



## Victoria: 2017 Child Protection Update

- ✓ New Reportable Conduct Scheme
- ✓ Changes to Working with Children Check Requirements
- ✓ New Duty of Care to Prevent Child Abuse
- ✓ Changes to Criminal Sexual Offences

Briefing paper for Principals, Bursars, Business Managers and Governors of non-government schools.

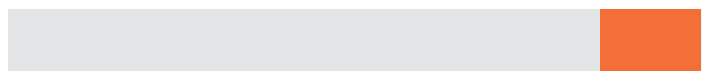
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## 1. Executive Summary

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Victoria continues to lead the way, ahead of other states and territories, in the rapid reform of its child protection legislation. Following the significant introduction of the seven (7) Child Safe Standards and Ministerial Order No. 870 in 2015, the Victorian Parliament has introduced new legislative requirements which impact schools and other organisations responsible for the care and protection of children. In 2017, four key new laws take effect; three in July and one in August. They are:

- ✓ The new Victorian Reportable Conduct Scheme (the Reportable Conduct Scheme) **effective 1 July 2017**;
- ✓ Changes to the Working with Children Check requirements **effective 1 August 2017**;
- ✓ A new Duty of Care to Prevent Child Abuse **effective 1 July 2017**; and
- ✓ Changes to Criminal Sexual Offences **effective 1 July 2017**.

Each new law is summarised below and discussed in more detail in the body of this paper.

### New Reportable Conduct Scheme

- ✓ The new Reportable Conduct Scheme will commence on 1 July 2017. The Reportable Conduct Scheme was created under the Child Wellbeing and Safety Act 2005 (Vic) (the CWS Act) in response to a recommendation by the Betrayal of Trust Inquiry.
- ✓ The introduction of the Scheme creates additional child protection reporting obligations for schools and other organisations which exercise care, supervision or authority over children.
- ✓ The Reportable Conduct Scheme is being introduced in three Phases. Government and non-government schools in Victoria are included in Phase 1 and they must comply with obligations introduced by the Reportable Conduct Scheme from 1 July 2017. Residential facilities of boarding schools must comply from 1 January 2018 (Phase 2).
- ✓ Under the Reportable Conduct Scheme, schools must report allegations of misconduct to the Victorian Commission for Children and Young People (the Commission). The Commission has the power to share information it obtains under the Reportable Conduct Scheme to other organisations including the Working with Children Check Unit and the Victorian Institute of Teaching (VIT).
- ✓ The Reportable Conduct Scheme is designed to complement the mandatory reporting obligations under the Children, Youth and Families Act 2005 (Vic) (CYFA) and operate in conjunction with the Victorian Child Safe Standards (the Child Safe Standards), created under the CWS Act.
- ✓ Compliance with the Reportable Conduct Scheme will enable a school to better identify and reduce the risk of child abuse and respond to allegations of child abuse or misconduct involving children.

### Changes to Working with Children Check Requirements

- ✓ The Working with Children Act 2005 (Vic)(WWC Act) was amended in 2016 to change the definitions of “direct contact” and “child-related work” in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).
- ✓ The definition of “direct contact” has been expanded to ensure that people engaging in child-related work that involves physical contact, face-to-face contact, written, telephone or oral communication, or electronic contact are required to obtain a Working with Children Check (WWCC).
- ✓ The definition of “child-related work” has been broadened by deleting references to contact not being ‘directly supervised’ by another person. It is now irrelevant whether a person’s work is supervised or not.
- ✓ The amendments take effect on 1 August 2017.
- ✓ Schools must update their recruitment policies and procedures to reflect the updated WWCC Act and ensure that the updates are effectively implemented and communicated to the school community.

### New Duty of Care to Prevent Child Abuse

- ✓ The Wrongs Act 1958 (Vic) (Wrongs Act) was amended in early 2017 to impose a new duty of care on organisations exercising care, supervision or authority over children.

- ✓ The changes to the Wrongs Act were introduced in response to a recommendation by the Betrayal of Trust Inquiry.
- ✓ Under the Wrongs Act a school must take “reasonable precautions” to prevent the physical or sexual abuse of a student by an individual associated with the school (Duty of Care to Prevent Child Abuse).
- ✓ The new duty commences on 1 July 2017.
- ✓ Schools must be aware of their duty as described under the Wrongs Act and what taking “reasonable precautions” means in practice.

## Changes to Criminal Sexual Offences

- ✓ The Crimes Amendment (Sexual Offences) Act 2016 (Vic) (Crimes Amendment Act) was passed in 2016 to amend various sections of the Crimes Act 1958 (Vic) (Crimes Act). The amendments were introduced in response to proposals by the Department of Justice and Regulation in its 2013 Review of sexual offences: consultation paper (Consultation Paper).<sup>1</sup>
- ✓ The amendments are intended to improve the clarity and effectiveness of the drafting of the sexual offences included in the Crimes Act and keep up with technological advances.
- ✓ Schools must be aware of revisions to their existing duty to protect a child from a sexual offence and amendments to the grooming offence.
- ✓ Two key additional offences relevant to schools are the additional offences relating to the “encouragement” of a child under the age of 16, or aged 16 or 17 under care, supervision or authority, to engage in, or be involved in, sexual activity.
- ✓ The amendments commence on 1 July 2017.

## 2. Background: The Reportable Conduct Scheme and the New Duty of Care to Prevent Child Abuse

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In order to appreciate the nature of the changes introduced by the Reportable Conduct Scheme and the new Duty of Care to Prevent Child Abuse, it is necessary to have a basic understanding of how they came about. Both legislative initiatives were introduced in response to recommendations made by the Betrayal of Trust Inquiry.

### The Betrayal of Trust Inquiry

In April 2012, the Victorian Government initiated a landmark inquiry into the handling of child abuse allegations within religious and other non-government organisations. This became known as the Betrayal of Trust Inquiry. The Inquiry’s final report (Report) was tabled on 13 November 2013 and contained 15 recommendations, including the introduction of the Child Safe Standards (refer to [The New Victorian Child Safe Standards – A radical shift in your school’s child protection obligations](#) for more information on the Child Safe Standards).

The Betrayal of Trust Inquiry’s findings and recommendations fall into three broad categories for improvement:

- ✓ Prevention;
- ✓ Response; and
- ✓ Access to justice.

The Victorian Government has interpreted the recommendations as requiring three stages of legislative and regulatory reform, being:

- ✓ **Stage One:** Criminal law reform;
- ✓ **Stage Two:** The creation of child safe organisations; and
- ✓ **Stage Three:** Civil law reform.

### *Stage One: Criminal Law Reform*

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<sup>1</sup> The Department of Justice and Regulation’s consultation paper is available [here](#).

The first priority for the Victorian Government was to ensure the immediate safety of children. To achieve this objective, three new criminal offences relating to child protection were created. These are offences relating to:

- ✓ Grooming – a law prohibiting communications with a child, or a child’s parents/carers, with the intent of committing child sexual abuse (section 49B Crimes Act 1958 (Vic)).
- ✓ Failure to protect – an offence for persons in authority who fail to protect a child from sexual abuse when they know that someone associated with their organisation poses a substantial risk of sexually abusing children (section 49C Crimes Act 1958 (Vic)).
- ✓ Failure to disclose – an offence for persons over 18 who fail to inform the Police if they know or believe that a child has been sexually abused (section 327 Crimes Act 1958 (Vic)).

See **Section 4 Background: Changes to Sexual Offences in the Crimes Act** for information on how the grooming and failure to protection offences will change from 1 July 2017.

### *Stage Two: Creating Child Safe Organisations*

The Victorian Government is now implementing the second stage of recommendations: the creation of child safe organisations. The Child Safe Standards are the centerpiece of this reform.

As a part of this second stage of reform, the Victorian Government has created the Reportable Conduct Scheme which was recommended by the Report. This scheme is similar to the Reportable Conduct Scheme currently operating in NSW. The Reportable Conduct Scheme is discussed in more detail in section 4 of this paper.

### *Stage Three: Civil Law Reform*

Stage three of the Victorian Government’s implementation of the Report’s recommendations focuses on civil law reform including access to justice and redress. Examples of such reform include the recent action to remove the statute of limitations for civil actions founded upon child abuse in Victoria and the amendments to the Wrongs Act to create the Duty of Care to Prevent Child Abuse.

Recommendation 26.4 of the Report suggested that the Victorian Government undertake a review of the Wrongs Act and identify whether any legislative amendment could be made to ensure organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse. The School Governance article [Proposed new Victorian laws: Does your school take reasonable precautions to prevent abuse?](#) explains the background to the amendments to the Wrongs Act in more detail.

## **3. Background: Changes to WWCC Requirements**

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The amendments made to the WWC Act were introduced to implement recommendations made by the Royal Commission in its 2015 Working with Children Checks Report<sup>2</sup>. The School Governance article [Significant reforms to Victoria’s Working with Children Check regime leaves schools in the dark](#) explains the Royal Commission’s recommendations in more detail.

The School Governance article also points out that the Victorian Government’s amendments to the WWC Act go beyond the Royal Commission’s recommendations. The Royal Commission recommended that all states and territories should, through the Council of Australian Governments or a relevant ministerial council, agree on standard definitions of each form of ‘contact’ which makes up the newly expanded definition of ‘direct contact’ in the WWC Act. However, the changes have been introduced in Victoria without any form of consistency being agreed upon by other jurisdictions.

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<sup>2</sup> The Royal Commission’s Working with Children Checks Report is available here:

<https://www.childabuseroyalcommission.gov.au/getattachment/7ecd3db9-0b17-483e-9a0e-8fb247140f3e/Working-with-Children-Checks-Report>

## 4. Background: Changes to Sexual Offences in the Crimes Act

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The Crimes Act has over 300 offences relating to a broad range of prohibited conduct. Any member of a school's community can engage conduct which results in them being charged with an offence under the Act. While schools are not expected to be aware of and educate the school community on all forms of criminal conduct, some offences are more relevant than others and should be the subject of policies, procedures and training.

The amendments in the Crimes Amendment Act were introduced to implement recommendations by the Department of Justice in its 2013 Consultation Paper. The Consultation Paper made it clear that the existing sexual offence laws are "too complicated" and that "significant changes are required" to improve those laws so that they reflect "community understanding of key issues".

Since the publication of the Consultation Paper, reform has occurred through the introduction of the grooming offence and the failure to protect offence (which were introduced in 2014 and 2015 as part of the Stage One: Criminal law reform response to the Betrayal of Trust Inquiry). These offences are included in Division 1, Part 1 of the Crimes Act under subdivision 8, which has been significantly updated by the Crimes Amendment Act. The failure to disclose offence was introduced in 2014 but unlike the previous two offences, it is not included in Division 1, Part 1 so has not been affected.

## 5. The Reportable Conduct Scheme: Principles and a School's Obligations

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### Principles

Section 16B of the CWS Act sets out the eight (8) fundamental Principles of the Reportable Conduct Scheme:

- ✓ The protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child;
- ✓ Criminal conduct or suspected criminal conduct should be reported to the Police;
- ✓ A Police investigation into the subject matter of a reportable allegation has priority and, unless the investigation may otherwise be conducted under any other Act, an investigation under the Reportable Conduct Scheme must be suspended or must not be commenced until the Police advise or agree that it may proceed;
- ✓ The Commission and others involved in the Reportable Conduct Scheme should work in collaboration to ensure the fair, effective and timely investigation of reportable allegations;
- ✓ Employees who are the subject of reportable allegations are entitled to receive natural justice in investigations into their conduct;
- ✓ Regulators have specific knowledge of the roles of the entities or the professional responsibilities of the employees they regulate and, if their functions permit, play an important role in the investigation of reportable allegations;
- ✓ Information should be shared during and after the conclusion of an investigation into a reportable allegation; and
- ✓ After the conclusion of an investigation into a reportable allegation, the Commission may share information with the Department of Justice and Regulation for the purpose of a WWCC.

The Commission's role is to educate and guide:

- ✓ entities in order to improve their ability to identify reportable conduct and to report and investigate reportable allegations; and
- ✓ regulators in order to promote compliance by entities with the Reportable Conduct Scheme.

### School's Obligations

The new Reportable Conduct Scheme provisions in the CWS Act require schools to take steps to ensure that they meet their reportable conduct reporting obligations. The Appendix to this paper includes:

- ✓ a table which summarises those key obligations and what a school, or the ‘head’ of the school, must do to comply with them; and
- ✓ the key definitions that are relevant to the information in the table.

While the CWS Act sets out several new and important provisions which establish the Reportable Conduct Scheme, the **head** of a school should be particularly aware of their obligations under:

- ✓ *Section 16K: Head of entity to have systems in place; and*
- ✓ *Section 16M: Head of entity to notify Commission of reportable allegation.*

To comply with sections 16K and 16M, the head of the school must document and effectively implement policies and procedures for preventing, responding and reporting reportable conduct committed by an “employee” of the school.

‘**Head**’ means the chief executive officer or principal officer of the entity or a person belonging to a class of persons prescribed as the head of an entity. Various sources of guidance provide more information about who, in practice, is the head of an entity.

The Explanatory Memorandum which accompanied the legislative reform states that the head of an entity will be the person who is “primarily responsible for an entity’s compliance with the reportable conduct scheme”.

The Victorian Department of Health and Humans Services’ (DHHS) Fact Sheet<sup>3</sup> on the Reportable Conduct Scheme talks about the person who is in a “relevant position of authority” who is required to notify the Commission. The Fact Sheet explains that such a person may be “the individual who is primarily responsible for engaging, managing, disciplining and terminating the engagement of workers or volunteers, such as the Chief Executive Officer, board council or committee member, a school principal, service manager or religious leader.”

In the context of a school, the head will normally be the Principal however, as the DHHS Fact Sheet explains, the relevant person may be different depending on the structure and operation of the school.

‘**Employee**’ is defined broadly in the CWS Act. Under the CWS Act, an employee includes a person of or over the age of 18 years who:

- ✓ is employed by the entity, whether or not that person employed in connection with any work or activities of the entity that relate to children; or
- ✓ engaged by the entity to provide services, including as a volunteer, contractor, office holder or officer, whether or not the person provides services to children; or
- ✓ if the entity is a religious body (defined under section 81 of the Equal Opportunity Act 2011 (Vic) to include an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles) – a minister of religion, a religious leader or an employee, or officer of the religious body.

Under that broad definition, all staff, volunteers, contractors, board members, ministers of religion, religious leaders or officers at a school are considered to be employees.

Refer to the Appendix for a list of other important definitions.

## 6. The Reportable Conduct Scheme and Other Reporting Obligations

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The introduction of new reporting obligations under the CWS Act increases the list of authorities in Victoria to which reports must be made by various members of a school in response to a child protection incident.

<sup>3</sup> The Fact Sheet is available here: <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/creating-child-safe-organisations>

Depending on the type of conduct which occurs, the following authorities must be notified:

- ✓ the Victoria Police under the Crimes Act 1958 (Vic) (Crimes Act) if the conduct amounts to a sexual offence or abuse (Failure to disclose offence);
- ✓ the DHHS under the CYFA if the conduct meets the mandatory reporting criteria;
- ✓ the VIT under the ETR Act if the conduct involves a registered teacher; and
- ✓ the Commission under the CWS Act.

The person who is the head of the school for the purposes of the Reportable Conduct Scheme will be required to disclose an offence under the Crimes Act, be a mandatory reporter under the CYFA and likely also notify the VIT in relation to misconduct by a registered teacher. If the teacher misconduct involves a sexual offence, the VIT must be notified immediately.<sup>4</sup> This timing is more urgent than the timeframe under the CWS Act, which allows the head of the school 3 business days to notify the Commissioner (refer to the Appendix, *Section 16M: Head of entity to notify Commission of reportable allegation* for more information).

In addition, the head will be in a 'position of authority' at the school, requiring them to act to protect a child under the Crimes Act (Failure to protect offence).

Despite the various sources of reporting obligations which now exist in Victoria, it is important to note that the Reportable Conduct Scheme will not interfere with a school's reporting obligations under the Crimes Act or CYFA. In all circumstances, allegations of criminal conduct must be reported to the Police as a first priority. Once the Police have been notified and a child is not at risk of harm, the school should then consider its reporting obligations under other legislation.

In terms of the school conducting investigations into reportable conduct involving a teacher, there will be some overlap between a school's obligations under the ETR Act and the CWS Act but in any case, the VIT must be notified once the investigation is finalised and the Commission must be notified as soon as practicable and within 30 days of becoming aware of the reportable conduct.

## 7. The Reportable Conduct Scheme and the Child Safe Standards

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The purpose of the Child Safe Standards is to drive cultural change within an organisation so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers. From a practical perspective, compliance with the Child Safe Standards requires each Victorian non-government school to establish a Child Protection Program which sets out in detail the internal policies, procedures and workplace systems it has adopted not only to ensure compliance with its legal and regulatory obligations, but also to drive cultural change as required by the Child Safe Standards.

The introduction of the Reportable Conduct Scheme requires schools with a Child Protection Program to introduce new policies, procedures and workplace systems to comply with its obligations under the CWS Act. The addition of these new policies and procedures will result in a more comprehensive Child Protection Program which will further drive cultural change in schools.

## 8. Changes to WWCC Requirements

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The WWC Act is regularly reviewed and amended to strengthen the restrictions on who can engage in child related work. The latest amendments follow recommendations from the Royal Commission but also, the introduction of the Child Safe Standards and Ministerial Order No. 870 in 2016. Clause 10 of Ministerial Order No. 870 requires schools to have screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel. Part of meeting this obligation is verifying the WWCC Check status of a person who proposes to engage in child-connected work.

The Standards include a definition of child-connected work, which means 'work authorised by the school governing authority and performed by an adult in a school environment<sup>5</sup> while children are present or reasonably expected to

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<sup>4</sup> Section 2.6.31(3) Education and Training Reform Act 2006 (Vic)

<sup>5</sup> Ministerial Order No.870 defines a school environment to mean any physical or virtual place made available or authorised by the school governing authority for use by a child during our outside school hours, including: (a) a campus of the school, (b)



be present.’ The Ministerial Order No. 870 definition is broader than the definition of ‘child-related work’ under the WWC Act, however the recent amendments go some way towards reducing the distinction between the two sources of obligations.

The definition of **direct contact** in section 3 of the WWC Act has expanded from being only physical contact or face-to-face oral communication to also include contact by:

- ✓ post or other written communication;
- ✓ telephone or other oral communication; or
- ✓ email or other electronic communication.

This definition has clearly been broadened to capture all forms of technological communication which could give rise to potential predatory activity. There are no additional definitions given for the different types of conduct, meaning that if you meet the conditions of engaging in ‘child-related work’ then your direct contact with a child could be as expansive as producing a newsletter or social media whose recipients include a person aged under 18. The Department of Justice’s [website](#) provides the following example:

“John is employed as a counsellor with a phone counselling service specifically for young people aged between 5 and 18. Because John’s role involves direct contact with children by telephone, he is required to hold a Check.”

The definition of **child-related work** in section 9 of the WWC Act has been amended by deleting the references to direct supervision in sections 9(1)(b), sub-section 9(2) and the example at the foot of sub-section 9(2). Consequently, from 1 August 2017, a person who engages or intends to engage in:

- ✓ work at or for a school; and
- ✓ that usually involves **direct contact** (physical, face to face, post, written, telephone, oral, email, electronic) with a child,

must have a current WWC Check.

The Department of Justice and Regulation’s [website](#) provides the following example:

“Chris has taken up a position as an assistant coach of a junior football team. Even though he is directly supervised by the head coach, Chris is still required to hold a Check.”

These changes are significant and will impact upon a school’s recruitment processes. Schools must communicate these changes to all members of their school community and train staff on the new requirements.

## 9. The New Duty of Care to Prevent Child Abuse

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The Wrongs Act is the principal statute in Victoria governing claims for damages for economic and non-economic loss from negligence claims. Where negligence is established, damages can be awarded. Although it has traditionally not been considered a form of child protection legislation, the recent changes will mean that all schools should be aware of its effects and how they approach child abuse risk management.

From 1 July 2017, new **Part XIII: Organisational liability for child abuse** will be in effect. Section 91 is the key section for schools to be aware of. Under Section 91: Liability of organisations, a “relevant organisation” owes a duty to take the care that in all the circumstances of the case is reasonable to prevent the abuse of a child by an *individual associated with the relevant organisation* while the child is under the care, supervision or authority of the relevant organisation”.

A school is a relevant organisation.

‘Abuse’ means physical or sexual abuse, and those terms are defined as:

- ✓ Sexual abuse: sexual assault or other sexual misconduct.
- ✓ Physical abuse: an act or omission that does not include a lawful exercise of force (summarised definition).

An ‘individual associated with the relevant organisation’ is an extensive definition and includes:

- ✓ an officer, office holder, employee, owner, volunteer or contractor of the organisation;
- ✓ for religious organisations: a minister of religion, a religious leader, an officer or member of the personnel of the religious organisation; and
- ✓ the same persons above if they are at an organisation to which the relevant organisation has delegated its care supervision or authority over a child.

Under that broad definition, all staff, volunteers, contractors, board members, ministers of religion, religious leaders or officers at a school are “individuals associated with the school”. As a result, a school owes a duty to students under their care to prevent child abuse by those persons.

Importantly, if a school is involved in a claim under Section 91, it is presumed to have breached that duty of care unless it proves, on the balance of probabilities, that it took *reasonable precautions* to prevent the abuse.

In practice, this means that where abuse has been proven to have occurred and committed by an individual associated with a school, the school must provide proof that they took reasonable precautions to prevent that abuse. This is known as the reverse onus of proof.

A *reasonable precaution* is not defined in the Wrongs Act, but it does state in a Statutory Note that reasonable precautions will vary depending on factors including:

- ✓ the nature of the relevant organisation;
- ✓ the resources reasonably available to the organisation;
- ✓ the relationship between the organisation and the child;
- ✓ whether the organisation had delegated care, supervision or authority over the child to another organisation; and
- ✓ the role in the organisation of the perpetrator of the abuse.

While the amendments to the Wrongs Act do not impose a continuous compliance obligation on schools requiring the introduction and implementation of policies and procedures, they do require schools to be conscious of how, if they were to ever to be subject to a Section 91 proceeding, they would prove that “reasonable precautions” had been taken. First and foremost, this involves having established and well documented record keeping procedures.

Effective compliance with the Child Safe Standards and other elements of Victoria’s child protection legislative and

regulatory framework, should also assist schools to demonstrate in court that reasonable precautions had been taken, in light of the meaning of that phrase in the Wrongs Act.

## 10. Changes to Sexual Offences

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When the 2016 changes to the Crimes Act take effect on 1 July 2017, schools will need to be aware of how changes to existing offences may affect them and the effect of consequential amendments to other legislation such as the CWS Act and the Education and Training Reform Act 2006 (Vic) (ETR Act).

The following amendments are particularly relevant:

- ✓ the grooming offence will be located at section 49M (currently section 49B); and
- ✓ the failure to protect offence will be located at section 49O (currently section 49C).

The wording of both offences has been varied, restructured and some key terms such as “care, supervision or authority” and “communication” have been updated, but otherwise the provisions are substantially the same. Two key additions to Division 1, Part 1 of the Crimes Act are the additional offences of “preparatory sexual conduct”<sup>6</sup>. The Amending Act introduces two new offences of:

- ✓ section 49K: Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity; and
- ✓ section 49L: Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity.

Section 49L addresses situations where, due to a special relationship of trust they have with a person in a position of care, supervision or authority (for example a teacher or sports coach), a child may be more vulnerable. Schools should be aware of these offences, as certain behaviour may constitute grooming and “encouragement”.

“Encourage” is defined to include suggest, request, urge and demand. Examples of such encouragement includes offering money or gifts or threatening harm. It can be done in person or by electronic communication. An example of conduct prohibited by these offences is an adult asking a child to watch inappropriate material.

These offences are broader than the grooming offence because they do not require that the sexual activity be a criminal offence. For example, if a child was encouraged to watch inappropriate material, the act of watching is not illegal however the act of encouragement would amount to criminal conduct. It is not necessary to prove that the child actually engaged in the activity for the accused to be found guilty of “encouragement”.

The CWS Act and ETR Act reference sexual offences in relation to reportable conduct and teacher registration obligations. Consequently, when considering which sexual offences must be reported or may affect registration, reference should be made to the amended Crimes Act.

## 11. Next Steps for Schools

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Both the DHHS and the Commission have released guidance and fact sheets for Victorian schools to assess their preparedness to comply with the Reportable Conduct Scheme. The DHHS website states that it is working with the Commission to prepare for the implementation of the Reportable Conduct Scheme and that further information will be made available on their websites.

The Department of Justice and Regulation has provided some information on its website about the changes to the WWC Act however as pointed out in the School Governance article,<sup>7</sup> there is still a high degree of ambiguity about how the new requirements will work in practice. At the time of publication, the Department of Justice and Regulation has yet to publish guidance about the revised sexual offences.

It is recommended that schools understand their obligations under the Reportable Conduct Scheme and the WWC

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<sup>6</sup> Crimes Amendment (Sexual Offences) Bill 2016 Explanatory Memorandum

<sup>7</sup> [Significant reforms to Victoria’s Working With Children Check regime leave schools in the dark](#)

Act as early as possible. While most schools will have policies and procedures in place that relate to child protection, specific compliance with the Reportable Conduct Scheme and the WWC Act changes will require a review of a school's policies and procedures as well as its workplace systems.

Schools may not need to develop policies and procedures to address the new Duty of Care to Prevent Child Abuse but they should be proactive in ensuring that they have taken reasonable precautions in case they are scrutinised in future court proceedings. Schools should understand the changes to the Crimes Act and revise their policies and procedures to reflect amendments to existing offences and include information about new offences.

## 12. How CompliSpace Can Help

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CompliSpace combines specialist governance, risk and compliance (GRC) consultancy services with practical, technology-enabled solutions. We are the leading provider of student duty of care and child protection GRC services in Australia, working with leading non-government schools and educational authorities in all Australian states and territories.

Our team of lawyers and industry experts actively monitor changes to relevant laws and standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

In response to the introduction of the Reportable Conduct Scheme, the new WWCC requirements, the new Duty of Care to Prevent Child Abuse and the changes to the sexual offences in the Crimes Act, CompliSpace has developed detailed policies and procedures that address the provisions under the legislation. The new policies and procedures are designed to integrate into a school's existing Child Protection Program and be tailored to the particular circumstances of each school. CompliSpace has also developed detailed online child protection training which includes information on the Reportable Conduct Scheme, WWC Act and duty of care.

CompliSpace works with schools to tailor compliance and risk management systems to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

T: 1300 132 090

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### Disclaimer

This briefing paper is a guide to keep readers updated with the latest information. It is not intended as legal advice or as advice that should be relied on by readers. The information contained in this briefing paper may have been updated since its posting, or it may not apply in all circumstances. If you require specific advice, please contact us on 1300 132 090 and we will be happy to assist.

# APPENDIX

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## Key Definitions: CWS ACT

The CWS Act introduces several new important terms in relation to the administration of the Reportable Conduct Scheme which must be understood by schools in order to comply with their obligations under the Act. Guidance about the practical application of the new terms has been given by some authorities to assist schools, and other organisations, to understand their Reportable Conduct obligations.

**'Employee'** is defined broadly in the Act. Under the Act, an employee includes a person of or over the age of 18 years who:

- ✓ is employed by the entity, whether or not that person employed in connection with any work or activities of the entity that relate to children; or
- ✓ engaged by the entity to provide services, including as a volunteer, contractor, office holder or officer, whether or not the person provides services to children; or
- ✓ if the entity is a religious body (defined under section 81 of the Equal Opportunity Act 2011 (Vic) to include an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles) – a minister of religion, a religious leader or an employee, or officer of the religious body.

Under that broad definition, all staff, volunteers, contractors, board members, ministers of religion, religious leaders or officers at a school are considered to be "employees".

**'Entities'** are set out in the Schedules 3, 4 and 5 to the Act and each Schedule relates to a different Phase of the three-Phase introduction process of the Reportable Conduct Scheme. Schools are included in the list of entities in Schedule 3.

**'Head'** means the chief executive officer or principal officer of the entity or a person belonging to a class of persons prescribed as the head of an entity. Various sources of guidance provide more information about who, in practice, is the head of an entity.

**'Regulators'** are defined in the Act to include the Victorian Registration and Qualifications Authority (VRQA) and the VIT.

**'Reportable Conduct'** means:

- ✓ a *sexual offence* committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded; or
- ✓ *sexual misconduct*, committed against, with or in the presence of, a child; or
- ✓ *physical violence* committed against, with or in the presence of, a child; or
- ✓ any behavior that causes *significant* emotional or psychological harm to a child; or
- ✓ *significant* neglect of a child.

From the definition of Reportable Conduct, several key terms are further defined:

- ✓ *sexual misconduct* includes behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behavior and voyeurism;
- ✓ *sexual offence* means a serious sexual offence as set out in clause 1 of Schedule 1 of the Sentencing Act 1991 (Vic), which includes rape, attempted rape, sexual assault, incest, indecent act with a child, persistent sexual abuse of a child, grooming and the production or possession of child abuse material (formerly referred to in the Crimes Act as "child pornography"); and
- ✓ *significant* means in relation to emotional or psychological harm or neglect, that the harm is more than trivial or significant, but need not be as high as serious and need not have a lasting permanent effect.

‘Reportable Allegation’ means any information that leads a person to form a reasonable belief that an employee has committed:

- ✓ Reportable Conduct; or
- ✓ misconduct that may involve Reportable Conduct,

whether or not the conduct or misconduct is alleged to have occurred within the course of the person’s employment.

## Table of Key Obligations

Section of the CWS Act	Requirement	What schools must do
<b>Section 16K: Head of entity to have systems in place</b>	<p>The head of the entity must ensure that the entity has in place:</p> <ul style="list-style-type: none"> <li>✓ A system for preventing the commission of reportable conduct by an employee within the course of their employment; and</li> <li>✓ A system for enabling any person, including an employee, to notify the head of the entity, of a reportable allegation of which the person becomes aware; and</li> <li>✓ A system for enabling any person, including an employee, to notify the Commission of a reportable allegation involving the head of the entity of which the person becomes aware; and</li> <li>✓ A system for investigating and responding to a reportable allegation against an employee.</li> </ul>	<p>Identify who the head of the school is.</p> <p>Document and effectively implement appropriate policies and procedures for preventing reportable conduct by an employee and responding to such conduct.</p>
<b>Section 16L: Disclosure to Commission of reportable conduct</b>	<p>Any person may disclose a reportable allegation to the Commission.</p>	<p>Document and effectively implement a policy and procedures to communicate to the school community that any person may disclose a reportable allegation to the Commission. This includes where the reportable allegation is made against the head of the school.</p>
<b>Section 16M: Head of entity to notify Commission of reportable allegation</b>	<p>If the head of an entity becomes aware of a reportable allegation against an employee, the head must notify the Commission in writing of certain matters when it becomes aware of a reportable allegation against an employee of the entity.</p> <p>Notice must be given in writing and must be given in two stages:</p> <ul style="list-style-type: none"> <li>✓ Within 3 business days of becoming aware of the reportable allegation; and</li> <li>✓ As soon as practicable and within 30 days of becoming aware of the reportable allegation.</li> </ul> <p>Different information must be</p>	<p>Document and effectively implement appropriate policies and procedures for notifying the Commission of a reportable allegation and setting out the information which must be submitted within the two timeframes.</p> <p>It is a criminal offence if the head of the entity does not meet its notification obligations under section 16M.</p>

Section of the CWS Act	Requirement	What schools must do
<b>Section 16N: Head of entity to respond to reportable allegation</b>	<p>submitted to the Commission at each stage.</p> <p>As soon as practicable after the head of the entity becomes aware of a reportable allegation against an employee, the head must:</p> <ul style="list-style-type: none"> <li>✓ Investigate or permit a regulator or independent investigator to investigate; and</li> <li>✓ Inform the Commission of the person or body who will conduct the investigation; and</li> <li>✓ Provide the Commission with information relating to the reportable allegation or investigation if requested; and</li> <li>✓ Provide the Commission with any action the head of the entity will take, or won't take in relation to the employee.</li> </ul>	<p>Document and effectively implement appropriate policies and procedures for investigating a reportable allegation and providing information to the Commission about any action it does or does not take, in response to a reportable allegation.</p>
<b>Section 16ZB: Disclosure of information about investigations to children, parents and carers</b>	<p>The head of the entity may disclose information about an investigation conducted under section 16N to the child in relation to whom the reportable allegation has been made, a parent of the child or another body or person who may be involved in the care of the child.</p>	<p>Document and effectively implement appropriate policies and procedures for sharing information about investigations conducted in relation to a reportable allegation.</p>
<b>Section 16ZC: Disclosure of information to the Commission, the head of an entity, a regulator, Victoria Police and others</b>	<p>The head of the entity may disclose information about certain matters relating to a reportable allegation to the head of another entity, a regulator, the Police and others including an independent investigator, the Secretary to the Department of Justice and Regulation (for the purposes of a working with children check) and a Minister.</p>	<p>Document and effectively implement appropriate policies and procedures for sharing information about investigations conducted in relation to a reportable allegation.</p>