

Authorised Version No. 035
Children's Services Act 1996
No. 53 of 1996

Authorised Version incorporating amendments as at
17 May 2020

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The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to regulate children's services, in a manner that is consistent, where appropriate, with the regulation of education and care services under the Education and Care Services National Law (Victoria), by—

- (a) establishing a scheme that provides for—
 - (i) the approval of persons who provide the services; and
 - (ii) the operation of the services; and
- (b) providing for the monitoring and enforcement of the scheme; and
- (c) providing for other related matters.

S. 1
substituted by
No. 37/2019
s. 4.

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 1998, it comes into operation on that day.

S. 2(3)
substituted by
No. 72/1997
s. 14.

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3 Definitions

(1) In this Act—

S. 3(1) def. of
*approval of
premises*
inserted by
No. 22/2008
s. 3(1),
repealed by
No. 37/2019
s. 5(4).

* * * *

S. 3(1) def. of
*approved
associated
children's
service*
inserted by
No. 80/2011
s. 4(1)(a),
repealed by
No. 37/2019
s. 5(4).

* * * *

S. 3(1) def. of
*approved
children's
service*
inserted by
No. 37/2019
s. 5(1).

approved children's service means a children's
service for which a service approval exists;

S. 3(1) def. of
*approved
education and
care service*
inserted by
No. 80/2011
s. 4(1)(a),
repealed by
No. 37/2019
s. 5(4).

* * * *

S. 3(1) def. of
*approved
learning
framework*
inserted by
No. 37/2019
s. 5(1).

approved learning framework has the same
meaning as in the National Law;

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approved provider means—

- (a) a person who holds a provider approval; and
- (b) a person who is taken to have been granted a provider approval under section 16;

S. 3(1) def. of *approved provider* inserted by No. 80/2011 s. 4(1)(a), substituted by No. 37/2019 s. 5(2)(a).

* * * * *

S. 3(1) def. of *associated children's service* inserted by No. 80/2011 s. 4(1)(a), repealed by No. 37/2019 s. 5(4).

authorised officer means—

- (a) a person authorised to be an authorised officer under Part 5B; or
- (b) a person authorised to be an authorised officer under the National Law;

S. 3(1) def. of *authorised officer* substituted by No. 37/2019 s. 5(2)(b).

* * * * *

S. 3(1) def. of *certified supervisor* inserted by No. 80/2011 s. 4(1)(a), repealed by No. 9/2017 s. 69.

children's service means a service providing education and care for 4 or more children under the age of 13 years in the absence of the parents or custodians of the children, where the service—

S. 3(1) def. of *children's service* amended by No. 22/2008 s. 3(2), substituted by No. 37/2019 s. 5(2)(c).

- (a) is provided—
 - (i) for fee or reward; or
 - (ii) while the parents or custodians of the children use sports, leisure or other prescribed services or

facilities provided by the provider
of the service for the children; and

- (b) is not an education and care service,
within the meaning of the National
Law;

S. 3(1) def. of
*children's
service
premises*
inserted by
No. 37/2019
s. 5(1).

children's service premises means each place at
which a children's service operates or is to
operate;

S. 3(1) def. of
*compliance
direction*
inserted by
No. 37/2019
s. 5(1).

compliance direction means a compliance
direction under section 116;

S. 3(1) def. of
*compliance
notice*
inserted by
No. 37/2019
s. 5(1).

compliance notice means a compliance notice
under section 117;

S. 3(1) def. of
custodian
inserted by
No. 37/2019
s. 5(1).

custodian, in relation to a child, means a person
who has custody or control of the child who
is not—

- (a) a parent of the child; or
(b) a person providing a service of
education and care to the child;

S. 3(1) def. of
*de facto
relationship*
inserted by
No. 37/2019
s. 5(1).

de facto relationship means—

- (a) a registered domestic relationship; or
(b) a relationship between 2 people who
are not married to each other but who
are living together as a couple on a
genuine domestic basis (irrespective of
gender);

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Department means the Department of Education and Training;

S. 3(1) def. of *Department* substituted by No. 58/2007 s. 52(1)(a), amended by No. 37/2019 s. 5(3)(a).

education and care service means a service that is an education and care service within the meaning of section 5(1) of the National Law;

S. 3(1) def. of *education and care service* inserted by No. 80/2011 s. 4(1)(a).

education law means the **Education and Training Reform Act 2006**;

S. 3(1) def. of *education law* inserted by No. 37/2019 s. 5(1).

educator means an individual who provides education and care for children as part of a children's service;

S. 3(1) def. of *educator* inserted by No. 37/2019 s. 5(1).

eligible association means an association of a prescribed class;

S. 3(1) def. of *eligible association* inserted by No. 37/2019 s. 5(1).

* * * * *

S. 3(1) def. of *family day care service* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

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S. 3(1) def. of
*family day
care venue*
inserted by
No. 22/2008
s. 3(1),
repealed by
No. 80/2011
s. 4(1)(e).

* * * *

S. 3(1) def. of
*family day
carer*
inserted by
No. 22/2008
s. 3(1),
repealed by
No. 80/2011
s. 4(1)(e).

* * * *

S. 3(1) def. of
*family
member*
inserted by
No. 37/2019
s. 5(1).

family member, in relation to a child, means—

- (a) a parent, grandparent, brother, sister, uncle, aunt, or cousin of the child, whether of the whole blood or halfblood and whether that relationship arises by marriage (including a de facto relationship) or by adoption or otherwise; or
- (b) a relative of the child according to Aboriginal or Torres Strait Islander tradition; or
- (c) a person with whom the child resides in a family-like relationship; or
- (d) a person who is recognised in the child's community as having a familial role in respect of the child;

S. 3(1) def. of
*fit and proper
person check*
inserted by
No. 22/2008
s. 3(1),
repealed by
No. 37/2019
s. 5(4).

* * * *

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<i>guardian</i> , in relation to a child or other person, means the legal guardian of the child or person;	S. 3(1) def. of <i>guardian</i> substituted by No. 37/2019 s. 5(2)(d).
<i>identity card</i> means— (a) in relation to an authorised officer to whom paragraph (a) of the definition of <i>authorised officer</i> applies, the identity card issued under section 137; or (b) in relation to an authorised officer to whom paragraph (b) of the definition of <i>authorised officer</i> applies, the identity card issued under the National Law;	S. 3(1) def. of <i>identity card</i> inserted by No. 37/2019 s. 5(1).
* * * * *	S. 3(1) def. of <i>licensee</i> repealed by No. 37/2019 s. 5(4).
<i>municipal council</i> has the same meaning as <i>Council</i> has in the Local Government Act 1989 ;	S. 3(1) def. of <i>municipal council</i> inserted by No. 37/2019 s. 5(1).
<i>National Authority</i> has the same meaning as in the National Law;	S. 3(1) def. of <i>National Authority</i> inserted by No. 37/2019 s. 5(1).
<i>National Law</i> means the Education and Care Services National Law (Victoria);	S. 3(1) def. of <i>National Law</i> inserted by No. 80/2011 s. 4(1)(a).
<i>National Law approved provider</i> means the holder of a provider approval under the National Law that is not suspended;	S. 3(1) def. of <i>National Law approved provider</i> inserted by No. 37/2019 s. 5(1).

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S. 3(1) def. of
*national
regulations*
inserted by
No. 80/2011
s. 4(1)(a).

national regulations means the regulations made
under the National Law;

S. 3(1) def. of
*nominated
supervisor*
inserted by
No. 80/2011
s. 4(1)(a),
substituted by
No. 37/2019
s. 5(2)(e).

nominated supervisor, in relation to a children's
service, means an individual who—

- (a) is nominated by the approved provider
of the service under Part 3 to be a
nominated supervisor of that service;
and
- (b) unless the individual is the approved
provider, has provided written consent
to that nomination;

S. 3(1) def. of
nominee
inserted by
No. 22/2008
s. 3(1),
substituted by
No. 80/2011
s. 4(1)(b),
repealed by
No. 37/2019
s. 5(4).

* * * * *

S. 3(1) def. of
parent
inserted by
No. 37/2019
s. 5(1).

parent, in relation to a child, includes—

- (a) a guardian of the child; and
- (b) a person who has parental
responsibility for the child under a
decision or order of a court;

S. 3(1) def. of
*participating
jurisdiction*
inserted by
No. 37/2019
s. 5(1).

participating jurisdiction has the same meaning
as in the National Law;

S. 3(1) def. of
payment
inserted by
No. 37/2019
s. 5(1).

payment, in relation to a prescribed fee, includes
payment by electronic or other means;

person means—

- (a) an individual; or
- (b) a body corporate; or
- (c) an eligible association; or
- (d) a partnership; or
- (e) a prescribed entity;

S. 3(1) def. of
person
inserted by
No. 37/2019
s. 5(1).

person in day-to-day charge, in relation to a children's service, means a person who is placed in day-to-day charge of the service in accordance with the regulations;

S. 3(1) def. of
person in day-to-day charge
inserted by
No. 37/2019
s. 5(1).

person with management or control, in relation to a children's service, means—

S. 3(1) def. of
person with management or control
inserted by
No. 37/2019
s. 5(1).

- (a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act 2001 who is responsible for managing the delivery of the children's service; or
- (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the children's service; or
- (c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the children's service; or
- (d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the children's service;

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 17.1).

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

S. 3(1) def. of
*prescribed
ineligible
person*
inserted by
No. 37/2019
s. 5(1).

prescribed ineligible person means a person in a
class of persons prescribed by the regulations
to be prescribed ineligible persons;

S. 3(1) def. of
*primary
nominee*
inserted by
No. 22/2008
s. 3(1),
substituted by
No. 80/2011
s. 4(1)(c),
repealed by
No. 37/2019
s. 5(4).

* * * *

S. 3(1) def. of
*prohibition
notice*
inserted by
No. 37/2019
s. 5(1).

prohibition notice means a prohibition notice
given under section 123(1) or (3);

S. 3(1) def. of
proprietor
amended by
No. 22/2008
s. 3(3),
substituted by
No. 80/2011
s. 4(1)(d),
repealed by
No. 37/2019
s. 5(4).

* * * *

S. 3(1) def. of
*protected
disclosure*
inserted by
No. 37/2019
s. 5(1).

protected disclosure has the meaning set out in
section 183;

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provider approval means—

- (a) an approval granted under Part 2; and
- (b) if an approval granted under Part 2 has been amended under this Act, the approval as amended—

but does not include such an approval that has been cancelled;

S. 3(1) def. of *provider approval* inserted by No. 80/2011 s. 4(1)(a), substituted by No. 37/2019 s. 5(2)(f).

public authority means a body established for a public purpose by or under an Act;

S. 3(1) def. of *public authority* inserted by No. 37/2019 s. 5(1).

receiving approved provider has the meaning set out in section 58;

S. 3(1) def. of *receiving approved provider* inserted by No. 37/2019 s. 5(1).

* * * * *

S. 3(1) def. of *registered medical practitioner* inserted by No. 22/2008 s. 3(1), substituted by No. 13/2010 s. 51(Sch. item 13), repealed by No. 37/2019 s. 5(4).

Regulatory Authority means the Secretary;

S. 3(1) def. of *Regulatory Authority* inserted by No. 80/2011 s. 4(1)(a), substituted by No. 37/2019 s. 5(2)(g).

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S. 3(1) def. of
relative
amended by
No. 29/2011
s. 3(Sch. 1
item 10.1).

relative, in relation to a child means a parent,
grandparent, brother, sister, uncle, aunt or
cousin of the whole blood or half-blood or
by marriage including a de facto marriage,
and whether or not the relationship depends
on adoption of the child;

S. 3(1) def. of
residence
inserted by
No. 37/2019
s. 5(1).

residence means the habitable areas of a dwelling;

S. 3(1) def. of
*responsible
person*
inserted by
No. 80/2011
s. 4(1)(a),
repealed by
No. 37/2019
s. 5(4).

* * * * *

S. 3(1) def. of
school
inserted by
No. 22/2008
s. 3(1),
amended by
No. 37/2019
s. 5(3)(b).

school means a Government school or
non-Government school, within the
meaning of the **Education and Training
Reform Act 2006**;

S. 3(1) def. of
Secretary
substituted by
No. 58/2007
s. 52(1)(b),
amended by
No. 37/2019
s. 5(3)(c).

Secretary means the Secretary to the Department
of Education and Training;

S. 3(1) def. of
*serious
incident*
inserted by
No. 37/2019
s. 5(1).

serious incident means an incident or class of
incidents prescribed by the regulations as a
serious incident;

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Part 1—Preliminary

service approval means a service approval—

- (a) granted under Part 3; and
- (b) if an approval granted under Part 3 has been amended under this Act, the approval as amended—

but does not include such an approval that has been cancelled;

S. 3(1) def. of *service approval* inserted by No. 80/2011 s. 4(1)(a), substituted by No. 37/2019 s. 5(2)(h).

* * * * *

S. 3(1) def. of *sibling* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

staff member, in relation to a children's service, means any individual (other than a nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of a children's service, whether as an educator or otherwise;

S. 3(1) def. of *staff member* inserted by No. 37/2019 s. 5(1).

* * * * *

S. 3(1) def. of *supervisor certificate* inserted by No. 80/2011 s. 4(1)(a), repealed by No. 9/2017 s. 69.

this Act includes regulations made under the Act;

S. 3(1) def. of *this Act* amended by No. 37/2019 s. 5(3)(d).

transferring approved provider has the meaning set out in section 58;

S. 3(1) def. of *transferring approved provider* inserted by No. 37/2019 s. 5(1).

S. 3(1) def. of
*working with
children
assessment
notice*
inserted by
No. 37/2019
s. 5(1).

working with children assessment notice has the
same meaning as assessment notice has in
the **Working with Children Act 2005**;

S. 3(1) def. of
*working with
vulnerable
people law*
inserted by
No. 37/2019
s. 5(1).

working with vulnerable people law has the same
meaning as in the National Law.

S. 3(1A)
inserted by
No. 37/2019
s. 5(5).

(1A) For the purposes of the definition of *de facto
relationship* in subsection (1)—

- (a) *registered domestic relationship* has the
same meaning as in the **Relationships Act
2008**; or
- (b) in determining whether persons who are not
in a registered domestic relationship are in a
de facto relationship, all the circumstances of
their relationship are to be taken into
account, including any one or more of the
matters referred to in section 35(2) of the
Relationships Act 2008 as may be relevant
in a particular case.

S. 3(1B)
inserted by
No. 37/2019
s. 5(5).

(1B) In this Act, a reference to education and care
includes a reference to education or care.

S. 3(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 30),
58/2007
s. 52(2),
repealed by
No. 37/2019
s. 5(6).

* * * * *

- (3) In this Act, a children's service is a children's service even if the service also provides education and care to children of or over the age of 13 years.

S. 3(3)
amended by
No. 80/2011
s. 4(2),
substituted by
No. 37/2019
s. 5(7).

- (4) In this Act, a reference (either generally or specifically) to a law or a provision of a law (including this Act and the National Law) includes a reference to any statutory instrument made or in force under the law or provision.

S. 3(4)
inserted by
No. 80/2011
s. 4(3),
substituted by
No. 37/2019
s. 5(7).

4 Act to bind the Crown

- (1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative capacity of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

5 Non-application of this Act

- (1) Nothing in this Act applies in circumstances where the children being cared for or educated are—
- (a) patients in a hospital which is a registered funded agency under the **Health Services Act 1988**;
- (b) patients of a medical or therapeutic care service;

S. 5(1)(b)
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 6),
repealed by
No. 22/2008
s. 4(1), new
s. 5(1)(b)
inserted by
No. 80/2011
s. 5(1)(a).

S. 5(1)(c)
substituted by
No. 48/2006
s. 42(Sch.
item 6).

(c) recipients of protection, care or accommodation being provided by a community service or secure welfare service established under section 44 of the **Children, Youth and Families Act 2005** or a community service registered under Division 3 of Part 3.3 of that Act;

S. 5(1)(d)
substituted by
No. 80/2011
s. 5(1)(b),
amended by
No. 19/2019
s. 253(a).

(d) clients of a disability service provider within the meaning of the **Disability Act 2006**;

S. 5(1)(e)
inserted by
No. 19/2019
s. 253(b).

(e) recipients of supports or services provided by a registered NDIS provider within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth.

S. 5(1A)
inserted by
No. 22/2008
s. 4(2).

(1A) Nothing in this Act applies in circumstances where the education provided to a child is education at a preparatory level or above at a Government school, or non-Government school, within the meaning of the **Education and Training Reform Act 2006**.

S. 5(1B)
inserted by
No. 22/2008
s. 4(2).

(1B) Nothing in this Act applies—

(a) to a service principally conducted to provide instruction in a particular activity or sport; or

Example

Instruction in a particular activity could be instruction in dance, music or language or religious instruction.

S. 5(1B)(b)
amended by
No. 80/2011
s. 5(2)(a),
repealed by
No. 37/2019
s. 6(1)(a).

* * * * *

Children's Services Act 1996
No. 53 of 1996
Part 1—Preliminary

- | | | | | | |
|---|--|---|---|---|---|
| * | * | * | * | * | |
| | | | | | S. 5(1B)(c)
inserted by
No. 80/2011
s. 5(2)(b),
repealed by
No. 37/2019
s. 6(1)(b). |
| | (d) | to an early childhood intervention service
provided for the principal purpose of
providing therapeutic intervention for
children with a disability, additional needs or
developmental delay; or | | | S. 5(1B)(d)
inserted by
No. 80/2011
s. 5(2)(b). |
| | (e) | to a short-term program provided by and at a
school to children who will attend the school
in the following year, for the purpose of
orienting children to the school; or | | | S. 5(1B)(e)
inserted by
No. 80/2011
s. 5(2)(b). |
| | (f) | to a service provided by and at a hotel or
resort to provide education and care to
children who are temporary guests of the
hotel or resort; or | | | S. 5(1B)(f)
inserted by
No. 80/2011
s. 5(2)(b). |
| | Example | | | | |
| | A ski resort that offers child-minding services for
children staying at the resort. | | | | |
| | (g) | to a service provided on an ad hoc basis at
the place of a meeting, convention, seminar
or other short-term event attended by a
parent of, or other person responsible for, the
child; or | | | S. 5(1B)(g)
inserted by
No. 80/2011
s. 5(2)(b),
amended by
No. 37/2019
s. 6(1)(c). |
| | (h) | to a service providing education and care to
children at a camp, including a camp where
the children stay overnight; or | | | S. 5(1B)(h)
inserted by
No. 37/2019
s. 6(1)(d). |
| | (i) | to any other prescribed class of service. | | | S. 5(1B)(i)
inserted by
No. 37/2019
s. 6(1)(d). |
| | (1C) | To avoid doubt, it is declared that a service may
be a children's service even though it is
conducted— | | | S. 5(1C)
inserted by
No. 22/2008
s. 4(2). |

Children's Services Act 1996
No. 53 of 1996
Part 1—Preliminary

- (a) by an entity that also carries on a school; or
- (b) at premises at which a school is also carried on.

S. 5(1D)
inserted by
No. 80/2011
s. 5(3).

(1D) To avoid doubt, it is declared that a service may be a children's service even though it is conducted—

- (a) by an entity that also operates an education and care service under the National Law; or
- (b) at a place at which an education and care service is operated under the National Law.

(2) Nothing in this Act applies in circumstances where the children are being cared for or educated in the children's own home or by a relative of the children.

S. 5(3)
substituted by
No. 22/2008
s. 4(3).

(3) Nothing in this Act applies in circumstances where—

S. 5(3)(a)
amended by
No. 37/2019
s. 6(2).

- (a) children are being cared for or educated under an informal arrangement between a parent or custodian of one or more of the children and the individual (the *carer*) providing the care and education; and
- (b) at least one of the children (other than a child of the carer) is being cared for or educated in his or her own home; and
- (c) not more than 4 children under the age of 6 who are not students enrolled at a preparatory level or above at a school are being cared for or educated by the carer.

Example

A group of parents arrange for their children to be cared for by a babysitter or nanny in one of the parent's homes.

- (4) Nothing in this Act applies in circumstances where children who are 6 years of age or over or who are students enrolled at a preparatory level or above at a school are being cared for or educated outside their own home under an informal arrangement between a parent or custodian of the children and the individual providing the care or education.

S. 5(4)
inserted by
No. 22/2008
s. 4(3),
amended by
No. 37/2019
s. 6(3).

Example

A parent arranges for a neighbour or friend to care for his or her children after school.

6 Exemption

- (1) The Minister, by notice published in the Government Gazette, may declare that all or any of the provisions of this Act do not apply to any specified children's service or any specified type of children's service.
- (2) A declaration may be made subject to any terms and conditions that are specified in the notice.
- (3) A notice remains in force for any period that is specified in the notice or, if no period is specified, until the Minister, by notice published in the Government Gazette, revokes the earlier notice.
- (4) A notice of revocation under subsection (3) does not apply to a children's service or a type of children's service until 60 days after the publication of the notice in the Government Gazette.

S. 6(1)
amended by
No. 22/2008
s. 5.

S. 6(4)
amended by
No. 22/2008
s. 5.

7 Extraterritorial operation of Law

It is the intention of the Parliament that the operation of this Act includes, as far as possible, operation in relation to the following—

- (a) things situated in or outside the territorial limits of this jurisdiction;

New s. 7
inserted by
No. 37/2019
s. 7.

- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

New s. 8
inserted by
No. 37/2019
s. 7.

8 Objectives and guiding principles

- (1) The objectives of this Act are—
 - (a) to ensure the safety, health and wellbeing of children attending children's services; and
 - (b) to improve the educational and developmental outcomes for children attending children's services; and
 - (c) to promote continuous improvement in the provision of quality children's services.
- (2) The guiding principles of this Act are as follows—
 - (a) that the rights and best interests of the child are paramount;
 - (b) that children are successful, competent and capable learners;
 - (c) that the principles of equity, inclusion and diversity underlie this Act;
 - (d) that Australia's Aboriginal and Torres Strait Islander cultures are valued;
 - (e) that the role of parents and families is respected and supported;
 - (f) that best practice is expected in the provision of children's services.

9 How functions exercised

An entity that has functions under this Act is to exercise its functions having regard to the objectives and guiding principles of this Act set out in section 8.

**New s. 9
inserted by
No. 37/2019
s. 7.**

Pt 2 (Heading
and ss 7, 8)
amended by
Nos 22/2008
ss 6, 7,
68/2009
s. 97(Sch.
item 19),
80/2011
ss 6, 7,
substituted as
Pt 2
(Headings
and ss 10–41)
by
No. 37/2019
s. 8.

New s. 10
inserted by
No. 37/2019
s. 8.

New s. 11
inserted by
No. 37/2019
s. 8.

Part 2—Provider approval

Division 1—Application for provider approval

10 Application for provider approval

- (1) A person, other than a prescribed ineligible person, may apply to the Regulatory Authority for a provider approval.
- (2) An application may be made by more than one person.
- (3) If an application is made by more than one person—
 - (a) the prescribed information must be provided in respect of each person; and
 - (b) the requirements of this Division must be complied with by and in respect of each person.

11 Form of application

An application under section 10 must—

- (a) be made to the Regulatory Authority; and
- (b) be in writing; and
- (c) include the prescribed information; and
- (d) include payment of the prescribed fee.

12 Applicant must be fit and proper person

New s. 12
inserted by
No. 37/2019
s. 8.

- (1) An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of a children's service.
- (2) If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that—
 - (a) each person who will be a person with management or control of a children's service to be operated by the applicant is a fit and proper person to be involved in the provision of a children's service; and
 - (b) the applicant is a fit and proper person to be involved in the provision of a children's service.

13 Matters to be taken into account in assessing whether fit and proper person

New s. 13
inserted by
No. 37/2019
s. 8.

- (1) In determining whether a person is a fit and proper person under this Division, the Regulatory Authority must have regard to—
 - (a) the person's history of compliance with—
 - (i) this Act; and
 - (ii) any law referred to in section 13(1)(a) of the National Law; and

Note

If a person has been served with an infringement notice for an offence under the National Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5) of the National Law.

- (b) any decision under this Act or the National Law to refuse, refuse to renew, suspend or cancel an approval or other authorisation granted under this Act or the National Law; and
 - (c) any decision referred to in section 13(1)(b) of the National Law; and
 - (d) either—
 - (i) any prescribed matters relating to the criminal history of the person to the extent that history may affect the person's suitability for the role of provider of a children's service; or
 - (ii) any check of the person under a working with vulnerable people law of a participating jurisdiction; and
 - (e) whether the person is bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors or, in the case of a body corporate, is insolvent under administration or an externally administered body corporate.
- (2) Without limiting subsection (1), the Regulatory Authority may have regard to—
- (a) whether the person has a medical condition that may cause the person to be incapable of being responsible for providing a children's service in accordance with this Act; and
 - (b) whether the financial circumstances of the person may significantly limit the person's capacity to meet the person's obligations in providing a children's service in accordance with this Act; and

- (c) whether the person has the management capability to operate a children's service in accordance with this Act; and
- (d) any of the following actions taken under the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth in relation to a child care service approved under that Act, operated by the person or in relation to which the person was a person with management or control—
 - (i) a sanction imposed under section 195H of that Act;
 - (ii) a suspension imposed under section 197A of that Act;
 - (iii) an infringement notice issued under Part 5 of the Regulatory Powers (Standard Provisions) Act 2014 of the Commonwealth in respect of section 219WA of the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth.
- (3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person to be involved in the provision of a children's service.

14 Regulatory Authority may seek further information

- (1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person, the Regulatory Authority may—
 - (a) ask the person to provide further information; and
 - (b) undertake inquiries in relation to the person.

New s. 14
inserted by
No. 37/2019
s. 8.

New s. 15
inserted by
No. 37/2019
s. 8.

- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 15 for the Regulatory Authority to make a decision on the application.

15 Grant or refusal of provider approval

- (1) On an application under section 10, the Regulatory Authority may—
- (a) grant the provider approval; or
 - (b) refuse to grant the provider approval.

Note

A provider approval is granted subject to conditions in accordance with section 19.

- (2) The Regulatory Authority must not grant a provider approval unless the Authority is satisfied as to the matters in section 12.
- (3) Subject to subsection (4), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

Note

If further information is requested under section 14, the period between the making of the request and the provision of the information is not included in the 60 day period.

- (4) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.
- (5) The Regulatory Authority is taken to have refused to grant a provider approval if the Regulatory Authority has not made a decision under subsection (1)—
- (a) within the relevant period required under subsection (3); or

(b) within the period extended under subsection (4)—

as the case requires.

- (6) The Regulatory Authority must give written notice to the applicant of a decision under this section and the reasons for that decision within 7 days after the decision is made.

16 National Law approved providers, granting of provider approvals

New s. 16
inserted by
No. 37/2019
s. 8.

- (1) On a National Law approved provider making an application for a service approval under Part 3, the National Law approved provider is taken to be granted a provider approval under this Part.
- (2) A provider approval to which subsection (1) applies is taken to be subject to any conditions to which the provider approval under the National Law of the approved provider is subject, unless the condition is inconsistent with this Act.
- (3) A provider approval that is taken to be granted under subsection (1) is taken to be cancelled if either of the following occurs—
- (a) the Regulatory Authority refuses the application for the service approval under section 47(1);
- (b) the service approval is not granted within the period of 6 months after the provider approval is taken to be granted under subsection (1).

17 National Law approved providers, transfers of provider approvals

New s. 17
inserted by
No. 37/2019
s. 8.

- (1) On a National Law approved provider giving notification to the Regulatory Authority of a proposal to transfer a service approval to the National Law approved provider under Division 3 of Part 3, the National Law approved provider is

taken to be granted a provider approval under this Part.

- (2) A provider approval to which subsection (1) applies is taken to be subject to any conditions to which the provider approval under the National Law of the approved provider is subject, unless the condition is inconsistent with this Act.
- (3) A provider approval that is taken to be granted under subsection (1) is taken to be cancelled if either of the following occurs—
 - (a) the Regulatory Authority refuses to consent to the proposed transfer under section 65(1);
 - (b) the Regulatory Authority does not consent to the proposed transfer within the period of 6 months after the provider approval is taken to be granted under subsection (1).

New s. 18
inserted by
No. 37/2019
s. 8.

18 Duration and effect of provider approval

- (1) A provider approval continues in force until it is cancelled or surrendered under this Act.
- (2) A provider approval authorises the approved provider to operate an approved children's service if the approved provider is the holder of the service approval for the service.

New s. 19
inserted by
No. 37/2019
s. 8.

19 Conditions on provider approval

- (1) A provider approval may be granted subject to any conditions that are prescribed in the regulations or that are determined by the Regulatory Authority.
- (2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Act.
- (3) A condition of a provider approval applies to the provider as the operator of any children's service, unless the condition expressly provides otherwise.

- (4) An approved provider must comply with the conditions of the provider approval.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

20 Copy of provider approval

New s. 20
inserted by
No. 37/2019
s. 8.

If the Regulatory Authority grants a provider approval under this Part, the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—

- (a) the name of the approved provider; and
- (b) if the approved provider is not an individual, the address of the principal office of the provider; and
- (c) any conditions to which the approval is subject; and
- (d) the date that the provider approval was granted; and
- (e) the provider approval number; and
- (f) any other prescribed matters.

Division 2—Reassessment

21 Reassessment of fitness and propriety

New s. 21
inserted by
No. 37/2019
s. 8.

- (1) The Regulatory Authority may at any time assess—
- (a) whether an approved provider continues to be a fit and proper person to be involved in the provision of a children's service; or
 - (b) whether a person with management or control of a children's service operated by an approved provider continues to be a fit and proper person to be involved in the provision of a children's service; or

- (c) whether a person who becomes a person with management or control of a children's service operated by the approved provider after the grant of the provider approval is a fit and proper person to be involved in the provision of a children's service.

- (2) Sections 13 and 14 apply to the reassessment.

Division 3—Amendment of provider approvals

22 Amendment of provider approval on application

New s. 22
inserted by
No. 37/2019
s. 8.

- (1) An approved provider may apply to the Regulatory Authority for an amendment of the provider approval.
- (2) The application must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority must decide the application by—
 - (a) amending the provider approval in the way applied for; or
 - (b) with the applicant's written agreement, amending the provider approval in another way; or
 - (c) refusing to amend the provider approval.
- (4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.

- (5) Without limiting subsection (3), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

23 Amendment of provider approval by Regulatory Authority

New s. 23
inserted by
No. 37/2019
s. 8.

- (1) The Regulatory Authority may amend a provider approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.
- (3) The Regulatory Authority must give written notice to the approved provider of the amendment.
- (4) An amendment under this section has effect—
- (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
 - (b) if another period is specified by the Regulatory Authority, at the end of that period.

24 Copy of amended provider approval to be provided

New s. 24
inserted by
No. 37/2019
s. 8.

If the Regulatory Authority amends a provider approval under this Division, the Regulatory Authority must—

- (a) provide an amended copy of the provider approval to the approved provider; and
- (b) make any necessary amendments to any service approval held by the provider and provide an amended copy of the service approval to the approved provider.

Division 4—Suspension or cancellation of provider approval

New s. 25
inserted by
No. 37/2019
s. 8.

25 Grounds for suspension of provider approval

The Regulatory Authority may suspend a provider approval if—

- (a) the approved provider has been charged with an indictable offence, or with an offence that if committed in Victoria would be an indictable offence, or any other circumstance indicates that the approved provider may not be a fit and proper person to be involved in the provision of a children's service; or
- (b) the approved provider has failed to comply with a condition of the provider approval; or
- (c) the approved provider has failed to comply with—
 - (i) this Act; or
 - (ii) the National Law as applying in any participating jurisdiction; or
- (d) action is being taken under Part 5 (other than a compliance direction) in respect of more than one children's service operated by the approved provider; or
- (e) the approved provider has not operated any children's service for a period of more than 12 months (including any period of suspension); or
- (f) the approved provider purported to transfer or receive a transfer of an approved children's service without the consent of the Regulatory Authority; or
- (g) the approved provider has not paid any outstanding prescribed fees.

26 Show cause notice before suspension

New s. 26
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority is considering the suspension of a provider approval under section 25.
- (2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—
 - (a) that the Regulatory Authority intends to suspend the provider approval; and
 - (b) the proposed period of suspension; and
 - (c) the reasons for the proposed suspension; and
 - (d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

27 Decision to suspend after show cause process

New s. 27
inserted by
No. 37/2019
s. 8.

After considering any written response from the approved provider received within the time allowed by section 26(2)(d), the Regulatory Authority may—

- (a) if the suspension was proposed on a ground referred to in section 25(a), accept an undertaking from the approved provider under section 119; or
- (b) in any case—
 - (i) suspend the provider approval for a period not more than the prescribed period; or
 - (ii) decide not to suspend the provider approval.

New s. 28
inserted by
No. 37/2019
s. 8.

28 Suspension without show cause notice

- (1) The Regulatory Authority may suspend the provider approval on a ground referred to in section 25 without giving the approved provider a show cause notice under section 26 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by a children's service operated by the provider.
- (2) The suspension may not be for a period of more than 6 months.

New s. 29
inserted by
No. 37/2019
s. 8.

29 Notice and taking effect of suspension

- (1) The Regulatory Authority must give the approved provider written notice of the decision to suspend the provider approval.
- (2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.
- (3) The decision under section 27 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.
- (4) The decision under section 28 to suspend takes effect on the giving of the notice.

New s. 30
inserted by
No. 37/2019
s. 8.

30 Effect of suspension

- (1) Subject to this section, if a provider approval is suspended under section 27 or 28, all service approvals held by the provider are also suspended for the same period.
- (2) A person whose provider approval is suspended is taken not to be an approved provider for the period of the suspension.

- (3) A service approval is not suspended under subsection (1) during any period that a person is approved under section 41 to manage or control the children's service.
- (4) The Regulatory Authority may consent under Part 3 to the transfer of a service approval that is suspended under section 27 or 28.
- (5) The suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date.

31 Grounds for cancellation of provider approval

New s. 31
inserted by
No. 37/2019
s. 8.

The Regulatory Authority may cancel a provider approval if—

- (a) the Regulatory Authority is satisfied that the approved provider or a person with management or control of a children's service operated by the approved provider is not a fit and proper person to be involved in the provision of a children's service; or
- (b) the Regulatory Authority is satisfied that the continued provision of children's services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by a children's service operated by the approved provider; or
- (c) the approved provider has been found guilty of an indictable offence or an offence that if committed in Victoria would be an indictable offence; or

- (d) the approved provider has been found guilty of an offence under—
 - (i) this Act; or
 - (ii) the National Law as applying in any participating jurisdiction; or
- (e) the approved provider has breached a condition of the provider approval; or
- (f) the approved provider has not operated any children's service for a period of more than 12 months (including any period of suspension).

New s. 32
inserted by
No. 37/2019
s. 8.

32 Show cause notice before cancellation

- (1) This section applies if the Regulatory Authority is considering the cancellation of a provider approval under section 31.
- (2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—
 - (a) that the Regulatory Authority intends to cancel the provider approval; and
 - (b) the reasons for the proposed cancellation; and
 - (c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

New s. 33
inserted by
No. 37/2019
s. 8.

33 Decision in relation to cancellation

- (1) After considering any written response from the approved provider received within the time allowed under section 32(2)(c), the Regulatory Authority—
 - (a) may—
 - (i) cancel the provider approval; or

- (ii) suspend the provider approval for a period not more than the prescribed period; or
 - (iii) decide not to cancel the provider approval; and
- (b) must give the approved provider written notice of the decision.
- (2) The decision to cancel the provider approval takes effect at the end of 14 days after the date of the decision or, if another period is specified by the Regulatory Authority, at the end of that period.
- (3) The notice of a decision to cancel the provider approval must set out the date on which it takes effect.
- (4) This Act applies to a suspension of a provider approval under this section as if it were a suspension under section 27.

34 Effect of cancellation

New s. 34
inserted by
No. 37/2019
s. 8.

- (1) Subject to this section, if a provider approval is cancelled under section 33, all service approvals held by the person who was the approved provider are also cancelled.
- (2) A service approval is not cancelled under subsection (1) if before that cancellation a person is approved under section 41 to manage or control the children's service.
- (3) A service approval is cancelled if a person referred to in subsection (2) ceases to manage or control the service.
- (4) A provider whose provider approval is to be cancelled under section 33 may apply to the Regulatory Authority under Part 3 for consent to transfer a service approval held by the provider.

- (5) The application for consent to transfer must be made within 14 days after the date of the decision to cancel the provider approval is made.
- (6) If an application for consent to transfer is made, the service approval is suspended until the Regulatory Authority determines the application.
- (7) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the transfer specify a later date.
- (8) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse consent.

New s. 35
inserted by
No. 37/2019
s. 8.

35 Approved provider to provide information to Regulatory Authority

- (1) This section applies if a show cause notice has been given to an approved provider under section 26 or 32.
- (2) The approved provider, at the request of the Regulatory Authority, must, within 7 days of the request, provide the Regulatory Authority with the contact details of the parents of all children enrolled at each children's service operated by the approved provider.
- (3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at a children's service about the suspension or cancellation.

New s. 36
inserted by
No. 37/2019
s. 8.

36 Notice to parents of suspension or cancellation

- (1) This section applies if a provider approval has been suspended or cancelled under section 27, 28, 33 or 34.
- (2) The Regulatory Authority may require the person who is or was the approved provider to give written notice of the suspension or cancellation

and its effect to the parents of children enrolled at all or any of the children's services operated by that person.

- (3) A person must comply with a requirement made of that person under subsection (2).

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

37 Voluntary suspension of provider approval

New s. 37
inserted by
No. 37/2019
s. 8.

- (1) An approved provider may apply to the Regulatory Authority for a suspension of the provider approval for a period of not more than 12 months.
- (2) The application must—
- (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.
- (3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the children's services operated by the approved provider of the intention to make the application.
- (4) The Regulatory Authority must within 30 days after the application is made decide whether or not to grant the application.
- (5) The Regulatory Authority must give written notice of its decision (including the period of suspension) to the approved provider.
- (6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

- (7) A suspension under this section remains in force for the period of time specified in the notice.
- (8) The approved provider may apply to the Regulatory Authority to revoke the suspension before the end of the suspension period.
- (9) If the Regulatory Authority grants the application to revoke the suspension, the suspension ceases on the date determined by agreement with the approved provider.
- (10) If a provider approval is suspended under this section, each service approval held by the provider is also suspended for the same period unless—
 - (a) a person is approved under section 41 to manage or control the children's service to which the approval relates; or
 - (b) the service approval is transferred under Division 3 of Part 3.

New s. 38
inserted by
No. 37/2019
s. 8.

38 Surrender of provider approval by approved provider

- (1) An approved provider may surrender the provider approval by written notice to the Regulatory Authority.
- (2) The notice must specify a date on which the surrender is intended to take effect which must be—
 - (a) after the notice is given; and
 - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must notify the parents of children enrolled at the children's service operated by the approved provider of the intention to surrender the provider approval, at least 14 days before the surrender is intended to take effect.

- (4) If a provider approval is surrendered, the approval is cancelled on the date specified in the notice.
- (5) If a provider approval is surrendered, any service approval held by the provider is also taken to be surrendered.

Note

If a service approval is surrendered, it is cancelled—see section 84. A cancelled service approval cannot be transferred—see definition of *service approval* and also Division 3 of Part 3.

Division 5—Approval of executor, representative or guardian as approved provider

39 Death of approved provider

New s. 39
inserted by
No. 37/2019
s. 8.

- (1) This section applies if an approved provider dies.
- (2) A nominated supervisor or a person in day-to-day charge of a children's service of the approved provider must notify the Regulatory Authority of the approved provider's death within 7 days after that death.
- (3) The executor of the estate of the approved provider may continue to operate any approved children's service of the approved provider for the relevant period provided that at least one nominated supervisor continues to manage the day-to-day operation of the service.
- (4) The executor of the estate of the approved provider may transfer, surrender or apply for suspension of a service approval of the approved provider under this Act during the relevant period as if the executor were the approved provider.
- (5) The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval.

- (6) The application must be made within 30 days of the death of the approved provider and must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.
- (7) In this section, *relevant period* means—
 - (a) the period of 30 days after the death of the approved provider; or
 - (b) if the executor of the estate of the approved provider makes an application under subsection (5) within that period, until the application is finally determined under this Act.

New s. 40
inserted by
No. 37/2019
s. 8.

40 Incapacity of approved provider

- (1) This section applies if an approved provider has become incapacitated.
- (2) The legal personal representative or guardian of an approved provider may apply to the Regulatory Authority for a provider approval.
- (3) The application must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.

New s. 41
inserted by
No. 37/2019
s. 8.

41 Decision on application

- (1) The Regulatory Authority must not grant a provider approval to a person who has made an application under section 39 or 40 unless the Regulatory Authority is satisfied that the person is a fit and proper person to be involved in the provision of a children's service.
- (2) Sections 12, 13 and 14 apply to the assessment of a person under subsection (1).

- (3) Subject to this section, the Regulatory Authority may—
 - (a) grant the provider approval; or
 - (b) grant the provider approval subject to conditions; or
 - (c) refuse to grant the provider approval.
- (4) An approval under this section—
 - (a) may be granted for a period of not more than 6 months; and
 - (b) may be extended or further extended for periods of not more than 6 months—at the discretion of the Regulatory Authority.
- (5) The provider approval is granted only in relation to the operation of the approved children's services of the approved provider for whom the applicant is the executor, legal personal representative or guardian, as the case requires.

Pt 3 (Heading and ss 9–25) substituted as Pt 3 (Heading and ss 9–25U) by No. 22/2008 s. 8, amended by Nos 29/2011 s. 3(Sch. 1 item 10.2), 80/2011 ss 8–28, 9/2017 ss 70, 71, substituted as Pt 3 (Headings and ss 42–100) by No. 37/2019 s. 8.

New s. 42 inserted by No. 37/2019 s. 8.

New s. 43 inserted by No. 37/2019 s. 8.

Part 3—Service approval

Division 1—Application for service approval

42 Application for service approval

- (1) An approved provider under this Act or a National Law approved provider may apply to the Regulatory Authority for a service approval for a children's service.
- (2) An approved provider under this Act or a National Law approved provider may only apply for a service approval for a children's service if the approved provider is or will be the operator of the children's service and is or will be responsible for the management of the staff members and nominated supervisors of that service.
- (3) A person who has applied for a provider approval under this Act may apply to the Regulatory Authority for a service approval, however the Regulatory Authority must not grant the service approval unless the provider approval is granted.

43 Form of application

An application for a service approval must—

- (a) be made to the Regulatory Authority; and
- (b) be in writing; and

- (c) include the prescribed information; and
- (d) nominate one or more individuals to be nominated supervisors of the children's service; and
- (e) include from each nominated individual (other than the approved provider) the written consent to the nomination; and
- (f) include payment of the prescribed fee.

44 Regulatory Authority may seek further information

New s. 44
inserted by
No. 37/2019
s. 8.

- (1) The Regulatory Authority may ask an applicant for a service approval to provide any further information that is reasonably required for the purpose of assessing the application.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 47 for the Regulatory Authority to make a decision on the application.

45 Investigation of application for service approval

New s. 45
inserted by
No. 37/2019
s. 8.

- (1) For the purposes of determining an application for a service approval, the Regulatory Authority may—
 - (a) undertake inquiries and investigations, including inquiries relating to any previous licensing, accreditation or registration of the children's service under this Act or the National Law; and
 - (b) inspect the children's service premises; and
 - (c) inspect the policies and procedures of the service.

- (2) For the purposes of an inspection under subsection (1)(b) or (c), the Regulatory Authority may enter the children's service premises at any reasonable time.

New s. 46
inserted by
No. 37/2019
s. 8.

46 Determination of application

- (1) In determining an application under section 42, the Regulatory Authority must have regard to—
- (a) the suitability of the children's service premises and the site and location of those premises for the operation of a children's service; and
 - (b) the adequacy of the policies and procedures of the service; and
 - (c) whether the applicant has a provider approval; and
 - (d) except in the case of a nominated supervisor who is the approved provider, whether each nominated supervisor has consented in writing to the nomination; and
 - (e) any other matter the Regulatory Authority thinks fit; and
 - (f) any other prescribed matter.
- (2) In addition, the Regulatory Authority may have regard to either of the following—
- (a) whether the applicant is capable of operating the children's service having regard to the financial capacity and management capability of the applicant and any other matter the Regulatory Authority considers relevant;
 - (b) the applicant's history of compliance with—
 - (i) this Act, including in relation to any other children's service the applicant operates or has operated; or

- (ii) the National Law as applying in any participating jurisdiction, including in relation to any education and care service the applicant operates or has operated.

47 Grant or refusal of service approval

New s. 47
inserted by
No. 37/2019
s. 8.

- (1) On an application under section 42, the Regulatory Authority may—
 - (a) grant the service approval for the children's service; or
 - (b) refuse to grant the service approval.

Note

A service approval is granted subject to conditions in accordance with section 50.

- (2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 90 days after the Regulatory Authority received the application.

Note

If further information is requested under section 44(2), the period between the making of the request and the provision of the information is not included in the 90 day period.

- (3) The period referred to in subsection (2) may be extended with the agreement of the applicant.
- (4) The Regulatory Authority is taken to have refused to grant a service approval if the Regulatory Authority has not made a decision under subsection (1)—
 - (a) within the relevant time required under subsection (2); or
 - (b) within the period extended under subsection (3)—

as the case requires.

New s. 48
inserted by
No. 37/2019
s. 8.

48 Grounds for refusal

- (1) The Regulatory Authority must refuse to grant a service approval if—
 - (a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the children's service; or
 - (b) the applicant does not have a provider approval.
- (2) The Regulatory Authority may refuse to grant a service approval on any other prescribed grounds.

New s. 49
inserted by
No. 37/2019
s. 8.

49 Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 47 and the reasons for the decision within 7 days after the decision is made.

New s. 50
inserted by
No. 37/2019
s. 8.

50 Conditions on service approval

- (1) A service approval is granted subject to the condition that the children's service is operated in a way that—
 - (a) ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) meets the educational and developmental needs of the children being educated and cared for by the service.
- (2) A service approval is granted subject to a condition that the service must commence ongoing operation of the service within 6 months after the approval is granted unless the Regulatory Authority agrees to an extension of time.

- (3) A service approval is granted subject to a condition that the approved provider must hold the prescribed insurance in respect of the children's service.
- (4) A service approval is granted subject to a condition that the approved provider must ensure that the number of children educated and cared for by the service at any one time does not exceed the maximum number of children specified in the service approval.
- (5) An approved provider is not required to comply with subsection (4) if—
 - (a) the maximum number of children is exceeded because a child is, or 2 or more children from the same family are, being educated and cared for by the children's service in an emergency; and
 - (b) the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of any other child who is attending the children's service.

Example

An emergency under this subsection would include circumstances where a child is in need of protection under a child protection order or where the parent of a child needs urgent health care that prevents that parent caring for the child.

- (6) A service approval is granted subject to any other conditions prescribed in the regulations or imposed by—
 - (a) this Act; or
 - (b) the Regulatory Authority.

- (7) An approved provider must comply with the conditions of a service approval held by the approved provider.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

New s. 51
inserted by
No. 37/2019
s. 8.

51 Copy of service approval to be provided

- (1) If the Regulatory Authority grants a service approval under this Part, the Regulatory Authority must provide a copy of the service approval to the approved provider stating—
- (a) the name of the children's service; and
 - (b) the location of the children's service; and
 - (c) any conditions to which the service approval is subject; and
 - (d) the date the service approval was granted; and
 - (e) the service approval number; and
 - (f) the name of the approved provider; and
 - (g) the maximum number of children who can be educated and cared for by the service at any one time; and
 - (h) the details of any service waiver under Division 5 or temporary waiver under Division 6 applying to the service; and
 - (i) any other prescribed matters.
- (2) If a provider approval is taken to be granted under section 16(1), at the same time as the Regulatory Authority provides a copy of the service approval under subsection (1), the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—

- (a) the matters set out in section 20(a), (b), (c), (e) and (f); and
- (b) the date that the provider approval is taken to be granted.

52 Annual fee

An approved provider must, in accordance with the regulations, pay the prescribed annual fee in respect of each service approval held by the approved provider.

New s. 52
inserted by
No. 37/2019
s. 8.

Division 2—Amendment of service approval

53 Amendment of service approval on application

- (1) An approved provider may apply to the Regulatory Authority for an amendment of a service approval.
- (2) An application must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority may ask the approved provider to provide any further information that is reasonably required for the purpose of assessing the application.
- (4) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in subsection (5).
- (5) The Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

New s. 53
inserted by
No. 37/2019
s. 8.

- (6) The Regulatory Authority must decide the application by—
 - (a) amending the service approval in the way applied for; or
 - (b) with the applicant's written agreement, amending the service approval in another way; or
 - (c) refusing to amend the service approval.
- (7) Without limiting subsection (6), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (8) An amendment cannot change a location of a children's service.
- (9) The Regulatory Authority must give written notice of its decision to the approved provider.

New s. 54
inserted by
No. 37/2019
s. 8.

54 Amendment of service approval by Regulatory Authority

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (3) The Regulatory Authority must give written notice of the amendment to the approved provider.
- (4) An amendment under this section has effect—
 - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
 - (b) if another period is specified by the Regulatory Authority, at the end of that period.

55 Notice of addition of nominated supervisor

New s. 55
inserted by
No. 37/2019
s. 8.

- (1) The approved provider of a children's service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to add a new nominated supervisor of the children's service.
- (2) The notice must—
 - (a) nominate one or more individuals to be nominated supervisors of the service and, unless the individual nominated is the approved provider, include from each nominated individual the written consent to the nomination; and
 - (b) include the prescribed information; and
 - (c) be given—
 - (i) at least 7 days before the individual is to commence work as a nominated supervisor; or
 - (ii) if that period of notice is not possible in the circumstances, as soon as practicable but not more than 14 days after the individual commences work as a nominated supervisor.

Note

Section 113(2)(c) requires an approved provider to notify the Regulatory Authority of the removal of a nominated supervisor.

56 Notice of change of a nominated supervisor's name or contact details

New s. 56
inserted by
No. 37/2019
s. 8.

The approved provider of a children's service must give written notice to the Regulatory Authority of any change to the name or contact details of any nominated supervisor of the children's service.

New s. 57
inserted by
No. 37/2019
s. 8.

57 Copy of amended service approval to be provided

If the Regulatory Authority amends a service approval under this Division, the Authority must provide an amended copy of the service approval to the approved provider.

Division 3—Transfer of service approval

New s. 58
inserted by
No. 37/2019
s. 8.

58 Service approval may be transferred

- (1) Subject to this Division, an approved provider who holds a service approval (*transferring approved provider*) may transfer the service approval to another approved provider under this Act or a National Law approved provider (*receiving approved provider*).
- (2) A person who holds a provider approval under this Act may transfer a service approval held by the provider even if the provider approval or service approval is suspended.

New s. 59
inserted by
No. 37/2019
s. 8.

59 Regulatory Authority to be notified of transfer

- (1) The transferring approved provider and the receiving approved provider must jointly notify the Regulatory Authority of the transfer—
 - (a) at least 42 days before the transfer is intended to take effect; or
 - (b) if the Regulatory Authority considers that the circumstances are exceptional, a lesser period agreed to by the Regulatory Authority.
- (2) The notice must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.

60 Consent of Regulatory Authority required for transfer

New s. 60
inserted by
No. 37/2019
s. 8.

A service approval cannot be transferred without the consent of the Regulatory Authority.

61 Consent taken to be given unless Regulatory Authority intervenes

New s. 61
inserted by
No. 37/2019
s. 8.

The Regulatory Authority is taken to have consented to the transfer of a service approval if—

- (a) the parties have given a notification under section 59; and
- (b) 28 days before the transfer is intended to take effect, the Regulatory Authority has not notified the parties that it intends to intervene under section 62.

62 Transfer may be subject to intervention by Regulatory Authority

New s. 62
inserted by
No. 37/2019
s. 8.

- (1) The Regulatory Authority may intervene in a transfer of a service approval if the Regulatory Authority is concerned as to any of the following matters—
 - (a) whether the receiving approved provider is capable of operating the children's service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
 - (b) the receiving approved provider's history of compliance with—
 - (i) this Act, including in relation to any other children's service the provider operates or has operated; or
 - (ii) the National Law as applying in a participating jurisdiction, including in relation to any education and care

service the receiving approved provider operates or has operated;

- (c) any other matter relevant to the transfer of the service approval.
- (2) The Regulatory Authority must notify the transferring approved provider and the receiving approved provider of the decision to intervene.
- (3) Subject to subsection (5), the notice must be given at least 28 days before the date on which the transfer is intended to take effect.
- (4) A notification under subsection (2) must—
 - (a) be in writing; and
 - (b) include the prescribed information.
- (5) The period within which notice must be given under subsection (3) does not apply where the Regulatory Authority has not been notified of the intended transfer of a service approval in accordance with section 59.

New s. 63
inserted by
No. 37/2019
s. 8.

63 Effect of intervention

If the Regulatory Authority intervenes under section 62, the transfer must not proceed unless and until the Regulatory Authority gives written consent to the transfer.

S. 64
inserted by
No. 37/2019
s. 8.

64 Regulatory Authority may request further information

If the Regulatory Authority has intervened under section 62, the Regulatory Authority may—

- (a) request further information from the transferring approved provider or receiving approved provider for the purposes of deciding whether to consent to the transfer; and

- (b) undertake inquiries in relation to the receiving approved provider for that purpose.

65 Decision after intervention

S. 65
inserted by
No. 37/2019
s. 8.

- (1) If the Regulatory Authority has intervened under section 62, it may decide—
 - (a) to consent to the proposed transfer; or
 - (b) to refuse to consent to the proposed transfer.
- (2) If the Regulatory Authority consents to the proposed transfer the Regulatory Authority may impose conditions on the consent, including specifying the date on which the proposed transfer is to take effect.
- (3) The service approval must be transferred in accordance with the conditions imposed on the consent.

66 Regulatory Authority to notify outcome 7 days before transfer

S. 66
inserted by
No. 37/2019
s. 8.

- (1) If the Regulatory Authority has intervened in the transfer of a service approval, the Authority must, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party specifying that the Authority—
 - (a) consents to the transfer; or
 - (b) refuses to consent to the transfer; or
 - (c) has suspended further consideration of the transfer until further information is received and that the transfer may not proceed until a further notice is given under this section consenting to the transfer; or
 - (d) has not yet made a decision on the transfer and that the Regulatory Authority will make a decision on the transfer within 28 days and that the transfer may not proceed until a

further notice is given under this section
consenting to the transfer.

- (2) If the Regulatory Authority consents to the transfer, the notice—
- (a) must specify—
 - (i) the date on which the transfer is to take effect; and
 - (ii) any conditions on the consent to the transfer; and
 - (b) may include notice of any condition that the Regulatory Authority has imposed on the provider approval or a service approval of the receiving approved provider because of the transfer.
- (3) If the Regulatory Authority refuses to consent to the transfer, the notice must include the reasons for the refusal.

S. 67
inserted by
No. 37/2019
s. 8.

67 Transfer of service approval without consent is void

A transfer of a service approval is void if—

- (a) it is made without the consent of the Regulatory Authority; or
- (b) it is made in contravention of the conditions imposed by the Regulatory Authority on the consent to the transfer; or
- (c) it is made to a person who is not the approved provider who gave the notification under section 59 as the receiving approved provider.

S. 68
inserted by
No. 37/2019
s. 8.

68 Confirmation of transfer

- (1) The transferring approved provider and the receiving approved provider must give written notice to the Regulatory Authority within 2 days

after the transfer takes effect specifying the date of the transfer.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (2) On receipt of a notice under this section, the Regulatory Authority must amend the service approval and provide an amended copy of the service approval to the receiving approved provider.
- (3) If a provider approval is taken to be granted under section 17(1), at the same time as the Regulatory Authority provides an amended copy of the service approval under subsection (2), the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—
 - (a) the matters set out in section 20(a), (b), (c), (e) and (f); and
 - (b) the date that the provider approval is taken to be granted.
- (4) The amendment to the service approval is taken to take effect on the date of the transfer.
- (5) An approved provider who gives notice under this section is not guilty of an offence for a failure of any other person to give that notice.

69 Notice to parents

- (1) The receiving approved provider must give written notice to the parents of children enrolled at a children's service of the transfer of the service approval for that service to that provider.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

**S. 69
inserted by
No. 37/2019
s. 8.**

- (2) The notice must be given at least 2 days before the date on which the transfer of the service approval takes effect.

Division 4—Suspension or cancellation of service approval

S. 70
inserted by
No. 37/2019
s. 8.

70 Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if—

- (a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or
- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this Act; or
- (d) the approved provider has contravened—
 - (i) this Act; or
 - (ii) the National Law as applying in a participating jurisdiction; or
- (e) the approved provider has failed to comply with a direction, compliance notice or emergency order under this Act; or
- (f) the approved provider has—
 - (i) ceased to operate the children's service at the children's service premises for which the service approval was granted; and
 - (ii) within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or

- (g) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or
- (h) the approved provider has not paid the prescribed annual fee for the service approval.

71 Show cause notice before suspension

S. 71
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority is considering the suspension of a service approval under section 70.
- (2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—
 - (a) that the Regulatory Authority intends to suspend the service approval; and
 - (b) the proposed period of suspension; and
 - (c) the reasons for the proposed suspension; and
 - (d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

72 Decision in relation to suspension

S. 72
inserted by
No. 37/2019
s. 8.

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

- (a) if the suspension was proposed on the ground referred to in section 70(a) or (c), accept an undertaking from the approved provider under section 119; or

(b) in any case—

- (i) suspend the service approval for a period not more than the prescribed period; or
- (ii) decide not to suspend the service approval.

S. 73
inserted by
No. 37/2019
s. 8.

73 Suspension of service approval without show cause

The Regulatory Authority may suspend the service approval without giving the approved provider a show cause notice under section 71 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the children's service.

S. 74
inserted by
No. 37/2019
s. 8.

74 Notice and effect of decision

- (1) The Regulatory Authority must give the approved provider written notice of the decision to suspend.
- (2) Subject to section 75, the decision under section 72 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.
- (3) Subject to section 75, the decision under section 73 to suspend takes effect on the giving of the notice.
- (4) The notice of a decision to suspend must set out—
 - (a) the period of suspension; and
 - (b) the date on which it takes effect.

S. 75
inserted by
No. 37/2019
s. 8.

75 Transfer of suspended service

- (1) The Regulatory Authority may consent under this Part to the transfer of a service approval that is suspended under section 72 or 73.

- (2) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the Regulatory Authority's consent to the transfer otherwise provide.

76 Grounds for cancellation of service approval

S. 76
inserted by
No. 37/2019
s. 8.

The Regulatory Authority may cancel a service approval if—

- (a) the Regulatory Authority reasonably believes that the continued operation of the children's service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the children's service; or
- (b) the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension; or
- (c) the service approval was obtained improperly; or
- (d) a condition of the service approval has not been complied with.

77 Show cause notice before cancellation

S. 77
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority is considering the cancellation of a service approval under section 76.
- (2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—
 - (a) that the Regulatory Authority intends to cancel the service approval; and
 - (b) the reasons for the proposed cancellation; and

- (c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

S. 78
inserted by
No. 37/2019
s. 8.

78 Decision in relation to cancellation

- (1) After considering any written response from the approved provider received within the time allowed by section 77(2)(c), the Regulatory Authority—
 - (a) may—
 - (i) cancel the service approval; or
 - (ii) suspend the service approval for a period not more than the prescribed period; or
 - (iii) decide not to cancel the service approval; and
 - (b) must give the approved provider written notice of the decision.
- (2) Subject to section 79, the decision to cancel the service approval takes effect—
 - (a) at the end of 14 days after the date of the decision; or
 - (b) if another period is specified by the Regulatory Authority, at the end of that period.
- (3) The notice of a decision to cancel must set out the date on which it takes effect.
- (4) This Act applies to a suspension of a service approval under this section as if it were a suspension under section 72.

79 Application for transfer of cancelled service

S. 79
inserted by
No. 37/2019
s. 8.

- (1) An approved provider may apply to the Regulatory Authority under this Part for consent to transfer a service approval that is to be cancelled under this Part.
- (2) The application for consent to transfer must be made within 14 days after the decision to cancel the service approval is made.
- (3) If an application for consent to transfer is made, the cancellation of the service approval does not take effect, and the service approval is suspended, until the Regulatory Authority determines the application.

80 Decision on application to transfer cancelled service

S. 80
inserted by
No. 37/2019
s. 8.

- (1) If the Regulatory Authority consents to the transfer—
 - (a) the decision to cancel the service approval is revoked; and
 - (b) the suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date for the suspension to cease.
- (2) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse to consent.

81 Approved provider to provide information to Regulatory Authority

S. 81
inserted by
No. 37/2019
s. 8.

- (1) This section applies if a show cause notice has been given to an approved provider under section 71 or 77.

- (2) The approved provider, at the request of the Regulatory Authority, must provide the Authority with the contact details of the parents of all children enrolled at the children's service.
- (3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an approved children's service of a suspension or cancellation of the service approval for the service.

S. 82
inserted by
No. 37/2019
s. 8.

82 Notice to parents of suspension or cancellation

- (1) This section applies if a service approval has been suspended or cancelled under section 72, 73, 78 or 80.
- (2) The Regulatory Authority may require the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at the children's service to which the approval relates.
- (3) The approved provider must comply with a requirement made under subsection (2).

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

S. 83
inserted by
No. 37/2019
s. 8.

83 Voluntary suspension of service approval

- (1) An approved provider may apply to the Regulatory Authority for the suspension of a service approval for a period of not more than 12 months.
- (2) The application must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) include payment of the prescribed fee.

- (3) The Regulatory Authority may agree to the suspension, having regard to whether the suspension is reasonable in the circumstances.
- (4) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the children's service of the intention to make the application.
- (5) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.
- (6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

84 Surrender of service approval

S. 84
inserted by
No. 37/2019
s. 8.

- (1) An approved provider may surrender a service approval by written notice to the Regulatory Authority.
- (2) The notice must specify a date on which the surrender is intended to take effect which must be—
 - (a) after the notice is given; and
 - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must notify the parents of children enrolled at the children's service to which the approval relates of the intention to surrender the service approval, at least 14 days before the surrender is intended to take effect.
- (4) If a service approval is surrendered, the approval is cancelled on the date specified in the notice.

Division 5—Application for service waiver

S. 85
inserted by
No. 37/2019
s. 8.

85 Application for service waiver for service

- (1) An approved provider may apply to the Regulatory Authority for a waiver from a requirement that an approved children's service comply with any prescribed requirements of the regulations.
- (2) A person who applies for a service approval may apply for a service waiver under this section together with the application for the service approval.
- (3) The Regulatory Authority must not grant a service waiver to a person who applies under subsection (2) unless the service approval is granted to that person.

S. 86
inserted by
No. 37/2019
s. 8.

86 Form of application

An application under section 85 must—

- (a) be in writing; and
- (b) include the prescribed information; and
- (c) include payment of the prescribed fee.

S. 87
inserted by
No. 37/2019
s. 8.

87 Powers of Regulatory Authority in considering application

- (1) For the purpose of determining an application under this Division, the Regulatory Authority may—
 - (a) ask the applicant to provide further information; and
 - (b) inspect the children's service premises and the office of the applicant.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of that request until the provision of further information is not included in the period

referred to in section 89(2) for the Regulatory Authority to make a decision on the application.

88 Matters to be considered

In considering whether the grant of a service waiver is appropriate, the Regulatory Authority may have regard to either or both of the following—

- (a) whether the children's service is able to meet the prescribed requirements of the regulations by alternative means that satisfy the objectives of those regulations;
- (b) any matters disclosed in the application that are relevant to the application for the service waiver.

**S. 88
inserted by
No. 37/2019
s. 8.**

89 Decision on application

- (1) On an application under this Division, the Regulatory Authority may decide to grant the service waiver or refuse the application.
- (2) Subject to subsection (3), the Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.
- (3) If an application for a service waiver has been made together with an application for service approval, the Regulatory Authority may notify the applicant of the Authority's decision on the application at the same time as the notice of the decision on the application for the service approval.
- (4) If a service waiver is granted, the Regulatory Authority may place any conditions on the service waiver, including any condition limiting the use of the service waiver.

**S. 89
inserted by
No. 37/2019
s. 8.**

- (5) The Regulatory Authority may, at any time remove, add to or vary any conditions placed on a service waiver under subsection (4).
- (6) If a service waiver is granted or its conditions are amended under subsection (5), the Regulatory Authority must issue or reissue the service approval specifying—
 - (a) the regulations that have been waived; and
 - (b) any conditions placed on the waiver.

S. 90
inserted by
No. 37/2019
s. 8.

90 Revocation of service waiver

- (1) The Regulatory Authority may, at its discretion, revoke a service waiver.
- (2) An approved provider may apply to the Regulatory Authority for the revocation of a service waiver applying to any children's service that it operates.
- (3) A revocation under this section takes effect at the end of the period prescribed in the regulations.

S. 91
inserted by
No. 37/2019
s. 8.

91 Effect of service waiver

While a service waiver is in force, the approved children's service is taken to comply with the regulations that are specified in the service waiver.

Division 6—Temporary waiver

S. 92
inserted by
No. 37/2019
s. 8.

92 Application for temporary waiver

An approved provider may apply to the Regulatory Authority for a temporary waiver from a requirement that an approved children's service comply with any prescribed requirements of the regulations.

93 Form of application

An application under section 92 must—

- (a) be in writing; and
- (b) include the prescribed information; and
- (c) include payment of the prescribed fee.

S. 93
inserted by
No. 37/2019
s. 8.

94 Regulatory Authority may seek further information

- (1) For the purpose of determining an application under this Division, the Regulatory Authority may—
 - (a) ask the applicant to provide further information; and
 - (b) inspect the children's service premises and the office of the applicant.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of that request until the provision of further information is not included in the period referred to in section 96(1) for the Regulatory Authority to make a decision on the application.

S. 94
inserted by
No. 37/2019
s. 8.

95 Special circumstances

In considering whether the grant of a temporary waiver is appropriate, the Regulatory Authority must have regard to whether special circumstances disclosed in the application reasonably justify the grant of the temporary waiver.

S. 95
inserted by
No. 37/2019
s. 8.

96 Decision on application

- (1) The Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.

S. 96
inserted by
No. 37/2019
s. 8.

- (2) A temporary waiver must specify the period of the waiver which cannot be for a period of more than 12 months.
- (3) The Regulatory Authority, on the application of the approved provider, may—
 - (a) extend and further extend the period of a temporary waiver by periods of not more than 12 months; and
 - (b) grant a further temporary waiver for a children's service under this Division.
- (4) An application under subsection (3) must include payment of the prescribed fee.
- (5) If a temporary waiver is granted, the Regulatory Authority may place any conditions on the temporary waiver, including any condition limiting the use of the temporary waiver.
- (6) The Regulatory Authority may at any time remove, add to or vary any conditions placed on a temporary waiver under subsection (5).
- (7) If a temporary waiver is granted or its conditions are amended under subsection (6), the Regulatory Authority must issue or reissue the service approval specifying—
 - (a) the regulations that have been temporarily waived; and
 - (b) the period of the waiver; and
 - (c) any conditions placed on the waiver.

S. 97
inserted by
No. 37/2019
s. 8.

97 Revocation of temporary waiver

The Regulatory Authority may, at its discretion, revoke a temporary waiver.

98 Effect of temporary waiver

While a temporary waiver is in force, the approved children's service is not required to comply with the regulations that have been temporarily waived.

S. 98
inserted by
No. 37/2019
s. 8.

Division 7—Offences

99 Offence to provide a children's service without service approval

A person must not provide a children's service unless—

- (a) the person is an approved provider in respect of that service; and
- (b) the children's service is an approved children's service.

Penalty: 120 penalty units, in the case of an individual.

600 penalty units, in any other case.

100 Offence to advertise children's service without service approval

S. 99
inserted by
No. 37/2019
s. 8.

S. 100
inserted by
No. 37/2019
s. 8.

- (1) A person must not knowingly publish or cause to be published an advertisement for a children's service unless it is an approved children's service.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

- (2) Subsection (1) does not apply if an application for a service approval in respect of the children's service has been made under this Act but has not been decided.

Children's Services Act 1996
No. 53 of 1996

Pt 3A
(Heading and
ss 25V–25ZB)
inserted by
No. 80/2011
s. 29,
amended by
No. 9/2017
ss 72, 73,
repealed by
No. 37/2019
s. 8.

* * * * *

Part 4—Operating a children's service

Pt 4 (Heading and ss 26–34A) amended by Nos 3/2008 s. 3, 22/2008 ss 9–20, 80/2011 ss 30–41, substituted as Pt 4 (Heading and ss 101–115) by No. 37/2019 s. 8.

101 Offence to operate children's service without nominated supervisor

S. 101 inserted by No. 37/2019 s. 8.

The approved provider of a children's service must not operate the service unless there is at least one nominated supervisor for that service.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

102 Offence for nominated supervisor not to meet prescribed minimum requirements

S. 102 inserted by No. 37/2019 s. 8.

The approved provider of a children's service must not nominate an individual to be a nominated supervisor of that service unless that individual meets the prescribed minimum requirements for nomination as a nominated supervisor.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

103 Offence to operate children's service unless responsible person is present

S. 103 inserted by No. 37/2019 s. 8.

The approved provider of a children's service must ensure that one of the following persons is present at all times that the service is educating and caring for children—

- (a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of a children's service operated by the approved provider;
- (b) a nominated supervisor of the service;
- (c) a person in day-to-day charge of the service.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

S. 104
inserted by
No. 37/2019
s. 8.

104 Persons in day-to-day charge and nominated supervisors to have child protection training

The approved provider of a children's service must ensure that each nominated supervisor and each person in day-to-day charge of the service has successfully completed the child protection training (if any) required by or under the law of Victoria, a Government protocol applying to the approved provider in Victoria or otherwise required by Victoria.

S. 105
inserted by
No. 37/2019
s. 8.

105 Offence to inadequately supervise children

- (1) The approved provider of a children's service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (2) A nominated supervisor of a children's service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: 60 penalty units.

106 Offence to use inappropriate discipline

S. 106
inserted by
No. 37/2019
s. 8.

- (1) The approved provider of a children's service must ensure that no child being educated and cared for by the service is subjected to—
- (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (2) A nominated supervisor of a children's service must ensure that no child being educated and cared for by the service is subjected to—
- (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Penalty: 60 penalty units.

- (3) A staff member of, or a volunteer at, a children's service must not subject any child being educated and cared for by the service to—
- (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Penalty: 60 penalty units.

S. 107
inserted by
No. 37/2019
s. 8.

107 Offence relating to protection of children from harm and hazards

- (1) The approved provider of a children's service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (2) A nominated supervisor of a children's service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty: 60 penalty units.

S. 108
inserted by
No. 37/2019
s. 8.

108 Offence relating to required programs

- (1) The approved provider of a children's service must ensure that a program is delivered to all children being educated and cared for by the service that—

- (a) is based on an approved learning framework; and
- (b) is delivered in a manner that accords with the approved learning framework; and
- (c) is based on the developmental needs, interests and experiences of each child; and
- (d) is designed to take into account the individual differences of each child.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (2) A nominated supervisor of a children's service must ensure that a program is delivered to all children being educated and cared for by the service that—
- (a) is based on an approved learning framework; and
 - (b) is delivered in a manner that accords with the approved learning framework; and
 - (c) is based on the developmental needs, interests and experiences of each child; and
 - (d) is designed to take into account the individual differences of each child.

Penalty: 20 penalty units.

109 Offence relating to staffing arrangements

S. 109
inserted by
No. 37/2019
s. 8.

- (1) An approved provider of a children's service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (2) An approved provider of a children's service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the regulations.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (3) A nominated supervisor of a children's service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: 60 penalty units.

- (4) A nominated supervisor of a children's service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the regulations.

Penalty: 60 penalty units.

- (5) Subsections (1), (2), (3) and (4) do not apply in respect of a children's service—

- (a) to the extent that it holds a temporary waiver under Division 6 of Part 3 in respect of this requirement; or
- (b) to the extent that it holds a service waiver under Division 5 of Part 3 in respect of this requirement.

- (6) The Regulatory Authority, on application or on its own initiative, may determine qualifications, including foreign qualifications, to be equivalent to the qualifications required by the regulations.

- (7) If a determination is made under subsection (6), any person holding the qualification is to be taken to be qualified in accordance with the regulations.

S. 110
inserted by
No. 37/2019
s. 8.

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

- (1) The approved provider of a children's service must ensure that a person does not remain at the children's service premises while children are being educated and cared for at the premises, unless—

- (a) the person is an authorised person; or
- (b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: 5 penalty units, in the case of an individual.

25 penalty units, in any other case.

- (2) A nominated supervisor of a children's service must ensure that a person does not remain at the children's service premises while children are being educated and cared for at the premises, unless—

- (a) the person is an authorised person; or
- (b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: 5 penalty units.

- (3) In this section—

authorised nominee, in relation to a child, means a person who has been given permission by a parent or family member of the child to collect the child from the children's service;

authorised person means a person who is—

- (a) a person who holds a current working with children assessment notice; or
- (b) a parent or family member of a child who is being educated and cared for by the children's service; or
- (c) an authorised nominee of a parent or family member of a child who is being educated and cared for by the children's service; or

- (d) in the case of an emergency, medical personnel or emergency service personnel; or
 - (e) a person who is permitted under the **Working with Children Act 2005** or a working with children law to remain at the children's service premises without holding a working with children assessment notice.
- (4) A reference in subsection (3) to a parent or family member of a child does not include a person—
- (a) whose access to the child is prohibited or restricted by an order of a court or tribunal of which the approved provider or nominated supervisor is aware; or
 - (b) who is an inappropriate person within the meaning of section 111.

S. 111
inserted by
No. 37/2019
s. 8.

111 Offence relating to direction to exclude inappropriate persons from children's service premises

- (1) The Regulatory Authority may direct an approved provider or a nominated supervisor to exclude a person whom the Authority is satisfied is an inappropriate person from the children's service premises while children are being educated and cared for at the premises for such time as the Authority considers appropriate.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

(3) In this section—

inappropriate person means a person—

- (a) who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the children's service; or
- (b) whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for the person to be on the children's service premises while children are being educated and cared for by the children's service.

Example

A person who is under the influence of drugs or alcohol.

112 Offence to fail to display prescribed information

S. 112
inserted by
No. 37/2019
s. 8.

An approved provider of a children's service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the children's service premises—

- (a) the provider approval;
- (b) the service approval;
- (c) each nominated supervisor of the service;
- (d) any service waivers or temporary waivers held by the service;
- (e) any other prescribed matters.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

S. 113
inserted by
No. 37/2019
s. 8.

113 Offence to fail to notify certain circumstances to Regulatory Authority

- (1) An approved provider must notify the Regulatory Authority of the following in relation to the approved provider or each approved children's service operated by the approved provider—
- (a) a change in the name of the approved provider;
 - (b) any appointment or removal of a person with management or control of a children's service operated by the approved provider;
 - (c) a failure to commence operating a children's service within 6 months (or within the time agreed with the Regulatory Authority) after being granted a service approval for the service.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (2) In relation to an approved children's service operated by an approved provider, the approved provider must notify the Regulatory Authority—
- (a) of any suspension or cancellation of a working with children assessment notice or a teacher registration of a nominated supervisor engaged by the service that the approved provider is notified of; and
 - (b) of any disciplinary proceedings under an education law or an equivalent law of a participating jurisdiction in respect of a nominated supervisor engaged by the service that the approved provider is notified of; and

- (c) if a nominated supervisor of the approved children's service—
 - (i) ceases to be employed or engaged by the service; or
 - (ii) is removed from the role of nominated supervisor; or
 - (iii) withdraws consent to the nomination; and
- (d) of any proposed change to the children's service premises of the approved children's service; and
- (e) if the approved provider ceases to operate the children's service; and
- (f) of an intention to transfer a service approval, as required under section 59.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (3) A notice under subsection (1) or (2) must—
 - (a) be in writing; and
 - (b) include any prescribed information.
- (4) A notice under subsection (1) must be provided within the relevant prescribed time to the Regulatory Authority.
- (5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority.

114 Offence to fail to notify certain information to Regulatory Authority

- (1) An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider or each approved

S. 114
inserted by
No. 37/2019
s. 8.

children's service operated by the approved provider—

- (a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of a children's service;
- (b) information in respect of any other prescribed matters.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved children's service operated by the approved provider—

- (a) any serious incident at the approved children's service;
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved children's service; or
 - (ii) that this Act has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority.

115 Offence relating to requirement to keep enrolment and other documents

S. 115
inserted by
No. 37/2019
s. 8.

- (1) An approved provider of a children's service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: 20 penalty units, in the case of an individual.

100 penalty units, in any other case.

- (2) Documents referred to in subsection (1)—
- (a) must, to the extent practicable, be kept at the children's service premises if they relate to—
 - (i) the operation of the service; or
 - (ii) any staff member employed or engaged by the service; or
 - (iii) any child cared for, or educated at, those premises—in the previous 12 months; and
 - (b) in any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

Pt 5 (Heading
and ss 35–49)
amended by
Nos 72/1997
s. 15, 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 30),
22/2008
ss 21–31,
29/2011
s. 3(Sch. 1
item 10.3),
80/2011
ss 42–50,
37/2014
s. 10(Sch.
item 17.2),
6/2018
s. 68(Sch. 2
item 21),
substituted as
Pt 5
(Headings
and ss 116–
131) by
No. 37/2019
s. 8.

Part 5—Compliance with this Act

Division 1—Notices

S. 116
inserted by
No. 37/2019
s. 8.

116 Compliance directions

- (1) This section applies if the Regulatory Authority is satisfied that a children's service has not complied with a provision of this Act that is prescribed by the regulations.
- (2) The Regulatory Authority may give the approved provider a written direction (a ***compliance direction***) requiring the approved provider to take the steps specified in the direction to comply with that provision.

- (3) An approved provider must comply with a direction under subsection (2) within the period (being not less than 14 days) specified in the direction.

Penalty: 10 penalty units, in the case of an individual.

50 penalty units, in any other case.

117 Compliance notices

S. 117
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority is satisfied that a children's service is not complying with any provision of this Act.
- (2) The Regulatory Authority may give the approved provider a notice (a *compliance notice*) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

118 Emergency action notices

S. 118
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority is satisfied that a children's service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.
- (2) The Regulatory Authority may, by written notice, direct the approved provider of the children's service to take the steps specified in the notice to remove or reduce the risk within the time (not more than 14 days) specified in the notice.

- (3) An approved provider must comply with a direction given under subsection (2).

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

Division 2—Enforceable undertakings

S. 119
inserted by
No. 37/2019
s. 8.

119 Enforceable undertakings

- (1) This section applies—
- (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Act; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 125(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Act.
- (3) If subsection (1)(b) applies in relation to the approved provider of a children's service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the children's service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of a children's service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to a children's service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.

- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Internet site of the Authority an undertaking accepted under this section.

120 Certain actions prohibited while undertaking is in force

S. 120
inserted by
No. 37/2019
s. 8.

- (1) While an undertaking is in force under section 119(2), proceedings may not be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking is given.
- (2) While an undertaking is in force under section 119(3), the Regulatory Authority must not (as the case requires)—
 - (a) suspend the provider approval under section 27 in relation to a matter that is the subject of the undertaking; or
 - (b) suspend the service approval under section 72 in relation to a matter that is the subject of the undertaking; or
 - (c) give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.
- (3) While an undertaking is in force under section 119(4), the Regulatory Authority must not give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.

S. 121
inserted by
No. 37/2019
s. 8.

121 Certain actions prohibited if undertaking is complied with

- (1) If a person complies with the requirements of an undertaking under section 119(2), no further proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.
- (2) If an approved provider complies with the requirements of an undertaking under section 119(3), the Regulatory Authority must not (as the case requires)—
 - (a) suspend the provider approval under section 27 in relation to a matter that is the subject of the undertaking; or
 - (b) suspend the service approval under section 72 in relation to a matter that is the subject of the undertaking; or
 - (c) give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.
- (3) If a person complies with the requirements of an undertaking under section 119(4), the Regulatory Authority must not give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.

S. 122
inserted by
No. 37/2019
s. 8.

122 Failure to comply with enforceable undertakings

- (1) If the Regulatory Authority considers that a person who gave an undertaking under section 119 has failed to comply with any of its terms, the Regulatory Authority may apply to the Magistrates' Court for an order under subsection (2) to enforce the undertaking.

- (2) If the Magistrates' Court is satisfied that the person has failed to comply with a term of the undertaking, the Magistrates' Court may make any of the following orders—
 - (a) an order directing the person to comply with the term of the undertaking;
 - (b) an order that the person take any specified action for the purpose of complying with the undertaking;
 - (c) any other order that the Magistrates' Court considers appropriate in the circumstances.
- (3) If the Magistrates' Court determines that the person has failed to comply with a term of an undertaking under section 119(2), proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.
- (4) If the Magistrates' Court determines that an approved provider has failed to comply with a term of an undertaking under section 119(3), the Regulatory Authority may without further notice—
 - (a) if the undertaking was given in circumstances set out in section 27(a), suspend the provider approval under section 27; or
 - (b) if the undertaking was given in circumstances set out in section 72(a), suspend the service approval under section 72; or
 - (c) if the undertaking was given in circumstances set out in section 125(3), give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.

- (5) If the Magistrates' Court determines that a person has failed to comply with a term of an undertaking under section 119(4), the Regulatory Authority may, without further notice, give a prohibition notice under section 123 in relation to a matter that is the subject of the undertaking.
- (6) Proceedings referred to in subsection (3) may be brought within 6 months of the determination or within 2 years of the date of the alleged offence, whichever occurs last.

Division 3—Prohibition notices

S. 123
inserted by
No. 37/2019
s. 8.

123 Grounds for giving prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved children's service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed—
 - (a) to remain on the children's service premises;
or
 - (b) to provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved children's service as any of the following—
 - (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) an employee;
 - (e) a contractor;
 - (f) a volunteer;

(g) a person who was formerly a person referred to in paragraphs (a) to (f) in relation to the approved children's service—

or in any other capacity.

(3) The Regulatory Authority may give a prohibition notice to a person to—

- (a) prohibit the person from being nominated as a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
- (b) impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

124 Show cause notice to be given before prohibition notice

S. 124
inserted by
No. 37/2019
s. 8.

- (1) Before giving a person a prohibition notice, the Regulatory Authority must give the person a notice (a *show cause notice*)—
 - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

- (2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

S. 125
inserted by
No. 37/2019
s. 8.

125 Deciding whether to give prohibition notice

- (1) If the Regulatory Authority gives a show cause notice under section 124 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.
- (2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.
- (3) The Regulatory Authority may accept an undertaking from a person under section 119 instead of giving a prohibition notice under this Division.

S. 126
inserted by
No. 37/2019
s. 8.

126 Content of prohibition notice

- (1) A prohibition notice given to a person under section 123(1) must state that the person is prohibited from doing one or more of the following—
- (a) providing education and care to children for a children's service;
 - (b) being engaged as an educator, employee, contractor or staff member of, or being a volunteer at, a children's service;
 - (c) carrying out any other activity relating to a children's service.

- (2) A prohibition notice given to a person under section 123(3) must state that either—
 - (a) the person is prohibited from being nominated as a nominated supervisor of a children's service; or
 - (b) the person may only be nominated as a nominated supervisor of a children's service on the condition or conditions specified by the Regulatory Authority in the notice.
- (3) A prohibition notice given to a person under section 123(1) or (3) must state—
 - (a) that the person may apply for cancellation of the notice; and
 - (b) how an application for cancellation must be made.

127 Cancellation of prohibition notice

**S. 127
inserted by
No. 37/2019
s. 8.**

- (1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the Regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.
- (2) A person for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.
- (3) The application must—
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) be signed by the person.
- (4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were—

- (a) to remain at the children's service premises;
or
 - (b) to provide education and care to children.
- (5) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether the person is a fit and proper person to be nominated as a nominated supervisor with or without conditions.
- (6) The application may include a statement setting out any change in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.
- (7) The Regulatory Authority must decide the application as soon as practicable after its receipt.

S. 128
inserted by
No. 37/2019
s. 8.

128 Person must not contravene prohibition notice

- (1) While a prohibition notice under section 123(1) is in force under this Act for a person, the person must not—
- (a) provide education and care to children for a children's service; or
 - (b) be engaged as an educator, employee, contractor or staff member of, or perform volunteer services for, a children's service; or
 - (c) carry out any other activity relating to children's services.

Penalty: 120 penalty units.

- (2) While a prohibition notice under section 123(3) is in force under this Act for a person, the person must not—

- (a) in the case of a prohibition notice under section 123(3)(a), consent to a nomination of that person as a nominated supervisor of a children's service; or
- (b) in the case of a prohibition notice under section 123(3)(b), consent to a nomination of that person as a nominated supervisor of a children's service in contravention of a condition or conditions stated in the prohibition notice.

Penalty: 120 penalty units.

129 Offence to engage person to whom prohibition notice applies

S. 129
inserted by
No. 37/2019
s. 8.

- (1) An approved provider must not engage a person as an educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, a children's service if the provider knows, or ought reasonably to know, a prohibition notice is in force under this Act in respect of the person.

Penalty: 120 penalty units, in the case of an individual.

600 penalty units, in any other case.

- (2) An approved provider must not nominate a person as a nominated supervisor of a children's service if the approved provider knows, or ought reasonably to know, that a prohibition notice is in force under this Act prohibiting the nomination of that person as a nominated supervisor of a children's service.

Penalty: 120 penalty units, in the case of an individual.

600 penalty units, in any other case.

- (3) An approved provider must not nominate a person as a nominated supervisor of a children's service if the approved provider knows, or ought reasonably to know, that the nomination would place the person in contravention of a condition of a prohibition notice in force under this Act.

Penalty: 120 penalty units, in the case of an individual.

600 penalty units, in any other case.

S. 130
inserted by
No. 37/2019
s. 8.

130 False or misleading information about prohibition notice

A person who is subject to a prohibition notice under this Act must not give an approved provider any information about the content or existence of the prohibition notice that is false or misleading in any material particular.

Penalty: 40 penalty units.

Division 4—Emergency removal of children

S. 131
inserted by
No. 37/2019
s. 8.

131 Emergency removal of children

- (1) This section applies if the Regulatory Authority considers, on reasonable grounds, that there is an immediate danger to the safety or health of a child or children being educated and cared for by a children's service.
- (2) The Regulatory Authority may remove, or cause the removal of, the child or children from the children's service premises.
- (3) In exercising a power under subsection (2)—
- (a) the Regulatory Authority may be given such assistance by other persons (including police officers) as is reasonably required; and

- (b) the Regulatory Authority and any person assisting the Regulatory Authority may—
 - (i) enter the children's service premises, without warrant; and
 - (ii) use reasonable force as necessary.
- (4) If a child is removed from the children's service premises under subsection (2), the Regulatory Authority must ensure that the child's parents are immediately notified of the situation and the child's current location.

Part 5A
(Headings
and ss 132–
135)
inserted by
No. 37/2019
s. 8.

Part 5A—Review

Division 1—Internal review

S. 132
inserted by
No. 37/2019
s. 8.

132 Reviewable decision—internal review

A reviewable decision for internal review is a decision of the Regulatory Authority under this Act—

- (a) to refuse to grant a provider approval or a service approval; or
- (b) to amend or refuse to amend a provider approval or a service approval; or
- (c) to impose a condition on a provider approval or a service approval; or
- (d) to suspend—
 - (i) a provider approval under section 28; or
 - (ii) a service approval under section 73; or
- (e) to refuse to consent to the transfer of a service approval; or
- (f) to revoke a service waiver; or
- (g) to issue a compliance direction; or
- (h) to issue a compliance notice.

S. 133
inserted by
No. 37/2019
s. 8.

133 Internal review of reviewable decisions

- (1) A person who is the subject of a reviewable decision for internal review may apply to the Regulatory Authority in writing for review of the decision.

- (2) An application under subsection (1) must be made—
 - (a) within 14 days after the day on which the person is notified of the decision; or
 - (b) if the person is not notified of the decision, within 14 days after the person becomes aware of the decision.
- (3) The person who conducts the review for the Regulatory Authority must not be a person who was involved in the assessment or investigation of the person or service to whom or which the decision relates.
- (4) The person conducting the review may ask the person who applied for the review for further information.
- (5) A review under this section must be conducted within 30 days after the application is made.
- (6) The period specified in subsection (5) may be extended by up to 30 days—
 - (a) if a request for further information is made under subsection (4); or
 - (b) by agreement between the person who applied for the review and the Regulatory Authority.
- (7) The Regulatory Authority may, in relation to an application under subsection (1)—
 - (a) confirm the decision; or
 - (b) make any other decision that the Regulatory Authority thinks appropriate.

Division 2—External review

S. 134
inserted by
No. 37/2019
s. 8.

134 Reviewable decision—external review

A reviewable decision for external review is—

- (a) a decision of the Regulatory Authority made under section 133 (other than a decision in relation to the issue of a compliance direction or a compliance notice); or
- (b) a decision of the Regulatory Authority under this Act—
 - (i) to suspend a provider approval under section 27; or
 - (ii) to cancel a provider approval under section 33; or
 - (iii) to suspend a service approval under section 72; or
 - (iv) to cancel a service approval under section 78; or
 - (v) to give a prohibition notice or to refuse to cancel a prohibition notice; or
- (c) any other decision of the Regulatory Authority that is prescribed.

S. 135
inserted by
No. 37/2019
s. 8.

135 Application for review of decision of the Regulatory Authority

- (1) A person who is the subject of a reviewable decision for external review may apply to VCAT for a review of the decision.
- (2) An application must be made within 30 days after the day on which the applicant is notified of the decision that is to be reviewed.
- (3) After hearing the matter, VCAT may—
 - (a) confirm the decision of the Regulatory Authority; or

- (b) amend the decision of the Regulatory Authority; or
 - (c) substitute another decision for the decision of the Regulatory Authority.
- (4) In determining any application under this section, VCAT may have regard to any decision of VCAT under this Act or any decision of a tribunal or court of a participating jurisdiction in relation to the National Law as applying in that jurisdiction.

Part 5B
(Headings
and ss 136–
159)
inserted by
No. 37/2019
s. 8.

Part 5B—Monitoring and enforcement

Division 1—Authorised officers

S. 136
inserted by
No. 37/2019
s. 8.

136 Authorisation of authorised officers

- (1) The Regulatory Authority may authorise any person who the Regulatory Authority is satisfied is an appropriate person to be an authorised officer for the purposes of this Act.
- (2) An authorised officer holds office on any terms and conditions stated in the authorisation.
- (3) A defect in the authorisation of an authorised officer does not affect the validity of any action taken or decision made by the authorised officer under this Act.
- (4) The Regulatory Authority may determine the requirements for the authorisation of authorised officers under this section.
- (5) In making a determination under subsection (4), the Regulatory Authority may take into account the requirements for the authorisation of authorised officers determined by the National Authority under section 195(5) of the National Law.
- (6) A determination under subsection (4) must be published on the Internet site of the Regulatory Authority.

S. 137
inserted by
No. 37/2019
s. 8.

137 Identity card

- (1) The Regulatory Authority must issue to each authorised officer, to whom paragraph (a) of the definition of *authorised officer* applies, an identity card in the form prescribed by the regulations.

- (2) The identity card issued under subsection (1) must identify the authorised officer as an authorised officer authorised by the Regulatory Authority under this Act.
- (3) An authorised officer must—
 - (a) carry the officer's identity card whenever the officer is exercising any functions under this Act; and
 - (b) show the identity card—
 - (i) before exercising a power of entry under this Act; and
 - (ii) at any time during the exercise of a power under this Act when asked to do so.

Penalty: 5 penalty units.

- (4) An authorised officer who fails to comply with subsection (3)(b) in relation to the exercise of a power ceases to be authorised to exercise the power in relation to the matter.
- (5) An authorised officer who is authorised under subsection (1) must return the officer's identity card to the Regulatory Authority on ceasing to be so authorised.

Penalty: 5 penalty units.

Division 2—Powers of entry

138 Powers of entry for assessing and monitoring approved children's service

S. 138
inserted by
No. 37/2019
s. 8.

- (1) An authorised officer may exercise a power under this section for any of the following purposes—
 - (a) monitoring compliance with this Act;
 - (b) obtaining information requested under section 35 or 81.

- (2) An authorised officer may, at any reasonable time and with such assistants as may reasonably be required, enter any children's service premises and do any of the following—
 - (a) inspect the premises and any plant, equipment, vehicle or other thing;
 - (b) inspect and make copies of, or take extracts from, any document kept at the premises;
 - (c) take any document or any other thing at the premises;
 - (d) ask a person at the premises—
 - (i) to answer a question to the best of that person's knowledge, information and belief; or
 - (ii) to take reasonable steps to provide information or produce a document.
- (3) A power under subsection (2)(a) to (c) is limited to a document or thing that is used or likely to be used in the provision of the children's service.
- (4) If the authorised officer takes any document or thing under subsection (2), the authorised officer must—
 - (a) give notice of the taking of the document or thing to the person apparently in charge of it or to an occupier of the premises; and
 - (b) return the document or thing to that person or the premises within 7 days after taking it.
- (5) An authorised officer may not, under this section, enter a residence unless—
 - (a) an approved children's service is operating at the residence at the time of entry; or
 - (b) the occupier of the residence has consented in writing to the entry and the inspection.

139 Powers of entry for investigating approved children's service

S. 139
inserted by
No. 37/2019
s. 8.

- (1) An authorised officer may exercise the powers under this section to investigate an approved children's service if the authorised officer reasonably suspects that an offence may have been or may be being committed against this Act.
- (2) The authorised officer, with any necessary assistants, may with or without the consent of the occupier of the premises, enter the children's service premises at any reasonable time and do any of the following—
 - (a) search any part of the premises;
 - (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
 - (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
 - (d) copy, or take an extract from, a document, at the premises;
 - (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;
 - (f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.
- (3) A power under subsection (2)(b) to (d) is limited to a document or thing that is used or likely to be used in the provision of the children's service.

- (4) An authorised officer may not, under this section, enter a residence unless—
- (a) the authorised officer reasonably believes that an approved children's service is operating at the residence at the time of entry; or
 - (b) the occupier of the residence has consented in writing to the entry and the inspection.

S. 140
inserted by
No. 37/2019
s. 8.

140 Powers of entry to business premises

- (1) An authorised officer may exercise powers under this section if the authorised officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against this Act are present at the principal office of the approved provider of the service or any other business office of the approved provider of the service.
- (2) The authorised officer, with the consent of the occupier of the premises, may enter the premises and do any of the following—
- (a) search any part of the premises;
 - (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
 - (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
 - (d) copy, or take an extract from, a document, at the premises;
 - (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

- (f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.
- (3) An authorised officer must not enter and search the premises with the consent of the occupier unless, before the occupier consents to that entry, the authorised officer has—
 - (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search and the powers that may be exercised; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the taking of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.

141 Entry to premises without search warrant

- (1) An authorised officer may enter any premises (including residential or business premises) for the purpose of determining whether a children's service is operating without a service approval at or from the premises, if—
 - (a) the authorised officer reasonably believes that a person is operating a children's service in contravention of section 99 at the premises; and
 - (b) the occupier of the premises has consented in writing to the entry and inspection.

S. 141
inserted by
No. 37/2019
s. 8.

- (2) An authorised officer must not enter and search the premises under this section unless, before the occupier consents to the entry, the authorised officer has—
 - (a) produced the authorised officer's identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search and the powers that may be exercised; and
 - (ii) that the occupier may refuse to consent to the entry and search or the taking of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.
- (3) An authorised officer who exercises a power of entry under this section may for the purposes of the investigation do any of the things referred to in clause 5(2)(a) to (e) of Schedule 1 as if a reference to that Schedule included a reference to this section.

S. 142
inserted by
No. 37/2019
s. 8.

142 Entry to premises with search warrant

- (1) An authorised officer under the authority of a search warrant may enter premises if the authorised officer reasonably believes that a person is operating a children's service in contravention of section 99 at or from the premises.
- (2) An authorised officer under the authority of a search warrant may enter any children's service premises or any premises where the authorised officer reasonably believes that an approved children's service is operating if the authorised

officer reasonably believes that the children's service is operating in contravention of this Act.

- (3) An authorised officer under the authority of a search warrant may enter the principal office of the approved provider of the service or any other business office of the approved provider of the service if the authorised officer reasonably believes that documents or other evidence relevant to the possible commission of an offence against this Act are present at those premises.
- (4) Schedule 1 applies in relation to the issue of the search warrant and the powers of the authorised officer on entry.

143 Seized items

S. 143
inserted by
No. 37/2019
s. 8.

- (1) If an authorised officer has taken a thing under section 139, 140 or 141 or under a search warrant under section 142, the authorised officer must take reasonable steps to return the thing to the person from whom it was taken if the reason for the taking no longer exists.
- (2) If the thing has not been returned within 60 days after it was taken, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings have been commenced within the period of 60 days and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 144 extending the period the thing can be retained.
- (3) If an authorised officer has taken a thing under section 139, 140 or 141 or under a search warrant under section 142, the authorised officer must provide the owner of the thing with reasonable access to the thing.

S. 144
inserted by
No. 37/2019
s. 8.

144 Magistrates' Court may extend period

- (1) An authorised officer may apply to the Magistrates' Court within the period of 60 days referred to in section 143 or within a period extended by the Court under this section for an extension of the period for which the thing can be held.
- (2) The Magistrates' Court may order the extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

Division 3—Other powers

S. 145
inserted by
No. 37/2019
s. 8.

145 Power to require name and address

- (1) This section applies if—
 - (a) an authorised officer finds a person committing an offence against this Act; or
 - (b) an authorised officer finds a person in circumstances that lead, or the authorised officer has information that leads, the officer to reasonably suspect the person is committing, or has committed, an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.

- (3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

146 Power to require evidence of age, name and address of person

S. 146
inserted by
No. 37/2019
s. 8.

- (1) This section applies if—
- (a) the regulations require a staff member, or a volunteer to have attained a prescribed minimum age; and
 - (b) an authorised officer reasonably suspects that a person—
 - (i) is employed or engaged as a staff member by, or is a volunteer at, a children's service; and
 - (ii) has not attained that prescribed minimum age.
- (2) The authorised officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.
- (3) Also, the authorised officer may require the person to provide evidence of the correctness of the stated date of birth—
- (a) at the time of making the requirement under subsection (2) if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth; or
 - (b) otherwise, within 14 days of making the requirement under subsection (2).

- (4) The authorised officer may require the person to state the person's name and residential address if—
 - (a) the person refuses or is unable to comply with a requirement under subsection (2) or (3); or
 - (b) according to the date of birth the person states, or the evidence of the person's age the person gives, the person has not attained the prescribed minimum age.

S. 147
inserted by
No. 37/2019
s. 8.

147 Power of authorised officers to obtain information documents and evidence

- (1) An authorised officer may exercise a power under this section for any of the following purposes—
 - (a) monitoring compliance with this Act;
 - (b) obtaining information requested under section 35 or 81.
- (2) An authorised officer may, by written notice, require a specified person to provide to the authorised officer, by writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice.
- (3) The time specified in the notice must not be less than 14 days from the date the notice is issued.
- (4) In this section—

specified person means a person who is or has been an approved provider, a nominated supervisor or a staff member of, or a volunteer at, an approved children's service.

Division 4—Offences relating to enforcement

148 Offence to obstruct authorised officer

**S. 148
inserted by
No. 37/2019
s. 8.**

A person must not obstruct an authorised officer in exercising the authorised officer's powers under this Act.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

149 Offence to fail to assist authorised officer

**S. 149
inserted by
No. 37/2019
s. 8.**

A person must not, without reasonable excuse—

- (a) refuse to answer a question lawfully asked by an authorised officer (other than a question asked under section 138(2)(d)); or
- (b) refuse to provide information or produce a document lawfully required by an authorised officer; or
- (c) fail to comply with a requirement made by an authorised officer under clause 5(2)(f) or (g) of Schedule 1.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

150 Offence to destroy or damage notices or documents

**S. 150
inserted by
No. 37/2019
s. 8.**

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept under this Act.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

S. 151
inserted by
No. 37/2019
s. 8.

151 Offence to impersonate authorised officer

A person must not impersonate an authorised officer.

Penalty: 40 penalty units.

S. 152
inserted by
No. 37/2019
s. 8.

152 Protection against self-incrimination

- (1) An individual may refuse or fail to give information or do any other thing that the individual is required to do by or under this Act if giving the information or doing the thing might incriminate the individual.
- (2) However, subsection (1) does not apply to—
 - (a) the production of a document or part of a document that is required to be kept under this Act; or
 - (b) the giving of the individual's name or address in accordance with this Act; or
 - (c) anything required to be done under section 155 or 156.
- (3) Any document referred to in subsection (2)(a) that is produced by an individual or any information obtained directly or indirectly from that document produced by an individual is not admissible in evidence against the individual in any criminal proceedings (except for criminal proceedings under this Act) or in any civil proceedings.

S. 153
inserted by
No. 37/2019
s. 8.

153 Warning to be given

- (1) Before requiring a person to answer a question or provide information or a document under this Part or Schedule 1, an authorised officer must—
 - (a) identify himself or herself to the person as an authorised officer by producing the officer's identity card; and

- (b) warn the person that a failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
 - (c) in the case of an individual, warn the person about the effect of section 152.
- (2) Nothing in this section prevents an authorised officer from obtaining and using evidence given to the authorised officer voluntarily by any person.
 - (3) This section does not apply to a request made under section 138.

154 Occupier's consent to search

S. 154
inserted by
No. 37/2019
s. 8.

- (1) An occupier who consents in writing to the entry and inspection of his or her premises under Division 2 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed until the contrary is proved that the occupier did not consent to the entry and search.

Division 5—Powers of Regulatory Authority

155 Power of Regulatory Authority to obtain information, documents and evidence by notice

S. 155
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Act.
- (2) The Regulatory Authority may, by written notice, require a specified person—
 - (a) to provide to the Regulatory Authority, in writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any

- relevant information that is specified in the notice; or
- (b) to produce to the Regulatory Authority, or to a person specified in the notice acting on the Regulatory Authority's behalf, in accordance with the notice, any relevant document referred to in the notice; or
 - (c) to appear before the Regulatory Authority, or a person specified in the notice acting on the Regulatory Authority's behalf, at a time and place specified in the notice to give any evidence or to produce any relevant document specified in the notice.
- (3) The notice must—
- (a) warn the person that failure or refusal to comply with the notice would constitute an offence; and
 - (b) warn the person about the effect of sections 157, 158 and 159.
- (4) The Regulatory Authority or the person specified in the notice acting on the Regulatory Authority's behalf may require the evidence referred to in subsection (2)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.
- (5) The person may give evidence under subsection (2)(c) by telephone or video conference or other electronic means unless the Regulatory Authority, on reasonable grounds, requires the person to give that evidence in person.
- (6) In this section, *specified person* has the meaning given in section 147(4).

156 Power of Regulatory Authority to obtain information, documents and evidence at children's service

S. 156
inserted by
No. 37/2019
s. 8.

- (1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Act.
- (2) The Regulatory Authority may require a specified person at a children's service—
 - (a) to provide the Regulatory Authority, or a person acting on the Regulatory Authority's behalf, with any specified information that is relevant to the suspected offence; or
 - (b) to produce to the Regulatory Authority, or to a person acting on the Regulatory Authority's behalf, any specified document that is relevant to the suspected offence.
- (3) The Regulatory Authority must—
 - (a) warn the person that failure or refusal to comply with the requirement would constitute an offence; and
 - (b) warn the person about the effect of sections 157, 158 and 159.
- (4) The Regulatory Authority must not require a person to remain at the children's service more than a reasonable time for the purposes of providing information or producing documents under subsection (2).
- (5) In this section, *specified person* has the meaning given in section 147(4).

S. 157
inserted by
No. 37/2019
s. 8.

157 Offence to fail to comply with notice or requirement

A person must not refuse or fail to comply with a requirement under section 155 or 156 to the extent that the person is capable of complying with that requirement.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

S. 158
inserted by
No. 37/2019
s. 8.

158 Offence to hinder or obstruct Regulatory Authority

A person must not obstruct or hinder the Regulatory Authority in exercising a power under section 155 or 156.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

S. 159
inserted by
No. 37/2019
s. 8.

159 Self-incrimination not an excuse

- (1) A person is not excused from complying with a notice or requirement under section 155 or 156 on the ground that complying with the notice or requirement may result in information being provided that might tend to incriminate the person.
- (2) Subject to subsection (3), disclosed information is not admissible in evidence against the individual in any criminal proceedings (other than proceedings under section 158 or 182) or in any civil proceedings.
- (3) Despite subsection (2), any information obtained from a document or documents required to be kept under this Act that is produced by a person is admissible in evidence against the person in criminal proceedings under this Act.

(4) In this section—

disclosed information means—

- (a) the answer by an individual to any question asked under section 155 or 156; or
- (b) the provision by an individual of any information in compliance with section 155 or 156; or
- (c) any information obtained directly or indirectly because of that answer or the provision of that information.

Part 5C
(Heading and
ss 160–162)
inserted by
No. 37/2019
s. 8.

Part 5C—Regulatory Authority

S. 160
inserted by
No. 37/2019
s. 8.

160 Functions of Regulatory Authority

The Regulatory Authority has the following functions under this Act—

- (a) to assist with the administration of this Act;
- (b) to monitor and enforce compliance with this Act;
- (c) to receive and investigate complaints arising under this Act;
- (d) to undertake information collection, review and reporting for the purposes of—
 - (i) the regulation of children's services; and
 - (ii) the sharing of information under this Act;
- (e) any other functions conferred on the Regulatory Authority under this Act.

S. 161
inserted by
No. 37/2019
s. 8.

161 Powers of Regulatory Authority

- (1) The Regulatory Authority has the power to do all things that are necessary or convenient to be done for, or in connection with, or that are incidental to the carrying out of its functions under this Act.
- (2) Without limiting subsection (1), the Regulatory Authority has the following powers—
 - (a) to collect, hold and use information obtained under this Act by the Regulatory Authority about the provision of children's services to children including information about outcomes for children and information about providers of children's services;

- (b) subject to the **Privacy and Data Protection Act 2014**, to collect, hold and use information about providers of children's services and nominated supervisors;
- (c) to maintain and publish registers of approved providers and approved children's services;
- (d) to exercise any other powers conferred on it by this Act.

162 Delegations

S. 162
inserted by
No. 37/2019
s. 8.

- (1) The Regulatory Authority may in writing delegate any of its functions and powers under this Act (other than this power of delegation) to—
 - (a) any person employed under the **Public Administration Act 2004**; or
 - (b) a prescribed person or a person in a prescribed class of persons.
- (2) A delegate of the Regulatory Authority must disclose to the Regulatory Authority, at the request of the Authority, any direct or indirect personal or pecuniary interest the delegate may have in relation to the delegated functions and powers.

Pt 5D
(Headings
and ss 163–
168)
inserted by
No. 37/2019
s. 8.

Part 5D—Information, records and privacy

Division 1—Registers

S. 163
inserted by
No. 37/2019
s. 8.

163 Register of approved providers

- (1) The Regulatory Authority must keep a register of approved providers.
- (2) The register must contain—
 - (a) the name of each approved provider; and
 - (b) any other prescribed information.

S. 164
inserted by
No. 37/2019
s. 8.

164 Register of children's services

- (1) The Regulatory Authority must keep a register of approved children's services.
- (2) The register of approved children's services must contain the following information—
 - (a) the name of each service;
 - (b) the name of the approved provider of each service;
 - (c) the address of each children's service premises;
 - (d) any other prescribed information.

Division 2—Publication of information

S. 165
inserted by
No. 37/2019
s. 8.

165 Publication of information

- (1) The Regulatory Authority may publish the following information about approved providers, approved children's services and nominated supervisors—
 - (a) the name of each provider, service or supervisor;

- (b) the address of each children's service premises;
 - (c) other prescribed information in respect of approved children's services.
- (2) The Regulatory Authority must publish, on the Internet site of the Authority—
 - (a) the register of approved providers kept under section 163; and
 - (b) the register of approved children's services kept under section 164.
- (3) The Regulatory Authority may publish the prescribed information about—
 - (a) enforcement actions taken under this Act, including information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals; and
 - (b) any prescribed matters.
- (4) Information published under this section must not include information that could identify or lead to the identification of an individual other than—
 - (a) an approved provider or nominated supervisor; or
 - (b) a person who is being prosecuted for an offence against this Act; or
 - (c) if the Regulatory Authority is satisfied that it is in the public interest to do so, a person with management or control of a children's service.

Division 3—Disclosure of information

S. 166
inserted by
No. 37/2019
s. 8.

166 Disclosure of information to other authorities

- (1) The Regulatory Authority may disclose information in respect of a children's service for a purpose listed in subsection (2), to—
 - (a) the Regulatory Authority for Victoria under the National Law; or
 - (b) any relevant Government Department of the Commonwealth; or
 - (c) any State or Territory Government Department; or
 - (d) any Commonwealth, State or Territory public authority; or
 - (e) any municipal council or any equivalent body in another State or a Territory of the Commonwealth; or
 - (f) a Regulatory Authority of a participating jurisdiction; or
 - (g) the National Authority under the National Law.
- (2) The purposes for disclosure of information under this section are—
 - (a) the disclosure is reasonably necessary to promote the objectives of this Act; or
 - (b) the disclosure is for the purposes of enabling or assisting the other entity to perform or exercise any of its functions or powers under this Act, the National Law; or
 - (c) the disclosure is for the purposes of research or development of National, State or Territory policy with respect to children's services; or

- (d) the disclosure is for a purpose relating to the funding of children's services; or
 - (e) the disclosure is for a purpose relating to the payment of benefits or allowances to persons using children's services, and the disclosure of information is not otherwise prohibited by law.
- (3) Information disclosed under this section for the purpose of research or the development of National, State or Territory policy with respect to children's services or education and care services under the National Law must not include information that could identify or lead to the identification of an individual other than—
- (a) an approved provider or a nominated supervisor; or
 - (b) a person to whom a prohibition notice applies; or
 - (c) a person who is being prosecuted for an offence against this Act.

167 Disclosure of information to approved providers

S. 167
inserted by
No. 37/2019
s. 8.

- (1) At the request of an approved provider, the Regulatory Authority may disclose to the provider whether a person named in the request is subject to a prohibition notice given under section 123.
- (2) Information may only be disclosed under subsection (1) if the Regulatory Authority considers on reasonable grounds that the provider requires the information to comply with the provider's obligations under this Act.

S. 168
inserted by
No. 37/2019
s. 8.

168 Duty of confidentiality

- (1) An individual who is, or who has been, a person exercising functions under this Act must not disclose to another person protected information.

Penalty: 20 penalty units.

- (2) However, subsection (1) does not apply if—

- (a) the information is disclosed in the exercise of a function under, or for the purposes of, or in accordance with, this Act; or
- (b) the disclosure of the information is required or permitted by law; or
- (c) the disclosure is with the agreement of the person to whom the information relates; or
- (d) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or
- (e) the information is, or has been accessible to the public, including because it was published for the purposes of, or in accordance with, this Act.

- (3) In this section—

protected information means information—

- (a) that is personal to a particular individual and that identifies or could lead to the identification of the individual; and
- (b) that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Act.

Part 6—Miscellaneous

Pt 6 (Heading)
substituted by
No. 37/2019
s. 9.

Division 1—Administration

Pt 6 Div. 1
(Heading)
inserted by
No. 37/2019
s. 10.

169 Power to fund children's services

S. 50
renumbered
as s. 169 by
No. 37/2019
s. 11.

The Secretary may provide grants, payments, subsidies or other financial assistance to any person or body of persons—

- (a) providing or operating a children's service;
or
- (b) responsible for administering children's services or arranging for the provision of children's services—

from funds administered by the Secretary for that purpose on terms and conditions that the Secretary considers appropriate.

170 Guidelines

S. 51
renumbered
as s. 170 by
No. 37/2019
s. 11.

- (1) The Secretary, by notice published in the Government Gazette, may issue guidelines about the establishment, management and operation of children's services.
- (2) The Secretary, by notice published in the Government Gazette, may revoke or amend any guidelines.

171 Ministerial delegation

S. 52
amended by
No. 46/1998
s. 7(Sch. 1),
renumbered
as s. 171 by
No. 37/2019
s. 11.

The Minister, by instrument, may delegate to the Secretary or any employee in the Department any power of the Minister under this Act other than this power of delegation and the powers under section 6.

Children's Services Act 1996
No. 53 of 1996
Part 6—Miscellaneous

S. 52A inserted by No. 58/2007 s. 52(3), amended by No. 22/2008 s. 32, repealed by No. 37/2019 s. 12.	*	*	*	*	*
S. 53 inserted by No. 22/2008 s. 33, amended by No. 80/2011 s. 51, repealed by No. 37/2019 s. 12.	*	*	*	*	*
S. 53A inserted by No. 22/2008 s. 33, repealed by No. 80/2011 s. 52.	*	*	*	*	*
S. 53B inserted by No. 22/2008 s. 33, amended by No. 80/2011 s. 53, repealed by No. 37/2019 s. 12.	*	*	*	*	*
S. 53C inserted by No. 22/2008 s. 33, amended by No. 80/2011 s. 54, repealed by No. 37/2019 s. 12.	*	*	*	*	*

172 Immunity

**S. 54
renumbered
as s. 172 by
No. 37/2019
s. 13.**

- (1) Any person who believes on reasonable grounds that any provisions of this Act are being contravened and notifies the Secretary or an authorised officer of that belief and the reasonable grounds for it—
 - (a) is not liable to any action or proceedings for unprofessional conduct or a breach of professional ethics; or
 - (b) if it is made in good faith, is not subject to any liability—with respect to that notification.
- (2) In any legal proceedings evidence as to the grounds contained in a notification under subsection (1) for the belief that this Act is being contravened may be given but evidence that a particular matter is contained in such a notification or evidence that identifies the person who made the notification as the notifier or is likely to lead to the identification of that person as the notifier is only admissible in the proceedings if the court or tribunal grants leave for the evidence to be given or if the notifier consents in writing to the admission of that evidence.
- (3) A witness in a proceeding referred to in subsection (2) must not be asked and, if asked, is entitled to refuse to answer—
 - (a) any question to which the answer would or might identify the person who made a notification under subsection (1) as the notifier or might lead to the identification of that person as the notifier; or

- (b) any question as to whether any matter is contained in a notification made under subsection (1)—

unless the court or tribunal grants leave for the question to be asked or the notifier has consented in writing to the question being asked.

- (4) A court or tribunal may only grant leave under subsection (2) or (3) if—

S. 54(4)(a)
amended by
No. 10/2005
s. 3(Sch. 1
item 4.1).

- (a) in the case of a proceeding in the court or in any other court arising out of a proceeding in the court or in the Victorian Civil and Administrative Tribunal on a review under section 55 it is satisfied that it is necessary for the evidence to be given to ensure the safety and well-being of any child being cared for or educated by a children's service;
- (b) in any other case, it is satisfied that the interests of justice require that the evidence be given.

S. 54(5)
amended by
No. 37/2014
s. 10(Sch.
item 17.2).

- (5) If a notification is made under subsection (1), a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than the Secretary, a police officer or an officer of the Department or any other person or class of persons authorised by the Secretary—
- (a) the name of the person who made the notification; or
- (b) any information that is likely to lead to the identification of the person who made the notification.

Penalty applying to this subsection: 10 penalty units.

(6) Subsection (5) does not apply to a disclosure made to a court or tribunal in accordance with this section.

*	*	*	*	*	S. 54A inserted by No. 22/2008 s. 34, amended by No. 80/2011 s. 55, repealed by No. 37/2019 s. 14.
*	*	*	*	*	S. 55 (Heading) inserted by No. 10/2005 s. 3(Sch. 1 item 4.2). S. 55 amended by Nos 10/2005 s. 3(Sch. 1 item 4.3), 22/2008 s. 35, 80/2011 s. 56, repealed by No. 37/2019 s. 14.
*	*	*	*	*	S. 56 amended by Nos 3/2008 s. 4, 22/2008 ss 5, 36, 80/2011 s. 57, repealed by No. 37/2019 s. 14.

Division 2—Legal proceedings

Pt 6 Div. 2
(Heading and
ss 173–179)
inserted by
No. 37/2019
s. 15.

173 Who may bring proceedings for an offence?

S. 173
inserted by
No. 37/2019
s. 15.

- (1) The following persons may bring proceedings for an offence under this Act—
- (a) the Regulatory Authority;

(b) a person authorised by the Regulatory Authority;

(c) a police officer.

- (2) In a proceeding for an offence against this Act, it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

S. 174
inserted by
No. 37/2019
s. 15.

174 When proceedings may be brought

Subject to section 122(6), a proceeding for an offence under this Act must be commenced within 2 years of the date of the alleged offence.

S. 175
inserted by
No. 37/2019
s. 15.

175 Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence also commits that offence and is liable to the penalty for that offence.
- (2) The penalty for an offence referred to in this section is the penalty applicable to an individual.

S. 176
inserted by
No. 37/2019
s. 15.

176 Application of Act to partnerships and eligible associations and other entities

- (1) If this Act would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (2) If this Act would otherwise require or permit something to be done by an eligible association, the thing may be done by one or more of the members of the executive committee on behalf of the association.
- (3) If this Act would otherwise require or permit something to be done by a prescribed entity, the thing may be done by one or more of the persons

with management or control of the entity on behalf of the entity.

- (4) An offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who is a person with management or control of the partnership.
- (5) An offence against this Act that would otherwise be committed by an eligible association is taken to have been committed by each person who is a person with management or control of the association.
- (6) An offence against this Act that would otherwise be committed by a prescribed entity is taken to have been committed by each person who is a person with management or control of that entity.
- (7) The penalty for an offence that is taken to be committed under this section is the penalty applicable to an individual.

177 Multiple holders of an approval

If more than one person holds a provider approval or service approval under this Act each holder of the approval is jointly and severally responsible for compliance with this Act.

S. 177
inserted by
No. 37/2019
s. 15.

178 Immunity—education law

- (1) This section applies if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under an education law.
- (2) The Regulatory Authority may refer the matter to the relevant disciplinary body under the education law.
- (3) If the Regulatory Authority refers a matter under subsection (2), a prosecution cannot be brought under this Act for an offence in relation to that matter.

S. 178
inserted by
No. 37/2019
s. 15.

S. 179
inserted by
No. 37/2019
s. 15.

179 Evidentiary certificates

A certificate purporting to be signed by the Regulatory Authority and stating any of the following matters is prima facie evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a notice, direction or requirement;
 - (iii) a register, or an extract from a register;
 - (iv) a record, or an extract from a record;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of a document mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a stated person was or was not an approved provider;
- (e) on a stated day, or during a stated period, a children's service was or was not an approved children's service;
- (f) on a stated day, or during a stated period, an approval was or was not subject to a stated condition;
- (g) on a stated day, an approval was suspended or cancelled;
- (h) on a stated day, or during a stated period, an appointment as authorised officer was, or was not, in force for a stated person;

- (i) on a stated day, a stated person was given a stated notice or direction under this Act;
- (j) on a stated day, a stated requirement was made of a stated person.

Division 3—Service of notices

Pt 6 Div. 3
(Heading and
ss 180, 181)
inserted by
No. 37/2019
s. 15.

180 Service of notices

S. 180
inserted by
No. 37/2019
s. 15.

- (1) If this Act requires or permits a notice to be served on a person, the notice may be served—
 - (a) on an individual by—
 - (i) delivering it to the individual personally; or
 - (ii) leaving it at, or by sending it by post to, the address notified to the sender by the individual as an address at which service of notices under this Act will be accepted or otherwise the address of the place of residence or business of the individual last known to the person serving the document; or
 - (iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Act will be accepted; or
 - (iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Act will be accepted; or

- (b) on a person other than an individual by—
 - (i) leaving it at, or by sending it by post to, the address notified to the sender by the person as an address at which service of notices under this Act will be accepted or otherwise the address of the head office, a registered office or the principal place of business of the person; or
 - (ii) sending it by facsimile transmission to a facsimile number notified to the sender by the person as an address at which service of notices under this Act will be accepted; or
 - (iii) sending it by email to an internet address notified to the sender by the person as an address at which service of notices under this Act will be accepted.
- (2) Subsection (1) applies whether the word "deliver", "give", "notify", "send" or "serve" or another expression is used.
- (3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a notice otherwise than as provided in that subsection.

S. 181
inserted by
No. 37/2019
s. 15.

181 Service by post

If a notice authorised or required to be served (whether the word "deliver", "give", "notify", "send" or "serve" or another expression is used) on a person is served by post, service of the notice—

- (a) may be effected by properly addressing, prepaying and posting a letter containing the document; and

- (b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth day after the letter was posted; and
- (c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

Division 4—False or misleading information

Pt 6 Div. 4
(Heading and
s. 182)
inserted by
No. 37/2019
s. 15.

182 False or misleading information or documents

S. 182
inserted by
No. 37/2019
s. 15.

- (1) A person must not give the Regulatory Authority or an authorised officer under this Act any information or document that the person knows is false or misleading in a material particular.

Penalty: 40 penalty units, in the case of an individual.

200 penalty units, in any other case.

- (2) Subsection (1) does not apply in respect of the giving of a document, if the person when giving the document—
 - (a) informs the Regulatory Authority or authorised officer, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the Regulatory Authority or authorised officer if the person has, or can reasonably obtain, the correct information.

Pt 6 Div. 5
(Heading and
ss 183–187)
inserted by
No. 37/2019
s. 15.

Division 5—Protection from reprisal

S. 183
inserted by
No. 37/2019
s. 15.

183 Definitions

In this Division—

protected disclosure means a disclosure of information or provision of documents to the Regulatory Authority—

- (a) pursuant to a request under this Act; or
- (b) where the person making the disclosure has a reasonable belief that—
 - (i) an offence against this Act has been or is being committed; or
 - (ii) the safety, health or wellbeing of a child or children being educated and cared for by a children's service is at risk;

serious detrimental action includes dismissal, involuntary transfer, loss of promotion and demotion.

S. 184
inserted by
No. 37/2019
s. 15.

184 Protection from reprisal

- (1) A person must not take serious detrimental action against a person in reprisal for a protected disclosure.

Penalty: 60 penalty units, in the case of an individual.

300 penalty units, in any other case.

- (2) A person takes serious detrimental action in reprisal for a protected disclosure if—
 - (a) the person takes or threatens to take the action because—
 - (i) a person has made, or intends to make, a protected disclosure; or
 - (ii) the person believes that a person has made or intends to make the protected disclosure; or
 - (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.
- (3) In determining whether a person takes serious detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

185 Proceedings for damages for reprisal

S. 185
inserted by
No. 37/2019
s. 15.

- (1) A person who takes serious detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the serious detrimental action.

S. 186
inserted by
No. 37/2019
s. 15.

186 Application for injunction or order

A person who believes that serious detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the Supreme Court for—

- (a) an order requiring the person who has taken the serious detrimental action to remedy that action; or
- (b) an injunction.

S. 187
inserted by
No. 37/2019
s. 15.

187 Injunction or order

- (1) If, on receipt of an application under section 186, the Supreme Court is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure, the court may—
 - (a) order the person who took the serious detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the court considers appropriate.
- (2) The Supreme Court, pending the final determination of an application under section 186, may—
 - (a) make an interim order in the terms of subsection (1)(a); or
 - (b) grant an interim injunction.

Pt 6 Div. 6
(Heading and
ss 188, 189)
inserted by
No. 37/2019
s. 15.

Division 6—Miscellaneous matters

S. 188
inserted by
No. 37/2019
s. 15.

188 Production of records kept in computers etc.

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Act—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person—

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

189 Determining age in years

For the purposes of this Act, a person attains an age in years at the beginning of the person's birthday for the age.

S. 189
inserted by
No. 37/2019
s. 15.

Division 7—Approved associated children's services National Law provisions not to apply

Pt 6 Div. 7
(Heading and
s. 190)
inserted by
No. 37/2019
s. 15.

190 Approved associated children's services, National Law provisions do not apply

The provisions of the National Law that provide for the authorisation of the operation of associated children's services and any other provisions relating to associated children's services do not apply in this State.

S. 190
inserted by
No. 37/2019
s. 15.

Pt 6 Div. 8
(Heading and
ss 191, 192)
inserted by
No. 37/2019
s. 15.

Division 8—Regulations

S. 191
inserted by
No. 37/2019
s. 15.

191 Regulations

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) The regulations may provide for any matter that is required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (3) Without limiting subsection (1), the regulations may provide for the following—
 - (a) fees (including application fees and annual fees) for—
 - (i) approvals under this Act; and
 - (ii) other things done under this Act;
 - (b) requirements for educational programs, including the quality of those programs and their development, documentation and delivery;
 - (c) requirements to be complied with for the safety, health and wellbeing of children being educated and cared for by a children's service;
 - (d) requirements to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing children's services;

- (e) requirements about the premises to be used to provide a children's service including siting, design, layout, space, security and entitlement to occupy;
- (f) requirements for the staffing of children's services including the recruitment (and conduct of criminal history or other security checks) and the appointment of staff, performance improvement, professional standards, professional development, numbers and qualifications of educators (including minimum age and requirements concerning groups of children of different ages and composition) and staffing rosters and arrangements;
- (g) requirements about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for children's services;
- (h) requirements for partnerships between children's services and the community in which they are located and the families of children being educated and cared for by children's services, including requirements for services to link to other support services for children and families;
- (i) requirements as to the leadership and management of children's services including governance and fitness and propriety of all staff members and volunteers, management of grievances and complaints and the provision of information to families;
- (j) the records, policies and procedures to be kept by approved providers including enrolment and attendance information;

- (k) requirements about first aid and management of children's medical conditions including—
 - (i) the training of educators and staff members; and
 - (ii) plans, policies and procedures used to manage medical conditions and first aid; and
 - (iii) the keeping and storage of first aid kits and medications;
 - (l) information required to be submitted for applications made under this Act;
 - (m) requirements for the provision and display of information by approved providers;
 - (n) the publication of information about enforcement actions taken under this Act, including notice and review of proposals to publish information;
 - (o) matters relating to the application of this Act to partnerships, eligible associations or prescribed entities;
 - (p) requirements relating to the receipt and payment and distribution of fees and monetary penalties payable under this Act.
- (4) The regulations—
- (a) may exempt any children's service or any type or class of children's service from complying with all or any of the regulations; and
 - (b) may impose penalties not exceeding 10 penalty units for offences against the regulations.

192 Matters for which regulations or other statutory instruments may make provision

S. 192
inserted by
No. 37/2019
s. 15.

- (1) If this Act authorises or requires the making of a regulation or other statutory instrument in relation to a matter, a regulation or other statutory instrument made under this Act may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—
- (a) an Act, regulation or other statutory instrument; or
 - (b) another document (whether of the same or a different kind)—
- as in force at a particular time or as in force from time to time.
- (2) If a regulation or other statutory instrument applies, adopts or incorporates the provisions of a document, the regulation or other statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the regulation or other statutory instrument otherwise expressly provides.
- (3) A regulation or other statutory instrument may—
- (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or
 - (b) apply generally to all persons, matters or things or be limited in its application to—
 - (i) particular persons, matters or things; or
 - (ii) particular classes of persons, matters or things; or
 - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

- (4) A regulation or other statutory instrument may—
 - (a) apply differently according to different specified factors; or
 - (b) otherwise make different provision in relation to—
 - (i) different persons, matters or things; or
 - (ii) different classes of persons, matters or things; or
 - (iii) the type or class of children's service and the ages of children being educated and cared for by a service.
- (5) A regulation or other statutory instrument may authorise a matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or body.
- (6) If this Act authorises or requires a matter to be regulated by regulation or other statutory instrument, the power may be exercised by prohibiting by regulation or other statutory instrument the matter or any aspect of the matter.
- (7) If this Act authorises or requires provision to be made with respect to a matter by regulation or other statutory instrument, a regulation or other statutory instrument made under this Act may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Act in relation to another aspect of the matter or in relation to another matter.
- (8) A regulation or other statutory instrument may provide for the review of, or a right of appeal against, a decision made under the regulation, other statutory instrument, or this Act, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

- (9) A regulation or other statutory instrument may require a form prescribed by or under the regulation or other statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

Pt 7 (Heading and ss 57–62) amended by Nos 74/2000 s. 3(Sch. 1 item 19), 22/2008 ss 37–39, substituted by No. 80/2011 s. 58, substituted as Pt 7 (Headings and ss 193–210) by No. 37/2019 s. 16.

Part 7—Transitional provisions—Children's Services Amendment Act 2019

Division 1—Preliminary

S. 193 inserted by No. 37/2019 s. 16.

193 Definitions

In this Part—

commencement day means the day on which the 2019 Act comes into operation;

old Act means this Act as in force immediately before the commencement day;

old approved associated children's service means a children's service that was an approved associated children's service under the National Law immediately before the commencement day;

old licence means a licence to operate a children's service issued under the old Act and in force immediately before the commencement day which authorises the operation of a children's service;

old person in charge, in relation to a transitioned children's service, means a person who was, immediately before the commencement day, a nominee for that service within the meaning of *nominee* in the old Act, but does not include an old primary nominee for that service;

old primary nominee, in relation to a transitioned children's service, means the person who was, immediately before the commencement day, the primary nominee for that service within the meaning of ***primary nominee*** in the old Act;

transition period, in relation to an old approved associated children's service, means the period commencing on the commencement day and ending at the end of the day immediately preceding the day that is 2 years after the commencement day;

transitioned children's service means a children's service provided under an old licence in respect of which the licence holder, under Division 2, is taken to hold a provider approval and a service approval under this Act;

2019 Act means the **Children's Services Amendment Act 2019**.

Division 2—Old licences

194 Status of old licences

- (1) On and from the commencement day, a person who was the holder of an old licence—
 - (a) is taken to hold a provider approval in respect of the children's service for which the person held the licence; and
 - (b) is taken to hold a service approval for the children's service for which the person held the licence.
- (2) A person who is taken to hold a provider approval in respect of a children's service under subsection (1)(a) must notify the Regulatory Authority of the

S. 194
inserted by
No. 37/2019
s. 16.

name and contact details of each person with management or control of the children's service.

- (3) A notice under subsection (2) must be given no more than 30 days after the commencement day.
- (4) This Act applies to a provider approval and to a service approval that a person is taken to hold under subsection (1) as if—
 - (a) the provider approval and service approval had been granted under this Act; and
 - (b) as if the provider approval and service approval had been granted on the commencement day.

S. 195
inserted by
No. 37/2019
s. 16.

195 Suspended licences

If an old licence which is taken to be a provider approval and service approval under section 194 was suspended immediately before the commencement day under the old Act—

- (a) the provider approval and service approval are taken to be suspended for the remainder of the period for which the old licence was suspended under the old Act; and
- (b) this Act applies to the suspension of the provider approval and service approval as if the approvals were suspended under this Act.

S. 196
inserted by
No. 37/2019
s. 16.

196 Old licences held by trusts

- (1) If, immediately before the commencement day, the holder of the old licence was a trust, the trustee or trustees of the trust are taken to be the approved provider of the children's service under section 194.
- (2) The trust must, within 30 days after the commencement day, notify the Regulatory Authority of the identity of the trustee or trustees of the trust.

- (3) If the notice is not given under subsection (2) within the required period, each trustee of the trust ceases to be an approved provider under this section at the end of that period.

197 Conditions on old licences

S. 197
inserted by
No. 37/2019
s. 16.

- (1) If, under this Division, a person is taken to hold a provider approval, any conditions of the old licence relating to that person are taken to be conditions of the provider approval, unless inconsistent with this Act.
- (2) If, under this Division, a person is taken to hold a service approval, any conditions of the old licence relating to the children's service are taken to be conditions of the service approval, unless inconsistent with this Act.

198 Copies of approvals to be given

S. 198
inserted by
No. 37/2019
s. 16.

- (1) The Regulatory Authority must, within 6 months after the commencement day, give to each person who is taken to be the holder of a provider approval under this Division a copy of the provider approval setting out the matters listed in section 20.
- (2) The Regulatory Authority must, within 6 months after the commencement day, give to each person who is taken to be the holder of a service approval under this Division a copy of the service approval setting out the matters listed in section 51.

199 Existing multiple licences to merge

S. 199
inserted by
No. 37/2019
s. 16.

If, immediately before the commencement day, the holder of an old licence held more than one old licence in respect of the same premises, the old licences are taken to be one service approval in respect of those premises for the purposes of this Act.

Division 3—Approved associated children's services

S. 200
inserted by
No. 37/2019
s. 16.

200 Transitional arrangements for old approved associated children's services

- (1) Despite the commencement of section 190, for the transition period an old approved associated children's service may continue to operate as if section 190 had not been enacted.
- (2) The provisions of this Act apply to an old approved associated children's service operating under subsection (1) as if—
 - (a) the old approved associated children's service were an approved children's service under this Act; and
 - (b) the approved provider of the old approved associated children's service under the National Law were the approved provider under this Act; and
 - (c) the person who was the nominated supervisor of the old approved associated children's service under the National Law were the nominated supervisor under this Act.

S. 201
inserted by
No. 37/2019
s. 16.

201 Cessation of application of section 200

On and from the day that is 2 years after the commencement day section 200 ceases to apply to old approved associated children's services.

Division 4—Exemptions from requirements of the old Act

S. 202
inserted by
No. 37/2019
s. 16.

202 Individual service exemptions

- (1) This section applies in respect of the holder of an old licence for a children's service that was not required to comply with a requirement of the old

Act under a relevant declaration immediately before the commencement day.

- (2) The children's service is taken to comply with an equivalent requirement of this Act—
- (a) for the period of 6 months from the commencement day; or
 - (b) if the holder of the old licence applies to the Regulatory Authority under this Act for a temporary waiver or service waiver under this Act in respect of that requirement and the application is received by the Regulatory Authority on or before the expiry of the 6-month period, to the date on which the application is finally determined under this Act.
- (3) In this section—
- relevant declaration***, in relation to a children's service, means—
- (a) a declaration made under section 29A of the old Act specifically in respect of the children's service; or
 - (b) a declaration made under section 6(1) of the old Act specifically in respect of the children's service.

203 General service exemptions

On and from the commencement day, a declaration in respect of a specified type of service under section 6 or 29A of the old Act that was in force immediately before the commencement day, is taken to continue in force—

- (a) as if the declaration applied to the equivalent requirement of this Act as in force on and from the commencement day; and

**S. 203
inserted by
No. 37/2019
s. 16.**

- (b) unless sooner revoked, for the remainder of the period for which it was specified to remain in force in the notice of the declaration.

Division 5—Applications

S. 204
inserted by
No. 37/2019
s. 16.

204 Existing applications

- (1) On and from the commencement day, a person who applied for an old licence under the old Act whose application is on foot immediately before the commencement day is taken to have applied under this Act for a provider approval and a service approval.
- (2) To avoid doubt, the Regulatory Authority has all the powers under this Act to deal with the application as if it were an application under this Act.
- (3) This section does not apply if the applicant is a prescribed ineligible person.

Division 6—Nominated supervisors and other persons

S. 205
inserted by
No. 37/2019
s. 16.

205 Nominated supervisors

- (1) On and from the commencement day, an old primary nominee of a transitioned children's service is taken to be the nominated supervisor for that service.
- (2) Subsection (1) ceases to apply if—
 - (a) the approved provider does not confirm the nomination within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority; or

- (b) the person advises the Regulatory Authority in writing that the person does not consent to being the nominated supervisor of the children's service.

206 Persons in day-to-day charge

S. 206
inserted by
No. 37/2019
s. 16.

- (1) On and from the commencement day, an old person in charge of a transitioned children's service is taken to be a person in day-to-day charge for that service.
- (2) Subsection (1) ceases to apply if another person is placed in day-to-day charge of the service under the regulations.

Division 7—Miscellaneous matters

207 Notices to comply

S. 207
inserted by
No. 37/2019
s. 16.

- (1) On and from the commencement day, an old Act compliance notice in force immediately before the commencement day is taken to be a compliance notice under this Act.
- (2) In this section—

old Act compliance notice means a notice issued under section 43 or 43A of the old Act.

208 Disclosure of information

S. 208
inserted by
No. 37/2019
s. 16.

For the purposes of section 166, information that may be disclosed by the Regulatory Authority includes information obtained or kept by the Regulatory Authority under the old Act.

209 Keeping of old information

S. 209
inserted by
No. 37/2019
s. 16.

- (1) A person who was the proprietor of a children's service immediately before the commencement day must—
- (a) keep the prescribed records about the children's service for the prescribed period; or

(b) within the prescribed period after the commencement day, transfer the prescribed records about the children's service to the approved provider.

Penalty: 15 penalty units, in the case of an individual.

125 penalty units, in any other case.

(2) A person who was the holder of an old licence immediately before the commencement day must keep the prescribed records about the children's service to which the licence applied for the prescribed period.

Penalty: 15 penalty units, in the case of an individual.

125 penalty units, in any other case.

(3) An approved provider to whom records are transferred under subsection (1)(b) must keep the prescribed records for the prescribed period.

Penalty: 15 penalty units, in the case of an individual.

125 penalty units, in any other case.

(4) A person who is required to keep records under this section must make the records available to the Regulatory Authority on being requested to do so by the Regulatory Authority in the prescribed manner.

Penalty: 15 penalty units, in the case of an individual.

125 penalty units, in any other case.

S. 210
inserted by
No. 37/2019
s. 16.

210 Regulation making powers

(1) The Governor in Council may make regulations providing for matters of a transitional nature, including matters of an application or saving

nature required, necessary or convenient to be made as a result of the enactment of the 2019 Act, other than in relation to any matter provided for in this Part.

- (2) A regulation made under subsection (1) may—
 - (a) have retrospective effect to the commencement day; and
 - (b) be of a general or limited application; and
 - (c) differ according to time, place or circumstance; and
 - (d) leave any matter or thing to be determined by the Regulatory Authority; and
 - (e) exempt any person or class of person from complying with the regulation.
- (3) To the extent to which any provision of the regulations under this section takes effect from a date that is earlier than the date of its making, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its making.
- (4) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to any regulations made under this section.
- (5) This section expires on the second anniversary of the day on which it comes into operation.

Children's Services Act 1996
No. 53 of 1996

Pt 8 (Heading
and s. 63)
inserted by
No. 9/2017
s. 74,
repealed by
No. 37/2019
s. 16.

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Children's Services Act 1996
No. 53 of 1996

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Sch.
inserted by
No. 22/2008
s. 40,
repealed by
No. 80/2011
s. 59.

Sch. 1
inserted by
No. 37/2019
s. 17.

Schedule 1—Powers of entry by search warrant

1 Application for warrant

- (1) An authorised officer may apply to a magistrate for a search warrant in relation to premises if the officer believes on reasonable grounds that—
 - (a) a person is or has been operating a children's service at the premises in contravention of this Act; or
 - (b) documents or other evidence relevant to the possible commission of an offence against this Act are present at the premises.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

2 Issue of warrant

- (1) The magistrate may issue the warrant in respect of premises only if the magistrate is satisfied there are reasonable grounds to believe that—
 - (a) a person is operating a children's service at the premises in contravention of this Act; or
 - (b) documents or other evidence relevant to the possible commission of an offence against this Act are present at the premises.

(2) The warrant must state—

- (a) that a stated authorised officer may, with necessary and reasonable help and force—
 - (i) enter the premises and any other premises necessary for entry; and
 - (ii) exercise the authorised officer's powers under this Schedule; and
- (b) the matter for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the premises may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

3 Application by electronic communication

- (1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including the authorised officer's remote location.
- (2) The application—
 - (a) may not be made before the authorised officer prepares the written application under clause 1(2); but
 - (b) may be made before the written application is sworn.

- (3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subclause (1); and
 - (b) the way the application was made under subclause (1) was appropriate.
- (4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by facsimile or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the authorised officer must complete a form of warrant including by writing on it—
 - (A) the magistrate's name; and
 - (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- (5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

- (6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with clause 1(2) and (3); and
 - (b) if the authorised officer completed a form of warrant under subclause (4)(b), the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.
- (8) Despite subclause (5), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and
 - (b) the original warrant is not produced in evidence—

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This clause does not limit clause 1.

4 Procedure before entry under warrant

- (1) Before entering premises under a warrant, an authorised officer must do or make a reasonable attempt to do the following—
 - (a) identify himself or herself to a person present at the premises who is an occupier of the premises by producing the authorised officer's identity card;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the authorised officer is permitted by the warrant to enter the premises;

- (d) give the person an opportunity to allow the authorised officer immediate entry to the premises without using force.
- (2) However, the authorised officer need not comply with subclause (1) if the authorised officer reasonably believes that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

5 Powers after entering premises

- (1) This clause applies if an authorised officer enters premises under clause 4.
- (2) The authorised officer may for the purposes of the investigation do the following—
 - (a) search any part of the premises;
 - (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
 - (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
 - (d) copy, or take an extract from, a document, at the premises;
 - (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Schedule;
 - (f) require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);

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No. 53 of 1996
Schedule 1—Powers of entry by search warrant

- (g) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.
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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: 30 May 1996

Legislative Council: 8 October 1996

The long title for the Bill for this Act was "to provide for the licensing and regulation of children's services, to repeal Part XIA of the **Health Act 1958** and to make consequential amendments to other Acts."

The **Children's Services Act 1996** was assented to on 3 December 1996 and came into operation as follows:

Sections 1 and 2 on 3 December 1996: section 2(1); rest of Act on 1 June 1998: Government Gazette 28 May 1998 page 1189.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Children's Services Act 1996** by Acts and subordinate instruments.

Disability Services and Other Acts (Amendment) Act 1997, No. 72/1997

Assent Date: 25.11.97
Commencement Date: Ss 14, 15 on 25.11.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 19) on 3.12.96: s. 2(2)(d)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 30) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 4) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 6) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 6) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

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**Education and Training Reform Miscellaneous Amendments Act 2007,
No. 58/2007**

Assent Date: 27.11.07
Commencement Date: S. 52 on 28.11.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Children's Services and Education Legislation Amendment (Anaphylaxis
Management) Act 2008, No. 3/2008**

Assent Date: 4.3.08
Commencement Date: Ss 3, 4 on 14.7.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Children's Legislation Amendment Act 2008, No. 22/2008

Assent Date: 3.6.08
Commencement Date: Ss 6, 7(2), 9(1)–(4), 11(1)(2), 12(1)(2), 13(1), 16, 17,
20(2)(3), 27, 29(6), 30 on 4.6.08: s. 2(1); ss 3–5, 7(1),
8, 9(5)(6), 10, 11(3), 12(3), 13(2), 14, 15, 18, 19,
20(1), 21–26, 28, 29(1)–(5), 31–40 on 25.5.09: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Criminal Procedure Amendment (Consequential and Transitional Provisions)
Act 2009, No. 68/2009**

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 19) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,
No. 13/2010**

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 13) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 10.3) on 25.5.09: s. 2(2)(a);
s. 3(Sch. 1 items 10.1, 10.2) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Children's Services Amendment Act 2011, No. 80/2011

Assent Date: 21.12.11
Commencement Date: Ss 4–59 on 1.1.12: Special Gazette (No. 423) 21.12.11
p. 2
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

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Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 17) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Education and Care Services National Law Amendment Act 2017, No. 9/2017

Assent Date: 27.3.17
Commencement Date: Ss 69–74 on 1.10.17: Special Gazette (No. 303) 12.9.17 p. 1
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: S. 68(Sch. 2 item 21) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date: 25.6.19
Commencement Date: S. 253 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Children's Services Amendment Act 2019, No. 37/2019

Assent Date: 6.11.19
Commencement Date: Ss 4–17 on 17.5.20: Special Gazette (No. 232) 12.5.20 p. 1
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.