a religious vocation; or
 - (b) practical training undertaken as part of an educational or vocational course other than under an arrangement within the meaning of Part IVA of the **Education Act 1958** where the pupil is of or under 18 years of age; or

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Part 2—Working with Children Check

- (c) work performed as a volunteer (including the performance of unpaid community work under a community-based order, a drug treatment order or an intensive correction order within the meaning of the **Sentencing Act 1991**) other than unpaid work performed for a private or domestic purpose—

that involves contact with a child in connection with a service, body, place or activity specified in sub-section (2).

Note: "Contact" is defined in section 3.

- (2) The services, bodies, places or activities in connection with which contact with a child results in work being child-related work are—
- (a) child protection services;
 - (b) pre-schools or kindergartens;
 - (c) child care services mentioned in section 194(1) of the A New Tax System (Family Assistance) Administration Act 1999 of the Commonwealth;
 - (d) educational institutions for children;
 - (e) juvenile detention centres;
 - (f) refuges or other residential facilities used by children;
 - (g) wards of public or private hospitals in which children are ordinarily patients;
 - (h) clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement;
 - (i) religious organisations;
 - (j) baby sitting or child minding services arranged by a commercial agency;
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- (k) fostering children;
- (l) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
- (m) coaching or private tuition services of any kind for children;
- (n) counselling or other support services for children;
- (o) overnight camps for children regardless of the type of accommodation or of how many children are involved;
- (p) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
- (q) providing, on a commercial basis and not merely incidentally to or in support of other business activities, an entertainment or party service specifically for children;
- (r) providing, on a commercial basis and not merely incidentally to or in support of other business activities, gym or play facilities specifically for children;

Example

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

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

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- (t) talent or beauty competitions held for children on a commercial basis and not merely incidentally to or in support of other business activities.
- (3) For the purposes of this Act, a person is engaged in child-related work if he or she is—
 - (a) an officer of a body corporate that is engaged in child-related work; or
 - (b) a member of the committee of management of an unincorporated body or association that is engaged in child-related work; or
 - (c) a member of a partnership that is engaged in child-related work.
- (4) For the purposes of this Act, a person is engaged in child-related work if he or she is employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.

10. Application for working with children check

- (1) A person may apply to the Secretary for a working with children check to be carried out on him or her and an assessment notice to be given to him or her on completion of that check.
 - (2) An application must—
 - (a) be in the prescribed form; and
 - (b) be signed by the applicant; and
 - (c) include any identifying information of a prescribed kind; and
 - (d) be accompanied by the prescribed application fee.
-

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Part 2—Working with Children Check

- (3) The prescribed form is to include provision for—
- (a) authorising the conduct (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice remains in force) of a police record check on the applicant; and
 - (b) consenting to enquiries being made about the applicant to any relevant prescribed body (in connection with the consideration of the application and, if an assessment notice is given, from time to time while that notice remains in force) and authorising the disclosure by that body of any relevant information.

11. Consideration of application

- (1) The Secretary must consider each application made under section 10.
 - (2) In considering an application, the Secretary—
 - (a) must arrange for the conduct of a police record check on the applicant; and
 - (b) may have regard to any notice given to the Secretary under the **Victorian Institute of Teaching Act 2001** and make enquiries to any relevant prescribed body; and
 - (c) may make any other enquiries to, or seek advice or information on the application from, the Director of Public Prosecutions or any other person or source that he or she thinks fit; and
 - (d) may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days after the making of the requirement.
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Part 2—Working with Children Check

- (3) Despite sub-section (2)(a), the Secretary is not required to, and must not, arrange for the conduct of a police record check on an applicant if—
- (a) a check of a prescribed kind has previously been conducted on the applicant otherwise than under this Act; and
 - (b) notice of the result of that check has been provided to the Secretary in accordance with the regulations.

12. Category 1 application

- (1) An application is a category 1 application for the purposes of this Act if it is in respect of—
- (a) a person who is a registrable offender within the meaning of the **Sex Offenders Registration Act 2004**; or
 - (b) a person who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991**.
- (2) The Secretary must refuse to give an assessment notice on a category 1 application.

13. Category 2 application

- (1) An application is a category 2 application for the purposes of this Act if it is in respect of—
- (a) a person who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** in circumstances where the person against whom the offence is committed is a child; or
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Part 2—Working with Children Check

- (b) a person who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981**; or
 - (c) a person against whom a charge of an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** or an offence covered by paragraph (a) or (b) is pending.
- (2) The Secretary must refuse to give an assessment notice on a category 2 application unless satisfied that doing so would not pose an unjustifiable risk to the safety of children, having regard to—
- (a) the nature and gravity of the offence or alleged offence and its relevance to child-related work; and
 - (b) the period of time since the applicant committed, or allegedly committed, the offence; and
 - (c) the ages of the applicant and of any victim at the time the applicant committed, or allegedly committed, the offence; and
 - (d) the applicant's behaviour since he or she committed, or allegedly committed, the offence; and
 - (e) the likelihood of future threat to a child caused by the applicant; and
 - (f) any information given by the applicant in, or in relation to, the application; and
 - (g) any other matter that the Secretary considers relevant to the application.
-

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Part 2—Working with Children Check

14. Category 3 application

- (1) An application is a category 3 application for the purposes of this Act if it is in respect of—
 - (a) a person who has at any time (whether before, on or after the commencement of this section) been subject to an adverse finding made in a disciplinary proceeding conducted by, or on behalf of, a prescribed body; or
 - (b) a person who has at any time (whether before, on or after the commencement of this section) been convicted or found guilty of an offence against this Act.
 - (2) The Secretary must give an assessment notice on a category 3 application unless satisfied, in the particular circumstances, that it is appropriate to give a negative notice.
 - (3) In considering on a category 3 application any conduct of which the Secretary is notified by a relevant prescribed body, the Secretary must have regard to—
 - (a) the nature and gravity of the conduct and its relevance to child-related work; and
 - (b) the period of time since the applicant was alleged to have engaged in the conduct; and
 - (c) the ages of the applicant and of any victim at the time the applicant was alleged to have engaged in the conduct; and
 - (d) the applicant's behaviour since he or she was alleged to have engaged in the conduct; and
 - (e) the likelihood of future threat to a child caused by the applicant; and
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Part 2—Working with Children Check

- (f) any information given by the applicant in, or in relation to, the application; and
- (g) any other matter that the Secretary considers relevant to the application.

15. Withdrawal of application

- (1) An applicant for a working with children check may withdraw his or her application at any time before the application has been determined.
- (2) The Secretary must treat an application as having been withdrawn if the applicant does not provide any further information required under section 11(2)(d) within the period specified in that section.
- (3) If—
 - (a) the Secretary is aware that the applicant is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency; and
 - (b) the application is withdrawn or treated as withdrawn under this section—

the Secretary must notify that other person or that agency in writing of that fact.

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

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Part 2—Working with Children Check

16. Submission sought from applicant before giving negative notice

- (1) If the Secretary proposes, or is required under section 12(2), to give a negative notice on an application, the Secretary must before finally deciding the application—
 - (a) give a written notice to the applicant that—
 - (i) informs him or her of the proposal or requirement; and
 - (ii) states the information about him or her of which the Secretary is aware; and
 - (iii) invites him or her to make a submission to the Secretary, in writing or in another form approved by the Secretary, within the period specified in the notice (not being less than 28 days after the date of the notice) about his or her eligibility to be given an assessment notice; and
 - (b) give an interim negative notice to the applicant.
 - (2) Before finally deciding the application the Secretary must consider any submission made by the applicant in response to a notice under sub-section (1)(a)(iii) and within the period specified in that sub-section.
 - (3) The Secretary must give a negative notice to the applicant if he or she does not make a submission in response to a notice under sub-section (1)(a)(iii) within the period specified in that sub-section.
 - (4) Any information given by a person under sub-section (1)(a)(iii) (including that section as applied to a re-assessment by section 21(5)) is not admissible in evidence against the person in—
 - (a) a criminal proceeding; or
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Part 2—Working with Children Check

(b) a proceeding for the imposition of a penalty—

other than—

(c) proceedings in respect of an offence against this Act; or

(d) a proceeding in respect of the falsity or misleading nature of the information.

17. Final determination of application

(1) The Secretary must give an assessment notice—

(a) on an application that is not a category 1, 2 or 3 application; or

(b) to an applicant who otherwise passes a working with children check.

(2) The Secretary must give a negative notice on an application that is a category 1 application or to an applicant who otherwise fails a working with children check

(3) If the Secretary gives a negative notice to an applicant, he or she must give to the applicant with that notice a written notice that—

(a) states the reasons for the decision on the application; and

(b) informs the applicant that he or she may apply to VCAT to have the decision reviewed; and

(c) explains how an application is made to VCAT.

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18. Copy of notice to be given to employer or agency

If the Secretary—

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

the Secretary must also give a copy of that notice to that other person or that agency.

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

19. Duration of assessment notice

- (1) An assessment notice remains in force for 5 years beginning on the date of the notice unless sooner revoked under section 23 or surrendered under section 24.
- (2) A person who holds an assessment notice may apply for the carrying out of a working with children check and a new assessment notice at any time within the period beginning 6 months before, and ending 3 months after, the expiry of the notice.
- (3) Despite sub-section (1), for the purposes of Part 4 a person must be regarded as still having a current assessment notice at any time within 3 months after its expiry.

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

- (1) If a relevant change in circumstances occurs with respect to a person who has a current assessment notice, that person must notify—
- (a) the Secretary; and
 - (b) any person by whom he or she is engaged in child-related work; and
 - (c) any agency with which he or she is listed—
- in writing of that change within 7 days after becoming aware of the change.

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

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

- (2) For the purposes of sub-section (1) a relevant change in circumstances is—
- (a) the person being charged with a relevant offence; or
 - (b) the person being found guilty of a relevant offence or the charge being otherwise finally dealt with; or
 - (c) an adverse finding being made against the person in a disciplinary proceeding conducted by, or on behalf of, a prescribed body.
- (3) In a proceeding for an offence against sub-section (1) constituted by not notifying the Secretary of how a charge of an offence was finally dealt with, it is a defence to the charge for the accused to prove that—
- (a) he or she notified the Secretary of the filing of the charge in accordance with sub-section (1); and
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- (b) the Secretary re-assessed under section 21 his or her eligibility to have an assessment notice; and
- (c) his or her assessment notice was not revoked following the re-assessment; and
- (d) he or she was not found guilty of the charge.

21. Re-assessment

- (1) The Secretary must re-assess a person's eligibility to have an assessment notice—
 - (a) if notified of a relevant change in circumstances under section 20; or
 - (b) if notified by the Chief Commissioner of Police under section 38 of a charge or of how a charge has been finally dealt with; or
 - (c) if notified by a prescribed body under section 39 of a finding made in a disciplinary proceeding conducted by, or on behalf of, the body.
 - (2) The Secretary is not required to re-assess a person's eligibility to have an assessment notice on being notified of a charge of an offence being finally dealt with without the person being found guilty if a re-assessment was carried out on the Secretary being notified of the filing of the charge and the assessment notice was not revoked following that re-assessment.
 - (3) On a re-assessment the Secretary may do anything that he or she has power to do under section 11 in considering an application but is not required to consider any matter other than the matter that has given rise to the re-assessment.
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- (4) If an assessment notice is due to expire within 12 months after the date on which a re-assessment is required, the Secretary may invite the holder of the assessment notice to make a fresh application under section 10, despite section 19(2).
- (5) Sections 16 to 18 apply to a re-assessment in the same way that they apply to an application.
- (6) For the purposes of Part 4 a person must be regarded as still having a current assessment notice if—
 - (a) an interim negative notice has been given under section 16(1)(b) as applied to a re-assessment by sub-section (5) of this section; and
 - (b) his or her assessment notice has not been—
 - (i) revoked under section 23 following the re-assessment; or
 - (ii) surrendered under section 24.

22. Notification requirements of holder of assessment notice when given interim negative notice

If an interim negative notice is given to a person who has a current assessment notice, that person must notify—

- (a) any person by whom he or she is engaged in child-related work; and
- (b) any agency with which he or she is listed—

in writing of the giving of that notice within 7 days after being given it.

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

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

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23. Revocation of assessment notice and surrender of document

- (1) The Secretary may at any time revoke an assessment notice following a re-assessment of the person's eligibility to have the notice.
- (2) If the Secretary revokes an assessment notice, the Secretary must give a negative notice to the former holder of the assessment notice.
- (3) The Secretary may give a notice to a person whose assessment notice is revoked or has been expired for more than 3 months requiring him or her to surrender the assessment notice document to the Secretary in the manner specified in the notice and within the period for doing so specified in the notice.
- (4) A person must not, without reasonable excuse, refuse or fail to surrender a document as required by a notice given by the Secretary under sub-section (3).

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

- (5) If the Secretary—
 - (a) gives a notice under sub-section (3) consequent on the expiry of an assessment notice; and
 - (b) is aware that the applicant is a person who—
 - (i) is, or is proposed to be, engaged in child-related work by another person; or
 - (ii) is listed with an agency—

the Secretary must notify that other person or that agency in writing of the expiry.

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

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24. Surrender of assessment notice

- (1) The holder of a current assessment notice may at any time surrender the assessment notice document to the Secretary.
- (2) For the purposes of this Act, a person who surrenders a current assessment notice document is to be regarded as not having a current assessment notice.

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

- (1) A person given a negative notice is not entitled to make a further application under section 10 until 5 years have elapsed from the date of that notice unless, since that date, there has been a relevant change in circumstances.
 - (2) For the purposes of sub-section (1) a relevant change in circumstances is—
 - (a) a charge that was pending at the date of the notice being finally dealt with without the person being found guilty of the offence; or
 - (b) a finding of guilt being quashed or set aside by a court after the date of the notice; or
 - (c) a finding of a prescribed body being quashed or set aside after the date of the notice; or
 - (d) the person ceasing to be a registrable offender within the meaning of the **Sex Offenders Registration Act 2004**.
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Part 2—Working with Children Check

26. Review by VCAT

- (1) An applicant who has been given a negative notice may apply to VCAT for review of the decision to give the notice.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Note: VCAT has power to affirm the decision to give the negative notice or set it aside and either give an assessment notice or send the matter back to the Secretary for re-consideration (see section 51 of the **Victorian Civil and Administrative Tribunal Act 1998**).

27. Offence to use false or other person's assessment notice

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

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

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

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Part 2—Working with Children Check

28. False or misleading information

- (1) A person must not in, or in relation to, an application for the carrying out of a working with children check or in connection with a re-assessment under section 21 give information that is false or misleading in a material particular.

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

- (2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—
- (a) in the case of false information—that the information was true; or
 - (b) in the case of misleading information—that the information was not misleading.
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Part 3—Exemptions From Working With Children Check

PART 3—EXEMPTIONS FROM WORKING WITH CHILDREN CHECK

29. Volunteer whose child ordinarily participates in the relevant activity

A parent performing, or proposing to perform, work as a volunteer in relation to an activity in which that parent's child ordinarily participates is exempt from a working with children check in respect of that activity.

Example

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

30. Person working with closely related child

- (1) A person working, or applying for work, in a position where any child with whom he or she is, or would be, required to have contact during the work is, or would be, a child who is closely related to that person is exempt from a working with children check in respect of that work.
- (2) For the purposes of sub-section (1), a person is closely related to a child if the person is the child's—
 - (a) spouse (including domestic partner as defined in the **Crimes (Family Violence) Act 1987**);
 - (b) parent, step-parent, mother-in-law or father-in-law;

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Part 3—Exemptions From Working With Children Check

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

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

31. Volunteers with limited contact

- (1) A person performing, or proposing to perform, work as a volunteer in child-related work for another person no more often than 4 times in a 12 month period and not more than 2 times in any 1 month period and who—
 - (a) is, or would be, supervised at all times when in contact with a child in the course of the work by a person who has a current assessment notice; and
 - (b) does not, or would not, have overnight contact with a child in the course of the work—

is exempt from a working with children check in respect of that work for that person.

- (2) For the purposes of this section—
 - (a) a period begins on the first day on or after the commencement of this section on which a volunteer performs work for the person and further 12 month or 1 month periods (as the case requires) continue to be measured for that work by reference to that day;

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Part 3—Exemptions From Working With Children Check

- (b) a time of volunteering in relation to a person is each day during all or part of which the volunteer performs work as a volunteer for that person.

Example

A person volunteering for 3 consecutive days at an organisation is to be regarded as having volunteered 3 times for that organisation.

32. Exemption for children

- (1) A child who has not attained the age of 14 years is exempt from a working with children check in respect of any work.
- (2) A child who is a student at an educational institution for children is exempt from a working with children check in respect of any work at that institution.
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Part 4—Offences Connected with Child-related work

**PART 4—OFFENCES CONNECTED WITH CHILD-RELATED
WORK**

**33. Engaging in child-related work without an
assessment notice**

- (1) A person is guilty of an offence if—
- (a) he or she does not have a current assessment notice; and
 - (b) he or she engages in child-related work, knowing that it is child-related work; and
 - (c) he or she knows that he or she does not have a current assessment notice or is reckless as to whether or not he or she has one.
- (2) In a proceeding for an offence against sub-section (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she—
- (a) had applied for a working with children check and the application had not been finally determined or withdrawn; or
 - (b) was exempt from a working with children check in respect of the work under Part 3 and—
 - (i) had not at any time been given a negative notice; and
 - (ii) was not a registrable offender within the meaning of the **Sex Offenders Registration Act 2004**; or
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Part 4—Offences Connected with Child-related work

- (c) unless working as a volunteer in the work or undertaking practical training—
 - (i) having applied for a working with children check and been given a negative notice, had notified his or her employer of the giving of that notice; and
 - (ii) his or her employer was in the process of—
 - (A) transferring him or her to work that was not child-related work; or
 - (B) terminating his or her employment in accordance with the requirements of the Workplace Relations Act 1996 of the Commonwealth.
- (3) A person who is guilty of an offence against sub-section (1) is liable to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

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

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

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.
 - (2) In a proceeding for an offence against sub-section (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she did not know that the work was child-related work.
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Part 4—Offences Connected with Child-related work

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

- (1) A person is guilty of an offence if—
- (a) the person engages, or continues to engage, another person (the worker) in child-related work, knowing that it is child-related work; and
 - (b) the worker does not have a current assessment notice; and
 - (c) the person engaging, or continuing to engage, the worker knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.
- (2) In a proceeding for an offence against sub-section (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—
- (a) the worker had applied for a working with children check and the application had not been finally determined or withdrawn; or
 - (b) the worker was exempt from a working with children check in respect of the work under Part 3; or
 - (c) unless the worker was working as a volunteer in the work or undertaking practical training, having been notified that the worker had been given a negative notice, the accused was in the process of—
 - (i) transferring him or her to work that was not child-related work; or
 - (ii) terminating his or her employment in accordance with the requirements of the Workplace Relations Act 1996 of the Commonwealth.
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Part 4—Offences Connected with Child-related work

- (3) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that he or she directly engaged the worker and the work involved contact with his or her own child, whether or not it also involved contact with other children.
- (4) A person who is guilty of an offence against subsection (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

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

- (1) An agency is guilty of an offence if—
 - (a) the agency, in the course of a business, offers to another person the services of a person (the worker) in child-related work, knowing that it is child-related work; and
 - (b) the worker does not have a current assessment notice; and
 - (c) the agency knows that the worker does not have a current assessment notice or is reckless as to whether or not he or she has one.
 - (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed—
 - (a) the worker had applied for a working with children check and the application had not been finally determined or withdrawn; or
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Part 4—Offences Connected with Child-related work

- (b) the worker was exempt from a working with children check in respect of the work under Part 3 and—
 - (i) had not at any time been given a negative notice; and
 - (ii) was not a registrable offender within the meaning of the **Sex Offenders Registration Act 2004**.
- (3) An agency that is guilty of an offence against sub-section (1) is liable, in the case of a natural person, to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both and, in the case of a body corporate, to a fine not exceeding 1200 penalty units.

37. Confidentiality of information

- (1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person—
 - (a) from, or in the carrying out of, a working with children check; or
 - (b) under section 18, 20(1), 22 or 23(5).

Penalty: Level 9 fine (60 penalty units maximum).
 - (2) Sub-section (1) does not apply to the giving of information—
 - (a) in good faith for the purposes of this Act; or
 - (b) with the written authority of the person to whom the information relates; or
 - (c) to a court or tribunal in the course of legal proceedings; or
 - (d) pursuant to an order of a court or tribunal; or
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Part 4—Offences Connected with Child-related work

- (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or
 - (f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation relating to a matter under this Act; or
 - (g) as required or authorised by or under any other Act.
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PART 5—MISCELLANEOUS

38. Duty on police to notify Secretary of certain matters

- (1) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable after the Chief Commissioner becomes aware that a person to whom an assessment notice has been given has been charged with a relevant offence.
- (2) The Chief Commissioner of Police must take all reasonable steps to ensure that the Secretary is notified as soon as practicable of how a charge of a relevant offence against a person who has a current assessment notice has been finally dealt with.

39. Duty on prescribed body to notify Secretary of certain matters

A prescribed body must take all reasonable steps to ensure that the Secretary is notified as soon as practicable of the making, in respect of a person whom it knows has a current assessment notice, of an adverse finding in a disciplinary proceeding conducted by, or on behalf of, the body.

40. Secretary may notify police of certain matters

Nothing in this Act prevents the Secretary, if he or she suspects on reasonable grounds that an applicant for a working with children check under Part 2 has committed an offence against this Act or Part 5 of the **Sex Offenders Registration Act 2004**, immediately notifying the Chief Commissioner of Police of that suspicion.

41. Delegation

The Secretary, by instrument, may delegate to—

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

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

42. Offences by bodies corporate

- (1) In a proceeding against a body corporate for an offence against a provision of this Act, it is a defence to the charge for the body corporate to prove that, at the time the offence is alleged to have been committed, it had taken all reasonable steps to have systems in place within the body corporate to ensure compliance with the relevant provision.
 - (2) If a body corporate contravenes any provision of this Act, each person who is an officer of the body corporate is to be taken to have contravened the same provision if the person knew of, or knowingly authorised or permitted, the contravention.
 - (3) A person may be proceeded against and found guilty or convicted under a provision in accordance with sub-section (2) whether or not the body corporate has been proceeded against or convicted or found guilty under that provision.
 - (4) Nothing in sub-section (2) or (3) affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.
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- (5) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the officer had that state of mind.

43. Offences by unincorporated bodies, partnerships, etc.

- (1) If this Act provides that a person, being an unincorporated body or association or a partnership, is guilty of an offence, that reference to the person must—
- (a) in the case of an unincorporated body or association—be read as a reference to each member of the committee of management of the body or association who knew of, or knowingly authorised or permitted, the commission of the offence; and
 - (b) in the case of a partnership—be read as a reference to each member of the partnership who knew of, or knowingly authorised or permitted, the commission of the offence.
- (2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an unincorporated body or association or a partnership in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by an employee or agent of the unincorporated body or association or the partnership within the scope of his or her actual or apparent authority; and
 - (b) the employee or agent had that state of mind.
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Part 5—Miscellaneous

44. Giving of notices

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

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

45. Evidentiary provisions

- (1) A document purporting to be given by the Secretary or a delegate of the Secretary certifying as to—
 - (a) whether an application by a specified person for a working with children check was pending under Part 2 as at a specified date; or
 - (b) whether an interim negative notice was given to a specified person on a specified date; or
 - (c) whether a negative notice was given to a specified person on a specified date; or
 - (d) whether an assessment notice was given to a specified person on a specified date; or
 - (e) whether a copy of an assessment notice, an interim negative notice or a negative notice was given to a specified person on a specified date; or
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(f) any other matter that appears in, or that can be determined from, the records kept by the Secretary under this Act—

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

- (2) A document purporting to be given by the Secretary or a delegate of the Secretary under subsection (1) must be presumed in any proceedings, in the absence of evidence to the contrary, to have been given by the Secretary or a person who was, at that time, a delegate of the Secretary, as the case requires.
- (3) This section is in addition to, and does not affect the operation of, the **Evidence Act 1958**.

46. Immunity

Nothing done or omitted to be done in good faith and with reasonable care by the Secretary or any employee within the meaning of the **Public Administration Act 2004**—

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

subjects the Crown, a Minister, the Secretary or any such employee to any liability in respect of it.

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Part 5—Miscellaneous

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) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
 - (3) Regulations made under this Act may be made—
 - (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
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- (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as published at the time the regulations are made or at any time before then; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
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- (d) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (e) the reduction, waiver or refund, in whole or in part, of the fees.
- (5) If under sub-section (4)(e) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain checks or classes of checks; or
 - (b) when an event happens; or
 - (c) in respect of certain persons or classes of persons; or
 - (d) in respect of any combination of such checks, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
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Part 6—Amendment of Certain Acts

PART 6—AMENDMENT OF CERTAIN ACTS

48. Schedule 1 to the Sentencing Act 1991

(1) In clause 1 of Schedule 1 to the **Sentencing Act 1991**—

(a) for paragraph (a)(ii) **substitute**—

"(ii) section 39 (indecent assault);";

(b) after paragraph (a)(viii) **insert**—

"(viii a) section 48(1) (sexual penetration of a 16 or 17 year old child);

(viii b) section 49(1) (indecent act with 16 year old child);";

(c) after paragraph (a)(xii) **insert**—

"(xii a) section 54 (occupier etc. permitting unlawful sexual penetration);";

(d) after paragraph (a)(xvii) **insert**—

"(xvii e) section 59(1) (bestiality);

(xvii f) section 60 (soliciting acts of sexual penetration or indecent acts);

(xvii g) section 68(1) (production of child pornography);

(xvii h) section 69 (procurement of minor for child pornography);

(xvii i) section 70(1) (possession of child pornography);";

(e) after paragraph (d) **insert**—

'(da) an offence against section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** (publication or transmission of child pornography);

See:
Act No.
49/1991.
Reprint No. 7
as at
1 January
2004 and
amending Act
Nos 2/2002,
53/2003,
10/2004,
20/2004,
49/2004,
59/2004,
65/2004,
72/2004 and
87/2004.
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Part 6—Amendment of Certain Acts

- (db) an offence against any of the following sections of the **Prostitution Control Act 1994**:
- (i) section 5(1) (causing or inducing a child to take part in prostitution);
 - (ii) section 6(1) (obtaining payment for sexual services provided by a child);
 - (iii) section 7(1) (agreement for provision of sexual services by a child);
 - (iv) section 11(1) (allowing child to take part in prostitution);
- (dc) an offence against any of the following sections of the Crimes Act 1914 of the Commonwealth:
- (i) section 50BA(1) (sexual intercourse with child under 16);
 - (ii) section 50BB(1) (inducing child under 16 to engage in sexual intercourse);
 - (iii) section 50BC(1) (sexual conduct involving child under 16);
 - (iv) section 50BD(1) (inducing child under 16 to be involved in sexual conduct);
 - (v) section 50DA(1) (benefiting from offence against Part IIIA);
 - (vi) section 50DB(1) (encouraging offences against Part IIIA);
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- (dd) an aggravated offence against any of the following sections of the Criminal Code of the Commonwealth:
 - (i) section 270.6 (sexual servitude offences);
 - (ii) section 270.7 (deceptive recruiting for sexual services);

Note: The Criminal Code of the Commonwealth is contained in the Schedule to the Criminal Code Act 1995 of the Commonwealth.
 - (de) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act;
 - (df) an offence against any of the following sections of the Criminal Code of the Commonwealth:
 - (i) section 474.19(1) (using a carriage service for child pornography material);
 - (ii) section 474.20(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
 - (iii) section 474.22(1) (using a carriage service for child abuse material);
 - (iv) section 474.23(1) (possessing, controlling, producing, supplying or obtaining child abuse material through a carriage service);
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- (v) section 474.26 (using a carriage service to procure persons under 16 years of age);
 - (vi) section 474.27 (using a carriage service to "groom" persons under 16 years of age);
 - (f) in paragraph (f), for "(e)." **substitute** "(e).";
 - (g) after paragraph (f) **insert**—
 - "(g) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (f)."
- (2) After clause 2(f) of Schedule 1 to the **Sentencing Act 1991 insert**—
 - "(g) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (f)."
- (3) After clause 3(d) of Schedule 1 to the **Sentencing Act 1991 insert**—
 - "(e) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (d)."
- (4) After clause 4(b) of Schedule 1 to the **Sentencing Act 1991 insert**—
 - "(c) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) and (b)."
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Part 6—Amendment of Certain Acts

**49. Amendment of Victorian Institute of Teaching
Act 2001**

(1) After section 48(1)(f) of the **Victorian Institute of Teaching Act 2001** insert—

"(fa) to the Secretary within the meaning of the **Working With Children Act 2005**; and".

(2) In section 48(3) of the **Victorian Institute of Teaching Act 2001**, after "(f)" insert ", (fa)".

See:
Act No.
96/2001
and
amending
Act Nos
23/2002,
83/2003 and
83/2004.
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ENDNOTES

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