

Authorised Version
Worker Screening Act 2020
No. 34 of 2020

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Authorised Version



Victoria

Worker Screening Act 2020[†]

No. 34 of 2020

[Assented to 4 November 2020]

The Parliament of Victoria enacts:

Chapter 1—Preliminary

Part 1.1—Introduction

1 Purposes

The main purposes of this Act are—

- (a) to provide for screening of persons employed or engaged in risk assessed roles for the purposes of the National Disability Insurance Scheme; and

- (b) to assist in protecting children from sexual and physical harm by providing for screening of persons who work with, or care for, children; and
- (c) to repeal the **Working with Children Act 2005**; and
- (d) to make consequential amendments to other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 15 September 2021, it comes into operation on that day.

3 Definitions

- (1) In this Act—

ACC means the Australian Crime Commission (by whatever name described) established by the Australian Crime Commission Act 2002 of the Commonwealth;

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;

approved application form means an application form for a screening check approved by the Secretary under section 13;

approved identifying information means identifying information of a kind approved by the Secretary under section 12;

authorised entity, in relation to NDIS worker screening, means—

- (a) ACC; or
- (b) Victoria Police; or
- (c) a law enforcement agency; or
- (d) the NDIS Commission; or
- (e) the NDIS Commissioner; or
- (f) an NDIS worker screening unit;

banning order means an order made under section 73ZN of the NDIS Act;

carnal knowledge offence means an offence specified in clause 1(d)(viii) or (ix) of Schedule 1 to the **Sentencing Act 1991**;

Chief Commissioner of Police means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;

child means a person under 18 years of age;

child abuse material offence means—

- (a) an offence against any of the following provisions of the **Crimes Act 1958**—
 - (i) section 51B(1) (involving a child in the production of child abuse material);
 - (ii) section 51C(1) (producing child abuse material);
 - (iii) section 51D(1) (distributing child abuse material);
 - (iv) section 51E(1) (administering a website used to deal with child abuse material);

- (v) section 51F(1) (encouraging use of a website to deal with child abuse material);
- (vi) section 51G(1) (possession of child abuse material);
- (vii) section 51H(1) (accessing child abuse material);
- (viii) section 51I(1) (assisting a person to avoid apprehension); or
- (b) 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; or
- (c) an offence referred to in paragraph (dam), (dama), (dan), (dao), (daoa), (daob), (daq) or (df)(iv), (v), (vi) or (vii) of clause 1 of Schedule 1 to the **Sentencing Act 1991**; or
- (d) an offence against any of the following sections of the Criminal Code of the Commonwealth, repealed by clause 33 of Schedule 7 to the Combatting Child Sexual Exploitation Legislation Amendment Act 2019 of the Commonwealth—
 - (i) section 474.19 (using a carriage service for child pornography material);
 - (ii) section 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);

child-related work has the meaning given by section 7;

clearance means—

- (a) an NDIS clearance; or
- (b) a WWC clearance;

community or treatment order means—

- (a) an old community-based order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
- (b) an old intensive correction order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
- (c) a drug treatment order within the meaning of the **Sentencing Act 1991**; or
- (d) a community correction order within the meaning of the **Sentencing Act 1991**; or
- (e) a fine conversion order within the meaning of the **Sentencing Act 1991**; or
- (f) a fine default unpaid community work order within the meaning of the **Sentencing Act 1991**;

corresponding NDIS worker screening law means a prescribed law of another State or a Territory that provides for screening of persons who are to be employed or engaged in risk assessed roles;

corresponding working with children law means a law of another State or a Territory that provides for screening of persons engaging in child-related work and that substantially

corresponds with the relevant provisions of this Act;

detention order means a detention order within the meaning of the **Serious Offenders Act 2018** or an interim detention order under that Act;

direct contact, in relation to child-related work, means any contact between a person and a child that involves—

- (a) physical contact; or
- (b) face to face contact; or
- (c) contact by post or other written communication; or
- (d) contact by telephone or other oral communication; or
- (e) contact by email or other electronic communication;

Disability Worker Registration Board means the Disability Worker Registration Board of Victoria established under section 8 of the **Disability Service Safeguards Act 2018**;

disciplinary or regulatory entity means a person or body that is prescribed to be a disciplinary or regulatory entity;

educational institution means—

- (a) any Government school or non-Government school within the meaning of the **Education and Training Reform Act 2006**; or
- (b) any of the following—
 - (i) a TAFE institute within the meaning of the **Education and Training Reform Act 2006**;

- (ii) a dual sector university within the meaning of the **Education and Training Reform Act 2006**;
- (iii) a provider of adult, community and further education, within the meaning of the **Education and Training Reform Act 2006**, that is eligible for funding under that Act;
- (iv) an adult education institution within the meaning of the **Education and Training Reform Act 2006**;
- (v) an education and training organisation registered on the State Register under the **Education and Training Reform Act 2006**—

to the extent that the college, university, provider, institution or organisation provides a program of study or training primarily for, or directed at, children and that leads to the award of a senior secondary certificate of education that is recognised by the AQF within the meaning of the **Education and Training Reform Act 2006**; or

- (c) any other institution that provides a program of study or training primarily for, or directed at, children—

but does not include—

- (d) except to the extent provided by paragraph (b), a university within the meaning of the **Education and Training Reform Act 2006**; or

- (e) except to the extent provided by paragraph (b), a TAFE institute or an adult education institution within the meaning of the **Education and Training Reform Act 2006**—

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

emergency detention order means an emergency detention order within the meaning of the **Serious Offenders Act 2018**;

excluded from child-related work under a corresponding working with children law, in relation to a person, means—

- (a) a person who, under a corresponding working with children law, has been refused a clearance (however described) permitting the person to engage in child-related work; or
- (b) a person whose clearance (however described) permitting the person to engage in child-related work has been revoked or cancelled under a corresponding working with children law; or
- (c) a person who has been otherwise prohibited from engaging in child-related work under a corresponding working with children law;

exclusion means—

- (a) an NDIS exclusion; or
- (b) a WWC exclusion;

interim exclusion means—

- (a) an interim NDIS exclusion; or

(b) an interim WWC exclusion;

interim NDIS exclusion means an interim exclusion given by the Secretary under section 29 or 47;

interim WWC exclusion means an interim exclusion given by the Secretary under section 66 or 88;

interstate NDIS clearance means a clearance (however described) given to a person under a corresponding NDIS worker screening law that corresponds to an NDIS clearance;

interstate NDIS exclusion means an exclusion (however described) given to a person under a corresponding NDIS worker screening law that corresponds to an NDIS exclusion;

law enforcement agency means—

- (a) the Australian Federal Police; or
- (b) the police force of another State or a Territory; or
- (c) a prescribed person or body established under a law of the Commonwealth or of another State or a Territory;

minister of religion means—

- (a) a person ordained or appointed as a recognised religious leader in an organised religious institution; or
- (b) the appointed leader of a local religious congregation in an organised religious institution who has general authority over the operations of that congregation within the institution;

NDIS Act means the National Disability Insurance Scheme Act 2013 of the Commonwealth;

NDIS category A offence means an offence specified in Schedule 1;

NDIS category B offence means an offence specified in Schedule 3;

NDIS check means the process under Chapter 2 for assessing or re-assessing whether a person may be employed or engaged in a risk assessed role;

NDIS clearance means an NDIS clearance given to a person under section 31(1), 99(1)(a)(ii) or Part 4.2;

NDIS Commission means the NDIS Quality and Safeguards Commission established under section 181A of the NDIS Act;

NDIS Commissioner means the Commissioner of the NDIS Quality and Safeguards Commission referred to in section 181C of the NDIS Act;

NDIS exclusion means an exclusion given to a person under section 30, 31(2), 49, 50, 51, 99(1)(a)(i) or (b)(i) or Part 4.2;

NDIS participant means a person who is a participant in the NDIS;

NDIS worker screening database means the NDIS worker screening database established under section 181Y of the NDIS Act;

NDIS Worker Screening Rules means the National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018 of the Commonwealth;

NDIS worker screening unit means an entity that has functions or powers under a corresponding NDIS worker screening law that correspond with the functions or powers of the Secretary under this Act in relation to

screening of persons who are to be employed or engaged in risk assessed roles;

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, Youth and Families Act 2005** but does not include a foster carer;

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

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

relevant disciplinary or regulatory finding means—

- (a) a determination by VCAT under section 77(4)(g) or (h) or 77(5)(e) or (f) of the **Health Professions Registration Act 2005** as in force immediately before its repeal; or
- (b) a determination under section 196(2)(d) or (e) or 197(2)(b) of the Health Practitioner Regulation National Law by VCAT or another responsible tribunal within the meaning of that Law; or

- (c) a finding of a prescribed kind made by or on behalf of, or referred to the Secretary by, a disciplinary or regulatory entity;

risk assessed role has the same meaning as it has in the NDIS Worker Screening Rules;

screening check means—

- (a) an NDIS check; or
- (b) a WWC check;

Secretary means Secretary to the Department of Justice and Community Safety;

supervision order means a supervision order within the meaning of the **Serious Offenders Act 2018** or an interim supervision order under that Act;

Victorian Disability Worker Commission means the Victorian Disability Worker Commission established under section 21 of the **Disability Service Safeguards Act 2018**;

Victorian Disability Worker Commissioner means the Victorian Disability Worker Commissioner appointed under section 26 of the **Disability Service Safeguards Act 2018**;

vulnerable person, in relation to an NDIS check, means an adult, who as a result of age, illness or disability is unable to take care of themselves or protect themselves from harm;

work, in relation to child-related work, means—

- (a) work engaged in—
 - (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
- (iii) as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
- (b) practical training undertaken as part of an educational or vocational course other than under an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**; or
- (c) work engaged in as a volunteer, including engaging in unpaid community work under a community or treatment order—

but does not include unpaid work engaged in for a private or domestic purpose;

working with children screening unit means an entity that has functions or powers under a corresponding working with children law that correspond with the functions or powers of the Secretary under this Act in relation to screening of persons who are to be employed or engaged in child-related work;

WWC category A offence means an offence specified in Schedule 2;

WWC category B offence means an offence specified in Schedule 4;

WWC check means the process under Chapter 3 for assessing or re-assessing whether a person may engage in child-related work;

WWC clearance means a WWC clearance given to a person under section 68(1) or Part 4.3;

WWC exclusion means an exclusion given to a person under section 68(2), 89, 90, 91 or Part 4.3.

- (2) For the purposes of this Act, a person is **listed with an agency** if the person has entered into an agreement with the agency for the agency to procure for that person child-related work, whether or not the agreement extends to any other kind of work.
- (3) For the purposes of this Act, a person does not cease to be a volunteer merely because the person has all or any of the person's out-of-pocket expenses reimbursed.

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;
 - (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) or 38X(1)(b) or (c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** or under section 17(1)(c) or 38X(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;

- (e) a verdict of not guilty on account of insanity before the day on which Schedule 3 to the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** came into operation in relation to the offence returned under—

(i) section 420 of the **Crimes Act 1958** (as then in force); or

(ii) an equivalent provision 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

For the purposes of this Act, a person is taken to have been charged with an offence if—

(a) an indictment has been filed for the offence; or

(b) a charge-sheet charging the offence has been filed against the person, whether or not one of the following has been issued or served—

(i) a summons to answer to the charge;

(ii) a warrant to arrest the person.

6 Pending charges

- (1) For the purposes of this Act a charge against a person for an offence is pending until the charge is finally dealt with, including 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;
 - (e) the person is discharged by the Magistrates' Court after completing a diversion program under section 59 of the **Criminal Procedure Act 2009**;
 - (f) the person is discharged by the Children's Court after completing a diversion program under section 356D of the **Children, Youth and Families Act 2005**.
- (2) A reference in this Act to the withdrawing of a charge includes a reference to the discontinuance of a prosecution.

7 Child-related work

- (1) Subject to subsection (2), in this Act, *child-related work* means work—
- (a) at or for a service, body or place, or that involves an activity, specified in subsection (3); and
 - (b) that usually involves direct contact with a child.
- (2) For the purposes of this Act, work is not child-related work by reason only of occasional direct contact with children that is incidental to the work.
- (3) For the purposes of subsection (1)(a), the following services, bodies, places or activities are specified—

- (a) child protection services;
- (b) children's services within the meaning of the **Children's Services Act 1996**;
- (c) education and care services within the meaning of the Education and Care Services National Law (Victoria);
- (d) educational institutions;
- (e) out of home care services, remand centres, youth residential centres or youth justice centres within the meaning of the **Children, Youth and Families Act 2005** or probation services under that Act;
- (f) refuges or other residential facilities used by children;
- (g) accommodation services specifically provided for students in connection with the operation of a student exchange program under Part 4.5A of the **Education and Training Reform Act 2006**, including the provision by a person of accommodation in the person's home;
- (h) paediatric wards of public hospitals within the meaning of the **Health Services Act 1988** or of denominational or private hospitals within the meaning of that Act;
- (i) clubs, associations or movements (including of a cultural, recreational or sporting nature) that provide services or conduct activities for, or directed at, children or whose membership is mainly comprised of children;
- (j) religious organisations;
- (k) baby sitting or child minding services arranged by a commercial agency;
- (l) fostering children;

- (m) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
 - (n) coaching or tuition services of any kind specifically for children;
 - (o) counselling or other support services for children;
 - (p) overnight camps for children regardless of the type of accommodation or of how many children are involved;
 - (q) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
 - (r) providing, on a commercial basis and not merely incidentally to or in support of other business activities—
 - (i) entertainment or party services specifically for children; or
 - (ii) gym or play facilities specifically for children; or
 - (iii) photography services specifically for children; or
 - (iv) talent or beauty competitions for children;
 - (s) providing, on a publicly-funded or commercial basis, an in home care service for children.
- (4) Subject to subsection (5) but despite any other provision of this section, for the purposes of this Act, work engaged in as a minister of religion is child-related work unless any direct contact with children during the work engaged in as a minister

of religion is only occasional direct contact that is incidental to that work.

- (5) Despite any other provision of this section, if a minister of religion is the appointed leader of a local religious congregation in an organised religious institution and the congregation contains any children, work engaged in as a minister of religion is child-related work.
- (6) Despite any other provision of this section, a person is engaged in child-related work if—
 - (a) the person is a family member or other person of significance to a child other than a parent; and
 - (b) the child is placed in the out of home care of that person under the **Children, Youth and Families Act 2005**.
- (7) For the purposes of this Act, a person is engaged in child-related work if the person is employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.
- (8) For the purposes of this Act, a person is not engaged in child-related work merely because the person—
 - (a) is participating in an activity with a child on the same basis as the child; or

Example

An adult playing in a cricket team whether on a professional or amateur basis alongside a child is not engaging in child-related work.

- (b) is supervising a child undertaking practical training as part of an arrangement or agreement under Part 5.4 of the **Education and Training Reform Act 2006**.

(9) In this section—

out of home care means care of a child by a person other than a parent of the child.

Note

Section 19A of the **Child Employment Act 2003** extends the application of this Act to the supervision of a child in employment that requires a permit under that Act as if the supervision were child-related work under this Act.

8 Act to bind the Crown

(1) This Act binds the Crown—

- (a) in right of the State of Victoria; and
 - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the Regulations.

9 References to Parts

Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number of this Act.

Part 1.2—Paramount considerations

10 Paramount consideration—NDIS clearances and checks

When the Secretary or VCAT makes a decision or takes an action under this Act in relation to an applicant for an NDIS check or a holder of an NDIS clearance, the health, safety and well-being of persons with a disability and in particular, the protection of persons with a disability from abuse, violence, neglect and exploitation must be the paramount consideration.

11 Paramount consideration—WWC clearances and checks

When the Secretary or VCAT makes a decision or takes an action under this Act in relation to an applicant for a WWC check or the holder of a WWC clearance, the protection of children from sexual or physical harm must be the paramount consideration.

Part 1.3—General provisions relating to applications for screening checks

12 Secretary must approve identifying information to accompany application for screening check

- (1) The Secretary must approve the identifying information that is to accompany an application for a screening check.
- (2) The Secretary may approve any kind of identifying information.
- (3) The Secretary must publish a description of the approved identifying information on a website maintained by the Secretary.

13 Secretary must approve application form for screening check

- (1) The Secretary must approve the form in which an application for a screening check is to be made.
- (2) Without limiting section 15 or 54, an approved application form must include the following particulars—
 - (a) the full name of the applicant and any other names by which the applicant is or has been known;
 - (b) the date and place of birth of the applicant;
 - (c) the gender of the applicant;
 - (d) the residential address and telephone number of the applicant;
 - (e) any other information relating to the applicant that the Secretary reasonably believes is appropriate.
- (3) The Secretary must publish a copy of an application form approved under this section on a website maintained by the Secretary.

Chapter 2—NDIS worker screening

Part 2.1—Applications for NDIS checks

Division 1—Making an application for an NDIS check

14 Who may apply for an NDIS check

- (1) A person may apply to the Secretary for an NDIS check to be carried out on the person and an NDIS clearance to be given on completion of that check if the person—
 - (a) ordinarily resides or works in Victoria; and
 - (b) has been or will be employed or engaged in a risk assessed role.
- (2) Despite subsection (1)(a), the Secretary may consider an application for an NDIS check made by a person who does not ordinarily reside or work in Victoria if the person intends to work in Victoria in a risk assessed role.

15 How to apply for an NDIS check

- (1) An application for an NDIS check must—
 - (a) be in the approved application form for an NDIS check; and
 - (b) subject to subsection (3), be signed by the applicant; and
 - (c) be accompanied by the approved identifying information; and
 - (d) include the authorisations and consents referred to in subsection (2); and
 - (e) be accompanied by the prescribed application fee; and
 - (f) include any prescribed information.

- (2) An applicant for an NDIS check must—
- (a) authorise the conduct of a police record check on the applicant in connection with the consideration of the application and, if an NDIS clearance is given, from time to time while that clearance remains in force; and
 - (b) consent to enquiries being made about the applicant to any authorised entity or any disciplinary or regulatory entity in connection with the consideration of the application and, if an NDIS clearance is given, from time to time while that clearance remains in force; and
 - (c) authorise the disclosure of any relevant information by an authorised entity or a disciplinary or regulatory entity for the purposes of the enquiries described in paragraph (b); and
 - (d) consent to enquiries being made about the applicant in connection with the consideration of the application to the Secretary to the Department of Health and Human Services in relation to whether the applicant has been assessed as posing an unacceptable risk to persons with a disability or NDIS participants; and
 - (e) authorise the disclosure of the outcome of the application to the NDIS Commission.
- (3) The Secretary must enable reasonable modifications to be made in relation to the requirement set out in subsection (1)(b) if the applicant has a disability that prevents the applicant signing an application.
- (4) Despite subsection (1)(c), the Secretary may consider an application that does not include all the approved identifying information.
-

- (5) If the Secretary receives an application that does not include all the information required by this section, the Secretary may require the applicant to provide the information, in the manner required by the Secretary, within 28 days or any longer period determined by the Secretary.
- (6) If an applicant has included approved identifying information for a previous application for an NDIS check completed within 5 years and 3 months before the current application, the Secretary may exempt the applicant from the requirement to provide approved identifying information under subsection (1)(c).

16 Secretary may refuse to consider application for NDIS check

If a person who has applied for an NDIS check makes a further application for another NDIS check, the Secretary may refuse to consider the first application for the NDIS check and that first application is to be treated as being withdrawn on the date of receipt of the further application.

17 Application for NDIS check by applicant who has previously been given an NDIS exclusion

If a person who has been given an NDIS exclusion applies for an NDIS check within 5 years after being given the NDIS exclusion, the Secretary must not consider the application further unless the Secretary has been notified in writing that there has been a relevant change in circumstances within the meaning of section 38 relating to the giving of the exclusion.

Division 2—Consideration of applications for NDIS checks

18 Consideration of application for NDIS check

- (1) The Secretary must—
 - (a) arrange for a police record check to be conducted on an applicant for an NDIS check; and
 - (b) arrange for a check of the NDIS worker screening database to be conducted in relation to the applicant.
- (2) In considering an application for an NDIS check, the Secretary may—
 - (a) have regard to any notice given to the Secretary by, and make enquiries to, any disciplinary or regulatory entity; and
 - (b) make any other enquiries to, or seek information on the application from, any person or source that the Secretary thinks fit, including but not limited to—
 - (i) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (ii) any authorised entity; and
 - (iii) the Disability Worker Registration Board; and
 - (iv) the Victorian Disability Worker Commission; and
 - (v) the Victorian Disability Worker Commissioner.

- (3) The Secretary may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (4) Despite subsection (1), the Secretary is not required to 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.

19 Secretary must make enquiries of Secretary to the Department of Health and Human Services

- (1) In considering an application for an NDIS check, the Secretary must—
 - (a) check information held by the Secretary as to whether the applicant was assessed by the Secretary to the Department of Health and Human Services as posing an unacceptable risk to persons with a disability or NDIS participants; and
 - (b) if the applicant was so assessed, request the Secretary to the Department of Health and Human Services provide information relating to that assessment held by the Secretary to the Department of Health and Human Services.
- (2) The Secretary to the Department of Health and Human Services must provide information requested under subsection (1)(b).

20 Applicant for NDIS check must be verified by NDIS Commission

- (1) The Secretary must not consider an application for an NDIS check unless the NDIS Commission verifies that the applicant has been or will be employed or engaged in a risk assessed role, and notifies the Secretary.
- (2) If the NDIS Commission does not provide a notification under subsection (1), the Secretary must not consider the application further and must treat the application as withdrawn.

21 Applicant may withdraw application for NDIS check with permission

- (1) An applicant for an NDIS check may request, in writing, that the Secretary permit the applicant to withdraw the application.
- (2) A request under subsection (1) may be made at any time before the first of the following occurs—
 - (a) the Secretary gives the applicant an interim NDIS exclusion under section 29(1)(b);
 - (b) the Secretary finally decides the application.
- (3) In deciding whether to allow the application to be withdrawn, the Secretary may make enquiries about the applicant to any of the following—
 - (a) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**;
 - (b) any authorised entity;
 - (c) the Disability Worker Registration Board;
 - (d) the Victorian Disability Worker Commission;

(e) the Victorian Disability Worker Commissioner;

(f) any disciplinary or regulatory entity.

22 Secretary must treat application for NDIS check as withdrawn if applicant fails to provide information

- (1) The Secretary must treat an application for an NDIS check as having been withdrawn if the applicant does not provide any information required under section 15(5) or 18(3) within the period required under that section.
- (2) Despite an application being treated as withdrawn under this section, the Secretary may, if the information referred to in subsection (1) is provided, reinstate the application as if it were an application under section 15.

Division 3—Determination of applications for NDIS checks

23 NDIS category A applications

- (1) An application for an NDIS check is an NDIS category A application if it is in respect of a person—
 - (a) who is subject to reporting obligations imposed by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) who is subject to a supervision order, a detention order or an emergency detention order; or
 - (c) who has at any time been convicted or found guilty of an NDIS category A offence specified in clauses 1 to 58 of Schedule 1 if the conduct constituting that offence occurred when the person was an adult; or

- (d) subject to section 25(2), who has at any time been convicted or found guilty of an NDIS category A offence specified in clauses 59 to 71 of Schedule 1 if the conduct constituting the offence occurred when the person was an adult.
- (2) For the purposes of this section, if the conduct constituting an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

24 Determination of NDIS category A application

The Secretary must refuse to give an NDIS clearance on an NDIS category A application.

25 NDIS category B applications

- (1) An application for an NDIS check is an NDIS category B application if it is in respect of a person—
 - (a) who is charged with an NDIS category A offence, if the conduct alleged to constitute that offence occurred when the person was an adult; or
 - (b) who is charged with or has at any time been convicted or found guilty of an NDIS category B offence if the conduct constituting or alleged to constitute that offence occurred when the person was an adult.
- (2) An application for an NDIS check is an NDIS category B application if it is in respect of a person who has at any time been convicted or found guilty of an NDIS category A offence specified in clauses 59 to 71 of Schedule 1 if—
 - (a) the conduct constituting that offence occurred when the person was an adult; and

- (b) the victim of the offence was a child aged at least 14 years when the conduct constituting the offence occurred; and
 - (c) the person was not more than 5 years older than the victim when the conduct constituting the offence occurred; and
 - (d) the commission of the offence did not involve violence or coercion.
- (3) For the purposes of this section, if the conduct constituting an offence or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

26 Determination of NDIS category B application

The Secretary must refuse to give an NDIS clearance on an NDIS category B application, unless satisfied that there are exceptional circumstances having regard to the following—

- (a) the nature, gravity and circumstances of the offence or alleged offence;
- (b) the period of time that has passed since the offence or alleged offence was committed;
- (c) the vulnerability of the victim at the time the offence or alleged offence was committed;
- (d) the applicant's relationship to the victim at the time the offence or alleged offence was committed;
- (e) whether the applicant had a position of authority in relation to the victim at the time the offence or alleged offence was committed;

- (f) the applicant's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
- (g) the applicant's behaviour since the applicant committed, or allegedly committed, the offence;
- (h) all other relevant circumstances in respect of the applicant's offending, misconduct or other relevant history.

27 NDIS category C applications

- (1) An application for an NDIS check is an NDIS category C application if it is in respect of a person—
 - (a) who is charged with or has at any time been convicted or found guilty of an offence other than an NDIS category A offence or an NDIS category B offence; or
 - (b) who is charged with or has at any time been convicted or found guilty of an NDIS category A offence or an NDIS category B offence if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or
 - (c) who has at any time been charged with an NDIS category A offence or an NDIS category B offence if the charge has been finally dealt with other than by way of conviction or finding of guilt; or
 - (d) who has at any time been convicted or found guilty outside Australia of an offence that if committed in Victoria would be an NDIS category A offence or an NDIS category B offence; or
 - (e) who has at any time been subject to a relevant disciplinary or regulatory finding; or

- (f) who has been assessed by the Secretary to the Department of Health and Human Services as posing an unacceptable risk to persons with a disability or NDIS participants; or
- (g) who has been the subject of any relevant civil penalty imposed under the NDIS Act; or
- (h) who, not more than 5 years before the application was made, was given a WWC exclusion on a WWC category C application or WWC category C re-assessment.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

- (2) For the purposes of this section, if the conduct constituting an offence or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

28 Determination of NDIS category C application

The Secretary must give an NDIS clearance on an NDIS category C application if the Secretary is satisfied that the applicant does not pose an unacceptable risk of harm to persons with a disability, having regard to the following—

- (a) the nature, gravity and circumstances of the conduct;
- (b) the period of time that has passed since the applicant engaged, or allegedly engaged, in the conduct;
- (c) the vulnerability of the victim at the time the applicant engaged, or allegedly engaged, in the conduct;

- (d) the applicant's relationship to the victim at the time the applicant engaged, or allegedly engaged, in the conduct;
- (e) whether the applicant had a position of authority in relation to the victim at the time the applicant engaged, or allegedly engaged, in the conduct;
- (f) the applicant's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
- (g) the applicant's behaviour since the applicant engaged, or allegedly engaged, in the conduct;
- (h) all other relevant circumstances in respect of the applicant's offending, misconduct or other relevant history.

Division 4—Intention to give NDIS exclusion on application for NDIS check

29 Secretary to notify applicant for NDIS check of intention to exclude

- (1) If the Secretary is required to refuse or proposes to refuse to give an NDIS clearance under section 24, 26 or 28, the Secretary must before finally deciding the application—
 - (a) give a written notice to the applicant that—
 - (i) informs the applicant of the proposal or requirement; and
 - (ii) states the information about the applicant of which the Secretary is aware; and
 - (iii) invites the applicant to make a submission to the Secretary in writing or in another form approved by the

Secretary within the timeframe
specified in the notice; and

- (b) give an interim NDIS exclusion to the applicant.

Note

An applicant who is given an interim NDIS exclusion on an application for a new NDIS check is not permitted to engage in work in a risk assessed role while that application is being determined—see sections 118 and 119.

- (2) The period specified in the notice under subsection (1) must not be less than—
 - (a) in the case of an NDIS category A application, 14 days; or
 - (b) in the case of an NDIS category B application or an NDIS category C application, 28 days.
- (3) The Secretary may extend the period specified in a notice for an NDIS category A application if the applicant satisfies the Secretary that it is appropriate to allow the applicant further time to make a submission.
- (4) Before finally deciding the application the Secretary must consider any submission made by the applicant in response to a notice under subsection (1) within the specified period, unless the applicant notifies the Secretary that the applicant does not want to make a submission.
- (5) Any information given by a person under subsection (1)(a)(iii) is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty other than—
 - (a) a proceeding in respect of an offence against this Act; or

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

30 Secretary must give NDIS exclusion to applicant who fails to make submission within timeframe

The Secretary must give an NDIS exclusion to an applicant for an NDIS check if, before the end of the period specified under section 29(2) or (3), the applicant—

- (a) does not make a submission in response to the notice under section 29(1); or
- (b) notifies the Secretary that the applicant does not want to make a submission.

Division 5—Outcome of application for NDIS check

31 Outcome of application for NDIS check

- (1) Subject to subsection (2), the Secretary must give an NDIS clearance on an application for an NDIS check.
- (2) The Secretary must give an NDIS exclusion to an applicant for an NDIS check who is refused an NDIS clearance under section 24, 26 or 28.

32 Notice to applicant for NDIS check of outcome of application

- (1) The Secretary must notify an applicant for an NDIS check in writing whether the applicant has been given an NDIS clearance or an NDIS exclusion.
- (2) If the Secretary has given an NDIS exclusion to the applicant, the notice under subsection (1) must—
 - (a) state the reasons for the decision to give the NDIS exclusion on the application; and

- (b) inform the applicant that the applicant may apply for internal review of the decision to give the NDIS exclusion and that, following internal review, the applicant may apply to VCAT.

Division 6—Duration of NDIS clearances

33 Duration of NDIS clearance

An NDIS clearance remains in force for 5 years beginning on the date on which the NDIS clearance was given unless it is sooner revoked under Division 5 of Part 2.4 or surrendered under Part 2.5.

Part 2.2—Change in circumstances of holder or applicant

34 Holder of NDIS clearance or applicant for NDIS check must notify Secretary of relevant change in circumstances

- (1) If a relevant change in circumstances occurs with respect to a person who holds an NDIS clearance or who has applied for an NDIS check and the application is still pending, that person must notify the Secretary in writing of the change within 7 days after becoming aware of the change.

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

- (2) For the purposes of subsection (1), each of the following is a relevant change in circumstances—
- (a) the person being charged with an NDIS category A offence or an NDIS category B offence;
 - (b) the person being convicted or found guilty of an NDIS category A offence or an NDIS category B offence or the charge otherwise being finally dealt with;
 - (c) the person becoming subject to reporting obligations imposed on the person by Part 3 of the **Sex Offenders Registration Act 2004**;
 - (d) the person becoming subject to a supervision order, a detention order or an emergency detention order;
 - (e) a relevant disciplinary or regulatory finding being made in relation to the person;
 - (f) the person being given a WWC exclusion.

- (3) It is a defence to a charge for an offence against subsection (1) constituted by not notifying the Secretary of how a charge for an offence was finally dealt with if—
- (a) the accused notified the Secretary of the filing of the charge-sheet containing the charge in accordance with subsection (1); and
 - (b) the Secretary re-assessed under Part 2.4 the accused's eligibility to hold an NDIS clearance; and
 - (c) the accused's NDIS clearance was not revoked following the re-assessment; and
 - (d) the charge was finally dealt with in any of the ways set out in section 6 other than by the accused being found guilty by a court.

Part 2.3—Further applications for NDIS checks

35 Time for application by holder of NDIS clearance or interstate NDIS clearance

A person who holds an NDIS clearance or an interstate NDIS clearance may apply for the carrying out of an NDIS check and a new NDIS clearance at any time within 3 months before the expiry of the person's NDIS clearance or interstate NDIS clearance.

36 Consideration of application for NDIS check made by holder of NDIS clearance

- (1) This section applies if—
 - (a) a person who holds an NDIS clearance applies in accordance with section 36 for the carrying out of an NDIS check; and
 - (b) the Secretary has not been notified of any relevant change in circumstances set out in section 34(2).
- (2) The Secretary may consider the application without having regard to any offence or conduct that was considered by the Secretary in relation to the decision to give the current NDIS clearance.

37 Restriction on right to make further application for an NDIS check—person given an NDIS exclusion

- (1) A person who has been given an NDIS exclusion is not entitled to make a further application under section 15 until 5 years have elapsed after the date on which that exclusion was given unless, since that date, there has been a relevant change in circumstances.

- (2) For the purposes of subsection (1) a relevant change in circumstances is—
- (a) a charge that was pending at the date of the NDIS exclusion 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 on which the NDIS exclusion was given; or
 - (c) the person ceasing to be subject to reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (d) the person being no longer subject to a supervision order, a detention order or an emergency detention order; or
 - (e) a relevant disciplinary or regulatory finding being quashed or set aside expressly or impliedly after the date on which the NDIS exclusion was given; or
 - (f) the person's WWC exclusion being deemed void under section 77 or being set aside, rendered inoperative or otherwise invalidated.
- (3) If a person who has been given an NDIS exclusion is subsequently given an NDIS clearance under a further application made under section 15(1), the NDIS exclusion is deemed to be void and of no effect from the date the NDIS clearance is given.

Part 2.4—Re-assessment of eligibility to hold NDIS clearance

Division 1—Re-assessment of eligibility to hold NDIS clearance

38 Re-assessment of eligibility to hold NDIS clearance

- (1) The Secretary must re-assess a person's eligibility to hold an NDIS clearance if—
 - (a) notified by the person of a relevant change in circumstances under section 34; or
 - (b) notified of a relevant disciplinary or regulatory finding being made against the person; or
 - (c) notified by the Chief Commissioner of Police under section 131 of a charge or of how a charge has been finally dealt with; or
 - (d) notified by a law enforcement agency of a charge or how a charge has been finally dealt with; or
 - (e) notified by an NDIS worker screening unit of a charge or how a charge has been finally dealt with in another State or a Territory; or
 - (f) the Secretary becomes aware that the person has been given a WWC exclusion on a WWC category C application or a WWC category C re-assessment.
- (2) The Secretary is not required to re-assess a person's eligibility to hold an NDIS clearance on being notified of a charge for an offence being finally dealt with if—
 - (a) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge; and

- (b) the clearance was not revoked following that re-assessment.
- (3) If the Secretary commences a re-assessment of a person's eligibility to hold an NDIS clearance, and the clearance expires before the re-assessment has been completed, the Secretary may complete the re-assessment.

39 Suspension powers on re-assessment of NDIS clearance

- (1) Subject to subsection (2), the Secretary must suspend a person's NDIS clearance in accordance with this section pending the carrying out and completion of a re-assessment if the Secretary becomes aware that—
 - (a) the person has become subject to reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) the person has become subject to a supervision order, a detention order or an emergency detention order; or
 - (c) the person has been charged with or been convicted or found guilty of an NDIS category A offence or an NDIS category B offence, where the conduct constituting or alleged to constitute the offence occurred when the person was an adult; or
 - (d) a banning order has been made in respect of the person.
- (2) The Secretary is not required to suspend a person's NDIS clearance pending the carrying out and completion of a re-assessment of that person's eligibility to hold an NDIS clearance if—
 - (a) the person is being re-assessed because the Secretary was notified of a charge for an offence being finally dealt with; and

- (b) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge.
- (3) If the person is being re-assessed because the Secretary was notified that the person has been charged with an NDIS category A offence or an NDIS category B offence, the Secretary may reinstate that person's NDIS clearance if, after the suspension of the clearance—
 - (a) the charge against the person is withdrawn; or
 - (b) the charge is dismissed by a court; or
 - (c) the person is acquitted of the offence by a court.
- (4) If a person's NDIS clearance is suspended under this section, the person is taken to not hold an NDIS clearance for the period of the suspension.
- (5) The Secretary must notify a person whose NDIS clearance is suspended under this section as soon as possible.

Division 2—Consideration of re-assessment

40 Consideration of re-assessment—NDIS clearance

- (1) On a re-assessment of a person's eligibility to hold an NDIS clearance, the Secretary—
 - (a) may have regard to any notice given to the Secretary by, and make enquiries to, any disciplinary or regulatory entity; and
 - (b) may make any other enquiries to, or seek information on the re-assessment from, any person or source that the Secretary thinks fit, including but not limited to—

- (i) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (ii) the Disability Worker Registration Board; and
 - (iii) the Victorian Disability Worker Commission; and
 - (iv) the Victorian Disability Worker Commissioner; and
 - (v) any authorised entity; and
 - (c) may require the person to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) On a re-assessment of a person's eligibility to hold an NDIS clearance, the Secretary—
- (a) is not required to consider any matter other than the matter that has given rise to the re-assessment; and
 - (b) may have regard to any offence or conduct that was considered by the Secretary in relation to the granting of the NDIS clearance.

Division 3—Determination of re-assessments

41 NDIS category A re-assessments

- (1) A re-assessment is an NDIS category A re-assessment if the Secretary is required to re-assess a person's eligibility to hold an NDIS clearance because the Secretary is notified that—

- (a) the person has become subject to reporting obligations imposed by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) the person has become subject to a supervision order, a detention order or an emergency detention order; or
 - (c) the person has been convicted or found guilty of an NDIS category A offence specified in clauses 1 to 58 of Schedule 1 if the conduct constituting that offence occurred when the person was an adult; or
 - (d) subject to section 43(2), the person has been convicted or found guilty of an NDIS category A offence specified in clauses 59 to 71 of Schedule 1 if the conduct constituting that offence occurred when the person was an adult.
- (2) For the purposes of this section, if the conduct constituting an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

42 Determination of NDIS category A re-assessment

The Secretary must revoke the person's NDIS clearance on an NDIS category A re-assessment.

43 NDIS category B re-assessments

- (1) A re-assessment is an NDIS category B re-assessment if the Secretary is required to re-assess a person's eligibility to hold an NDIS clearance because the Secretary is notified that—
- (a) the person has been charged with an NDIS category A offence if the conduct alleged to constitute that offence occurred when the person was an adult; or

- (b) the person has been charged with, convicted or found guilty of an NDIS category B offence if the conduct constituting or alleged to constitute that offence occurred when the person was an adult.
- (2) A re-assessment is an NDIS category B re-assessment if the Secretary is required to re-assess the person's eligibility to hold an NDIS clearance because the Secretary is notified the person has been convicted or found guilty of an NDIS category A offence specified in clauses 59 to 71 of Schedule 1 and—
 - (a) the conduct constituting that offence occurred when the person was an adult; and
 - (b) the victim of the offence was a child aged at least 14 years when the conduct constituting the offence occurred; and
 - (c) the person was not more than 5 years older than the victim when the conduct constituting the offence occurred; and
 - (d) the commission of the offence did not involve violence or coercion.
- (3) For the purposes of this section, if the conduct constituting an offence or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

44 Determination of NDIS category B re-assessment

The Secretary must revoke an NDIS clearance on an NDIS category B re-assessment, unless satisfied that there are exceptional circumstances having regard to the following—

- (a) the nature, gravity and circumstances of the offence or alleged offence;

- (b) the period of time that has passed since the offence or alleged offence was committed;
- (c) the vulnerability of the victim at the time the offence or alleged offence was committed;
- (d) the person's relationship to the victim at the time the offence or alleged offence was committed;
- (e) whether the person had a position of authority in relation to the victim at the time the offence or alleged offence was committed;
- (f) the person's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
- (g) the person's behaviour since the person committed, or allegedly committed, the offence;
- (h) all other relevant circumstances in respect of the person's offending, misconduct or other relevant history.

45 NDIS category C re-assessments

- (1) A re-assessment is an NDIS category C re-assessment if the Secretary is required to re-assess a person's eligibility to hold an NDIS clearance because the Secretary is notified that—
 - (a) the person has been charged with, convicted or found guilty of an offence other than an NDIS category A offence or an NDIS category B offence; or
 - (b) the person has been charged with, convicted or found guilty of an NDIS category A offence or an NDIS category B offence if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or

- (c) the person has been charged with an NDIS category A offence or an NDIS category B offence and the charge has been finally dealt with other than by way of conviction or a finding of guilt; or
- (d) the person has been convicted or found guilty outside Australia of an offence that if committed in Victoria would be an NDIS category A offence or an NDIS category B offence; or
- (e) the person has become subject to a relevant disciplinary or regulatory finding; or
- (f) the person has become subject to any relevant civil penalty imposed under the NDIS Act.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

- (2) A re-assessment is an NDIS category C re-assessment if the Secretary is required to re-assess the person's eligibility to hold an NDIS clearance because the Secretary becomes aware that the person has been given a WWC exclusion on a WWC category C application or a WWC category C re-assessment.
- (3) For the purposes of this section, if the conduct constituting an offence or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

46 Determination of NDIS category C re-assessment

The Secretary must not revoke an NDIS clearance on an NDIS category C re-assessment unless satisfied that the person poses an unacceptable

risk of harm to persons with a disability, having regard to the following—

- (a) the nature, gravity and circumstances of the conduct;
- (b) the period of time that has passed since the person engaged, or allegedly engaged, in the conduct;
- (c) the vulnerability of the victim at the time the person engaged, or allegedly engaged, in the conduct;
- (d) the person's relationship to the victim at the time the person engaged, or allegedly engaged, in the conduct;
- (e) whether the person had a position of authority in relation to the victim at the time the person engaged, or allegedly engaged, in the conduct;
- (f) the person's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
- (g) the person's behaviour since the person engaged, or allegedly engaged, in the conduct;
- (h) all other relevant circumstances in respect of the person's offending, misconduct or other relevant history.

Division 4—Intention to revoke NDIS clearance

47 Submission sought from holder before determining to revoke NDIS clearance

- (1) If the Secretary proposes or is required under section 42, 44 or 46 to revoke a person's NDIS clearance, the Secretary must, before finally deciding the re-assessment—

- (a) give a written notice to the person that—
 - (i) informs the person of the proposal or requirement; and
 - (ii) states the information about the person of which the Secretary is aware; and
 - (iii) invites the person to make a submission to the Secretary in writing or in another form approved by the Secretary within the timeframe specified in the notice; and
 - (b) give an interim NDIS exclusion to the person.
- (2) The period specified in the notice under subsection (1) must not be less than—
- (a) in the case of an NDIS category A re-assessment, 14 days; and
 - (b) in the case of an NDIS category B re-assessment or an NDIS category C re-assessment, 28 days.
- (3) The Secretary may extend the period specified in a notice for an NDIS category A re-assessment if the person satisfies the Secretary that it is appropriate to allow the person further time to make a submission.
- (4) Before finally determining whether to revoke the person's NDIS clearance, the Secretary must consider any submission made by the person in response to a notice under subsection (1) within the specified period, unless the person notifies the Secretary that the person does not want to make a submission.

- (5) Any information given by a person under subsection (1)(a)(iii) is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty other than—
 - (a) a proceeding in respect of an offence against this Act; or
 - (b) a proceeding in respect of the falsity or misleading nature of the information.
- (6) If the Secretary—
 - (a) gives the person who holds the NDIS clearance an interim NDIS exclusion under subsection (1)(b); and
 - (b) finally determines not to revoke that NDIS clearance—

the Secretary must give notice in writing to the person of the determination not to revoke the NDIS clearance.

48 Person given interim NDIS exclusion on re-assessment taken not to hold an NDIS clearance

A person who is given an interim NDIS exclusion under section 47(1)(b) is taken to not hold an NDIS clearance until the Secretary finally determines the re-assessment, unless the Secretary earlier revokes the person's NDIS clearance under section 50.

Division 5—Revocation of NDIS clearance

49 Revocation of NDIS clearance on failure to provide information during re-assessment

- (1) If a person being re-assessed under section 38 fails to provide information to the Secretary in accordance with section 40(1)(c), the Secretary must revoke the person's NDIS clearance in accordance with this section.

- (2) If the Secretary is required to revoke a person's NDIS clearance under subsection (1), the Secretary must give the person an NDIS exclusion.
- (3) The Secretary must notify the person referred to in subsection (1) of the Secretary's intention to revoke the person's NDIS clearance at least 7 days before the Secretary revokes the clearance.
- (4) As soon as possible after revoking a person's NDIS clearance under subsection (1), the Secretary must notify the person of the revocation and giving of the NDIS exclusion.

50 Revocation of NDIS clearance on failure to respond to notice

- (1) The Secretary must revoke an NDIS clearance if the person who holds that NDIS clearance does not make a submission in response to a notice given to the person under section 47(1) within the period specified under section 47(2) or 47(3) unless the person notifies the Secretary that the person does not want to make a submission.
- (2) If the Secretary revokes a person's NDIS clearance under subsection (1), the Secretary must give the person an NDIS exclusion.
- (3) The Secretary must notify the person whose NDIS clearance has been revoked under subsection (1) as soon as possible after the revocation of the clearance.

51 Revocation of NDIS clearance after completing re-assessment

- (1) If the Secretary revokes a person's NDIS clearance under section 42, 44 or 46, the Secretary must give the person an NDIS exclusion.

- (2) If the Secretary revokes a person's NDIS clearance, the Secretary must give the person a written notice that—
- (a) states the reasons for revoking the person's NDIS clearance; and
 - (b) informs the person that the person has been given an NDIS exclusion; and
 - (c) informs the person that the person may apply for internal review of the decision to revoke the clearance and that, following internal review, the person may apply to VCAT.

Part 2.5—Surrender of NDIS clearance

52 Holder of NDIS clearance may surrender clearance with approval of Secretary

On request of a person who holds an NDIS clearance, the Secretary may permit the person to surrender that clearance unless the person is subject to a re-assessment of the person's eligibility to hold an NDIS clearance at the time that the request is made.

Chapter 3—WWC worker screening

Part 3.1—Applications for WWC checks

Division 1—Making an application for a WWC check

53 Who may apply for a WWC check

A person may apply to the Secretary for a WWC check to be carried out on the person and a WWC clearance to be given on completion of that check.

54 How to apply for a WWC check

- (1) An application for a WWC check must—
 - (a) be in the approved application form for a WWC check; and
 - (b) subject to subsection (3), be signed by the applicant; and
 - (c) be accompanied by the approved identifying information; and
 - (d) include the authorisations and consents referred to in subsection (2); and
 - (e) unless the applicant holds an NDIS clearance, be accompanied by the prescribed application fee; and
 - (f) include any prescribed information; and
 - (g) state whether the child-related work in which the applicant is engaged or intends to engage is for profit or gain; and
 - (h) contain the name, address and telephone number of each person with whom the applicant is engaged in child-related work.

- (2) An applicant for a WWC check must—
 - (a) authorise the conduct of a police record check on the applicant in connection with the consideration of the application and, if a WWC clearance is given, from time to time while that clearance remains in force; and
 - (b) consent to enquiries being made about the applicant to the ACC or any disciplinary or regulatory entity in connection with the consideration of the application and, if a WWC clearance is given, from time to time while that clearance remains in force; and
 - (c) authorise the disclosure of any relevant information by any disciplinary or regulatory entity for the purposes of the enquiries described in paragraph (b).
- (3) The Secretary must enable reasonable modifications to be made in relation to the requirement set out in subsection (1)(b) if the applicant has a disability that prevents the applicant signing an application.
- (4) Despite subsection (1)(c), the Secretary may consider an application that does not include all the approved identifying information.
- (5) If the Secretary receives an application that does not include all the information required by this section, the Secretary may require the applicant to provide the information in the manner required by the Secretary within 28 days or any longer period determined by the Secretary.
- (6) If an applicant has included approved identifying information for a previous application for a WWC check completed within 5 years and 3 months before the current application, the Secretary may exempt the applicant from the requirement to

provide approved identifying information under subsection (1)(c).

- (7) If an application for a WWC check specifies that the applicant is engaged or intends to engage in child-related work described in section 7(6), that application is taken not to specify an intention to engage in child-related work for profit or gain.

55 Secretary may refuse to consider application for WWC check

- (1) If a person who has applied for a WWC check makes a further application for another WWC check, the Secretary may refuse to consider the first application for the WWC check and that first application is to be treated as being withdrawn on the date of receipt of the further application.
- (2) If a person who holds a current WWC clearance applies for another WWC check, the Secretary may refuse to consider the application for the further WWC check until the holder surrenders to the Secretary any current WWC clearance document that was given to the applicant in respect of the first WWC clearance.

56 Application for WWC check by applicant who has previously been given a WWC exclusion

If a person who has been given a WWC exclusion applies for a WWC check, the Secretary must not consider the application further unless the Secretary has been notified in writing that there has been a relevant change in circumstances within the meaning of section 77 relating to the giving of the exclusion.

57 Application for WWC check by exempt applicant

- (1) The Secretary may consider an application for a WWC check even though the applicant is exempt under this or any other Act from a WWC check.

- (2) Nothing in subsection (1) requires the Secretary to consider an application for a WWC check from an applicant who is exempt under this or any other Act from a WWC check.
- (3) If the Secretary refuses to consider an application on the basis that the person applying is exempt from the requirement to have a WWC check under this or any other Act, the application is to be treated as having been withdrawn.

Division 2—Consideration of applications for WWC checks

58 Consideration of application for WWC check

- (1) The Secretary must arrange for a police record check to be conducted on an applicant for a WWC check.
- (2) In considering an application for a WWC check, the Secretary may—
 - (a) have regard to any notice given to the Secretary by, and make enquiries to, any disciplinary or regulatory entity; and
 - (b) make any other enquiries to, or seek information on the application from, any person or source that the Secretary thinks fit, including but not limited to the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**.
- (3) The Secretary may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.

- (4) Despite subsection (1), the Secretary is not required to 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.
- (5) In considering an application for a WWC check, the Secretary must make enquiries of the ACC in relation to any decision made in another State or a Territory in relation to an application made by or a clearance (however described) granted to the applicant under a corresponding working with children law.

59 Withdrawal of application for WWC check

- (1) An applicant for a WWC check may withdraw the application at any time before the first of the following to occur—
 - (a) the Secretary gives the applicant an interim WWC exclusion under section 66(1)(b);
 - (b) the Secretary finally decides the application.
- (2) The Secretary must treat an application as having been withdrawn if the applicant does not provide any information required under section 54(5) or further information required under section 58(3) within the period required under that section.
- (3) Despite subsection (2), the Secretary may, if the information referred to in that subsection is provided after the required period, reinstate the application as if it were an application under section 54.

(4) 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 or reinstated under this section—

the Secretary, if the Secretary is aware of the identity of that other person or that agency, must notify that other person or that agency of the withdrawal or reinstatement.

Note

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

Division 3—Determination of applications for WWC checks

60 WWC category A applications

- (1) An application for a WWC check is a WWC category A application if it is in respect of a person—
 - (a) who is subject to reporting obligations imposed on the person by Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) who is subject to a supervision order, a detention order or an emergency detention order; or
 - (c) who is charged with or has at any time been convicted or found guilty of a WWC category A offence specified in clause 1 or 2 of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or

- (d) who is charged with or has at any time been convicted or found guilty of a WWC category A offence other than an offence specified in clause 1 or 2 of Schedule 2; or
 - (e) who has been excluded from child-related work under a corresponding working with children law in circumstances equivalent to those set out in paragraph (c) or (d).
- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

61 Determination of WWC category A application

- (1) Subject to this section, the Secretary must refuse to give a WWC clearance on a WWC category A application.
- (2) Despite subsection (1), the Secretary may give a WWC clearance on a WWC category A application if—
 - (a) the application is in respect of a person who has at any time been given a WWC clearance because of an order made by VCAT—
 - (i) under section 106(8); or
 - (ii) under an equivalent provision of the **Working with Children Act 2005** before the repeal of that Act; and
 - (b) a relevant change in circumstances (within the meaning of section 77) has not occurred with respect to the person; and
 - (c) the Secretary is satisfied that exceptional circumstances do not exist with respect to the person that justify the refusal of the WWC clearance.

62 WWC category B applications

- (1) An application for a WWC check is a WWC category B application if it is in respect of a person—
 - (a) who is charged with or has at any time been convicted or found guilty of a WWC category B offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (b) who is charged with or has at any time been convicted or found guilty of a WWC category B offence other than an offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4; or
 - (c) who is charged with or has at any time been convicted or found guilty of a WWC category A offence specified in clause 1 or 2 of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or
 - (d) who has been excluded from child-related work under a corresponding working with children law other than in circumstances equivalent to those set out in section 60(1)(c) or (d).
- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

63 Determination of WWC category B application

- (1) The Secretary must refuse to give a WWC clearance on a WWC category B 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) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
 - (e) the ages of the applicant and of any victim at the time the applicant committed, or allegedly committed, the offence; and
 - (f) whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the applicant committed, or allegedly committed, the offence; and
 - (g) the applicant's behaviour since the applicant committed, or allegedly committed, the offence; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that the Secretary considers relevant to the application.

- (2) For the purposes of subsection (1), in order to be satisfied that giving a WWC clearance would not pose an unjustifiable risk to the safety of children, the Secretary must be satisfied that—
- (a) a reasonable person would allow their child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

64 WWC category C applications

- (1) An application for a WWC check is a WWC category C application if it is in respect of a person—
- (a) who has at any time been subject to a relevant disciplinary or regulatory finding; or
 - (b) who is charged with or has at any time been convicted or found guilty of a WWC category B offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or
 - (c) who is charged with or has at any time been convicted or found guilty of an offence other than a WWC category A offence or a WWC category B offence; or
 - (d) who, not more than 5 years before the application was made, has been given an NDIS exclusion on an NDIS category C application or an NDIS category C re-assessment; or

- (e) who has at any time been charged with an offence specified in clause 2 of Schedule 5 if the charge has been finally dealt with other than by way of a conviction or a finding of guilt.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

65 Determination of WWC category C application

- (1) The Secretary must give a WWC clearance on a WWC category C application unless—
 - (a) the Secretary is satisfied that giving the WWC clearance would pose an unjustifiable risk to the safety of children having regard to the factors set out in subsection (2); or
 - (b) the Secretary is satisfied that—
 - (i) a reasonable person would not allow their child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; or
 - (ii) the applicant's engagement in any type of child-related work would pose an unjustifiable risk to the safety of children.
- (2) For the purposes of subsection (1)(a), 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 engaged, or allegedly engaged, in the conduct; and
- (c) in the case of an offence, whether a finding of guilt or a conviction was recorded for it or a charge for it is still pending; and
- (d) in the case of an offence, the sentence imposed for it; and
- (e) the ages of the applicant and of any victim at the time the applicant engaged, or allegedly engaged, in the conduct; and
- (f) whether or not the conduct has been decriminalised or has ceased to be subject to disciplinary charges since the applicant engaged, or allegedly engaged, in it; and
- (g) the applicant's behaviour since the applicant engaged, or allegedly engaged, in the conduct; and
- (h) the likelihood of future threat to a child caused by the applicant; and
- (i) any information given by the applicant in, or in relation to, the application; and
- (j) any other matter that the Secretary considers relevant to the application.

Division 4—Intention to give WWC exclusion on application for WWC check

66 Secretary to notify applicant for WWC check of intention to exclude

- (1) If the Secretary is required to refuse or proposes to refuse to give a WWC clearance under section 61, 63 or 65, the Secretary must before finally deciding the application for a WWC check—

- (a) give a written notice to the applicant that—
 - (i) informs the applicant of the proposal or requirement; and
 - (ii) states the information about the applicant of which the Secretary is aware; and
 - (iii) invites the applicant to make a submission to the Secretary in writing or in another form approved by the Secretary within the timeframe specified in the notice; and
 - (b) give the applicant an interim WWC exclusion.
- (2) The period specified in the notice under subsection (1) must not be less than—
- (a) in the case of a WWC category A application, 14 days; or
 - (b) in the case of a WWC category B application or a WWC category C application, 28 days.
- (3) The Secretary may extend the period specified in a notice for a WWC category A application if the applicant satisfies the Secretary that it is appropriate to allow the applicant further time to make a submission.
- (4) Before finally deciding the application the Secretary must consider any submission made by the applicant in response to a notice under subsection (1) within the specified period, unless the applicant notifies the Secretary that the applicant does not want to make a submission.

- (5) Any information given by a person under subsection (1)(a)(iii) is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty other than—
- (a) a proceeding in respect of an offence against this Act; or
 - (b) a proceeding in respect of the falsity or misleading nature of the information.

67 Secretary must give WWC exclusion to applicant who fails to make submission within timeframe

The Secretary must give a WWC exclusion to an applicant for a WWC check if, before the end of the period specified in section 66(2) or (3), the applicant—

- (a) does not make a submission in response to a notice under section 66(1); or
- (b) notifies the Secretary that the applicant does not want to make a submission.

Division 5—Outcome of application for WWC check

68 Outcome of application for WWC check

- (1) Subject to subsection (2), the Secretary must give a WWC clearance on an application for a WWC check.
- (2) The Secretary must give a WWC exclusion to an applicant who is refused a WWC clearance under section 61, 63 or 65.
- (3) A WWC clearance document must—
 - (a) state that the person in respect of whom it was given has passed a WWC check; and

- (b) if given on an application that did not specify an intention to engage in child-related work for profit or gain, state that the WWC clearance cannot be used in respect of child-related work engaged in for profit or gain.

69 Notice to applicant for WWC check of outcome of application

- (1) The Secretary must notify an applicant for a WWC check in writing whether the applicant has been given a WWC clearance or a WWC exclusion.
- (2) If the Secretary has given a WWC exclusion to the applicant, the notice under subsection (1) must—
 - (a) state the reasons for the decision to give the exclusion on the application; and
 - (b) inform the applicant that, in limited circumstances, the applicant may apply to VCAT to have the decision reviewed or, in the case of a WWC category A application, to have VCAT consider whether a WWC clearance is to be given; and
 - (c) explain how an application may be made to VCAT.

70 Copy of WWC clearance or WWC exclusion to be given to employer or agency

If the Secretary—

- (a) gives a WWC clearance, a WWC exclusion or an interim WWC exclusion 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, if the Secretary is aware of the identity of that other person or that agency, must also give a copy of the WWC clearance, WWC exclusion or WWC interim exclusion to that other person or that agency.

Note

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

Division 6—Duration of a WWC clearance

71 Duration of a WWC clearance

A WWC clearance remains in force for 5 years beginning on the date on which the WWC clearance was given unless it is sooner revoked under Division 5 of Part 3.4 or surrendered under Part 3.5.

Part 3.2—Change to employer or circumstances of holder or applicant

72 Holder of WWC clearance or applicant for WWC check must notify of relevant change in circumstances

- (1) If a relevant change in circumstances occurs with respect to a person who holds a WWC clearance or who has applied for a WWC check and the application is still pending, that person must notify the following in writing of the change within 7 days after becoming aware of the change—
- (a) the Secretary;
 - (b) any person by whom the person is engaged in child-related work;
 - (c) any agency with which the person is listed.

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

Note

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

- (2) For the purposes of subsection (1), each of the following is a relevant change in circumstances—
- (a) the person being charged with a WWC category A offence or a WWC category B offence;
 - (b) the person being convicted or found guilty of a WWC category A offence or a WWC category B offence or the charge being otherwise finally dealt with;
 - (c) the person becoming subject to reporting obligations imposed by Part 3 of the **Sex Offenders Registration Act 2004**;

- (d) the person becoming subject to a supervision order, a detention order or an emergency detention order;
 - (e) a relevant disciplinary or regulatory finding being made in relation to the person;
 - (f) the person being given an NDIS exclusion;
 - (g) the person being excluded from child-related work under a corresponding working with children law.
- (3) It is a defence to a charge for an offence against subsection (1) constituted by not notifying the Secretary of how a charge for an offence was finally dealt with if—
- (a) the accused notified the Secretary of the filing of the charge-sheet containing the charge in accordance with subsection (1); and
 - (b) the Secretary re-assessed under Part 3.4 the accused's eligibility to hold a WWC clearance; and
 - (c) the accused's WWC clearance was not revoked following the re-assessment; and
 - (d) the charge was finally dealt with in any of the ways set out in section 6 other than by the accused being found guilty by a court.

73 Notification of change in employer of holder of WWC clearance or applicant for WWC check

- (1) This section applies if—
- (a) a person has a current WWC clearance or has applied for a WWC check and the application is still pending; and
 - (b) there is a change in any person by whom the person is engaged in child-related work or any agency with which the person is listed.

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Part 3.2—Change to employer or circumstances of holder or applicant

- (2) The holder of the WWC clearance or applicant for the WWC check must notify the Secretary of the change and the name, address and telephone number of each person with whom the holder or applicant will be engaged in child-related work within 21 days after becoming aware of the change.

Penalty: 1 penalty unit.

- (3) If a holder of a WWC clearance or applicant for a WWC check notifies the Secretary that the holder or applicant is not, or is no longer, engaged in child-related work with a person or listed with an agency, the Secretary may notify that person or agency in writing of the information in the notification.

Part 3.3—Further applications for WWC checks

74 Time for application for WWC check by holder of WWC clearance

A person who holds a current WWC clearance may apply for the carrying out of a WWC check and a new WWC clearance at any time within the period beginning 6 months before, and ending 3 months after, the expiry of the current WWC clearance.

75 Consideration of application for WWC check made by holder of WWC clearance

- (1) This section applies if—
 - (a) a person who holds a current WWC clearance applies in accordance with section 74 for the carrying out of a WWC check; and
 - (b) the Secretary has not been notified of any relevant change in circumstances set out in section 72(2).
- (2) The Secretary may consider the application without having regard to any offence or conduct that was considered by the Secretary in relation to the giving of the current WWC clearance.

76 Further application for WWC check by holder of current WWC volunteer clearance

- (1) This section applies if—
 - (a) a person who has a current WWC volunteer clearance applies for the carrying out of a WWC check; and
 - (b) the application specifies that the child-related work that the person engages in or intends to engage in is for profit or gain; and

- (c) the Secretary has not been notified of any relevant change in circumstances under section 72(2).
- (2) The Secretary may consider the application without having regard to any offence or conduct that was considered by the Secretary in relation to the giving of the current WWC volunteer clearance.
- (3) In this section—

WWC volunteer clearance means a WWC clearance, the application for which does not specify that the child-related work that the applicant engages in or intends to engage in is for profit or gain.

77 Restriction on right to make further application for WWC check—person given a WWC exclusion

- (1) A person who has been given a WWC exclusion is not entitled to make a further application under section 54 until 5 years have elapsed after the date on which that exclusion was given unless, since that date, there has been a relevant change in circumstances.
- (2) For the purposes of subsection (1) a relevant change in circumstances is—
 - (a) a charge that was pending at the date of the WWC exclusion 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 on which the WWC exclusion was given; or
 - (c) the person no longer being excluded from child-related work under a corresponding working with children law; or

- (d) the person ceasing to be subject to reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (e) the person being no longer subject to a supervision order, a detention order or an emergency detention order; or
 - (f) a relevant disciplinary or regulatory finding being quashed or set aside expressly or impliedly after the date on which the WWC exclusion was given; or
 - (g) the person's NDIS exclusion being deemed void under section 37 or being set aside, rendered inoperative or otherwise invalidated.
- (3) If a person who has been given a WWC exclusion is subsequently given a WWC clearance under a further application made under section 54, the WWC exclusion is deemed to be void and of no effect from the date the WWC clearance is given.

Part 3.4—Re-assessment of eligibility to hold a WWC clearance

Division 1—Re-assessment of eligibility to hold WWC clearance

78 Re-assessment of eligibility to hold WWC clearance

- (1) The Secretary must re-assess a person's eligibility to hold a WWC clearance if—
 - (a) notified by the person of a relevant change in circumstances under section 72; or
 - (b) notified of a relevant disciplinary or regulatory finding being made against the person; or
 - (c) notified by the Chief Commissioner of Police under section 131 of a charge or of how a charge has been finally dealt with; or
 - (d) notified by a law enforcement agency of a charge or of how a charge has been finally dealt with; or
 - (e) notified by the ACC that the person has been excluded from child-related work under a corresponding working with children law; or
 - (f) the Secretary becomes aware that the person has been given an NDIS exclusion on an NDIS category C application or an NDIS category C re-assessment.
- (2) The Secretary is not required to re-assess a person's eligibility to hold a WWC clearance on being notified of a charge for an offence being finally dealt with if—
 - (a) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge; and

- (b) the clearance was not revoked following that re-assessment.
- (3) For the purposes of Part 6.2 or 6.3, a person must be regarded as still holding a current WWC clearance if—
 - (a) an interim WWC exclusion has been given under section 88(1)(b); and
 - (b) the person's WWC clearance—
 - (i) has not been revoked under section 91 following the re-assessment; or
 - (ii) has not been surrendered under section 93; or
 - (iii) has not expired.

79 Suspension powers on re-assessment of WWC clearance

- (1) Despite section 78(3) and subject to subsection (2), the Secretary must suspend a person's WWC clearance in accordance with this section pending the carrying out and completion of a re-assessment if the Secretary becomes aware that—
 - (a) the person has become subject to an obligation or order specified in clause 1 of Schedule 5; or
 - (b) the person has been charged with or been convicted or found guilty of an offence specified in clause 2 of Schedule 5; or
 - (c) the person has been excluded from child-related work under a corresponding working with children law.
- (2) The Secretary is not required to suspend a person's WWC clearance pending the carrying out and completion of a re-assessment of that person's eligibility to hold a WWC clearance if—

- (a) the person is being re-assessed because the Secretary was notified of a charge for an offence being finally dealt with; and
 - (b) a re-assessment was carried out on the Secretary being notified of the filing of the charge-sheet containing the charge.
- (3) If the person is being re-assessed because the Secretary was notified that the person has been charged with an offence specified in clause 2 of Schedule 5, the Secretary may reinstate that person's WWC clearance if, after the suspension of the clearance—
 - (a) the charge against the person is withdrawn; or
 - (b) the charge is dismissed by a court; or
 - (c) the person is acquitted of the offence by a court.
- (4) If a person's WWC clearance is suspended under this section, the person is taken to not hold a WWC clearance for the period of the suspension.

80 Secretary must notify WWC clearance holder, employer and agency of suspension

- (1) If the Secretary suspends a WWC clearance under section 79, the Secretary must notify the person whose WWC clearance is suspended as soon as possible.
- (2) If the Secretary is aware that a person whose WWC clearance is suspended under section 79—
 - (a) is, or is proposed to be, engaged in child-related work by another person; or

- (b) is listed with an agency—
the Secretary, if the Secretary is aware of the identity of that other person or that agency, must notify that other person or agency in writing of the suspension.
- (3) If the Secretary finally determines not to revoke a WWC clearance that has been suspended under section 79, the Secretary must give notice in writing of that determination to any person or agency notified of the suspension under subsection (2).

Division 2—Consideration of re-assessment

81 Consideration of re-assessment—WWC clearance

- (1) On a re-assessment of a person's eligibility to hold a WWC clearance, the Secretary—
 - (a) may have regard to any notice given to the Secretary by, and make enquiries to, any disciplinary or regulatory entity; and
 - (b) may make any other enquiries to, or seek information on the re-assessment from, any person or source that the Secretary thinks fit, including the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (c) may require the person to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) On a re-assessment of a person's eligibility to hold a WWC clearance, the Secretary—
 - (a) is not required to consider any matter other than the matter that has given rise to the re-assessment; and

- (b) may have regard to any offence or conduct that was considered by the Secretary in relation to the giving of the WWC clearance.

Division 3—Determination of re-assessments

82 WWC category A re-assessments

- (1) A re-assessment is a WWC category A re-assessment if the Secretary is required to re-assess a person's eligibility to hold a WWC clearance because the Secretary is notified that—
 - (a) the person has become subject to reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (b) the person has become subject to a supervision order, a detention order or an emergency detention order; or
 - (c) the person has been charged with or convicted or found guilty of a WWC category A offence specified in clause 1 or 2 of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (d) the person has been charged with or convicted or found guilty of a WWC category A offence other than an offence specified in clause 1 or 2 of Schedule 2; or
 - (e) the person has been excluded from child-related work under a corresponding working with children law in circumstances equivalent to those set out in paragraph (c) or (d).
- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an

adult, that conduct occurs when the person was an adult.

83 Determination of WWC category A re-assessment

The Secretary must revoke the person's WWC clearance on a WWC category A re-assessment.

84 WWC category B re-assessments

- (1) A re-assessment is a WWC category B re-assessment if the Secretary is required to re-assess a person's eligibility to hold a WWC clearance because the Secretary is notified that—
 - (a) the person has been charged with or convicted or found guilty of a WWC category B offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4 if the conduct constituting or alleged to constitute that offence occurred when the person was an adult; or
 - (b) the person has been charged with or convicted or found guilty of a WWC category B offence other than an offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4; or
 - (c) the person has been charged with or convicted or found guilty of a WWC category A offence specified in clause 1 or 2 of Schedule 2 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or
 - (d) the person has been excluded from child-related work under a corresponding working with children law other than in circumstances equivalent to those set out in section 82(1)(c) or (d).

- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

85 Determination of WWC category B re-assessment

- (1) The Secretary must revoke a WWC clearance on a WWC category B re-assessment unless satisfied that the person holding the WWC clearance 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 person committed, or allegedly committed, the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
 - (e) the ages of the person holding the WWC clearance and of any victim at the time the person holding the WWC clearance committed, or allegedly committed, the offence; and
 - (f) whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the person committed, or allegedly committed, the offence; and
 - (g) the person's behaviour since the person committed, or allegedly committed, the offence; and

- (h) the likelihood of future threat to a child caused by the person holding the WWC clearance; and
 - (i) any information given by the person in, or in relation to, the re-assessment; and
 - (j) any other matter that the Secretary considers relevant to the re-assessment.
- (2) In determining whether a person holding a WWC clearance would not pose an unjustifiable risk to the safety of children, the Secretary must be satisfied that—
 - (a) a reasonable person would allow their child to have direct contact with the person holding the WWC clearance while that person was engaged in any type of child-related work; and
 - (b) the person's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

86 WWC category C re-assessments

- (1) A re-assessment is a WWC category C re-assessment if the Secretary is required to re-assess a person's eligibility to hold a WWC clearance because the Secretary is notified that—
 - (a) the person has become subject to a relevant disciplinary or regulatory finding; or
 - (b) the person has been charged with or convicted or found guilty of a WWC category B offence specified in clause 2, 8, 9, 15 or 22 of Schedule 4 if the conduct constituting or alleged to constitute that offence occurred when the person was a child; or

- (c) the person has been charged with, convicted or found guilty of an offence other than a WWC category A offence or a WWC category B offence; or
- (d) the person has been charged with an offence specified in clause 2 of Schedule 5 and the charge has been finally dealt with other than by way of a conviction or a finding of guilt.

Note

For examples of the ways a charge may be finally dealt with, see section 6(1).

- (2) A re-assessment is a WWC category C re-assessment if the Secretary is required to re-assess the person's eligibility to hold a WWC clearance because the Secretary becomes aware that the person has been given an NDIS exclusion on an NDIS category C application or an NDIS category C re-assessment.
- (3) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

87 Determination of WWC category C re-assessment

- (1) The Secretary must not revoke a WWC clearance on a WWC category C re-assessment unless—
 - (a) the Secretary is satisfied that the person holding the WWC clearance would pose an unjustifiable risk to the safety of children having regard to the factors set out in subsection (2); or

- (b) the Secretary is satisfied that—
 - (i) a reasonable person would not allow their child to have direct contact with the holder of the WWC clearance while the holder was engaged in any type of child-related work; or
 - (ii) the holder's engagement in any type of child-related work would pose an unjustifiable risk to the safety of children.
- (2) For the purposes of subsection (1)(a), 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 holder of the WWC clearance engaged, or allegedly engaged, in the conduct; and
 - (c) in the case of an offence, whether a finding of guilt or a conviction was recorded for it or a charge for it is still pending; and
 - (d) in the case of an offence, the sentence imposed for it; and
 - (e) the ages of the holder and of any victim at the time the holder engaged, or allegedly engaged, in the conduct; and
 - (f) whether or not the conduct has been decriminalised or has ceased to be subject to disciplinary charges since the holder engaged, or allegedly engaged, in it; and
 - (g) the holder's behaviour since the holder engaged, or allegedly engaged, in the conduct; and

- (h) the likelihood of future threat to a child caused by the holder; and
- (i) any information given by the holder in, or in relation to, the re-assessment; and
- (j) any other matter that the Secretary considers relevant to the re-assessment.

Division 4—Intention to revoke WWC clearance

88 Submission sought from holder before determining to revoke WWC clearance

- (1) If the Secretary proposes or is required under section 83, 85 or 87 to revoke a person's WWC clearance, the Secretary must, before finally deciding the re-assessment—
 - (a) give a written notice to the person that—
 - (i) informs the person of the proposal or requirement; and
 - (ii) states the information about the person of which the Secretary is aware; and
 - (iii) invites the person to make a submission to the Secretary in writing or in another form approved by the Secretary within the timeframe specified in the notice; and
 - (b) give an interim WWC exclusion to the person.
- (2) The period specified in the notice under subsection (1) must not be less than—
 - (a) in the case of a WWC category A re-assessment, 14 days; and
 - (b) in the case of a WWC category B re-assessment or a WWC category C re-assessment, 28 days.

- (3) The Secretary may extend the period specified in a notice for a WWC category A re-assessment if the person satisfies the Secretary that it is appropriate to allow the person further time to make a submission.
- (4) Before finally determining whether to revoke the person's WWC clearance, the Secretary must consider any submission made by the person in response to a notice under subsection (1) within the specified period, unless the person notifies the Secretary that the person does not want to make a submission.
- (5) Any information given by the person under subsection (1)(a)(iii) is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty, other than—
 - (a) a proceeding in respect of an offence against this Act; or
 - (b) a proceeding in respect of the falsity or misleading nature of the information.
- (6) If the Secretary—
 - (a) gives the person who holds the WWC clearance an interim WWC exclusion under subsection (1)(b); and
 - (b) finally determines not to revoke that WWC clearance—

the Secretary must give notice in writing to the person of the determination not to revoke the WWC clearance.

Division 5—Revocation of WWC clearance

89 Revocation of WWC clearance on failure to provide information during re-assessment

- (1) Despite section 78(3), if a person being re-assessed under section 78 fails to provide information to the Secretary in accordance with section 81(1)(c), the Secretary may revoke the person's WWC clearance in accordance with this section.
- (2) The Secretary must notify the person referred to in subsection (1) of the Secretary's intention to revoke the person's WWC clearance at least 7 days before the Secretary revokes the clearance.
- (3) The Secretary is not required to continue to carry out or complete the re-assessment of the person whose WWC clearance has been revoked under subsection (1).
- (4) If the Secretary revokes a person's WWC clearance under subsection (1), the Secretary must give the person a WWC exclusion.
- (5) The Secretary must notify the person whose WWC clearance has been revoked under subsection (1) as soon as possible after the revocation of the clearance and the giving of the WWC exclusion.
- (6) If the Secretary is aware that the person whose WWC clearance has been revoked under subsection (1) is a person who—
 - (a) is, or is proposed to be, engaged in child-related work by another person; or
 - (b) is listed with an agency—the Secretary, if the Secretary is aware of the identity of that other person or that agency, must

notify that other person or agency in writing of the revocation of the person's WWC clearance.

- (7) Nothing in this section prevents the former holder of a WWC clearance applying for another WWC clearance under this Act.

90 Revocation of WWC clearance on failure to respond to notice

- (1) The Secretary must revoke a WWC clearance if the person who holds that WWC clearance does not make a submission in response to a notice given to the person under section 88(1) within the period specified under section 88(2) or (3) unless the person notifies the Secretary that the person does not want to make a submission.
- (2) If the Secretary revokes a person's WWC clearance under subsection (1), the Secretary must give the person a WWC exclusion.
- (3) The Secretary must notify the person whose WWC clearance has been revoked under subsection (1) as soon as possible after the revocation of the clearance.

91 Revocation of WWC clearance after completing re-assessment and surrender of document

- (1) If the Secretary revokes a person's WWC clearance under section 83, 85 or 87, the Secretary must give the person a WWC exclusion.
- (2) If the Secretary revokes a person's WWC clearance, the Secretary must give the person a written notice that—
- (a) states the reasons for revoking the person's WWC clearance and giving the person a WWC exclusion; and
- (b) informs the person that, in limited circumstances, the person may apply to VCAT to have the decision reviewed or, in

the case of a WWC category A re-assessment, to have VCAT consider whether a WWC clearance is to be given; and

(c) explains how an application may be made to VCAT.

- (3) The Secretary may give a notice to a person whose WWC clearance is revoked or has expired requiring the person to surrender the WWC clearance 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 under subsection (3).

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

- (5) If the Secretary—
- (a) gives a notice under subsection (3) on the expiry of a WWC clearance; and
- (b) is aware that the person whose WWC clearance has expired 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, if the Secretary is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the expiry.

Note

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

92 Secretary to give copy of WWC exclusion to employer or agency

If the Secretary—

- (a) gives the person who holds a WWC clearance a WWC exclusion under section 91 or an interim WWC exclusion under section 88; and
- (b) is aware that the person 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, if the Secretary is aware of the identity of that other person or that agency, must also give a copy of the WWC exclusion or WWC interim exclusion to that other person or that agency.

Note

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

Part 3.5—Surrender of WWC clearance

93 Holder of WWC clearance may surrender clearance

- (1) The holder of a WWC clearance may at any time surrender the WWC clearance document to the Secretary.
- (2) For the purposes of this Act, a person who surrenders their only WWC clearance document is to be regarded as not having a WWC clearance.
- (3) If the holder of a WWC clearance (*the first WWC clearance*) applies for a new WWC check and is given another WWC clearance, the holder must not, without reasonable excuse, refuse or fail to surrender to the Secretary the WWC clearance document that was given to the holder in respect of the first WWC clearance within 7 days after being directed to do so by the Secretary.

Penalty: 1 penalty unit.

- (4) If—
 - (a) a person surrenders a WWC clearance document to the Secretary under subsection (1); and
 - (b) the Secretary is aware that the former holder of the WWC clearance 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, if the Secretary is aware of the identity of that other person or that agency, must notify that other person or that agency in writing of the surrender.

Chapter 4—Review

Part 4.1—Internal review of decisions relating to NDIS clearances

94 Decisions for which internal review may be sought

- (1) Subject to this section, a person may apply for internal review of—
 - (a) a decision by the Secretary under section 31(2) to give the person an NDIS exclusion on an application for an NDIS check; or
 - (b) a decision by the Secretary under section 51 to revoke the person's NDIS clearance on a re-assessment of the person's eligibility to hold an NDIS clearance.
- (2) A person who was given an NDIS exclusion on an NDIS category A application may only apply for internal review on the ground that the person is not a person referred to in section 23(1).
- (3) A person whose NDIS clearance was revoked following an NDIS category A re-assessment may only apply for internal review on the ground that the person is not a person referred to in section 41(1).

95 Application for internal review

- (1) An application for internal review is to be made, in writing, in the form approved by the Secretary.
- (2) The application must be made within 28 days after the day on which the Secretary made the decision to give the person an NDIS exclusion or to revoke the person's NDIS clearance (as the case requires).

- (3) Despite subsection (2), the Secretary may extend the time for making an application for internal review if satisfied it is appropriate to allow the person further time to make an application.

96 NDIS exclusion continues to apply until internal review decided

If a person applies for internal review, an NDIS exclusion given to that person continues to apply until the application for internal review is finally decided.

97 Applicant may provide further information

- (1) An applicant for internal review may provide to the Secretary any further information that the applicant considers relevant.
- (2) If the applicant provides any further information under subsection (1), the Secretary may—
- (a) make any further enquiries of the applicant;
or
 - (b) make any other enquiries of any person or source that the Secretary thinks fit, including but not limited to—
 - (i) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
 - (ii) any disciplinary or regulatory entity; and
 - (iii) any authorised entity; and
 - (iv) the Disability Worker Registration Board; and
 - (v) the Victorian Disability Worker Commission; and

- (vi) the Victorian Disability Worker Commissioner.

98 Time for conducting internal review

- (1) The Secretary must ensure that an internal review is completed within 28 days after the application is made, unless that time period is earlier extended by the Secretary.
- (2) If the Secretary extends the time for completing an internal review, the Secretary must notify the applicant in writing and specify the extended period and the reasons for the extension.

99 Outcome of internal review

- (1) On completion of an internal review, the Secretary may—
 - (a) in the case of internal review of a decision referred to in section 94(1)(a)—
 - (i) give an NDIS exclusion to the applicant; or
 - (ii) give an NDIS clearance to the applicant; or
 - (b) in the case of internal review of a decision referred to in section 94(1)(b)—
 - (i) revoke the applicant's NDIS clearance and give the applicant an NDIS exclusion; or
 - (ii) reinstate the person's NDIS clearance.
- (2) As soon as possible after completing an internal review, the Secretary must give the applicant for internal review written notice of the outcome.
- (3) If the Secretary has given an NDIS exclusion to the applicant under subsection (1), the notice under subsection (2) must—

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- (a) state the reasons for the decision to give the NDIS exclusion or to revoke the NDIS clearance (as the case requires); and
- (b) inform the applicant that the applicant may apply to VCAT for review of the Secretary's decision; and
- (c) explain how an application may be made to VCAT.

Part 4.2—VCAT review of decisions relating to NDIS clearances

100 Definitions

In this Part—

NDIS category A decision means a decision by the Secretary under section 99(1)—

- (a) to give a person an NDIS exclusion on an NDIS category A application; or
- (b) to revoke a person's NDIS clearance following an NDIS category A re-assessment;

NDIS category B decision means a decision by the Secretary under section 99(1)—

- (a) to give a person an NDIS exclusion on an NDIS category B application; or
- (b) to revoke a person's NDIS clearance following an NDIS category B re-assessment;

NDIS category C decision means a decision by the Secretary under section 99(1)—

- (a) to give a person an NDIS exclusion on an NDIS category C application; or
- (b) to revoke a person's NDIS clearance following an NDIS category C re-assessment.

101 Jurisdiction of VCAT—NDIS

- (1) Each of the following decisions made by the Secretary is reviewable by VCAT—
 - (a) subject to subsection (2), an NDIS category A decision;

- (b) an NDIS category B decision;
 - (c) an NDIS category C decision.
- (2) A person may only apply to VCAT for review of an NDIS category A decision on the ground that the person is not a person referred to in section 23(1) or 41(1) (as the case requires).
- (3) An application for review under subsection (1) must be made within 28 days after the later of—
- (a) the day on which the decision of the Secretary is made under section 99(1); or
 - (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 may, on an application under subsection (1), affirm the decision to give an NDIS exclusion or set that decision aside and either give an NDIS clearance or send the matter back to the Secretary for re-consideration (see section 51 of the **Victorian Civil and Administrative Tribunal Act 1998**).

102 VCAT review of NDIS category B decisions

- (1) On a review of an NDIS category B decision, VCAT must determine that it is appropriate to refuse to give the applicant an NDIS clearance unless satisfied that there are exceptional circumstances.
- (2) In determining whether there are exceptional circumstances, VCAT must have regard to the following—
- (a) the nature, gravity and circumstances of the offence or alleged offence;

- (b) the period of time that has passed since the offence or alleged offence was committed;
 - (c) the vulnerability of the victim at the time the offence or alleged offence was committed;
 - (d) the applicant's relationship to the victim at the time the offence or alleged offence was committed;
 - (e) whether the applicant had a position of authority in relation to the victim at the time the offence or alleged offence was committed;
 - (f) the applicant's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
 - (g) the applicant's behaviour since the applicant committed, or allegedly committed, the offence;
 - (h) all other relevant circumstances in respect of the applicant's offending, misconduct or other relevant history;
 - (i) any other matter that VCAT considers relevant.
- (3) Even if VCAT is satisfied under subsection (1) that there are exceptional circumstances, VCAT must determine that it is appropriate to refuse to give the applicant an NDIS clearance unless it is satisfied that it is in the public interest to give the clearance.

103 VCAT review of NDIS category C decisions

- (1) On a review of an NDIS category C decision, VCAT must determine that it is appropriate to refuse to give the applicant an NDIS clearance unless satisfied that the applicant does not pose an unacceptable risk of harm to persons with a disability, having regard to the following—

- (a) the nature, gravity and circumstances of the conduct;
 - (b) the period of time that has passed since the applicant engaged, or allegedly engaged, in the conduct;
 - (c) the vulnerability of the victim at the time the applicant engaged, or allegedly engaged, in the conduct;
 - (d) the applicant's relationship to the victim at the time the applicant engaged, or allegedly engaged, in the conduct;
 - (e) whether the applicant had a position of authority in relation to the victim at the time the applicant engaged, or allegedly engaged, in the conduct;
 - (f) the applicant's criminal, misconduct and disciplinary history, including whether there is a pattern of concerning behaviour;
 - (g) the applicant's behaviour since the applicant engaged, or allegedly engaged, in the conduct;
 - (h) all other relevant circumstances in respect of the applicant's offending, misconduct or other relevant history;
 - (i) any other matter that VCAT considers relevant.
- (2) Even if VCAT does not determine that it is appropriate to refuse the applicant an NDIS clearance under subsection (1), VCAT must not determine that it is appropriate to give the person an NDIS clearance unless satisfied that it would be in the public interest to do so.

104 Secretary may request information for purposes of VCAT proceeding

The Secretary, for the purposes of assisting VCAT in relation to the determination of an application made under this Part, may make enquiries to, or seek information from, any person or source that the Secretary thinks fit, including but not limited to—

- (a) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
- (b) any disciplinary or regulatory entity; and
- (c) any authorised entity; and
- (d) the Disability Worker Registration Board; and
- (e) the Victorian Disability Worker Commission; and
- (f) the Victorian Disability Worker Commissioner.

Part 4.3—VCAT review of decisions relating to WWC clearances

105 Jurisdiction of VCAT—working with children

- (1) Each of the following decisions by the Secretary is reviewable by VCAT—
 - (a) subject to subsection (2), a decision to give a WWC exclusion on a WWC category A application on the ground that the person is a person referred to in section 60(1)(a) or (b);
 - (b) a decision to give a WWC exclusion on a WWC category B application or a WWC category C application;
 - (c) subject to subsection (3), a decision under section 83 to revoke a WWC clearance following a WWC category A re-assessment in circumstances referred to in section 82(1)(a) or (b);
 - (d) a decision under section 85 or 87 to revoke a WWC clearance following a WWC category B re-assessment or a WWC category C re-assessment.
- (2) A person who has been given a WWC exclusion by the Secretary on a WWC category A application may only apply to VCAT for review on the ground that the person is not a person referred to in section 60(1)(a) or (b).
- (3) A person whose WWC clearance was revoked by the Secretary following a WWC category A re-assessment may only apply to VCAT for review on the ground that the circumstances referred to in section 82(1)(a) or (b) did not occur.

- (4) An application for review under subsection (1) must be made within 28 days after the later of—
- (a) the day on which the decision of the Secretary is made; or
 - (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 may, on an application under subsection (1), affirm the decision to give a WWC exclusion or set that decision aside and either give a WWC clearance or send the matter back to the Secretary for re-consideration (see section 51 of the **Victorian Civil and Administrative Tribunal Act 1998**).

106 Jurisdiction of VCAT—WWC category A

- (1) Subject to subsection (2), a person may apply to VCAT for a WWC clearance if the person has been given a WWC exclusion—
- (a) on a WWC category A application (other than a person referred to in section 60(1)(a) or (b)); or
 - (b) under section 91(1) to revoke a WWC clearance following a WWC category A re-assessment (other than on the ground that the circumstances that required the re-assessment are those referred to in section 82(1)(a) or (b)).
- (2) A person may not apply to VCAT under subsection (1) if—
- (a) the person has at any time been charged with or convicted or found guilty of a WWC category A offence; and

- (b) the person was an adult at the time of the commission or alleged commission of the offence.
- (3) For the purposes of subsection (2), if an offence occurred or is alleged to have occurred between 2 dates, one on which the person was a child and one on which the person was an adult, the offence is taken to have occurred when the person was an adult.
- (4) An application under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision of the Secretary to give the WWC exclusion is made; and
 - (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.
- (5) Pending the final determination of an application under subsection (1), VCAT may—
 - (a) make an order staying the operation of the Secretary's decision; and
 - (b) make any other order it considers appropriate having regard to the matters set out in subsection (6).
- (6) VCAT must not make an order directing the Secretary to give a WWC clearance on an application under subsection (1) unless VCAT is satisfied that giving the clearance would not pose an unjustifiable risk to the safety of children, having regard to—

- (a) the nature and gravity of the offence and its relevance to child-related work; and
 - (b) the period of time since the applicant committed the offence; and
 - (c) whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; and
 - (d) the sentence imposed for the offence; and
 - (e) the ages of the applicant and of any victim at the time the applicant committed the offence; and
 - (f) whether or not the conduct that constituted the offence has been decriminalised since the applicant engaged in it; and
 - (g) the applicant's behaviour since the applicant committed the offence; and
 - (h) the likelihood of future threat to a child caused by the applicant; and
 - (i) any information given by the applicant in, or in relation to, the application; and
 - (j) any other matter that VCAT considers relevant to the application.
- (7) For the purposes of subsection (6), to be satisfied that giving a WWC clearance would not pose an unjustifiable risk to the safety of children, VCAT must be satisfied that—
- (a) a reasonable person would allow their child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.

- (8) If VCAT is satisfied that giving a WWC clearance would not pose an unjustifiable risk to the safety of children, VCAT may by order direct the Secretary to give the WWC clearance to the applicant if it is satisfied that, in all the circumstances, it is in the public interest to do so.
- (9) The Secretary must comply with an order made by VCAT under subsection (8).

107 Jurisdiction of VCAT—WWC category B

- (1) In a review of a decision to give a WWC exclusion on a WWC category B application or in relation to a WWC category B re-assessment, VCAT must determine that it is appropriate to refuse to give a WWC clearance unless satisfied that giving the clearance would not pose an unjustifiable risk to the safety of children, having regard to any matters to which the Secretary must have regard under section 63(1).
- (2) In satisfying itself that giving a WWC clearance would not pose an unjustifiable risk to the safety of children, VCAT must be satisfied that—
 - (a) a reasonable person would allow their child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; and
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.
- (3) Even if VCAT is satisfied under subsections (1) and (2) that giving a WWC clearance would not pose an unjustifiable risk to the safety of children, VCAT must determine that it is appropriate to refuse to give the clearance unless it is satisfied that it is in the public interest to give the clearance.

108 Jurisdiction of VCAT—WWC category C

- (1) In a review of a decision to give a WWC exclusion on a WWC category C application or in relation to a WWC category C re-assessment, VCAT must determine whether in the particular circumstances it would be appropriate to refuse to give a WWC clearance, having regard to any matters to which the Secretary must have regard under section 65(2).
- (2) VCAT must determine that it is appropriate to refuse to give a WWC clearance unless VCAT is satisfied that—
 - (a) a reasonable person would allow their child to have direct contact with the applicant while the applicant was engaged in any type of child-related work; or
 - (b) the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children.
- (3) Even if VCAT does not determine under subsection (1) or (2) that it would be appropriate to refuse to give a WWC clearance, VCAT must determine that it is appropriate to refuse to give the clearance unless it is satisfied that it is in the public interest to give the clearance.

109 Secretary may request information for purposes of VCAT proceeding

The Secretary, for the purposes of assisting VCAT in relation to the determination of an application made under this Part, may make enquiries to, or seek information from, any person or source that the Secretary thinks fit, including but not limited to—

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- (a) the Director of Public Prosecutions and any employee within the meaning of the **Public Administration Act 2004**; and
- (b) any disciplinary or regulatory entity.

Chapter 5—Exemptions

Part 5.1—Exemptions from a WWC check

110 Volunteer whose child is participating or ordinarily participates in the relevant activity

A parent engaging in work as a volunteer in relation to an activity in which their child is participating or ordinarily participates is exempt from a WWC check in respect of that activity.

Example 1

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

Example 2

An athletics carnival is being held at a school. A parent of one of the participating children carries out the task of raking the sand in the long jump pit. That parent is exempt from a WWC check even if their child is not participating in the long jump competition.

111 Person working with closely related child

- (1) A person engaging in child-related work (other than a person who engages in child-related work described in section 7(6)) where each child with whom the person is required to have direct contact during the work is a child who is closely related to that person is exempt from a WWC check in respect of that work.
- (2) For the purposes of this section, a person is closely related to a child if the person is the child's—
 - (a) spouse (including domestic partner as defined in the **Relationships Act 2008**); or

- (b) parent, step-parent, mother-in-law or father-in-law; or
 - (c) grandparent; or
 - (d) uncle or aunt; or
 - (e) brother or sister (including half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law).
- (3) For the purposes of subsection (2), a person who would be closely related to a child if domestic partners were married to each other is taken to be closely related to the child.

112 Children

- (1) A child is exempt from a WWC check.
- (2) An adult who has not attained the age of 20 years and who is a student at an educational institution is exempt from a WWC check in respect of any work engaged in as a volunteer at that institution or outside that institution under an arrangement entered into by that institution.

113 Teachers

- (1) A person who is a registered teacher is exempt from a WWC check.

Note

Section 2.6.54K of the **Education and Training Reform Act 2006** provides that a teacher whose registration is suspended is deemed not to be registered for the period of that suspension.

- (2) A registered teacher who engages in child-related work (other than teaching in a school or an early childhood service) must notify the Secretary in writing of the following details within 21 days after the engagement—
 - (a) the person by whom the registered teacher is engaged in that child-related work;

- (b) any agency with which the registered teacher is listed for child-related work (other than teaching in a school or an early childhood service).

Penalty: 10 penalty units.

- (3) A person who engages in child-related work (other than teaching in a school or an early childhood service) and who relies on an exemption under subsection (1) in respect of that work must give notification in writing of the suspension or cancellation of the person's registration as a teacher or an early childhood teacher under the **Education and Training Reform Act 2006** within 7 days after receiving notice of the suspension or cancellation to—
 - (a) any person by whom the person is engaged in that child-related work; and
 - (b) any agency with which the person is listed for child-related work (other than teaching in a school or an early childhood service).

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

Notes

- 1 The Victorian Institute of Teaching must notify a teacher's employer of the suspension or cancellation of the teacher's registration: see sections 2.6.27A, 2.6.28B and 2.6.51 of the **Education and Training Reform Act 2006**.
- 2 *Listed with an agency* is defined in section 3(2).
- (4) The Secretary may notify any person or agency referred to in a notification under subsection (2) that the person who notified the Secretary is no longer exempt from a WWC check because of the suspension or cancellation of the person's registration as a teacher.

(5) In this section—

early childhood service has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

registered teacher has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**.

114 Police officers and protective services officers

- (1) A person who is a police officer or protective services officer (other than a police officer or protective services officer who is suspended from duty under the **Victoria Police Act 2013**) is exempt from a WWC check.
- (2) A person referred to in subsection (1) who engages in child-related work (other than as a police officer or protective services officer) and who relies on an exemption under subsection (1) in respect of that work must give notification in writing of the suspension or dismissal of the person as a police officer or protective services officer under the **Victoria Police Act 2013** within 7 days after receiving notice of the suspension or dismissal to—
 - (a) any person by whom the person is engaged in that child-related work; and
 - (b) any agency with which the person is listed for child-related work.

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

Note

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

115 Federal police officers

- (1) A person who is a member of the Australian Federal Police within the meaning of the Australian Federal Police Act 1979 of the Commonwealth (other than a member who is suspended from duty under that Act) is exempt from a WWC check.
- (2) A person referred to in subsection (1) who engages in child-related work (other than as a member of the Australian Federal Police) and who relies on an exemption under subsection (1) in respect of that work must give notification in writing of the suspension or termination of the employment of the person as a member of the Australian Federal Police within 7 days after receiving notice of the suspension or termination to—
 - (a) any person by whom the person is engaged in that child-related work; and
 - (b) any agency with which the person is listed for child-related work.

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

116 Visiting workers

- (1) A person who is not ordinarily resident in Victoria is exempt from a WWC check in respect of child-related work in which the person engages in Victoria if—
 - (a) the period during which the person engages in that work is not more than 30 days; and
 - (b) the person does not engage in any other child-related work in Victoria within the same calendar year.

- (2) A person who is not ordinarily resident in Victoria is exempt from a WWC check in respect of child-related work in which the person engages in Victoria if—
- (a) the person holds the equivalent of a WWC clearance given under a corresponding working with children law from the jurisdiction in which the person is ordinarily resident; and
 - (b) the person engages in not more than 30 days of child-related work in Victoria within the same calendar year.

117 Exemptions subject to exclusion

A person is not exempt under this Part from a WWC check if the person has been given a WWC exclusion and has not subsequently been given a WWC clearance.

Chapter 6—Offences

Part 6.1—Offences relating to NDIS clearances

118 Engaging in risk assessed role without NDIS clearance or interstate NDIS clearance

- (1) A person who does not hold an NDIS clearance or an interstate NDIS clearance must not engage in work in a risk assessed role, except in circumstances referred to in section 119 or 120.

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

- (2) A person does not commit an offence against subsection (1) if, at the time the offence was alleged to have been committed—
- (a) the person did not know that the work was in a risk assessed role; or
 - (b) the person did not know that the person did not hold an NDIS clearance or an interstate NDIS clearance, and was not reckless as to whether or not the person held one.

119 Exception—engaging in risk assessed role on application or re-application

- (1) A person who does not hold an NDIS clearance or an interstate NDIS clearance may engage in work in a risk assessed role if—
- (a) the person has applied in accordance with section 35 for a new NDIS check to be carried out and—
 - (i) the application has not been finally decided or withdrawn; and

- (ii) the person has not been given an interim NDIS exclusion under section 29(1)(b); and
- (b) the person—
 - (i) has not at any time been given an NDIS exclusion or an interstate NDIS exclusion or, having been given an NDIS exclusion or an interstate NDIS exclusion, has subsequently been given an NDIS clearance or an interstate NDIS clearance; and
 - (ii) is not subject to a relevant obligation or order; and
 - (iii) is not charged with or has not been convicted or found guilty of an NDIS category A offence or an NDIS category B offence committed or alleged to have been committed when the person was an adult.
- (2) A person who does not hold an NDIS clearance or an interstate NDIS clearance may engage in work in a risk assessed role if the person—
 - (a) has applied for an interstate NDIS clearance under a corresponding NDIS worker screening law and the application has not been finally decided or withdrawn; and
 - (b) is permitted under that corresponding NDIS worker screening law to engage in a risk assessed role pending determination of that application.
- (3) In this section and section 120—
relevant obligation or order means—
 - (a) reporting obligations imposed on a person under Part 3 of the **Sex Offenders Registration Act 2004**; or

- (b) a supervision order, a detention order or an emergency detention order.

120 Exception—engaging in risk assessed role on work experience

A person may engage in work in a risk assessed role if—

- (a) the person is a secondary student on a work experience placement who is exempt under the NDIS Worker Screening Rules from a requirement to hold an NDIS clearance; and
- (b) the person—
 - (i) has not at any time been given an NDIS exclusion or an interstate NDIS exclusion or, having been given an NDIS exclusion or an interstate NDIS exclusion, has subsequently been given an NDIS clearance or an interstate NDIS clearance; and
 - (ii) is not subject to a relevant obligation or order.

Note

Rule 14(c) of the NDIS Worker Screening Rules provides that a person may be engaged in a risk assessed role without an NDIS clearance if the person is a secondary student on a formal work experience placement with a registered NDIS provider, and is directly supervised by another worker of the provider who has a clearance.

Part 6.2—Offences related to child-related work

121 Engaging in child-related work without a WWC clearance

- (1) A person must not engage in child-related work if—
- (a) the person does not have a current WWC clearance; and
 - (b) the person engages in the work knowing that it is child-related work; and
 - (c) the person knows that they do not have a current WWC clearance or is reckless as to whether or not they have one.

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

Note

See section 7(1) for the meaning of *child-related work*.

- (2) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the accused—
- (a) had applied for a WWC check and the application had not been finally decided or withdrawn and the person—
 - (i) had not at any time been given a WWC exclusion or, having been given a WWC exclusion, had subsequently been given a WWC clearance; and
 - (ii) was not excluded from child-related work under a corresponding working with children law; and

- (iii) was not subject to an obligation or order specified in clause 1 of Schedule 5; and
 - (iv) was not charged with or had not been convicted or found guilty of an offence specified in clause 2 of Schedule 5; or
 - (b) was exempt from a WWC check in respect of the work under Chapter 5 and the accused was not subject to an obligation or order specified in clause 1 of Schedule 5; or
 - (c) unless engaging in the work as a volunteer or undertaking practical training—
 - (i) having applied for a WWC check and been given a WWC exclusion, had notified their employer of the giving of that WWC exclusion; and
 - (ii) the accused's employer was in the process of—
 - (A) transferring the accused to work that was not child-related work; or
 - (B) terminating the accused's employment in accordance with the requirements of the Fair Work Act 2009 of the Commonwealth.
- (3) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—
 - (a) the person had been given a WWC exclusion by the Secretary and had applied to VCAT under section 106(1) for a WWC clearance; and
 - (b) the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

- (4) A person is not guilty of an offence against subsection (1) if—
 - (a) at the time the offence is alleged to have been committed, the work engaged in is child-related work described in section 7(6); and
 - (b) the person applies, within 21 days after first engaging in that work, for a WWC check to be carried out.

122 Offence for person given WWC exclusion to apply for child-related work

- (1) A person who has at any time been given a WWC exclusion and does not have a current WWC clearance must not apply for, or engage in, 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) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed, the accused did not know that the work was child-related work.
- (3) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—
 - (a) the person had been given a WWC exclusion by the Secretary and had applied to VCAT under section 106(1) for a WWC clearance; and
 - (b) the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

123 Offence to engage a person who does not have a WWC clearance in child-related work

- (1) A person must not engage, or continue to engage, another person (the worker) in child-related work if—
- (a) the person knows the work is child-related work; and
 - (b) the worker does not have a current WWC clearance; and
 - (c) the person engaging, or continuing to engage, the worker knows that the worker does not have a current WWC clearance or is reckless as to whether or not the worker has one.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

In the case of a body corporate,
1200 penalty units.

Note

See section 7(1) for the meaning of *child-related work*.

- (2) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—
- (a) the worker had applied for a WWC check and the application had not been finally decided or withdrawn, unless the person knew or ought reasonably to have known that the worker—

- (i) was subject to an obligation or order specified in clause 1 of Schedule 5; or
 - (ii) had been charged with or convicted or found guilty of an offence specified in clause 2 of Schedule 5; or
 - (iii) was excluded from child-related work under a corresponding working with children law; or
- (b) the worker was exempt from a WWC check in respect of the work under Chapter 5; or
- (c) having been notified that the worker (not being a worker who was engaging in the work as a volunteer or undertaking practical training) had been given a WWC exclusion, the person was in the process of—
 - (i) transferring the worker to work that was not child-related work; or
 - (ii) terminating the worker's employment in accordance with the requirements of the Fair Work Act 2009 of the Commonwealth.
- (3) A person is not guilty of an offence against subsection (1) if the person directly engaged the worker and the work was child-related work with a child of whom the person is a parent, whether or not it also involved direct contact with other children.
- (4) A person is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—

- (a) the worker had been given a WWC exclusion by the Secretary and had applied to VCAT under section 106(1) for a WWC clearance; and
- (b) the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

124 Offence for agency to offer the services of a person who does not have a WWC clearance

- (1) An agency must not, in the course of a business, offer to another person the services of a person (the worker) in child-related work if—
 - (a) the agency knows that the work is child-related work; and
 - (b) the worker does not have a current WWC clearance; and
 - (c) the agency knows that the worker does not have a current WWC clearance or is reckless as to whether or not the worker has one.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

In the case of a body corporate,
1200 penalty units.

Note

See section 7(1) for the meaning of *child-related work*.

- (2) An agency is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—
 - (a) the worker had applied for a WWC check and the application had not been finally decided or withdrawn unless the agency

knew or ought reasonably to have known that the worker—

- (i) was subject to an obligation or order specified in clause 1 of Schedule 5; or
 - (ii) had been charged with or convicted or found guilty of an offence specified in clause 2 of Schedule 5; or
 - (iii) was excluded from child-related work under a corresponding working with children law; or
- (b) the worker was exempt from a WWC check in respect of the work under Chapter 5.
- (3) An agency is not guilty of an offence against subsection (1) if, at the time the offence is alleged to have been committed—
- (a) the worker had been given a WWC exclusion by the Secretary and had applied to VCAT under section 106(1) for a WWC clearance; and
 - (b) the decision of the Secretary was the subject of an order by VCAT staying the operation of the decision.

125 Using volunteer clearance for paid work

- (1) A person must not engage in child-related work for profit or gain if—
- (a) the person has a current WWC clearance that was given to the person on an application that did not specify an intention to engage in child-related work for profit or gain; and

- (b) the person knows that their current WWC clearance was given on an application of a kind referred to in paragraph (a); and
- (c) the person knows that, or is reckless as to whether or not, the child-related work in which the person is engaging is being engaged in for profit or gain.

Penalty: Level 11 fine (5 penalty units maximum).

Note

See section 7(1) for the meaning of *child-related work*.

- (2) A person must not engage, or continue to engage, another person (the worker) in child-related work, if—
 - (a) the person knows that the work is child-related work; and
 - (b) the person knows that the worker has a current WWC clearance that was given to the worker on an application that did not specify an intention to engage in child-related work for profit or gain; and
 - (c) the person knows that, or is reckless as to whether or not, the child-related work in which the worker is engaging is being engaged in for profit or gain.

Penalty: Level 11 fine (5 penalty units maximum).

Note

A person who has been given a WWC clearance on an application that did not specify an intention to engage in child-related work for profit or gain may apply under section 54 for a WWC clearance that may be used in respect of child-related work engaged in for profit or gain.

126 Offence to use false or other person's WWC clearance

A person must not use in connection with the person's work, or an application for work—

- (a) a document purporting to be a WWC clearance 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 a WWC clearance given to the person knowing that the document is a WWC clearance given to another person.

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

127 Notification requirements of holder of WWC exclusion or interim WWC exclusion

If a WWC exclusion or an interim WWC exclusion is given to a person, that person must, within 7 days after being given the exclusion, give notice in writing of that exclusion—

- (a) to any person by whom they are engaged in child-related work; and
- (b) to any agency with which they are listed.

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

Note

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

Part 6.3—General

128 False or misleading information

- (1) A person must not give information that is false or misleading in a material particular—
- (a) in, or in relation to, an application for the carrying out of an NDIS check; or
 - (b) in connection with a re-assessment of eligibility to hold an NDIS clearance; or
 - (c) in connection with an internal review under Part 4.1.

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

- (2) A person must not in, or in relation to, an application for the carrying out of a WWC check or in connection with a re-assessment of eligibility to hold that clearance 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.

- (3) A person does not commit an offence against subsection (1) or (2) if, at the time at which the offence is alleged to have been committed, the person 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.

129 Sex offenders and serious offenders must not apply for clearance

A person who is any of the following must not apply for a screening check under this Act—

- (a) a registrable offender within the meaning of section 3 of the **Sex Offenders Registration Act 2004**;
- (b) a person who is subject to a supervision order, a detention order or an emergency detention order.

Penalty: 240 penalty units or imprisonment for 2 years.

130 Confidentiality of information

- (1) A person must not give to any other person, whether directly or indirectly, any information acquired by the person in the performance of functions or exercise of powers under this Act.

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

- (2) A person must not give to any other person, whether directly or indirectly, any information acquired by the person under section 70, 72(1), 91(5), 92, 113(3), 114(2), 115(2) or 127.

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

- (3) Subsections (1) and (2) do not apply to the giving of information in any of the following circumstances—

- (a) in good faith for the prevention of a serious threat to a person's life, health or safety;
- (b) with the written authority of the person to whom the information relates or, if the person to whom the information relates is a child or a person with a cognitive

- impairment or mental illness within the meaning of Subdivision (8E) of Division 1 of Part I of the **Crimes Act 1958**, with the written authority of a person authorised to act on that person's behalf;
- (c) to a court or tribunal in the course of legal proceedings;
 - (d) pursuant to an order of a court or tribunal;
 - (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;
 - (f) to a person or body established under a law of the Commonwealth or another State or Territory with functions or powers that correspond with the functions or powers of the Chief Commissioner of Police under this Act;
 - (g) to an Australian legal practitioner for the purpose of obtaining legal advice or representation;
 - (h) as required or permitted by or under this Act or any other law;
 - (i) in the case of WWC information, in good faith—
 - (i) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or
 - (ii) for the purposes of making employment-related decisions in respect of child-related work; or
 - (iii) to the Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) for the
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purposes of an investigation of a reportable allegation under Part 5A of the **Child Wellbeing and Safety Act 2005**; or

- (iv) to the Victorian Institute of Teaching under Part 2.6 of the **Education and Training Reform Act 2006** for the purposes of any of that Institute's functions under Part 2.6 of that Act.

- (4) In this section—

WWC information means information acquired from, or in carrying out, a WWC check or under section 70, 72(1), 91(5), 92, 113(3), 114(2), 115(2) or 127.

Chapter 7—Information sharing

131 Chief Commissioner of Police to notify Secretary of certain matters relating to current applicant or clearance holder

- (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 of Police becomes aware that—
 - (a) an applicant for a screening check has been charged with a relevant offence; or
 - (b) a person who holds a clearance 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—
 - (a) how a charge for a relevant offence against an applicant for a screening check has been finally dealt with; or
 - (b) how a charge for a relevant offence against a person who holds a clearance has been finally dealt with.
- (3) In this section and section 132—

relevant offence means—

 - (a) in relation to an applicant for a WWC check or a person who holds a WWC clearance—
 - (i) a WWC category A offence or a WWC category B offence; or
 - (ii) any other offence of a type of which the Secretary has requested to be notified by the Chief

Commissioner of Police for the
purposes of WWC clearances; and

- (b) in relation to an applicant for an NDIS check or a person who holds an NDIS clearance—
 - (i) an NDIS category A offence or an NDIS category B offence; or
 - (ii) any other offence of a type of which the Secretary has requested to be notified by the Chief Commissioner of Police for the purposes of NDIS clearances.

132 Chief Commissioner of Police to notify interstate screening units of how charges dealt with

- (1) The Chief Commissioner of Police must take all reasonable steps to ensure that an interstate screening unit is notified of how a charge against a person has been finally dealt with if the interstate screening unit has requested the notification.

- (2) In this section—

interstate screening unit means—

- (a) an NDIS worker screening unit; or
- (b) a working with children screening unit.

133 Secretary may notify police of certain matters

Nothing in this Act prevents the Secretary, if the Secretary suspects on reasonable grounds that a person has committed an offence against this Act or the regulations or Part 5 of the **Sex Offenders Registration Act 2004**, immediately notifying the Chief Commissioner of Police of that suspicion.

134 Secretary may disclose information to NDIS worker screening units

- (1) The Secretary may disclose to an NDIS worker screening unit any information held by the Secretary about a person who holds an NDIS clearance or who has made an application for an NDIS check if that information is relevant to the performance of that unit's functions or exercise of powers under a corresponding NDIS worker screening law.
- (2) Without limiting subsection (1), information about a person who holds an NDIS clearance or who has applied for an NDIS check includes—
 - (a) that the person has made an application for an NDIS check, and whether that application has been withdrawn or reinstated; and
 - (b) the person being given an NDIS exclusion, an interim NDIS exclusion or an NDIS clearance; and
 - (c) the person's NDIS clearance being suspended or revoked; and
 - (d) the person surrendering the person's NDIS clearance.

135 Secretary may disclose information to working with children screening units

- (1) The Secretary may disclose to a working with children screening unit any information held by the Secretary about a person who holds a WWC clearance or who has made an application for a WWC check if that information is relevant to the performance of that unit's functions or exercise of powers under a corresponding working with children law.

- (2) Without limiting subsection (1), information about a person who holds a WWC clearance or who has applied for a WWC check includes—
- (a) that the person has made an application for a WWC check, and whether that application has been withdrawn or reinstated; and
 - (b) the person being given a WWC exclusion, an interim WWC exclusion or a WWC clearance; and
 - (c) the person's WWC clearance being suspended or revoked; and
 - (d) the person surrendering the person's WWC clearance.

136 Notifications to the NDIS Commission

- (1) The Secretary must notify the NDIS Commission of the following matters—
- (a) a person makes an application for an NDIS check;
 - (b) a person's application for an NDIS check is withdrawn or treated as withdrawn or reinstated;
 - (c) a person is given an NDIS clearance;
 - (d) a person is given an NDIS exclusion or an interim NDIS exclusion;
 - (e) a person's NDIS clearance is suspended and, if applicable, later reinstated;
 - (f) a person's NDIS clearance is revoked;
 - (g) a person surrenders an NDIS clearance;
 - (h) a person's NDIS exclusion is deemed to be void under section 37, or the decision to give the exclusion is otherwise quashed or set aside.

- (2) The Secretary may disclose to the NDIS Commission any other information about a person who holds an NDIS clearance or who has made an application for an NDIS check if that information is relevant to the performance of the Commission's functions or exercise of the Commission's powers.

137 Disclosure of information about WWC exclusions by Secretary to ACC

- (1) If the Secretary gives a person a WWC exclusion, the Secretary must—
 - (a) notify the ACC; and
 - (b) give the ACC information relating to that exclusion.
- (2) If the Secretary has notified the ACC under this Act about a WWC exclusion given to a person, the Secretary must also notify the ACC if—
 - (a) the Secretary is ordered by a court or VCAT to give the person a WWC clearance; or
 - (b) the person's WWC exclusion is deemed to be void under section 77; or
 - (c) the person's WWC exclusion is set aside, rendered inoperative or otherwise invalidated.

138 Secretary may notify Department of Health and Human Services of certain matters relating to out of home carers

- (1) The Secretary may notify the Secretary to the Department of Health and Human Services of the following in relation to a current WWC clearance, the application for which specifies that the applicant is engaged or intends to engage in child-related work described in section 7(6)—

- (a) if the holder surrenders the WWC clearance;
 - (b) if the Secretary revokes or suspends the WWC clearance;
 - (c) if the holder notifies the Secretary of a change in any person by whom the holder is engaged in child-related work.
- (2) The Secretary may notify the Secretary to the Department of Health and Human Services of the following in relation to an application for a WWC clearance that specifies that the applicant is engaged or intends to engage in child-related work described in section 7(6)—
- (a) if the application is made, withdrawn or reinstated;
 - (b) if the Secretary gives a WWC clearance, an interim WWC exclusion or a WWC exclusion in relation to the application;
 - (c) if the applicant notifies the Secretary of a change in any person by whom the applicant is engaged in child-related work.

139 Secretary to Department of Health and Human Services may disclose information about out of home carers

Nothing in this Act or the **Children, Youth and Families Act 2005** prevents the Secretary to the Department of Health and Human Services disclosing to the Secretary information relating to a person who is engaged in child-related work described in section 7(6) if the disclosure is made for the purposes of the administration or execution of this Act in relation to child-related work or the **Children, Youth and Families Act 2005**.

140 Secretary may notify Department of Health and Human Services of certain matters relating to disability-related work

- (1) The Secretary may disclose to the Secretary to the Department of Health and Human Services any information held by the Secretary about a person who holds a clearance or who has made an application for a screening check if that information is relevant to assessing the person's suitability to work with persons with a disability within the meaning of the **Disability Act 2006**.
- (2) Without limiting subsection (1), information about a person who holds a clearance or who has applied for a screening check includes—
 - (a) that the person has made an application for a screening check, and whether that application has been withdrawn or reinstated; and
 - (b) the person being given an exclusion, an interim exclusion or a clearance; and
 - (c) the person's clearance being suspended or revoked; and
 - (d) the person surrendering the person's clearance.

141 Secretary may notify entities with functions under Disability Service Safeguards Act 2018 of matters relating to screening checks and clearances

- (1) The Secretary may disclose to a relevant entity any information held by the Secretary about a person who holds a clearance or who has made an application for a screening check if that information is relevant to the performance of the entity's functions or exercise of the entity's powers under the **Disability Service Safeguards Act 2018**.

- (2) Without limiting subsection (1), information about a person who holds a clearance or who has applied for a screening check includes—
 - (a) that the person has made an application for a screening check, and whether that application has been withdrawn or reinstated; and
 - (b) the person being given an exclusion, an interim exclusion or a clearance; and
 - (c) the person's clearance being suspended or revoked; and
 - (d) the person surrendering the person's clearance.
- (3) In this section—
relevant entity means—
 - (a) the Disability Worker Registration Board; or
 - (b) the Victorian Disability Worker Commission; or
 - (c) the Victorian Disability Worker Commissioner.

142 Secretary may require production of information

- (1) If the Secretary suspects that a person has committed an offence against this Act or the regulations or Part 5 of the **Sex Offenders Registration Act 2004**, the Secretary may, by notice in writing, require any person to provide any information that the Secretary thinks necessary to determine whether that suspicion is reasonable.
- (2) A person who receives a notice under subsection (1) must not, without reasonable excuse, fail to provide the information specified in the notice to

the Secretary within 28 days or any longer period specified in the notice.

Penalty: 60 penalty units.

- (3) For the purposes of subsection (2), it is a reasonable excuse for a natural person to refuse or fail to provide information that the person is required to provide under subsection (1) if the provision of the information would tend to incriminate the person.

143 Person responding to enquiry or request from Secretary does not contravene duty of confidentiality

A person in responding to an enquiry or a request for advice or information from the Secretary under section 18, 40, 58, 81, 97, 104, 109 or 142 does not contravene any duty of confidentiality imposed on the person by or under any Act (including the **Judicial Proceedings Reports Act 1958**) or agreement, despite anything to the contrary in that Act or agreement.

Chapter 8—General

Part 8.1—Offences committed by bodies corporate or unincorporated bodies, associations and partnerships

144 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 if, at the time the offence is alleged to have been committed, the body corporate 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 commits an offence against a provision specified in subsection (3), an officer of the body corporate also commits an offence against the provision.
- (3) For the purposes of subsection (2), the following provisions are specified—
 - (a) section 123(1);
 - (b) section 124(1).
- (4) An officer of a body corporate does not commit an offence against a provision specified in subsection (3) if—
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.

Part 8.1—Offences committed by bodies corporate or unincorporated bodies,
associations and partnerships

- (5) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (6) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (7) An officer of a body corporate may commit an offence against a provision specified in subsection (3) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (8) In this section—
- body corporate*** has the same meaning as corporation has in section 57A of the Corporations Act.

145 Offences by unincorporated bodies, partnerships etc.

- (1) For the purposes of a provision specified in subsection (2), a reference to a *person* who may be guilty of an offence against the provision includes an unincorporated body or association and a partnership and is to be taken to be—
 - (a) in the case of an unincorporated body or association—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—a reference to each member of the partnership who knew of, or knowingly authorised or permitted, the commission of the offence.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 123(1);
 - (b) section 124(1).
- (3) If, in a proceeding for an offence against a provision specified in subsection (2), 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 the employee or agent's actual or apparent authority; and
 - (b) the employee or agent had that state of mind.

Part 8.2—Miscellaneous

146 Delegation

The Secretary, by instrument, may delegate any of the Secretary's powers under this Act (other than this power of delegation) or the regulations under this Act to—

- (a) any person or person in a class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; or
- (b) except in the case of the Secretary's powers relating to internal review, another prescribed person or body.

147 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; or
- (d) by sending it by electronic communication to the person at the person's usual or last known electronic address.

148 Evidentiary provisions

- (1) A document purporting to be given by the Secretary or a delegate of the Secretary certifying as to any of the following matters is admissible in evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the matter—
 - (a) whether an application by a specified person for a screening check was pending at a specified date;
 - (b) whether an exclusion had been given to a specified person and was in place at a specified date;
 - (c) whether an interim exclusion had been given to a specified person and was in place at a specified date;
 - (d) whether a specified person's clearance had been suspended and whether that suspension was in place at a specified date;
 - (e) whether a clearance had been given to a specified person on a specified date;
 - (f) whether a copy of a clearance, an interim exclusion, a suspension or an exclusion was given to a specified person on a specified date;
 - (g) any other matter that appears in, or that can be determined from, records kept by the Secretary under this Act.
- (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.

149 Immunity

- (1) The Secretary or an employee within the meaning of the **Public Administration Act 2004** is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance 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 performance of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Secretary or an employee within the meaning of the **Public Administration Act 2004** attaches instead to the State.

Part 8.3—Regulations

150 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following—
 - (a) circumstances in which a charge against a person for an offence is not to be taken to be pending for the purposes of this Act;
 - (b) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may apply, adopt or incorporate any matter contained in any document, whether wholly or partially or as amended by the regulations or as in force at a particular time or as in force from time to time; and
 - (d) may confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
 - (e) may provide in specified cases or classes of cases for the exemption of persons or things or classes 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) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

- (3) 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;
 - (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.
- (4) If under subsection (3)(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.

Chapter 9—Transitional provisions, repeals and amendments

Part 9.1—Repeal of Working with Children Act 2005

151 Working with Children Act 2005 repealed

The **Working with Children Act 2005** is repealed.

Part 9.2—Transitional provisions

152 Definitions

In this Part—

assessment notice has the same meaning as in the
Working with Children Act 2005
immediately before the commencement day;

commencement day means the day on which
section 151 commences;

interim negative notice has the same meaning as
in the **Working with Children Act 2005**
immediately before the commencement day;

negative notice has the same meaning as in the
Working with Children Act 2005
immediately before the commencement day.

153 Assessment notices taken to be WWC clearances

- (1) Subject to subsection (2), if, immediately before the commencement day, a person holds an assessment notice, that assessment notice is taken to be a WWC clearance on and from the commencement day.

- (2) If, immediately before the commencement day, an assessment notice is suspended under the **Working with Children Act 2005**, on and from the commencement day that assessment notice is taken to be a WWC clearance that is suspended under Part 3.4.

154 Negative notices taken to be WWC exclusions

- (1) If, immediately before the commencement day, a person has been given a negative notice, that negative notice is taken to be a WWC exclusion on and from the commencement day.
- (2) For the purposes of this Act, a WWC exclusion referred to in subsection (1) is taken to be—
- (a) in the case of a negative notice given on a category A application or a category A re-assessment under the **Working with Children Act 2005**, a WWC exclusion given on an application that is a WWC category A application or a re-assessment that is a WWC category A re-assessment; or
 - (b) in the case of a negative notice given on a category B application or a category B re-assessment under the **Working with Children Act 2005**, a WWC exclusion given on an application that is a WWC category B application or a re-assessment that is a WWC category B re-assessment; or
 - (c) in the case of a negative notice given on a category C application or a category C re-assessment under the **Working with Children Act 2005**, a WWC exclusion given on an application that is a WWC category C application or a re-assessment that is a WWC category C re-assessment.

155 Interim negative notices taken to be interim WWC exclusions

- (1) If, immediately before the commencement day, a person has been given an interim negative notice, on and from the commencement day that person is taken to have been given—
- (a) in the case of an interim negative notice given under section 16(1)(b) of the **Working with Children Act 2005**, an interim WWC exclusion under section 66; or
 - (b) in the case of an interim negative notice given under section 21AE(1)(b) of the **Working with Children Act 2005**, an interim WWC exclusion under section 88.

156 Pending applications—working with children checks

If, before the commencement day, a person had applied for a working with children check under section 10 of the **Working with Children Act 2005** and that application had not been finally determined immediately before the commencement day—

- (a) the person is taken to have applied for a WWC check; and
- (b) the application must be determined under this Act.

157 Pending re-assessments—working with children checks

If, before the commencement day, the Secretary was required to re-assess a person's eligibility to have an assessment notice under Division 5 of Part 2 of the **Working with Children Act 2005** and that re-assessment had not been finally determined immediately before the

commencement day, that re-assessment must be determined in accordance with this Act.

158 Transitional provisions—VCAT

- (1) Subject to subsection (2), an application to VCAT for review of a decision made under a provision of the **Working with Children Act 2005** before the commencement day that had not been finally determined before that day is to be determined on and after that day as if the application was made under the equivalent provision of this Act.
- (2) Section 106(2) and (3) do not apply in relation to an application to VCAT that was made before the commencement of section 25(1)(a) and (2) of the **Children Legislation Amendment Act 2019** and that had not been finally determined before the commencement day.

159 Transitional provisions—NDIS worker screening

- (1) Section 118 does not apply to a person if, at the time the offence is alleged to have been committed—
 - (a) the person was engaged in a risk assessed role by a registered NDIS provider; and
 - (b) under rule 25(5) or (6) of the NDIS Worker Screening Rules—
 - (i) the registered NDIS provider was allowed to engage the person in a risk assessed role without a clearance; and
 - (ii) the person was allowed to engage in a risk assessed role without a clearance.
- (2) In this section—

registered NDIS provider has the same meaning as in the NDIS Act.

Part 9.3—Consequential and other amendments

Division 1—Bus Safety Act 2009

160 Definitions

In section 3(1) of the **Bus Safety Act 2009**, in paragraph (g) of the definition of *tier 1 offence*, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

161 Accreditation application to be refused in certain circumstances

For section 27(1)(a)(ii) of the **Bus Safety Act 2009** substitute—

"(ii) is a person who is subject to reporting obligations imposed on the person by Part 3 of the **Sex Offenders Registration Act 2004**; or".

162 Mandatory cancellation

In section 49(1) of the **Bus Safety Act 2009**, for ", or an order, referred to in section 27(a)(ii)" substitute "referred to in section 27(1)(a)(ii)".

Division 2—Child Employment Act 2003

163 Purposes

In section 1(e) of the **Child Employment Act 2003**, for "assessment notice under the **Working with Children Act 2005**" substitute "WWC clearance under the **Worker Screening Act 2020**".

164 Definitions

In section 3 of the **Child Employment Act 2003**—

(a) **insert** the following definitions—

"WWC check has the same meaning as in the **Worker Screening Act 2020**;

WWC clearance has the same meaning as in the **Worker Screening Act 2020**.";

(b) in the definition of *street trading*, for "place." **substitute** "place;"

(c) the definition of *assessment notice* is **repealed**.

165 Supervision of children in employment

(1) In section 19(1)(a) of the **Child Employment Act 2003**, for "assessment notice" (where twice occurring) **substitute** "WWC clearance".

(2) For the Note at the foot of section 19(1) of the **Child Employment Act 2003** **substitute**—

"Note

Section 19A of this Act extends the application of the **Worker Screening Act 2020** to the supervision of children in employment under this Act. Section 121 of the **Worker Screening Act 2020** as applied by this Act requires the supervisor of a child to hold a current WWC clearance under that Act. Section 123 of the **Worker Screening Act 2020** as applied by this Act makes it an offence for a person to engage another person to supervise a child in employment without a current WWC clearance. The exemptions from the requirement to hold a current WWC clearance under Part 5.1 of the **Worker Screening Act 2020** do not apply to supervisors of child employees but are replaced by the exemptions set out in section 19B of this Act."

(3) In section 19(2) and (4) of the **Child Employment Act 2003**, for "assessment notice" **substitute** "WWC clearance".

166 Heading to Division 2A of Part 2 substituted

For the heading to Division 2A of Part 2 of the
Child Employment Act 2003 substitute—

**"Division 2A—Worker Screening
Act 2020".**

167 Section 19A substituted

For section 19A of the **Child Employment
Act 2003** substitute—

**'19A Application of Worker Screening
Act 2020**

- (1) The **Worker Screening Act 2020**
extends and applies to the supervision
of a child in employment that requires a
permit under this Act as if that
supervision were child-related work for
the purposes of the **Worker Screening
Act 2020**.
- (2) The **Worker Screening Act 2020**
applies to the supervision of a child
referred to in subsection (1) with the
following modifications—
 - (a) section 7(1)(b) and (8)(b) do not
apply to exclude work experience
arrangements referred to in section
5.4.11(4) of the **Education and
Training Reform Act 2006** from
the operation of the Act as applied
by the **Child Employment
Act 2003**;
 - (b) section 66(5)(a) applies as if the
reference to "this Act" were a
reference to "this Act or the **Child
Employment Act 2003**";

(c) section 72(1) applies as if the following paragraph were inserted after paragraph (b)—

"(ba) if the person supervises a child referred to in section 19A(1) of the **Child Employment Act 2003**, the employer of the child;"

(d) section 78 applies as if the following subsection were substituted for section 78(3)—

"(3) For the purposes of Chapter 6, a person supervising a child referred to in section 19A(1) of the **Child Employment Act 2003** who has been given an interim WWC exclusion under section 66 is not to be regarded as having a current WWC clearance in respect of that supervision.";

(e) section 89(1) applies as if "Despite section 78(3)," were omitted;

(f) Chapter 5 does not apply;

(g) section 121(2)(b) applies as if the reference to "Chapter 5" were a reference to "section 19B of the **Child Employment Act 2003**";

(h) section 121(2)(a), (2)(c) and (3) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;

(i) section 122(3) does not apply;

- (j) section 123(2)(b) applies as if the reference to "Chapter 5" were a reference to "section 19B of the **Child Employment Act 2003**" **substituted**";
- (k) section 123(2)(a), (2)(c), (3) and (4) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;
- (l) section 124(2)(b) applies as if the reference to "Chapter 5" were a reference to "section 19B of the **Child Employment Act 2003**";
- (m) section 124(2)(a) and (4) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;
- (n) section 126 applies as if a reference to "work" were a reference to "work or the employment of a child referred to in section 19A(1) of the **Child Employment Act 2003**";
- (o) section 130(3)(h) applies as if the reference to "this Act" were a reference to "this Act or the **Child Employment Act 2003**";
- (p) section 130(3) applies as if the following paragraph were inserted after paragraph (a)—
 - "(aa) to the Secretary of the Department of Premier and Cabinet for considering an application under the **Child**

Employment Act 2003 or determining compliance with that Act;'.
'

- (3) Sections 121, 123, 124 and 125 of the **Worker Screening Act 2020** apply to the supervision of a child referred to in subsection (1) in or at a service, body, place or activity as if it were child-related work despite the supervision occurring before the relevant date in relation to that service, body, place or activity under that Act.".'

168 Exemptions from working with children check

- (1) In the heading to section 19B of the **Child Employment Act 2003**, for "working with children check" substitute "WWC check".
- (2) In section 19B(1) of the **Child Employment Act 2003**—
- (a) for "**Working with Children Act 2005**" (where twice occurring) substitute "**Worker Screening Act 2020**";
- (b) for "assessment notice" substitute "WWC clearance";
- (c) for "working with children check under Part 2" substitute "WWC check under Chapter 3".

Division 3—Child Wellbeing and Safety Act 2005

169 Definitions

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

- (a) insert the following definition—
- "**WWC check** has the same meaning as in the **Worker Screening Act 2020**.";

(b) the definition of *working with children check* is **repealed**.

170 Constitution of Board

In section 14(e) of the **Child Wellbeing and Safety Act 2005**, for "Regulation" substitute "Community Safety".

171 Principles

In section 16B(1)(h) of the **Child Wellbeing and Safety Act 2005**, for "Regulation for the purpose of a working with children check" substitute "Community Safety for the purpose of a WWC check".

172 Objectives of Commission under this Part

In section 16F(d) of the **Child Wellbeing and Safety Act 2005**, for "Regulation for the purpose of working with children checks" substitute "Community Safety for the purpose of WWC checks".

173 Functions of Commission under this Part

In section 16G(g) of the **Child Wellbeing and Safety Act 2005**, for "Regulation" substitute "Community Safety".

174 Disclosure of information to the Commission, the head of an entity, a regulator, Victoria Police and others

For section 16ZC(2)(d) of the **Child Wellbeing and Safety Act 2005** substitute—

"(d) if necessary for the purposes of a WWC check, the Secretary to the Department of Justice and Community Safety; and".

175 Commission to notify Secretary after finding of reportable conduct

- (1) In section 16ZD(1) of the **Child Wellbeing and Safety Act 2005**—
- (a) for "Regulation" **substitute** "Community Safety";
 - (b) for "working with children check" **substitute** "WWC check".
- (2) In section 16ZD(2) of the **Child Wellbeing and Safety Act 2005**, for "Regulation" (where twice occurring) **substitute** "Community Safety".

176 Secretary may remove Child Link user access to the Register

In section 46N(6)(b) of the **Child Wellbeing and Safety Act 2005**, for "assessment notice under the **Working with Children Act 2005**" **substitute** "WWC clearance under the **Worker Screening Act 2020**".

Division 4—Children's Services Act 1996

177 Definitions

In section 3(1) of the **Children's Services Act 1996**—

- (a) **insert** the following definition—
- "WWC clearance* has the same meaning as in the **Worker Screening Act 2020**.";
- (b) in the definition of *working with vulnerable people law*, for "Law." **substitute** "Law";
- (c) the definition of *working with children assessment notice* is **repealed**.

178 Offence relating to unauthorised persons on children's service premises

In section 110(3) of the **Children's Services Act 1996**, in the definition of *authorised person*—

(a) in paragraph (a), for "working with children assessment notice" **substitute** "WWC clearance";

(b) for paragraph (e) **substitute**—

"(e) a person who is permitted under the **Worker Screening Act 2020** or a working with children law to remain at the children's service premises without holding a WWC clearance."

179 Offence to fail to notify certain circumstances to Regulatory Authority

In section 113(2)(a) of the **Children's Services Act 1996**, for "cancellation of a working with children assessment notice or" **substitute** "revocation of a WWC clearance or suspension or cancellation of".

Division 5—Children, Youth and Families Act 2005

180 Notice of Panel's findings and determinations

In section 107(2)(a) of the **Children, Youth and Families Act 2005**, for "Working with Children Act 2005" **substitute** "Worker Screening Act 2020".

181 Notice of Panel's determination on application

In section 113(2)(a) of the **Children, Youth and Families Act 2005**, for "Working with Children Act 2005" **substitute** "Worker Screening Act 2020".

Division 6—Commercial Passenger Vehicle Industry Act 2017

182 Matters to which regulator may have regard in considering application

In section 73(1)(a) of the **Commercial Passenger Vehicle Industry Act 2017**, for "finding referred to in section 14(1)(a) of the **Working with Children Act 2005**" substitute "relevant disciplinary or regulatory finding within the meaning of the **Worker Screening Act 2020**".

183 Schedule 1—Categorised offences

In Part 1 of Schedule 1 to the **Commercial Passenger Vehicle Industry Act 2017**, in item 7, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 7—Commission for Children and Young People Act 2012

184 Definitions

In section 3 of the **Commission for Children and Young People Act 2012**, the definition of *Department of Justice* is repealed.

185 Functions in relation to working with children

For section 24 of the **Commission for Children and Young People Act 2012** substitute—

"24 Functions in relation to working with children

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

- (a) to review and report on the administration of the **Worker Screening Act 2020** to the extent

that it relates to working with children;

- (b) in consultation with the Secretary to the Department of Justice and Community Safety, to educate and inform the community about that Act to the extent that it relates to working with children."

186 Review of administration of Working with Children Act 2005

- (1) In the heading to section 25 of the **Commission for Children and Young People Act 2012**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".
- (2) For section 25(1) of the **Commission for Children and Young People Act 2012** substitute—
 - "(1) Every 3 years, the Commission must conduct a review of the administration of the **Worker Screening Act 2020** to the extent that it relates to working with children."
- (3) In section 25(2) of the **Commission for Children and Young People Act 2012**—
 - (a) in paragraph (b), for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**";
 - (b) in paragraph (c), after "Justice" insert "and Community Safety".
- (4) In section 25(5) of the **Commission for Children and Young People Act 2012**, for "or who has been issued with a notice under the **Working with Children Act 2005**" substitute "for a WWC check or who has been issued with a WWC clearance, an interim WWC exclusion or a WWC

exclusion under the **Worker Screening Act 2020**".

187 Assistance to be provided

In section 26 of the **Commission for Children and Young People Act 2012**, after "Justice" insert "and Community Safety".

188 Access to records

- (1) For section 27(1) of the **Commission for Children and Young People Act 2012** substitute—

"(1) The Commission or an authorised person may have, and must be given, access to the records kept by the Secretary to the Department of Justice and Community Safety under the **Worker Screening Act 2020** in relation to the administration of that Act to the extent that it relates to working with children."

- (2) In section 27(2) of the **Commission for Children and Young People Act 2012**, for "Working with Children Act 2005" substitute "Worker Screening Act 2020".

189 Access to information

In section 42(1)(b)(iii) of the **Commission for Children and Young People Act 2012**, for "Regulation" substitute "Community Safety".

190 Disclosure of Working with Children information

- (1) In the heading to section 59 of the **Commission for Children and Young People Act 2012**, for "Working with Children information" substitute "information in relation to working with children".

- (2) In section 59(1)(a) and (2) of the **Commission for Children and Young People Act 2012**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 8—Corrections Act 1986

191 Definitions

In section 104ZX of the **Corrections Act 1986**, in paragraph (k) of the definition of *Corrections-related legislation*, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

192 Authorisation to use or disclose information

In section 104ZY(2)(ga) of the **Corrections Act 1986**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 9—Disability Act 2006

193 Definitions

In section 3(1) of the **Disability Act 2006**—

- (a) **insert** the following definitions—

"Disability Worker Registration Board"
means the Disability Worker
Registration Board of Victoria
established under section 8 of the
**Disability Service Safeguards
Act 2018**;

"Victorian Disability Worker Commission"
means the Victorian Disability Worker
Commission established under
section 21 of the **Disability Service
Safeguards Act 2018**;

Victorian Disability Worker Commissioner
means the Victorian Disability Worker
Commissioner appointed under
section 26 of the **Disability Service
Safeguards Act 2018**.";

- (b) in the definition of ***Victorian Disability Advisory Council***, for "section 11."
substitute "section 11";
- (c) the definitions of ***NDIS worker screening check***, ***NDIS worker screening legislation***
and ***NDIS worker screening unit*** are
repealed.

194 Role and functions of the Secretary

In section 8(1)(ca) of the **Disability Act 2006**—

- (a) **omit** "or registered NDIS providers";
- (b) **omit** "or NDIS participants, as the case
requires".

195 Section 39A substituted

For section 39A of the Disability Act 2006
substitute—

"39A Disclosure of information about worker screening

- (1) The Secretary is authorised to transfer or
disclose any information about worker
screening to the following in relation to a
person who provided, provides, or seeks to
provide, disability services or services in
accordance with an NDIS plan—
 - (a) the NDIS Quality and Safeguards
Commission;

- (b) the Disability Worker Registration Board;
 - (c) the Victorian Disability Worker Commission;
 - (d) the Victorian Disability Worker Commissioner;
 - (e) the Secretary to the Department of Justice and Community Safety, for the purposes of performing functions in relation to screening checks under the **Worker Screening Act 2020**;
 - (f) an NDIS worker screening unit within the meaning of the **Worker Screening Act 2020**;
 - (g) the relevant disability services provider;
 - (h) the relevant registered NDIS provider.
- (2) The Secretary may transfer or disclose information about worker screening to an entity referred to in subsection (1) at the Secretary's own initiative or on request of the entity.
- (3) For the purposes of this section—
information about worker screening means one or more of the following—
- (a) whether or not the person is the subject of a prohibition order in relation to health services or disability services or other services involving the care of children that is made under another Act;

- (b) whether or not the Secretary has information relating to the person's suitability to provide disability services to persons with a disability or services under the NDIS to NDIS participants and, if so, that information which includes but is not limited to the following—
- (i) whether or not a person has been assessed as posing an unacceptable risk to persons with a disability or NDIS participants;
 - (ii) whether or not a notification or complaint has been made about the person that is relevant to the person's suitability to provide disability services to persons with a disability or services under the NDIS to NDIS participants;
 - (iii) details of any notification or complaint or investigation made into a notification or complaint referred to in subparagraph (ii);
 - (iv) whether or not the person has been screened in relation to the person's suitability to provide disability services to persons with a disability or services under the NDIS to NDIS participants."

196 New Division 5 of Part 10 inserted

After section 242 of the **Disability Act 2006**
insert—

**"Division 5—Transitional provisions—
Worker Screening Act 2020**

243 Definition

In this Division—

commencement day means the day on which
the **Worker Screening Act 2020**
comes into operation.

**244 Transfer of information to Secretary to
the Department of Justice and
Community Safety**

On the commencement day, the Secretary
must provide to the Secretary to the
Department of Justice and Community
Safety information that is sufficient to
identify any person who, before the
commencement of the **Worker Screening
Act 2020**, had been assessed by the
Secretary as posing an unacceptable risk to
persons with a disability or NDIS
participants.

**245 Continuation of safety screening
requirements for notifications about
persons providing services to NDIS
participants**

- (1) This section applies if, immediately before
the commencement day—
- (a) a person had a safety screening that was
current in accordance with the safety
screening requirements; and

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- (b) a notification or complaint had been made to the Secretary that is relevant to that person's suitability to provide services under the NDIS to NDIS participants; and
 - (c) the complaint or notification had not been finally dealt with in accordance with the safety screening requirements.
- (2) Despite the amendment of this Act by section 194 of the **Worker Screening Act 2020**—
 - (a) the Secretary may investigate the complaint or notification; and
 - (b) the safety screening requirements continue to apply for 3 months after the commencement day to the extent necessary to enable the notification or complaint to be investigated.
- (3) In this section—

safety screening requirements means the safety screening requirements for persons employed or engaged, or to be employed or engaged, by registered NDIS providers for the purpose of providing services to NDIS participants set out in the safety screening policy issued by the Secretary, as in force immediately before the commencement day."

Division 10—Disability Service Safeguards Act 2018

197 Definitions

In section 3(1) of the **Disability Service Safeguards Act 2018**—

(a) **insert** the following definitions—

"corresponding NDIS worker screening law
has the same meaning as in the **Worker Screening Act 2020**;

interim exclusion means—

- (a) an interim NDIS exclusion within the meaning of the **Worker Screening Act 2020**; or
- (b) an interim decision made under a corresponding NDIS worker screening law that has the same effect as a decision to give an interim NDIS exclusion;

NDIS check has the same meaning as in the **Worker Screening Act 2020**;

NDIS clearance has the same meaning as in the **Worker Screening Act 2020**;

NDIS exclusion has the same meaning as in the **Worker Screening Act 2020**;";

(b) in the definition of *NDIS worker screening check*, after "assessment" **insert** "under a corresponding NDIS worker screening law";

(c) for the definition of *clearance* **substitute**—

"clearance means—

- (a) an NDIS clearance; or
- (b) an interstate NDIS clearance within the meaning of the **Worker Screening Act 2020**;";

(d) for the definition of *exclusion* substitute—

"*exclusion* means—

(a) an NDIS exclusion; or

(b) an interstate NDIS exclusion
within the meaning of the **Worker
Screening Act 2020**";

(e) for the definition of *NDIS worker screening
unit* substitute—

"*NDIS worker screening unit* means an
NDIS worker screening unit within the
meaning of the **Worker Screening
Act 2020**";

(f) the definition of *interim bar* is repealed.

198 Investigation of complaints by Commission

(1) For section 119(1)(b)(i) and (ii) of the **Disability
Service Safeguards Act 2018** substitute—

"(i) has been given an exclusion; or

(ii) has had a clearance suspended or revoked;
or".

(2) For section 119(1)(b)(iv) of the **Disability Service
Safeguards Act 2018** substitute—

"(iv) has been given an interim exclusion; or".

199 Power of Commission to conduct a Commission initiated investigation

(1) For section 121(b)(i) and (ii) of the **Disability
Service Safeguards Act 2018** substitute—

"(i) has been given an exclusion; or

(ii) has had a clearance suspended or revoked;
or".

(2) For section 121(b)(iv) of the **Disability Service Safeguards Act 2018** substitute—

"(iv) has been given an interim exclusion; or".

200 Grounds on which interim prohibition order may be made

For section 131(c) and (d) of the **Disability Service Safeguards Act 2018** substitute—

"(c) the unregistered disability worker has been given an exclusion or has had a clearance suspended or revoked;

(d) the unregistered disability worker has been given an interim exclusion;"

201 Grounds on which prohibition order may be made

In section 133 of the **Disability Service Safeguards Act 2018**—

(a) for paragraph (c) **substitute**—

"(c) the unregistered disability worker has been given an exclusion or has had a clearance suspended or revoked;"

(b) for paragraph (e) **substitute**—

"(e) the unregistered disability worker has been given an interim exclusion; or";

(c) paragraph (d) is **repealed**.

202 Registered disability worker or disability student to give Board notice of certain events

In section 207(3) of the **Disability Service Safeguards Act 2018**, in paragraph (a) of the definition of *relevant event*—

(a) for subparagraph (x) **substitute**—

"(x) the disability worker has been given an exclusion or has had a clearance suspended or revoked;"

(b) for subparagraph (xiii) **substitute**—

"(xiii) the disability worker has been given an interim exclusion; or";

(c) subparagraph (xi) is **repealed**.

203 Board may ask registered disability worker for information

In section 209(1) of the **Disability Service Safeguards Act 2018**—

(a) for paragraph (h) **substitute**—

"(h) whether the disability worker has been given an exclusion or has had a clearance suspended or revoked;";

(b) for paragraph (j) **substitute**—

"(j) whether the disability worker has been given an interim exclusion;";

(c) paragraph (i) is **repealed**.

204 Disclosure of information to other relevant entities

In section 241(2) of the **Disability Service Safeguards Act 2018**, after paragraph (b) of the definition of *relevant entity* **insert**—

"(ba) the Secretary to the Department of Justice and Community Safety for the purposes of performing functions and exercising powers under the **Worker Screening Act 2020**; and".

205 Power to obtain criminal history report

In section 256(2) of the **Disability Service Safeguards Act 2018**—

(a) in paragraph (c), for "jurisdiction." **substitute** "jurisdiction;";

(b) after section 256(2)(c) **insert**—

"(d) a prescribed entity.".

Division 11—Education and Care Services National Law Act 2010

206 Working with children law

In section 14 of the **Education and Care Services National Law Act 2010**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020** to the extent that it relates to working with children".

Division 12—Education and Training Reform Act 2006

207 Definitions

In section 1.1.3(1) of the **Education and Training Reform Act 2006**—

(a) **insert** the following definitions—

"interim WWC exclusion has the same meaning as in the **Worker Screening Act 2020**;

WWC clearance has the same meaning as in the **Worker Screening Act 2020**;

WWC exclusion has the same meaning as in the **Worker Screening Act 2020**.";

(b) in the definition of *non-conviction charge*, for "section 6(1) of **Working with Children Act 2005**" substitute "section 6(1) of the **Worker Screening Act 2020**";

(c) in paragraph (b) of the definition of *vocational education and training*, for "industry provider." substitute "industry provider;"

(d) the definitions of *interim negative notice* and *negative notice* are **repealed**.

208 Meaning of *category A offence*

In section 1.1.3A(1) of the **Education and Training Reform Act 2006**—

- (a) in paragraph (a), for "clauses 1 and 2 of Schedule 1 to the **Working with Children Act 2005**" **substitute** "clauses 1 and 2 of Schedule 2 to the **Worker Screening Act 2020**";
- (b) in paragraph (b), for "clauses 3 to 10 of Schedule 1 to the **Working with Children Act 2005**" **substitute** "clauses 3 to 10 of Schedule 2 to the **Worker Screening Act 2020**".

209 Meaning of *category B offence*

In section 1.1.3B(1) of the **Education and Training Reform Act 2006**—

- (a) in paragraph (a), for "clause 2, 8, 9 or 14A of Schedule 2 to the **Working with Children Act 2005**" **substitute** "clause 2, 8, 9 or 15 of Schedule 4 to the **Worker Screening Act 2020**";
- (b) in paragraph (b), for "clauses 1, 3 to 7, 9A, 10 to 14 or 15 to 18 of Schedule 2 to the **Working with Children Act 2005**" **substitute** "clauses 1, 3 to 7, 10 to 14 or 16 to 20 of Schedule 4 to the **Worker Screening Act 2020**";
- (c) in paragraph (c), for "clauses 1 and 2 of Schedule 1 to the **Working with Children Act 2005**" **substitute** "clauses 1 and 2 of Schedule 2 to the **Worker Screening Act 2020**".

210 Meaning of *category C conduct*

In section 1.1.3C(1)(b) of the **Education and Training Reform Act 2006**, for "clause 2, 8, 9 or 14A of Schedule 2 to the **Working with Children Act 2005**" substitute "clause 2, 8, 9 or 15 of Schedule 4 to the **Worker Screening Act 2020**".

211 Eligibility of person to be employed as a teacher or an early childhood teacher

In section 2.3.9(1) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

212 Dismissal, suspension and termination of employment

In section 2.3.10(1) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

213 Employment, dismissal and termination of holders of temporary approvals

In section 2.3.10A(1) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

214 Eligibility for employment

In section 2.4.7(2) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

215 Saving of rights of persons holding Government office

In section 2.4.31(2A)(c) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

216 Dismissal of disqualified and unregistered teachers

In section 2.4.58 of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

217 Application for registration

For section 2.6.7(1A) of the **Education and Training Reform Act 2006** substitute—

"(1A) A person may not apply for registration as a teacher within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside or the person has been given a WWC clearance under that Act."

218 Registration as a teacher

In section 2.6.9(1A)(c) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

219 Application for registration

For section 2.6.12A(1A) of the **Education and Training Reform Act 2006** substitute—

"(1A) A person may not apply for registration as an early childhood teacher within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside or the person has been given a WWC clearance under that Act."

220 Registration as an early childhood teacher

In section 2.6.12D(1A)(c) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

221 Application for permission to teach

For section 2.6.13(1A) of the **Education and Training Reform Act 2006** substitute—

"(1A) A person may not apply for permission to teach within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside or the person has been given a WWC clearance under that Act."

222 Institute may disclose information about child-related work to Secretary

In section 2.6.26E of the **Education and Training Reform Act 2006**, for "Working with Children Act 2005" substitute "Worker Screening Act 2020".

223 Institute may suspend registration under this Part

In section 2.6.27(2)(b) of the **Education and Training Reform Act 2006**, for "interim negative notice" substitute "interim WWC exclusion".

224 Submissions or information lodged with Institute

In section 2.6.27B(2) of the **Education and Training Reform Act 2006**—

- (a) in paragraph (b), for "interim negative notice" substitute "interim WWC exclusion";

(b) for paragraph (d) **substitute—**

"(d) a decision has been made under the
Worker Screening Act 2020 in
relation to the interim WWC exclusion
referred to in the notice—

(i) to give a WWC clearance under
that Act to the person given the
interim WWC exclusion; or

(ii) to not revoke a WWC clearance
held by the person given the
interim WWC exclusion."

225 Notice of suspension of registration

In section 2.6.27D(2)(b) of the **Education and Training Reform Act 2006**, for "**Working with Children Act 2005**" **substitute "Worker Screening Act 2020"**.

226 Suspension remains in force

For section 2.6.27F(1)(c) of the **Education and Training Reform Act 2006** **substitute—**

"(c) in the case of an interim WWC exclusion
that forms the ground for the suspension, a
decision has been made under the **Worker
Screening Act 2020—**

(i) to give a WWC clearance under that
Act to the person whose registration has
been suspended under this Division; or

(ii) to not revoke a WWC clearance held by
that person."

227 Institute must notify persons of interim suspension

In section 2.6.28B(4) of the **Education and Training Reform Act 2006**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

228 Notice of revocation of interim suspension

In section 2.6.28H of the **Education and Training Reform Act 2006**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

229 Cancellation of registration held under this Part without inquiry

(1) In section 2.6.29(1)(b), (3)(b) and (7) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

(2) For section 2.6.29(3A) of the **Education and Training Reform Act 2006** substitute—

"(3A) If a WWC exclusion given to a person referred to in subsection (1) or (3) is set aside, or a WWC clearance is given to that person, under the **Worker Screening Act 2020**, the relevant subsection ceases to apply to the person from the date that the WWC exclusion was set aside or the WWC clearance was given to the person."

230 Notifications to Secretary

In section 2.6.29D of the **Education and Training Reform Act 2006**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

231 Notifications to Institute concerning conduct of, and actions against, registered teacher

In section 2.6.31(3)(b) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

232 Notifications

In section 2.6.51(1)(g) of the **Education and Training Reform Act 2006**, for "Working with Children Act 2005" substitute "Worker Screening Act 2020".

233 What the Register must contain

In section 2.6.54C(2)(g), (h) and (i) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

234 Review by VCAT

In section 2.6.55(3) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

235 Application for a temporary approval to be employed or engaged as an early childhood teacher

For section 2.6.60B(2)(b)(i) of the **Education and Training Reform Act 2006** substitute—

"(i) a copy of the applicant's current WWC clearance under the **Worker Screening Act 2020** or evidence that the applicant has applied for a WWC clearance under that Act; and".

236 Grant of temporary approval

In section 2.6.60C(2) of the **Education and Training Reform Act 2006**, for "assessment notice under the **Working with Children Act 2005**" substitute "WWC clearance under the **Worker Screening Act 2020**".

237 Revocation of exemptions and temporary approvals

In section 2.6.60E(2) of the **Education and Training Reform Act 2006**, for "negative notice" substitute "WWC exclusion".

Division 13—Sentencing Act 1991

238 Sentencing guidelines

In section 5(2BC) of the **Sentencing Act 1991**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 14—Serious Offenders Act 2018

239 Sharing of information

In section 284(6) of the **Serious Offenders Act 2018**, in paragraph (p) of the definition of *relevant Act*, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 15—Service Victoria Act 2018

240 Definitions

In section 3 of the **Service Victoria Act 2018**, for the examples at the foot of the definition of *official information document* substitute—
"Example
Birth certificate."

Division 16—Sex Offenders Registration Act 2004

241 Access to the Register to be restricted

In section 63(1B) of the **Sex Offenders Registration Act 2004**, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

Division 17—Transport (Compliance and Miscellaneous) Act 1983

242 Definitions

In section 86(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, in paragraph (e) of the definition of *category 1 offence*, for "**Working with Children Act 2005**" substitute "**Worker Screening Act 2020**".

243 Matters to be considered by the licensing authority when issuing or renewing an accreditation

(1) In section 169(1A) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "finding of a prescribed kind made by, or on behalf of a prescribed body, referred to in section 14(1)(a) of the **Working with Children Act 2005**" substitute "relevant disciplinary or regulatory finding within the meaning of the **Worker Screening Act 2020**".

(2) For section 169(2)(c) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"(c) is a person who is subject to reporting obligations imposed on the person by Part 3 of the **Sex Offenders Registration Act 2004**".

Division 18—Victorian Civil and Administrative Tribunal Act 1998

244 Part 23 of Schedule 1 substituted

For Part 23 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"Part 23—Worker Screening Act 2020

101 Constitution of Tribunal for Worker Screening matters

The Tribunal is to be constituted for the purposes of a proceeding under the **Worker Screening Act 2020** by a presidential member or a senior member sitting alone."

Division 19—Amendment of this Act

245 Definition of community or treatment order

In section 3(1), in paragraph (c) of the definition of *community or treatment order*, after "drug" insert "and alcohol".

Division 20—Repeal of this Part

246 Repeal of this Part

This Part is **repealed** on 15 September 2022.

Note

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

Schedule 1—NDIS category A offences

Section 3(1)

- 1 An offence specified in clause 2(a) of Schedule 1 to the **Sentencing Act 1991** (murder).
- 2 A child abuse material offence or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted a child abuse material offence.
- 3 An offence against any of the following sections of the **Crimes Act 1958**—
 - (a) section 25 (setting traps etc. to kill);
 - (b) section 32(1) (offence to perform female genital mutilation on a child);
 - (c) section 38(1) (rape);
 - (d) section 39(1) (rape by compelling sexual penetration);
 - (e) section 49A(1) (sexual penetration of a child under the age of 12);
 - (f) section 49B(1) (sexual penetration of a child under the age of 16);
 - (g) section 49C(1) (sexual penetration of a child aged 16 or 17 under care, supervision or authority);
 - (h) section 49D(1) (sexual assault of a child under the age of 16);
 - (i) section 49E(1) (sexual assault of a child aged 16 or 17 under care, supervision or authority);
 - (j) section 49F(1) (sexual activity in the presence of a child under the age of 16);

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- (k) section 49G(1) (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority);
- (l) section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
- (m) section 49I(1) (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity);
- (n) section 49J(1) (persistent sexual abuse of a child under the age of 16);
- (o) section 49K(1) (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity);
- (p) section 49L(1) (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity);
- (q) section 49M(1) (grooming for sexual conduct with a child under the age of 16);
- (r) section 49P(1) (abduction or detention of a child under the age of 16 for a sexual purpose);
- (s) section 49Q(1) (causing or allowing a sexual performance involving a child);
- (t) section 49R(1) (inviting or offering a sexual performance involving a child);
- (u) section 49S(1) (facilitating a sexual offence against a child);
- (v) section 53E(1) (aggravated sexual servitude);
- (w) section 53G(1) (aggravated deceptive recruiting for commercial sexual services);
- (x) section 54A(1) (bestiality).

- 4 An offence against any of the following sections of the **Crimes Act 1958** in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 15A(1) (causing serious injury intentionally in circumstances of gross violence);
 - (b) section 15B(1) (causing serious injury recklessly in circumstances of gross violence);
 - (c) section 16 (causing serious injury intentionally);
 - (d) section 17 (causing serious injury recklessly);
 - (e) section 18 (causing injury intentionally or recklessly);
 - (f) section 26 (setting traps etc. to cause serious injury);
 - (g) section 31(1)(a) (assault or threaten to assault with intent to commit indictable offence);
 - (h) section 32(2) (offence to perform genital mutilation);
 - (i) section 33(1) (offence to take a person from the State with the intention of having prohibited female genital mutilation performed);
 - (j) section 41(1) (sexual assault by compelling sexual touching);
 - (k) section 42(1) (assault with intent to commit a sexual offence);
 - (l) section 43(1) (threat to commit a sexual offence);

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- (m) section 46(1) (administration of an intoxicating substance for a sexual purpose);
- (n) section 47(1) (abduction or detention for a sexual purpose);
- (o) section 48(1) (sexual activity directed at another person);
- (p) section 50C(1) (sexual penetration of a child or lineal descendant);
- (q) section 50D(1) (sexual penetration of a step-child);
- (r) section 50E(1) (sexual penetration of a parent, lineal ancestor or step-parent);
- (s) section 50F(1) (sexual penetration of a sibling or half-sibling);
- (t) section 52B(1) (sexual penetration of a person with a cognitive impairment or mental illness);
- (u) section 52C(1) (sexual assault of a person with a cognitive impairment or mental illness);
- (v) section 52D(1) (sexual activity in the presence of a person with a cognitive impairment or mental illness);
- (w) section 52E(1) (causing a person with a cognitive impairment or mental illness to be present during sexual activity).
- (x) section 53B(1) (using force, threat etc. to cause another person to provide commercial sexual services);
- (y) section 53C(1) (causing another person to provide commercial sexual services in circumstances involving sexual servitude);

- (z) section 53D(1) (conducting a business in circumstances involving sexual servitude);
 - (za) section 53F(1) (deceptive recruiting for commercial sexual services).
- 5 An offence against any of the following sections of the **Crimes Act 1958** in circumstances where the person against whom the offence is committed is a child—
- (a) section 44(1) (procuring sexual act by threat);
 - (b) section 45(1) (procuring sexual act by fraud).
- 6 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**—
- (a) section 44(1) (rape);
 - (b) section 44(2) (rape with mitigating circumstances);
 - (c) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);
 - (d) section 47 (assault with intent to unlawfully and carnally know girl under the age of 10);
 - (e) section 47 (attempting to unlawfully and carnally know girl under the age of 10);
 - (f) section 48(2) (assault with intent to unlawfully and carnally know girl aged between 10 and 16).
- 7 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the

offence is committed is a child or a vulnerable person—

- (a) section 52(1) (unlawfully and carnally knowing woman or girl aged 10 or above who is daughter, lineal descendant or step-daughter);
- (b) section 52(2) (attempting to unlawfully and carnally know woman or girl aged 10 or above who is daughter, step-daughter or lineal descendant);
- (c) section 52(2) (assault with intent to unlawfully and carnally know woman or girl aged 10 or above who is daughter, step-daughter or lineal descendant);
- (d) section 52(3) (unlawfully and carnally knowing woman or girl aged 10 or above who is sister or mother);
- (e) section 52(4) (attempting to unlawfully and carnally know woman or girl aged 10 or above who is sister or mother);
- (f) section 52(4) (assault with intent to unlawfully and carnally know woman or girl aged 10 or above who is sister or mother);
- (g) section 54(1) (carnal knowledge of female mentally ill or intellectually defective person);
- (h) section 54(1) (attempted carnal knowledge of female mentally ill or intellectually defective person);
- (i) section 54(1) (assault with intent to carnally know female mentally ill or intellectually defective person);

- (j) section 58 (owner or occupier of premises induces or knowingly suffers any girl to be on premises to be unlawfully and carnally known by any man);
 - (k) section 62 (forcible abduction of woman with intent to marry or carnally know, or to be married or carnally known).
- 8 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 55(1) (unlawfully and indecently assault woman or girl) (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the offence is committed is a vulnerable person.
- 9 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the offence is committed is a child—
- (a) section 53(1) (adult female permitting carnal knowledge by father, lineal ancestor, step-father, brother or son);
 - (b) section 57(1) (procuring defilement of girl by threats or fraud);
 - (c) section 57(1) (attempting to procure defilement of girl by threats or fraud).
- 10 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 6 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the

offence is committed is a child or a vulnerable person—

- (a) section 68(1) (buggery with any person under the age of 14 years);
- (b) section 68(1) (buggery with violence);
- (c) section 68(3) (assault with intent to commit buggery);
- (d) section 69(1)(b) (inciting, procuring or attempting to procure girl under the age of 16 for act of gross indecency).

11 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 6 of the **Crimes (Sexual Offences) Act 1980**—

- (a) section 68(2) (buggery with any animal);
- (b) section 68(3) (attempting buggery with any animal).

12 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 8(2) of the **Crimes (Amendment) Act 1985**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—

- (a) section 17 (intentionally causing grievous bodily harm or shooting etc. with intention to do grievous bodily harm);
- (b) section 19 (unlawfully and maliciously wounding or inflicting grievous bodily harm);
- (c) section 23 (unlawfully and maliciously administering poison with intent to injure);

- (d) section 37 (assault occasioning actual bodily harm);
 - (e) section 37 (common assault).
- 13 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**—
- (a) section 45(1) (rape);
 - (b) section 45(2) (attempted rape);
 - (c) section 45(3) (aggravated rape);
 - (d) section 45(4) (attempted rape with aggravating circumstances);
 - (e) section 45(4) (assault with intent to commit rape with aggravating circumstances);
 - (f) section 47(1) (sexual penetration of child under the age of 10);
 - (g) section 47(2) (assault with intent to sexually penetrate child under the age of 10);
 - (h) section 49(2) (assault person aged 16 or 17 with intent to take part in sexual penetration);
 - (i) section 49(3) (assault person aged 16 or 17 under care, supervision or authority with intent to take part in sexual penetration);
 - (j) section 58(1) (bestiality);
 - (k) section 58(2) (attempting to commit bestiality).
- 14 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the
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Crimes Act 1958, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—

- (a) section 44(1) (indecent assault);
- (b) section 44(2) (indecent assault with aggravated circumstances);
- (c) section 51(2)(a) (take part in act of sexual penetration with mentally ill or intellectually defective person);
- (d) section 51(2)(a) (attempt to take part in act of sexual penetration with mentally ill or intellectually defective person);
- (e) section 51(2)(b) (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);
- (f) section 52(1) (sexual penetration of person aged 10 years or above who is child, lineal descendant or step-child);
- (g) section 52(2) (attempted sexual penetration of person aged 10 years or above who is child, lineal descendant or step-child);
- (h) section 52(2) (assault with intent to sexually penetrate person aged 10 years or above who is child, lineal descendant or step-child);
- (i) section 52(4) (sexual penetration of person aged 10 years or above who is sibling or half-sibling);
- (j) section 52(5) (attempted sexual penetration of person aged 10 years or above who is sibling or half-sibling);

- (k) section 52(5) (assault with intent to sexually penetrate person aged 10 years or above who is sibling or half-sibling);
 - (l) section 54(1)(b) (procuring sexual penetration by false representation or pretence);
 - (m) section 54(1)(b) (attempting to procure sexual penetration outside marriage by false representation or pretence);
 - (n) section 55(1)(a) (administration of drugs etc.);
 - (o) section 56(b) (taking away by force or detaining person with intent to take part in sexual penetration).
- 15 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**, in circumstances where the person against whom the offence is committed is a child—
- (a) section 54(1)(a) (procuring person by threats or intimidation);
 - (b) section 54(1)(a) (attempting to procure person by threats or intimidation).
- 16 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**—

- (a) section 40 (rape);
 - (b) section 41 (rape with aggravating circumstances).
- 17 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 42 (indecent assault) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**, in circumstances where the person against whom the offence is committed is a vulnerable person.
- 18 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 43 (indecent assault with aggravating circumstances) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 19 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.
- 20 An offence against section 49(1) (indecent act with 16 year old child under care, supervision or authority) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 13 of the **Crimes (Sexual Offences) Act 2006**.

- 21 An offence against section 52(1) (sexual penetration of resident of residential facility) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 17(2) of the **Crimes (Sexual Offences) Act 2006**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 22 An offence against section 52(2) (indecent act with resident of residential facility) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 17(3) of the **Crimes (Sexual Offences) Act 2006**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 23 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by section 58 (procuring sexual penetration of child under the age of 16) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 18 of the **Crimes (Sexual Offences) Act 2006**.
- 24 An offence against section 60(1) (soliciting acts of sexual penetration or indecent acts) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 19 of the **Crimes (Sexual Offences) Act 2006**.
- 25 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**—

- (a) section 47A(1) (sexual relationship with child under the age of 16 under care, supervision or authority);
 - (b) section 48(1) (sexual penetration of 16 or 17 year old child under care, supervision or authority);
 - (c) section 54 (occupier etc. permitting unlawful sexual penetration of a child under the age of 17);
 - (d) section 56(1) (abduction of child under the age of 16);
 - (e) section 56(2) (abduction of child under the age of 16);
 - (f) section 59(1) (bestiality).
- 26 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 44(1) (incest with child lineal descendant or step-child);
 - (b) section 44(2) (incest with child, lineal descendant or step-child of de facto spouse);
 - (c) section 44(4) (incest with sibling or half-sibling);
 - (d) section 51(1) (sexual penetration of person with impaired mental functioning);
 - (e) section 51(2) (indecent act with person with impaired mental functioning);

- (f) section 53(1) (administration of drugs etc.);
 - (g) section 55 (abduction or detention).
- 27 An offence against section 40(1) (assault with intent to rape) (as amended) of the **Crimes Act 1958**, inserted by section 20 of the **Sentencing (Amendment) Act 1993** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.
- 28 An offence against section 60A(1) (sexual offence while armed with an offensive weapon) (as amended) of the **Crimes Act 1958**, inserted by section 21 of the **Sentencing (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 29 An offence against section 49A(1) (facilitating sexual offences against children) (as amended) of the **Crimes Act 1958**, inserted by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 30 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 60AB(2) (sexual servitude);
 - (b) section 60AB(3) (sexual servitude);
 - (c) section 60AB(4) (sexual servitude);

- (d) section 60AC(1) (aggravated sexual servitude);
 - (e) section 60AD(1) (deceptive recruiting for commercial sexual services);
 - (f) section 60AE(1) (aggravated deceptive recruiting for commercial sexual services).
- 31 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 7 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**—
- (a) section 70AC(a) (inviting minor to be concerned in sexual performance);
 - (b) section 70AC(d) (offering minor to be concerned in sexual performance).
- 32 An offence against section 38A (compelling sexual penetration) (as amended) of the **Crimes Act 1958**, inserted by section 7 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 33 An offence against section 49(1) (indecent act with 16 or 17 year old child) (as amended) of the **Crimes Act 1958**, inserted by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 34 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 16 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences)**
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Act 2016, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—

- (a) section 51(1) (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services);
 - (b) section 51(2) (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services).
- 35 An offence against section 52(1) (sexual offences against persons with a cognitive impairment by providers of special programs) (as amended) of the **Crimes Act 1958**, inserted by section 17(2) of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 36 An offence against section 52(2) (sexual offences against persons with a cognitive impairment by providers of special programs) (as amended) of the **Crimes Act 1958**, inserted by section 17(3) of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 37 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**—

- (a) section 58(1) (procuring sexual penetration of a child);
 - (b) section 58(2) (procuring sexual penetration of a child).
- 38 An offence against section 49B(2) (grooming for sexual conduct with child under the age of 16 years) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes Amendment (Grooming) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 39 An offence against section 70(1) (possession of child pornography) (as amended) of the **Crimes Act 1958**, inserted by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by section 6 of the **Crimes (Amendment) Act 2000**.
- 40 An offence against section 58(1) (publication or transmission of certain material to minors) (as amended) of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**.
- 41 An offence against section 60A(1) (possession of child pornography) (as amended) of the **Classification of Films and Publications Act 1990**, inserted by section 3 of the **Classification of Films and Publications (Amendment) Act 1992**.
- 42 An offence against section 45 (procurement of child for objectionable film) (as amended) of the **Classification of Films and Publications Act 1990**.
- 43 An offence against section 11(3) (making objectionable film) (as amended) of the **Films (Classification) Act 1984**.
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- 44 An offence against any of the following sections (as amended) of the **Sex Work Act 1994**—
- (a) section 5(1) (causing or inducing child to take part in sex work);
 - (b) section 6(1) (obtaining payment for sexual services provided by a child);
 - (c) section 7(1) (agreement for provision of sexual services by a child);
 - (d) section 11(1) (allowing child to take part in sex work).
- 45 An offence against any of the following sections (as amended) of the **Prostitution Regulation Act 1986** as in force immediately before its repeal—
- (a) section 6(1) (offence to cause or induce child to take part in prostitution);
 - (b) section 7(1) (offence to allow child to take part in prostitution);
 - (c) section 8(1) (offence to obtain payment in respect of sexual services provided by a child);
 - (d) section 9(1) (offence to enter into agreement under which child is to provide sexual services).
- 46 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Summary Offences Act 1966** in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 24(1)(a) (aggravated assault of male child under the age of 14 or any female);
 - (b) section 24(2) (assault in company or assault by kicking or with weapon or instrument);

- (c) section 41H(2) (give food or drink containing intoxicating substance intending harm).

47 Any of the following offences in circumstances other than where there is a familial relationship between the offender and the person against whom the offence is committed—

- (a) an offence against section 63(1) (child stealing) of the **Crimes Act 1958**;
- (b) an offence against section 63(2) (takes, decoys or entices away a child) of the **Crimes Act 1958**;
- (c) an offence against section 63A (kidnapping) of the **Crimes Act 1958** if the person against whom the offence is committed is a child;
- (d) any of the following common law offences if the person against whom the offence is committed is a child—
 - (i) kidnapping;
 - (ii) stealing or unlawfully carrying a person away against their will.

48 Any of the following offences in circumstances where the person against whom the offence is committed is a vulnerable person—

- (a) an offence against section 63A (kidnapping) of the **Crimes Act 1958**;
- (b) any of the following common law offences—
 - (i) kidnapping;
 - (ii) stealing or unlawfully carrying a person away against their will.

49 An offence against any of the following sections of the Criminal Code of the Commonwealth—

- (a) section 271.4 (offence of trafficking in children);
- (b) section 271.7 (offence of domestic trafficking in children);
- (c) section 272.8 (sexual intercourse with child outside Australia);
- (d) section 272.9 (sexual activity (other than sexual intercourse) with child outside Australia);
- (e) section 272.10(1) (aggravated offence—child with mental impairment or under care, supervision or authority of defendant);
- (f) section 272.11(1) (persistent sexual abuse of child outside Australia);
- (g) section 272.12 (sexual intercourse with young person outside Australia—defendant in position of trust or authority);
- (h) section 272.13 (sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority);
- (i) section 272.14(1) (procuring child to engage in sexual activity outside Australia);
- (j) section 272.15(1) ("grooming" child to engage in sexual activity outside Australia);
- (k) section 272.18(1) (benefiting from offence against Division 272);
- (l) section 272.19(1) (encouraging offence against Division 272);
- (m) section 272.20(1) (preparing for or planning offence against Division 272);

- (n) section 273.6 (possessing, controlling, producing, distributing or obtaining child abuse material outside Australia);
- (o) section 273.7 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);
- (p) section 471.19 (using a postal or similar service for child abuse material);
- (q) section 471.20 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service);
- (r) section 471.22 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);
- (s) section 471.24 (using a postal or similar service to procure persons under 16);
- (t) section 471.25 (using a postal or similar service to "groom" persons under 16);
- (u) section 471.26 (using a postal or similar service to send indecent material to person under 16);
- (v) section 474.24A (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);
- (w) section 474.25A (using a carriage service for sexual activity with person under 16 years of age);
- (x) section 474.25B (aggravated offence—child with mental impairment or under care, supervision or authority of defendant);

- (y) section 474.25C (using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16);
- (z) section 474.27A (using a carriage service to transmit indecent communication to person under 16 years of age).

50 An offence against any of the following sections of the Criminal Code of the Commonwealth in circumstances where the person against whom the offence is committed is a child or a vulnerable person—

- (a) section 71.8 (unlawful sexual penetration);
- (b) section 270.3 (slavery offences);
- (c) section 270.5 (servitude offences);
- (d) section 270.6A (forced labour offences);
- (e) section 270.7 (deceptive recruiting for labour or services);
- (f) section 270.7B (forced marriage offences);
- (g) section 270.7C (offence of debt bondage);
- (h) section 271.2 (offence of trafficking in persons);
- (i) section 271.3 (trafficking in persons—aggravated offence);
- (j) section 271.5 (offence of domestic trafficking in persons);
- (k) section 271.6 (domestic trafficking in persons—aggravated offence);
- (l) section 271.7B (offence of organ trafficking—entry into and exit from Australia);

- (m) section 271.7C (organ trafficking—aggravated offence);
 - (n) section 271.7D (offence of domestic organ trafficking);
 - (o) section 271.7E (domestic organ trafficking—aggravated offence);
 - (p) section 274.2 (torture).
- 51 An offence against any of the following sections (as amended) of the Criminal Code of the Commonwealth, repealed by clause 12 of Schedule 1 to the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 of the Commonwealth, in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 270.6 (sexual servitude offences);
 - (b) section 270.7 (deceptive recruiting for sexual services);
 - (c) section 271.9 (debt bondage—aggravated offence).
- 52 An offence against section 271.9 (aggravated debt bondage) (as amended) of the Criminal Code of the Commonwealth, repealed by clause 42 of Schedule 1 to the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 of the Commonwealth, in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 53 Any of the following common law offences—
- (a) rape;
 - (b) assault with intent to rape.

- 54 The common law offence of assault causing injury in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 55 An offence of attempting to commit an offence specified in clauses 1 to 54 of this Schedule, other than an offence specified in clauses 2, 39, 40, 41, 43 and 49(n), (o), (p), (q), (r), (u) and (z).
- 56 An offence of incitement to commit an offence specified in clauses 1 to 54 of this Schedule.
- 57 An offence of conspiracy to commit an offence specified in clauses 1 to 54 of this Schedule.
- 58 An offence under a law of a jurisdiction other than Victoria that, if committed in Victoria, would have constituted an offence specified in clause 1 or clauses 3 to 57 of this Schedule.
- 59 An offence against section 42 (indecent assault) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**, in circumstances where the person against whom the offence is committed is a child.
- 60 An offence against section 47(1) (indecent act with child under the age of 16) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 61 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**, in circumstances where the person

against whom the offence is committed is a child—

- (a) section 44(1) (indecent assault);
- (b) section 48(1) (sexual penetration with person aged between 10 and 16);
- (c) section 48(2) (attempted sexual penetration with person aged between 10 and 16);
- (d) section 49(1) (sexual penetration with person aged 16 or 17);
- (e) section 49(2) (attempted sexual penetration with person aged 16 or 17);
- (f) section 50(1)(a) (commission of act of gross indecency in presence of person aged under 16).

62 An offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.

63 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the offence is committed is a child—

- (a) section 48(1) (unlawfully and carnally knowing girl aged between 10 and 16);
- (b) section 48(2) (attempting to unlawfully and carnally know girl aged between 10 and 16);
- (c) section 55(1) (unlawfully and indecently assault woman or girl).

- 64 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 6 of the **Crimes (Sexual Offences) Act 1980**—
- (a) section 69(1)(a) (committing act of gross indecency with or in the presence of girl under the age of 16);
 - (b) section 69(1)(c) (being party to the commission of act of gross indecency in presence of girl under the age of 16).
- 65 An offence against section 45(1) (sexual penetration of a child under the age of 16) (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 66 An offence against section 47(1) (indecent act with child under the age of 16) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 67 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**—
- (a) section 50(1)(a) (committing or being party to commission of act of gross indecency in presence of person under the age of 16);

(b) section 50(1)(b) (procuring, inciting or attempting to procure commission of act of gross indecency in presence of person under the age of 16).

68 The common law offence of indecent assault against a boy in circumstances where the person against whom the offence is committed is a child.

69 The common law offence of indecent assault against a girl in circumstances where the person against whom the offence is committed is a child.

70 An offence of attempting to commit an offence specified in clauses 59 to 69 of this Schedule.

71 An offence under a law of a jurisdiction other than Victoria that, if committed in Victoria, would have constituted an offence specified in clauses 59 to 70 of this Schedule.

Schedule 2—WWC category A offences

Section 3(1)

- 1 An offence (other than a child abuse material offence, a carnal knowledge offence or an offence specified in clause 4, 5, 6, 7 or 8 of this Schedule) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) in circumstances where the person against whom the offence is committed is a child or, in the case of an offence of bestiality, against an animal.
- 2 A child abuse material offence or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted a child abuse material offence.
- 3 An offence specified in clause 2(a) of Schedule 1 to the **Sentencing Act 1991** (murder).
- 4 The common law offence of rape.
- 5 An offence against section 38 (rape) of the **Crimes Act 1958**.
- 6 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**—
 - (a) section 40 (rape);
 - (b) section 41 (rape with aggravating circumstances).
- 7 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed

by section 3 of the **Crimes (Sexual Offences) Act 1991**—

- (a) section 45(1) (rape);
- (b) section 45(3) (rape with aggravating circumstances).

8 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**—

- (a) section 44(1) (rape);
- (b) section 44(2) (rape with mitigating circumstances).

9 An offence of attempting to commit an offence specified in clause 1, 3, 4, 5, 6, 7 or 8 of this Schedule.

10 An offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence specified in clause 1, 3, 4, 5, 6, 7, 8 or 9 of this Schedule.

Schedule 3—NDIS category B offences

Section 3(1)

- 1 An offence specified in any of the following clauses of Schedule 1 to the **Sentencing Act 1991**—
 - (a) clause 2(b) (manslaughter);
 - (b) clause 2(baa) (child homicide).
- 2 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**—
 - (a) section 3A(1) (unintentional killing in the course or furtherance of a crime of violence);
 - (b) section 6(1) (infanticide);
 - (c) section 6B(2)(a) (inciting another person to commit suicide);
 - (d) section 6B(2)(b) (aiding or abetting another person in committing or attempting to commit suicide);
 - (e) section 49N(1) (loitering near schools etc. by sexual offender);
 - (f) section 49O(1) (failure by a person in authority to protect a child from a sexual offence);
 - (g) section 197A (arson causing death);
 - (h) section 318(1) (culpable driving causing death);
 - (i) section 319(1) (dangerous driving causing death).

- 3 An offence against any of the following sections of the **Crimes Act 1958** in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
- (a) section 81(1) (obtaining property by deception);
 - (b) section 82(1) (obtaining financial advantage by deception);
 - (c) section 178(a) (giving or receiving false or misleading receipt or account an indictable offence);
 - (d) section 191(1) (fraudulently inducing persons to invest money).
- 4 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** in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 15A(1) (causing serious injury intentionally in circumstances of gross violence);
 - (b) section 15B(1) (causing serious injury recklessly in circumstances of gross violence);
 - (c) section 16 (causing serious injury intentionally);
 - (d) section 17 (causing serious injury recklessly);
 - (e) section 18 (causing injury intentionally or recklessly);
 - (f) section 31(1)(a) (assault or threaten to assault with intent to commit indictable offence);

- (g) section 32(2) (offence to perform female genital mutilation);
 - (h) section 33(1) (offence to take a person from the State with the intention of having prohibited female genital mutilation performed);
 - (i) section 40(1) (sexual assault);
 - (j) section 41(1) (sexual assault by compelling sexual touching);
 - (k) section 42(1) (assault with intent to commit a sexual offence);
 - (l) section 43(1) (threat to commit a sexual offence);
 - (m) section 46(1) (administration of an intoxicating substance for a sexual purpose);
 - (n) section 47(1) (abduction or detention for a sexual purpose);
 - (o) section 50C(1) (sexual penetration of a child or lineal descendant);
 - (p) section 50D(1) (sexual penetration of a step-child);
 - (q) section 50E(1) (sexual penetration of a parent, lineal ancestor or step-parent);
 - (r) section 50F(1) (sexual penetration of a sibling or half-sibling);
 - (s) section 53F(1) (deceptive recruiting for commercial sexual services).
- 5 An offence against any of the following sections of the **Crimes Act 1958** in circumstances where a person suffers injury as a direct result of the offence—
- (a) section 75A (armed robbery);

- (b) section 77 (aggravated burglary);
 - (c) section 77A(1) (home invasion) if, at the time the person enters the home, the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive;
 - (d) section 77B(2) (aggravated home invasion), in circumstances where the person commits the aggravated home invasion with intent to commit an offence, punishable by imprisonment for a term of 5 years or more, involving an assault to a person in the home;
 - (e) section 79A(2) (aggravated carjacking), in circumstances where the person who commits the aggravated carjacking causes injury to another person in the course of the carjacking.
- 6 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 5 of the **Crimes (Sexual Offences) Act 1980**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 52(1) (unlawfully and carnally knowing woman or girl aged 10 or above who is daughter, lineal descendant or step-daughter);
 - (b) section 52(2) (attempting to unlawfully and carnally know woman or girl aged 10 or above who is daughter, lineal descendant or step-daughter);

- (c) section 52(2) (assault with intent to unlawfully and carnally know woman or girl aged 10 or above who is daughter, lineal descendant or step-daughter);
- (d) section 52(3) (unlawfully and carnally knowing woman or girl aged 10 or above who is sister or mother);
- (e) section 52(4) (attempting to unlawfully and carnally know woman or girl aged 10 or above who is mother or sister);
- (f) section 52(4) (assault with intent to unlawfully and carnally know woman or girl aged 10 or above who is mother or sister);
- (g) section 55(1) (unlawfully and indecently assault any woman or girl);
- (h) section 58 (owner or occupier of premises induces or knowingly suffers any girl to be on premises to be unlawfully and carnally known by any man);
- (i) section 62 (forcible abduction of woman with intent to marry or carnally know);
- (j) section 68(1) (buggery with violence);
- (k) section 68(2) (buggery with mankind or any animal);
- (l) section 68(3) (attempt buggery with mankind or animal);
- (m) section 68(3) (assault with intent to commit buggery);
- (n) section 68(3) (any indecent assault upon any male person);
- (o) section 69(4) (male person commits or is party to the commission of or procures or attempts act of gross indecency with another male person).

- 7 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 44(1) (indecent assault);
 - (b) section 44(2) (indecent assault with aggravating circumstances);
 - (c) section 52(1) (sexual penetration with person aged 10 years or above and who is child, lineal descendant or step-child);
 - (d) section 52(2) (attempted sexual penetration with person aged 10 years or above who is child, lineal descendant or step-child);
 - (e) section 52(2) (assault with intent to sexually penetrate person aged 10 years or above who is child, lineal descendant or step-child);
 - (f) section 52(3) (person aged 18 or above permits father, mother, lineal ancestor or step-parent to take part in act of sexual penetration);
 - (g) section 52(4) (sexual penetration with person aged 10 years or above who is sibling or half-sibling);
 - (h) section 52(5) (attempted sexual penetration with person aged 10 years or above who is sibling or half-sibling);
 - (i) section 52(5) (assault with intent to sexually penetrate person aged 10 years or above who is sibling or half-sibling);

- (j) section 54(1)(b) (person procures by false representation or pretence or attempts to procure person to take part in sexual penetration outside marriage);
 - (k) section 56(b) (taking away by force or detaining person with intent to take part in sexual penetration);
 - (l) section 61 (unlawful detention for the purpose of sexual penetration).
- 8 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections (as amended) of the **Crimes Act 1958**, repealed by section 8(2) of the **Crimes (Amendment) Act 1985**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 17 (intentionally causing grievous bodily harm or shooting etc. with intention to do grievous bodily harm);
 - (b) section 19 (unlawfully and maliciously wounding or inflicting grievous bodily harm).
- 9 An offence against section 19A (intentionally causing a very serious disease) (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (HIV) Act 1993** and repealed by section 3 of the **Crimes Amendment (Repeal of Section 19A) Act 2015**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person.
- 10 An offence against section 37 (assault occasioning actual bodily harm or a common assault) of the **Crimes Act 1958**, repealed by section 3 of the **Crimes (Sexual Offences) Act 1991**, in circumstances where the person against whom the

offence is committed is not a child or a vulnerable person.

- 11 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 3 of the **Crimes (Rape) Act 1991**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
 - (a) section 42 (indecent assault);
 - (b) section 43 (indecent assault with aggravating circumstances).
- 12 An offence for which the maximum penalty is fixed by section 10(1) (child destruction) (as amended) of the **Crimes Act 1958**, repealed by section 9 of the **Abortion Law Reform Act 2008**.
- 13 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
 - (a) section 44(1) (incest with child, lineal descendant or step-child);
 - (b) section 44(3) (incest with lineal ancestor or step-parent);
 - (c) section 44(4) (incest with half-sibling);
 - (d) section 53(1) (administration of drugs etc.);
 - (e) section 55 (abduction or detention).

- 14 An offence against section 60A(1) of the **Crimes Act 1958** (sexual offence while armed with an offensive weapon)) (as amended) inserted by section 21 of the **Sentencing (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016** in circumstances where the person against whom the offence is committed is not a child or a vulnerable person.
- 15 An offence against any of the following sections (as amended) of the **Crimes Act 1958**, inserted by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 60AB(2) (sexual servitude);
 - (b) section 60AB(3) (sexual servitude);
 - (c) section 60AB(4) (sexual servitude);
 - (d) section 60AD(1) (deceptive recruiting for commercial sexual services).
- 16 Any of the following offences in circumstances where there is a familial relationship between the offender and the child against whom the offence is committed—
- (a) an offence against any of the following sections of the **Crimes Act 1958**—
 - (i) section 63(1) (child stealing);
 - (ii) section 63(2) (takes, decoys or entices away a child);
 - (iii) section 63A (kidnapping);

- (b) any of the following common law offences—
 - (i) kidnapping;
 - (ii) stealing or unlawfully carrying away against one's will.
- 17 An offence against section 261(1) (offence to fail to protect child from harm) of the **Children and Young Persons Act 1989**.
- 18 An offence against section 493 (offence to fail to protect children from harm) of the **Children, Youth and Families Act 2005**.
- 19 An offence against any of the following sections of the **Drugs, Poisons and Controlled Substances Act 1981**—
 - (a) section 71(1) (trafficking in a drug or drugs of dependence—large commercial quantity);
 - (b) section 71AA (trafficking in a drug or drugs of dependence—commercial quantity);
 - (c) section 71AB (trafficking in a drug of dependence to a child);
 - (d) section 71B (supply of drug of dependence to a child);
 - (e) section 72 (cultivation of narcotic plants—large commercial quantity);
 - (f) section 72A (cultivation of narcotic plants—commercial quantity);
 - (g) section 79(1) (conspiring) in circumstances where the conspiracy is to commit an offence against section 71(1), 71AA or 72A;
 - (h) section 80(1) (inciting etc.) in circumstances where the person incites the commission of an offence against section 71.

- 20 An offence against any of the following sections of the **Drugs, Poisons and Controlled Substances Act 1981**, as in force immediately before the commencement of section 5 of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**—
- (a) section 71(1) (trafficking in a drug of dependence) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;
 - (b) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence against section 71(1) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;
 - (c) section 80(1) (aiding, abetting, counselling, procuring, soliciting or incitement) in circumstances where the person aids, abets, counsels, procures, solicits or incites the commission of an offence against section 71(1) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence.
- 21 An offence against section 80(1) (aiding, abetting, counselling, procuring, soliciting or incitement) of the **Drugs, Poisons and Controlled Substances Act 1981**, as in force immediately before the commencement of section 7 of the **Crimes Amendment (Abolition of Defensive Homicide) Act 2014**, where the offence is committed on or after 1 January 2002 in circumstances where the

person aids, abets, counsels, procures, solicits or incites the commission of an offence against section 71(1) or 71AA.

- 22 An offence against section 10(1) of the **Prevention of Cruelty to Animals Act 1986** (aggravated cruelty).
- 23 An offence against any of the following sections of the **Summary Offences Act 1966** in circumstances where the person against whom the offence is committed is not a child or a vulnerable person—
- (a) section 24(1)(a) (aggravated assault);
 - (b) section 24(2) (aggravated assault in company).
- 24 An offence against Division 4A of Part I of the **Summary Offences Act 1966** (upskirting offences) in circumstances where the person against whom the offence is committed is a child or a vulnerable person.
- 25 An offence against any of the following sections of the Criminal Code of the Commonwealth—
- (a) section 72.3 (offences);
 - (b) section 101.1 (terrorist acts);
 - (c) section 101.2 (providing or receiving training connected with terrorist acts);
 - (d) section 101.4 (possessing things connected with terrorist acts);
 - (e) section 101.5 (collecting or making documents likely to facilitate terrorist acts);
 - (f) section 101.6 (other acts done in preparation for, or planning, terrorist acts);
 - (g) section 102.2 (directing the activities of a terrorist organisation);

- (h) section 102.3 (membership of a terrorist organisation);
 - (i) section 102.4 (recruiting for a terrorist organisation);
 - (j) section 102.5 (training involving a terrorist organisation);
 - (k) section 102.6 (getting funds to, from or for a terrorist organisation);
 - (l) section 102.7 (providing support to a terrorist organisation);
 - (m) section 102.8 (associating with terrorist organisations);
 - (n) section 103.1 (financing terrorism);
 - (o) section 103.2 (financing a terrorist).
- 26 An offence against any of the following sections of the Criminal Code of the Commonwealth in circumstances where the person against whom the offence is committed is an adult who is not a vulnerable person—
- (a) section 71.8 (unlawful sexual penetration);
 - (b) section 270.3 (slavery offences);
 - (c) section 270.5 (servitude offences);
 - (d) section 270.6A (forced labour offences);
 - (e) section 270.7 (deceptive recruiting for labour or services);
 - (f) section 270.7B (forced marriage offences);
 - (g) section 270.7C (offence of debt bondage);
 - (h) section 271.2 (offence of trafficking in persons);
 - (i) section 271.3 (trafficking in persons—aggravated offence);

- (j) section 271.5 (offence of domestic trafficking in persons);
 - (k) section 271.6 (domestic trafficking in persons—aggravated offence);
 - (l) section 271.7D (offence of domestic organ trafficking);
 - (m) section 271.7E (domestic organ trafficking—aggravated offence);
 - (n) section 274.2 (torture);
 - (o) section 474.17A (aggravated offences involving private sexual material—using a carriage service to menace, harass or cause offence).
- 27 An offence against any of the following sections of the Criminal Code of the Commonwealth—
- (a) section 302.2 (trafficking commercial quantities of controlled drugs);
 - (b) section 303.4 (cultivating commercial quantities of controlled plants);
 - (c) section 304.1 (selling commercial quantities of controlled plants);
 - (d) section 309.2 (supplying controlled drugs to children);
 - (e) section 309.3 (supplying marketable quantities of controlled drugs to children for trafficking);
 - (f) section 309.4 (supplying controlled drugs to children for trafficking);
 - (g) section 309.7 (procuring children for trafficking marketable quantities of controlled drugs);
 - (h) section 309.8 (procuring children for trafficking controlled drugs);

- (i) section 309.10 (procuring children for pre-trafficking marketable quantities of controlled precursors);
 - (j) section 309.11 (procuring children for pre-trafficking controlled precursors);
 - (k) section 309.12 (procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants);
 - (l) section 309.13 (procuring children for importing or exporting border controlled drugs or border controlled plants);
 - (m) section 309.14 (procuring children for importing or exporting marketable quantities of border controlled precursors);
 - (n) section 309.15 (procuring children for importing or exporting border controlled precursors).
- 28 An offence against any of the following sections of the Criminal Code of the Commonwealth in circumstances where a person suffers injury as a direct result of the offence—
- (a) section 132.3 (aggravated robbery);
 - (b) section 132.4 (burglary);
 - (c) section 132.5 (aggravated burglary).
- 29 An offence against any of the following sections (as amended) of the Criminal Code of the Commonwealth, repealed by clause 12 of Schedule 1 to the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 of the Commonwealth, in circumstances where the person against whom the offence is committed is an adult who is not a vulnerable person—

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- (a) section 270.7 (deceptive recruiting for sexual services);
 - (b) section 271.9 (debt bondage—aggravated offence).
- 30 Any of the following common law offences in circumstances where the person against whom the offence is committed is a child or a vulnerable person—
 - (a) forgery;
 - (b) uttering.
- 31 The common law offence of assault causing injury, in circumstances where the person against whom the offence is committed is not a child or a vulnerable person.
- 32 An offence against Chapter 6 of this Act (other than section 128 or 130).
- 33 An offence of attempting to commit an offence specified in this Schedule.
- 34 An offence of incitement to commit an offence specified in this Schedule.
- 35 An offence of conspiracy to commit an offence specified in this Schedule.
- 36 An offence under a law of a jurisdiction other than Victoria that, if committed in Victoria, would have constituted an offence specified in this Schedule.

Schedule 4—WWC category B offences

Section 3(1)

- 1 An offence (other than a child abuse material offence, a carnal knowledge offence or an offence specified in clause 4, 5, 6, 7, 8 or 9 of Schedule 2) specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) in circumstances where the person against whom the offence is committed is not a child.
- 2 A carnal knowledge offence.
- 3 An offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** (violent offences) other than murder or attempted murder.
- 4 An offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** (drug offences).
- 5 An offence against section 71AB (trafficking in a drug of dependence to a child) or 71B (supply of a drug of dependence to a child) of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 71AB or 71B of that Act.
- 6 An offence—
 - (a) against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70); or
 - (b) against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
 - (c) against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182, 186 or 189(1A)); or

- (d) against the **Serious Offenders Act 2018** (other than section 277, 281, 284 or 289A); or
 - (e) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against—
 - (i) section 46 or 47 of the **Sex Offenders Registration Act 2004** or Part 5 of that Act (other than section 70); or
 - (ii) the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
 - (iii) the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182, 186 or 189(1A)); or
 - (iv) the **Serious Offenders Act 2018** (other than section 277, 281, 284 or 289A).
- 7 An offence against section 271.4 (trafficking in children) or 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth, other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section.
- 8 An offence against section 21A (stalking) of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 21A of that Act, in circumstances where the person against whom the offence is committed is a child.
- 9 An offence against section 49N(1) (loitering near schools etc. by sexual offender) of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 49N(1) of that Act.
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10 An offence—

(a) against any of the following sections of the **Crimes Act 1958**—

- (i) section 49O(1) (failure by a person in authority to protect a child from a sexual offence);
 - (ii) section 327 (failure to disclose sexual offence committed against child under the age of 16 years); or
- (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Crimes Act 1958** specified in paragraph (a).

11 An offence against Chapter 6 of this Act (other than section 128 or 130).

12 An offence against section 18 (causing injury intentionally or recklessly) of the **Crimes Act 1958** or under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 18 of the **Crimes Act 1958**.

13 An offence—

(a) against any of the following sections of the **Crimes Act 1958**, if the offence was committed before the commencement of the **Crimes (Amendment) Act 1985**—

- (i) section 19 (unlawfully and maliciously wounding or inflicting grievous bodily harm);
- (ii) section 37 (common assault); or

- (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Crimes (Amendment) Act 1985**, would have constituted an offence against a section of the **Crimes Act 1958** specified in paragraph (a).
- 14 An offence against section 19 (sexual exposure) of the **Summary Offences Act 1966** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 19 of the **Summary Offences Act 1966**.
- 15 An offence against Division 4A of Part I of the **Summary Offences Act 1966** (upskirting offences) or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against that Division.
- 16 An offence—
 - (a) against section 17(1) (obscene, indecent, threatening language and behaviour etc. in public) of the **Summary Offences Act 1966** constituted by indecent behaviour, if the offence was committed before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**; or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**, would have constituted an offence against section 17(1) of the **Summary Offences Act 1966** constituted by indecent behaviour.

- 17 An offence against section 19 (obscene exposure) of the **Summary Offences Act 1966**, if the offence was committed before the commencement of section 25 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 18 An offence—
- (a) against section 7(1)(c) (wilful and obscene exposure) of the **Vagrancy Act 1966**, if the offence was committed before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**; or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria before the commencement of the **Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005**, would have constituted an offence against section 7(1)(c) of the **Vagrancy Act 1966**.
- 19 An offence—
- (a) against any of the following sections of the **Crimes Act 1958**—
 - (i) section 63 (child stealing);
 - (ii) section 75A (armed robbery); or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Crimes Act 1958** specified in paragraph (a).
- 20 An offence—
- (a) against any of the following sections of the **Children, Youth and Families Act 2005**—
 - (i) section 493 (failing to protect a child from harm);

- (ii) section 494 (leaving child unattended);
or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Children, Youth and Families Act 2005** specified in paragraph (a).
- 21 An offence—
 - (a) against any of the following sections of the **Surveillance Devices Act 1999**—
 - (i) section 7 (installing, using or maintaining a device to record or observe a private activity);
 - (ii) section 9B (employer installing, using or maintaining a device to record or observe a private activity of a worker);
or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against a section of the **Surveillance Devices Act 1999** specified in paragraph (a).
- 22 An offence against section 49C(2) of the **Crimes Act 1958** (failure by person in authority to protect child from sexual offence), inserted in the **Crimes Act 1958** by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against that section 49C(2) of the **Crimes Act 1958**.

- 23 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.), inserted in the **Crimes Act 1958** by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against that section 60B(2) of the **Crimes Act 1958**.

Schedule 5—Obligations and orders and offences

Section 3(1)

1 Obligations and orders

- 1.1 Reporting obligations imposed on a person by Part 3 of the **Sex Offenders Registration Act 2004**.
- 1.2 A supervision order, a detention order or an emergency detention order.

2 Offences

- 2.1 An offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** (sexual offences) other than a carnal knowledge offence.
- 2.2 A carnal knowledge offence where the conduct constituting the offence occurs when the person committing the offence is an adult.
- 2.3 An offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** (violent offences).
- 2.4 An offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** (drug offences).
- 2.5 An offence—
 - (a) against section 71AB (trafficking in a drug of dependence to a child) or 71B (supply of a drug of dependent to a child) of the **Drugs, Poisons and Controlled Substances Act 1981**; or
 - (b) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981**.

2.6 An offence—

- (a) against section 46 or 47 of the **Sex Offenders Registration Act 2004** or against Part 5 of that Act (other than section 70); or
- (b) against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
- (c) against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182, 186 or 189(1A)); or
- (d) against the **Serious Offenders Act 2018** (other than section 277, 281, 284 or 289A); or
- (e) under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against—
 - (i) section 46 or 47 of the **Sex Offenders Registration Act 2004** or Part 5 of that Act (other than section 70); or
 - (ii) the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)); or
 - (iii) the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182, 186 or 189(1A)); or
 - (iv) the **Serious Offenders Act 2018** (other than section 277, 281, 284 or 289A).

2.7 An offence against section 271.4 (trafficking in children) or 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth, other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section.

- 2.8 An offence against section 21A (stalking) of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 21A of that Act, in circumstances where the person against whom the offence is committed is a child.
- 2.9 An offence against section 49N(1) (loitering near schools etc. by sexual offender) of the **Crimes Act 1958** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 49N(1) of that Act, in circumstances where the conduct constituting the offence occurs when the person committing the offence is an adult.
- 2.10 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.), inserted in the **Crimes Act 1958** by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against that section 60B(2) of the **Crimes Act 1958**, in circumstances where the conduct constituting the offence occurs when the person committing the offence is an adult.
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Endnotes

1 General information

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

[†] *Minister's second reading speech—*

Legislative Assembly: 18 September 2020

Legislative Council: 15 October 2020

The long title for the Bill for this Act was "A Bill for an Act to provide for the screening of persons working with or caring for children or providing supports or services to persons with a disability under the National Disability Insurance Scheme, to repeal the **Working with Children Act 2005** and for other purposes."