

# Working with Children Amendment Act 2010

No. 51 of 2010

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**ENDNOTES**

**16**



Victoria

# **Working with Children Amendment Act 2010<sup>†</sup>**

**No. 51 of 2010**

[Assented to 24 August 2010]

**The Parliament of Victoria enacts:**

## **1 Purposes**

The main purposes of this Act are—

- (a) to amend the **Working with Children Act 2005** to make further provision for—
  - (i) applications for working with children checks; and
  - (ii) the issue, suspension and revocation of assessment notices; and
  - (iii) offences under the Act;

(b) to make consequential amendments to the  
**Child Employment Act 2003.**

## 2 Commencement

- (1) This Act, except sections 16 and 25, comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Section 16 comes into operation on 8 November 2012.
- (3) Subject to subsection (4), section 25 comes into operation on a day to be proclaimed.
- (4) If section 25 does not come into operation before 31 December 2010, it comes into operation on that day.

## 3 Diversion orders

- (1) In section 6(1)(d) of the **Working with Children Act 2005** for "court." **substitute** "court;".
- (2) After section 6(1)(d) of the **Working with Children Act 2005** insert—
  - "(e) the person is discharged by the Magistrates' Court after completing a diversion program under section 59 of the **Criminal Procedure Act 2009**."

See:  
Act No.  
57/2005.  
Reprint No. 2  
as at  
22/5/2008  
and  
amending  
Act Nos  
52/2008,  
85/2008,  
55/2009,  
68/2009,  
69/2009,  
74/2009,  
91/2009,  
6/2010,  
13/2010,  
16/2010 and  
19/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

## 4 Child-related work

- (1) In the example at the foot of section 9(2) of the **Working with Children Act 2005** after "worker" where first occurring **insert** "(whether paid or a volunteer)".

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- (2) In section 9(3) of the **Working with Children Act 2005**—
- (a) in paragraph (e) for "community services" **substitute** "out of home care services";
  - (b) in paragraph (g) after "or of" **insert** "denominational or".
- (3) In the example at the foot of section 9(8)(a) of the **Working with Children Act 2005** after "cricket team" **insert** "whether on a professional or amateur basis".

## **5 Applications**

- (1) In section 10(2)(c) of the **Working with Children Act 2005** for "prescribed kind" **substitute** "kind approved by the Secretary".
- (2) After section 10(3) of the **Working with Children Act 2005 insert**—
  - "(4) The Secretary may consider an application that does not include all the identifying information of the approved kind referred to in subsection (2)(c).
  - (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 that the Secretary determines.
  - (6) If an applicant has included identifying information of the approved kind to the Secretary for a previous application for a working with children check completed within 5 years and 3 months before the current application, the Secretary may exempt the applicant from the requirement to

provide any identifying information under subsection (2)(c).

- (7) The Secretary may approve any form of application and any kind of identifying information and must publish a copy of that form and that information on an Internet site maintained by the Secretary."

## **6 Enquiries about applications**

For section 11(1)(c) of the **Working with Children Act 2005** substitute—

- "(c) may make any other enquiries to, or seek information on the application 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"

## **7 Consideration of further applications**

After section 11(3) of the **Working with Children Act 2005** insert—

- "(4) If a person who has applied for an assessment notice makes a further application for another assessment notice, the Secretary may refuse to consider the first application for the assessment notice and that first application is to be treated as being withdrawn on the date of receipt of the further application.
- (5) If a person who holds a current assessment notice applies for another assessment notice, the Secretary may refuse to consider the application for the further assessment notice until the holder surrenders to the Secretary the current assessment notice document that was given to him or her in respect of the first assessment notice.

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- (6) If a person who has been given a negative notice applies for an assessment notice, the Secretary must not consider the application further unless the Secretary has been notified in writing that there has been a change of circumstances within the meaning of section 25 relating to the issue of the negative notice.
  - (7) The Secretary may consider an application for a working with children check even though the applicant is exempt under this or any other Act from a working with children check.
  - (8) Nothing in subsection (7) requires the Secretary to consider an application for a working with children check from an applicant who is exempt under this or any other Act from a working with children check.
  - (9) If the Secretary refuses to consider an application on the basis that the person applying is exempt from the requirement to have a working with children check under this or any other Act, the application is to be treated as being withdrawn."

### **8 Category 3 applications**

For section 14(1)(a) of the **Working with Children Act 2005** substitute—

- "(a) who has at any time (whether before, on or after 3 April 2006) been subject to—
- (i) a finding of a prescribed kind made by, or on behalf of, a prescribed body; or
  - (ii) a determination by VCAT under section 77(4)(g) or (h) or 77(5)(e) or (f) of the **Health Professions Registration Act 2005**; or"
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## 9 Deemed withdrawal of application

- (1) In section 15(2) of the **Working with Children Act 2005** for "further information required under section 11(1)(d)" **substitute** "information required under section 10 or further information required under section 11(1)(d)".
- (2) After section 15(2) of the **Working with Children Act 2005 insert—**
  - "(2A) Despite an application being withdrawn or treated as being withdrawn under this section, the Secretary may, if satisfied that the applicant wants to proceed with the application and has provided any information required under section 10 or any further information required under section 11(1)(d), reinstate the application as if it were an application under section 10."
- (3) In section 15(3) of the **Working with Children Act 2005—**
  - (a) after "withdrawn" where secondly occurring **insert** "or reinstated".
  - (b) after "withdrawal" **insert** "or reinstatement".

## 10 Submissions before negative notice

- (1) In section 16(1)(a)(iii) of the **Working with Children Act 2005 omit** "(not being less than 28 days after the date of the notice)".
- (2) After section 16(1) of the **Working with Children Act 2005 insert—**
  - "(1A) The period specified in a notice under subsection (1) must be not less than—
    - (a) 14 days in the case of a category 1 application unless the applicant satisfies the Secretary that it is appropriate to

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allow the applicant further time to make a submission; and

(b) 28 days in the case of any other application."

(3) In section 16 (2) and 16(3) of the **Working with Children Act 2005** for "that subsection" **substitute** "subsection (1A) unless the applicant notifies the Secretary that he or she does not want to make a submission".

#### **11 Refusal to give assessment notice**

In section 17 of the **Working with Children Act 2005**—

- (a) in subsection (1A)(a) **omit** "or has had a charge for an offence (other than a relevant offence) finally dealt with (other than by the applicant being found not guilty of the offence)";
- (b) in subsection (1A)(b)(ii) for "conviction, finding of guilt or final dealing" **substitute** "conviction or finding of guilt";
- (c) in subsection (1B)(a) for "conviction, finding of guilt or final dealing" **substitute** "conviction or finding of guilt";
- (d) in subsection (1B)(b) **omit** "or has had more than one offence of that kind finally dealt with".

#### **12 Ongoing monitoring**

In section 19(3) of the **Working with Children Act 2005** after "Part 4 "insert "or Part 5".



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**13 New section 19A inserted**

After section 19 of the **Working with Children Act 2005 insert—**

**"19A Further applications**

If—

- (a) a person who has a current assessment notice applies for the carrying out of a working with children check in accordance with section 19(2); and
- (b) the Secretary has not been notified of any relevant change in circumstances under section 20(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 assessment notice."

**14 Consequential amendment**

For section 20(3)(d) of the **Working with Children Act 2005 substitute—**

- "(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."

**15 New section 20A inserted**

After section 20 of the **Working with Children Act 2005 insert—**

**"20A Notification of change of employer etc.**

- (1) This section applies if—
  - (a) a person has a current assessment notice or has applied for an assessment notice and the application is still pending; and

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- (b) there is a change in any person by whom he or she is engaged in child-related work or any agency with which he or she is listed.
- (2) The person referred to in subsection (1)(a) must notify the Secretary of the change and the name, address and telephone number of each person with whom the person will be engaged in child-related work within 21 days after becoming aware of the change.

Penalty: 1 penalty unit."

**16 Powers on re-assessment**

Section 21(2A) of the **Working with Children Act 2005** is repealed.

**17 New section 21A inserted**

After section 21 of **Working with Children Act 2005** insert—

**"21A Suspension powers on reassessment**

- (1) Despite section 21(6), if a person being reassessed under section 21 fails to provide information to the Secretary in accordance with section 11(1)(d) (as applied by section 21) the Secretary may suspend the person's assessment notice in accordance with this section.
- (2) The Secretary must notify the person referred to in subsection (1) of the Secretary's intention to suspend the person's assessment notice at least 28 days before the Secretary suspends the notice.
- (3) The Secretary may suspend the person's assessment notice for the period not exceeding 6 months specified by the Secretary in the notice of suspension.

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- (4) The Secretary may reinstate an assessment notice if he or she receives the information required after the suspension of the assessment notice.
  - (5) A person whose assessment notice has been suspended is to be treated for the purposes of this Act as not having a current assessment notice for the period of the suspension of the notice.
  - (6) If the Secretary is aware that the person whose notice has been suspended 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 he or she is aware of the identity of that other person or that agency, must notify the person or agency in writing of the suspension of the person's assessment notice."

#### **18 Revocation of assessment notice**

- (1) In section 23 of the **Working with Children Act 2005**—
    - (a) in subsection (1)(b)(i) **omit** "or has had a charge for an offence (other than a relevant offence) finally dealt with (other than by the holder of the notice being found not guilty of the offence)";
    - (b) in subsection (1)(b)(ii)(B) for "conviction, finding of guilt or final dealing" **substitute** "conviction or finding of guilt";
    - (c) in subsection (1A)(a) for "conviction, finding of guilt or final dealing" **substitute** "conviction or finding of guilt";
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(d) in subsection (1A)(b) **omit** "or has had more than one offence of that kind finally dealt with".

(2) After section 23(1A) of the **Working with Children Act 2005 insert**—

"(1B) In considering whether it is appropriate to revoke an assessment notice in the circumstances referred to in subsection (1)(b), the Secretary may do anything that he or she has power to do under section 11 in considering an application but is not required to consider any matter other than the matter that has given rise to the revocation."

#### **19 Notification of surrender of assessment notice**

After section 24(3) of the **Working with Children Act 2005 insert**—

"(4) If—

- (a) a person surrenders an assessment notice document to the Secretary under subsection (1); and
- (b) the Secretary is aware that the former holder of the notice 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 he or she 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."

#### **20 Negative notices**

(1) In section 25(2)(e) of the **Working with Children Act 2005** after "set aside" **insert** "expressly or impliedly".

(2) After section 25(2) of the **Working with Children Act 2005** insert—

"(3) If a person who has been given a negative notice is subsequently given an assessment notice under a further application made under section 10, the negative notice is deemed to be void and of no effect from the date the assessment notice is given."

**21 New section 31A inserted**

After section 31 of the **Working with Children Act 2005** insert—

**"31A 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 working with children 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 notify in writing—
  - (a) any person by whom he or she is engaged in that child-related work; and
  - (b) any agency with which he or she is listed for child-related work—

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.

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

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**22 New section 39A inserted**

After section 39 of the **Working with Children Act 2005** insert—

**"39A Sex offenders not to apply for assessment notice**

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

- (a) a registered sex offender within the meaning of section 67 of the **Sex Offenders Registration Act 2004**; or
- (b) a person subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
- (c) a person subject to a detention order or a supervision order.

Penalty: 240 penalty units or imprisonment for 2 years."

**23 Giving information to other bodies**

After section 40(2)(e) of the **Working with Children Act 2005** insert—

- "(ea) 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 Secretary or the Chief Commissioner of Police under this Act; or"

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## 24 Notification by police

In section 41(1) of the **Working with Children Act 2005** after "offence" insert "or any other offence of a type that the Secretary has notified to the Chief Commissioner of Police to be an offence with a significant link to a risk to the safety of children".

## 25 Child Employment Act 2003

- (1) After section 19A(2)(d) of the **Child Employment Act 2003** insert—

'(da) section 21A applies with the expression "Despite section 21(6)," omitted;'.

- (2) After section 19B(1)(c) of the **Child Employment Act 2003** insert—

"(ca) 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);".

- (3) After section 19B(4) of the **Child Employment Act 2003** insert—

"(5) A person referred to in subsection (1)(ca) who supervises a child in employment (other than as a member of the Australian Federal Police) and who relies on an exemption under subsection (1)(ca) in respect of that supervision must notify any person by whom he or she is employed in that supervision 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.

Penalty: 60 penalty units."

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## **26 Repeal of Act**

This Act is repealed on the first anniversary of the first day on which all of its provisions are in operation.

### **Note**

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

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## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 9 June 2010*

*Legislative Council: 24 June 2010*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Working with Children Act 2005** and the **Child Employment Act 2003** and for other purposes."