

Child Wellbeing and Safety Act 2005

Act No. 83/2005

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Victoria

No. 83 of 2005

Child Wellbeing and Safety Act 2005[†]

[Assented to 29 November 2005]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to establish principles for the wellbeing of children; and
- (b) to establish the Victorian Children's Council; and
- (c) to establish the Children's Services Co-ordination Board; and

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- (d) to provide for the Child Safety Commissioner; and
- (e) to confer functions and powers on the Child Safety Commissioner in relation to the safety of children; and
- (f) to provide for the notification of births to municipal councils; and
- (g) to repeal Part IX of the **Health Act 1958**.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 October 2007, it comes into operation on that day.

3. Definitions

In this Act—

"**authorised person**" means a person authorised by the Child Safety Commissioner under section 22;

"**central register**" means the central register referred to in section 65(1)(b) of the **Children and Young Persons Act 1989**;

"**child**" means a person who is under the age of 18 years;

"**Child Safety Commissioner**" means the Child Safety Commissioner employed under Part 3 of the **Public Administration Act 2004**;

"**council**" has the same meaning as it has in the **Local Government Act 1989**;

"health professional" means—

- (a) a registered medical practitioner within the meaning of the **Medical Practice Act 1994**; or
- (b) a registered nurse within the meaning of the **Nurses Act 1993**; or
- (c) a registered psychologist within the meaning of the **Psychologists Registration Act 2000**;

"health service" means—

- (a) a relevant health service within the meaning of section 141 of the **Health Services Act 1988**; or
- (b) a relevant psychiatric service within the meaning of section 120A of the **Mental Health Act 1986**;

"human service" means—

- (a) a children's service within the meaning of the **Children's Services Act 1996**; or
 - (b) a body that receives funding from the Secretary under a State contract to provide disability services to a child who is an eligible person within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991**; or
 - (c) a body that receives funding from the Secretary under a State contract to provide family support services or services to homeless persons; or
 - (d) a body that receives funding from the Director of Housing under a State contract to provide assistance in
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providing housing services or other assistance to homeless persons; or

- (e) a body that receives funding from the Secretary under a State contract to provide drug or alcohol treatment services;

"Maternal and Child Health Centre" means a centre where health advice is given to the parents and other caregivers of children under 6 years of age;

"municipal district" has the same meaning as it has in the **Local Government Act 1989**;

"out of home care service" means—

- (a) a community service established under section 57 of the **Children and Young Persons Act 1989** to provide out of home care for children; or
- (b) a community service approved under section 58(1) of the **Children and Young Persons Act 1989**;

"performance standards" means standards provided for in a direction under section 59 of the **Children and Young Persons Act 1989**;

"post-secondary qualification" means a qualification from an institution, person or body providing or offering to provide (whether in or outside Victoria) post-secondary education as defined in the **Tertiary Education Act 1993** (whether or not that institution, person or body has since ceased to exist) and includes a qualification from a post-secondary education provider as defined in that Act;

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"Secretary" means the Secretary to the Department of Human Services established under the **Public Administration Act 2004**;

"State contract" means a contract entered into for or on behalf of the State;

"welfare practitioner" means—

- (a) a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field in a capacity that requires that person to hold such a qualification; or
 - (b) a person employed under Part 3 of the **Public Administration Act 2004** to perform the duties of a child, adolescent and family welfare officer; or
 - (c) a person who is engaged in the provision of community or welfare services under a State contract.
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PART 2—PRINCIPLES FOR CHILDREN

4. Principles are for guidance

- (1) It is the intention of Parliament that the principles set out in this Part should be used for guidance in the development and provision of Government, Government-funded and community services for children and their families.
- (2) The Parliament does not intend by this Part—
 - (a) to create in any person any legal right or give rise to any civil cause of action; or
 - (b) to affect in any way the interpretation of any Act or law in force in Victoria.

5. Principles for children

- (1) The development and provision of services for children and families should be based upon the fundamental principles that—
 - (a) society as a whole shares responsibility for promoting the wellbeing and safety of children;
 - (b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background;
 - (c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing;
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- (d) parents are the primary nurturers of a child and Government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing, however, it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection.
- (2) Services for children and families should be designed and developed—
- (a) to readily identify harm and damage to the child and to provide for intervention by providers of services to remove or ameliorate the causes of that harm or damage and to strengthen the capacity and efforts of parents, their families and communities to support the child as early as possible in the child's life;
- (b) to accord with the needs of each local community with the active involvement of that community's cultural groups, and to be accessible and responsive to the particular cultures, languages and circumstances of the community and to be properly planned and co-ordinated with services provided by other local and regional communities;
- (c) to give the highest priority to making appropriate and sufficient levels of assistance available to children and families in communities or population groups that are known to have the greatest need;
- (d) to promote continuous improvement in the quality of those services, based on the best available knowledge of the needs of children and their stages of development.
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Part 2—Principles for Children

- (3) The providers of services to children and families should—
- (a) protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision-making that affects their lives;
 - (b) acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child;
 - (c) make decisions about intervention by the providers of services into a child's or family's life and about access by a child or family to those services in a timely manner being mindful of any harmful effects that may be caused to the child by a delay in making decisions or providing services;
 - (d) ensure that families are made aware of the services available to them and of the benefits these services can provide, especially to those families in most need of assistance;
 - (e) co-operate with other services or professionals to work in the interests of the child and family.
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PART 3—CHILD WELLBEING AND SAFETY

6. The role of the Minister

- (1) The Minister must promote the co-ordination of Government programs that affect child wellbeing and safety.
- (2) The Minister may establish any advisory committee that the Minister considers appropriate to assist the Minister in the administration of this Act.

7. Role of the Secretary in relation to Aboriginal communities

The Secretary must work with Aboriginal communities to establish a Victorian Aboriginal Child Wellbeing Charter.

PART 4—VICTORIAN CHILDREN'S COUNCIL

8. Establishment of Victorian Children's Council

The Victorian Children's Council is established.

9. Constitution of Council

- (1) The Victorian Children's Council consists of—
 - (a) the Child Safety Commissioner; and
 - (b) at least 8 other members appointed by the Minister.
 - (2) The Minister must appoint one of the members to be the Chairperson.
 - (3) A person appointed under sub-section (1)(b) must be a person who, in the opinion of the Minister, has expert knowledge of policies and services that enhance the health, wellbeing, development or safety of children.
 - (4) A member (other than the Child Safety Commissioner)—
 - (a) holds office for such period not exceeding three years, as is specified in the instrument of appointment and is eligible for re-appointment;
 - (b) is entitled to the remuneration and allowances determined by the Minister from time to time;
 - (c) may resign from the office of member by writing to the Minister;
 - (d) may be removed from office by the Minister;
 - (e) is not in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 5 of that Act).
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10. Functions of the Council

- (1) The functions of the Council are to provide the Premier and the Minister with independent and expert advice relating to policies and services that enhance the health, wellbeing, development and safety of children.
- (2) The Secretary must make available to the Council the services of any employees in the Department that are necessary to enable the Council to carry out its functions.

11. Sub-committees

- (1) The Council, subject to the approval of the Minister, may appoint for the purposes of carrying out any of its functions under this Part a sub-committee consisting of such members as it determines together with such other persons as it determines.
- (2) A sub-committee appointed under this section must report to the Council.

12. Procedure of the Council

- (1) A majority of members for the time being of the Victorian Children's Council constitutes a quorum of that Council.
 - (2) The Victorian Children's Council may regulate its own proceedings.
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PART 5—CHILDREN'S SERVICES CO-ORDINATION BOARD

13. Establishment of Children's Services Co-ordination Board

The Children's Services Co-ordination Board is established.

14. Constitution of Board

The Children's Services Co-ordination Board consists of—

- (a) the Secretary to the Department of Premier and Cabinet; and
- (b) the Secretary to the Department of Treasury and Finance; and
- (c) the Secretary to the Department of Human Services; and
- (d) the Secretary to the Department of Education and Training; and
- (e) the Secretary to the Department of Justice; and
- (f) the Secretary to the Department of Victorian Communities; and
- (g) the Chief Commissioner of Police.

15. Functions of the Board

The functions of the Children's Services Co-ordination Board are—

- (a) to review annually and report to the Minister on the outcomes of Government actions in relation to children, particularly the most vulnerable children in the community; and

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Part 5—Children's Services Co-ordination Board

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- (b) to monitor administrative arrangements to support co-ordination of Government actions relating to children at local and regional levels.

16. Procedure of the Board

- (1) A majority of the members for the time being of the Children's Services Co-ordination Board constitutes a quorum of that Board.
- (2) The Children's Services Co-ordination Board may regulate its own proceedings.
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PART 6—CHILD SAFETY COMMISSIONER

Division 1—Child Safety Commissioner

17. Object of Part

The object of this Part is to promote continuous improvement and innovation in—

- (a) policies and practices relating to child safety; and
- (b) the provision of out of home care services for children.

18. Child Safety Commissioner

There is to be a Child Safety Commissioner employed under Part 3 of the **Public Administration Act 2004**.

19. General functions in relation to child safety

The functions of the Child Safety Commissioner are—

- (a) to provide advice and recommendations to the Minister about child safety issues, at the request of the Minister;
 - (b) to promote child-friendly and child-safe practices in the Victorian community;
 - (c) the functions relating to working with children conferred by Division 2;
 - (d) the functions relating to out of home care conferred by Division 3;
 - (e) the functions relating to child deaths conferred by Division 4;
 - (f) any other functions conferred on the Child Safety Commissioner under this Act or any other Act.
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20. Powers

For the purpose of performing his or her functions, the Child Safety Commissioner—

- (a) has such powers as are conferred on him or her by this Act or any other Act; and
- (b) may do all other things necessary or convenient to be done for or in connection with, or as incidental to, the performance of his or her functions.

21. Delegation

The Child Safety Commissioner may by instrument delegate to any person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Part any of the powers and functions of the Child Safety Commissioner under this Act except this power of delegation.

22. Authorised persons

- (1) The Child Safety Commissioner may authorise any person to assist the Child Safety Commissioner in carrying out his or her functions.
- (2) An authorisation may be general or limited to specified functions.
- (3) The Child Safety Commissioner must not authorise a person under this section unless the Child Safety Commissioner is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

23. Assistance to be provided

- (1) The Secretary must ensure that the Child Safety Commissioner or any authorised person is provided with any assistance in connection with the reasonable exercise of the Commissioner's functions that the Commissioner or authorised person reasonably requires.

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- (2) The person in charge of an out of home care service must ensure that the Child Safety Commissioner or any authorised person is provided with any assistance in connection with the Commissioner's functions that the Commissioner or authorised person reasonably requires.

Division 2—Working with Children

24. Functions in relation to working with children

The Child Safety Commissioner has the following functions in relation to working with children—

- (a) to review and report on the administration of the **Working with Children Act 2005**;
- (b) in consultation with the Secretary to the Department of Justice, to educate and inform the community about that Act.

25. Review of administration of Working with Children Act 2005

- (1) The Child Safety Commissioner must conduct an annual review of the administration of the **Working with Children Act 2005**.
 - (2) The Child Safety Commissioner must provide a report on the results of a review under subsection (1) to—
 - (a) the Minister; and
 - (b) the Minister administering the **Working with Children Act 2005**; and
 - (c) the Secretary to the Department of Justice.
 - (3) A report must be made within 3 months after the end of each financial year.
 - (4) A report may make any recommendations the Child Safety Commissioner considers appropriate.
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- (5) A report must not include any information that identifies or could lead to the identification of any person who has made an application or who has been issued with a notice under the **Working with Children Act 2005**.

26. Access to records

- (1) The Child Safety Commissioner or any authorised person may have, and must be given, access to the records kept by the Secretary to the Department of Justice under the **Working with Children Act 2005** in relation to the administration of that Act.
- (2) This section applies despite anything to the contrary in the **Working with Children Act 2005**.

27. Disclosure by Child Safety Commissioner

- (1) In this section "**relevant person**" means—
- (a) a person who is or has been the Child Safety Commissioner; or
 - (b) a person who is or has been a delegate of the Child Safety Commissioner; or
 - (c) a person who is or has been an authorised person.
- (2) A relevant person must not, except to the extent necessary—
- (a) to carry out functions under this Division; or
 - (b) to exercise powers under this Division; or
 - (c) to give any information he or she is expressly authorised, permitted or required to give under this Division—
- disclose to any other person, whether directly or indirectly, any information acquired by the relevant person under this Division.

Penalty: 60 penalty units.

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- (3) Sub-section (2) does not apply to the disclosure of information—
- (a) to a court or tribunal in the course of criminal legal proceedings; or
 - (b) pursuant to an order of a court or tribunal made under another Act or law; or
 - (c) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or
 - (d) with the consent of the Minister responsible for administering the **Working with Children Act 2005** and in accordance with the conditions specified by that Minister, if that Minister is of the opinion that it is in the public interest that the information be so disclosed.

28. Assistance to be provided

The Secretary to the Department of Justice must ensure that the Child Safety Commissioner or an authorised person is provided with any assistance in connection with the reasonable exercise of the Commissioner's functions under this Division that the Commissioner reasonably requires.

Division 3—Monitoring of Out of Home Care Services

29. Functions in relation to children in out of home care

The Child Safety Commissioner has the following functions in relation to out of home care services for children and children in out of home care—

- (a) to promote the provision of out of home care services that encourage the active participation of those children in the making of decisions that affect them;

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- (b) to advise the Minister and the Secretary on the performance of out of home care services;
 - (c) at the request of the Minister, to investigate and report on an out of home care service.

30. Access to records

- (1) This section applies if the Child Safety Commissioner is investigating an out of home care service at the request of the Minister.
- (2) The Child Safety Commissioner and any authorised person may have, and must be given, access to—
 - (a) any information on the central register in relation to the out of home care service; and
 - (b) any other documents held in or by the Department relating to the out of home care service or any child in out of home care to whom it provides services.
- (3) The Child Safety Commissioner and any authorised person may have, and must be given, access to any documents or files held by the out of home care service relating to the operation of the service or any child to whom it provides services.

31. Disclosure by Child Safety Commissioner

- (1) The Child Safety Commissioner may use and disclose to the Minister and the Secretary any information acquired by the Child Safety Commissioner in carrying out his or her functions under this Division.
- (2) The Child Safety Commissioner may disclose to an authorised person any information acquired by the Child Safety Commissioner that is relevant to carrying out a function under this Division for which the person is authorised under section 22.

32. Disclosure by authorised person

An authorised person may disclose to the Child Safety Commissioner any information acquired by the authorised person in carrying out any function under this Division for which the person is authorised under section 22.

Division 4—Inquiries into Child Deaths

33. Functions in relation to child deaths

- (1) The Child Safety Commissioner must conduct an inquiry and prepare a report in relation to a child who has died and who was a child protection client at the time of his or her death or within 3 months before his or her death.
 - (2) The object of an inquiry under this section is to promote continuous improvement and innovation in policies and practices relating to child protection and safety.
 - (3) The inquiry must relate to the services provided, or omitted to be provided, to the child before his or her death.
 - (4) The Secretary must advise the Child Safety Commissioner of the death of each child who was a child protection client at the time of his or her death or within 3 months before his or her death.
 - (5) For the purposes of this Division—
 - (a) a child is a child protection client if the child has come to the attention of the Secretary as being a child in need of protection within the meaning of section 63 of the **Children and Young Persons Act 1989**; and
 - (b) a child ceases to be a child protection client when the Secretary records in the central register that the child's case is closed.
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- (6) Nothing in this Division is intended to limit or affect any power or function of a coroner or a member of the police force to investigate the death of a child.

34. Access to information

- (1) The Child Safety Commissioner and any authorised person may have, and must be given, access to—
- (a) any information on the central register in relation to a child whose death is the subject of an inquiry under this Division that the Commissioner or authorised person reasonably requires; and
 - (b) any other information, documents or records held in or by the Department in relation to a child whose death is the subject of an inquiry under this Division that the Commissioner or authorised person reasonably requires.
- (2) The Child Safety Commissioner and any authorised person may have, and must be given, access to any information, documents or files held by an out of home care service relating to a child whose death is the subject of an inquiry under this Division that the Commissioner or authorised person reasonably requires.
- (3) The person in charge of a health service or a human service must provide the Child Safety Commissioner or an authorised person with access to any information, documents or files held by the health service or human service relating to a child whose death is the subject of an inquiry under this Division that the Commissioner or authorised person reasonably requires.

35. Disclosure by health professionals and welfare practitioners

- (1) The Child Safety Commissioner or an authorised person may request a health professional or a welfare practitioner to provide such information as the Commissioner or authorised person reasonably requires in relation to a child whose death is the subject of an inquiry under this Division.
- (2) A health professional or a welfare practitioner may disclose to the Child Safety Commissioner or an authorised person any information in the possession of that person that relates to the death of a child that is the subject of an inquiry under this Division.
- (3) In determining whether to disclose information under this Division, a health professional or welfare practitioner must have regard to—
 - (a) the object of this Part; and
 - (b) the public interest in ensuring that—
 - (i) child protection systems are effective; and
 - (ii) the Child Safety Commissioner can conduct effective inquiries into child deaths.

36. Disclosers protected

A disclosure of information made under section 34 or 35 in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

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- (b) does not make the person by whom it is made subject to any liability in respect of it; and
 - (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
 - (i) section 141 of the **Health Services Act 1988**; or
 - (ii) section 120A of the **Mental Health Act 1986**.

37. Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would tend to incriminate the person.

38. Disclosure by Child Safety Commissioner

- (1) The Child Safety Commissioner may use and disclose to the Minister or the Secretary any information acquired by the Child Safety Commissioner in carrying out his or her functions under this Division.
 - (2) The Child Safety Commissioner must give a copy of any report of an inquiry under this Division to the Minister and the Secretary.
 - (3) At the request of the Minister, the Child Safety Commissioner must give a copy of a report of any inquiry under this Division to an advisory committee established by the Minister.
 - (4) The Child Safety Commissioner may disclose to an authorised person any information acquired by the Child Safety Commissioner that is relevant to carrying out any function under this Division for which the person is authorised under section 22.
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39. Disclosure by authorised person

An authorised person may disclose to the Child Safety Commissioner any information acquired by the authorised person in carrying out any function under this Division for which the person is authorised under section 22.

Division 5—General

40. Confidentiality

(1) In this section—

"relevant person" means—

- (a) a person who is or has been the Child Safety Commissioner; or
- (b) a person who is or has been a delegate of the Child Safety Commissioner; or
- (c) a person who is or has been an authorised person; or
- (d) a person who is or has been a member of an advisory committee referred to in section 38; or
- (e) a person who is or has been appointed to assist an advisory committee referred to in section 38;

"senior available next of kin" has the same meaning as in the **Human Tissue Act 1982**.

(2) A relevant person must not, except to the extent necessary—

- (a) to carry out functions under this Part; or
- (b) to exercise powers under this Part; or

- (c) to give any information he or she is expressly authorised, permitted or required to give under this Part—

disclose to any other person, whether directly or indirectly, any information acquired by reason of being a relevant person if a person who is or has been a child in out of home care or a child whose death is the subject of an inquiry under Division 4 or a member of that person's family will or may be identified from that information.

Penalty: 60 penalty units.

- (3) Sub-section (2) does not apply to the disclosure of information—
- (a) with the prior consent in writing of the person to whom the information relates or, if that person has died, with the consent (which may be express or implied) of the senior available next of kin of that person; or
 - (b) to a court or tribunal in the course of criminal legal proceedings; or
 - (c) pursuant to an order of a court or tribunal made under another Act or law; or
 - (d) to an Australian legal practitioner for the purpose of obtaining legal advice or representation.

41. Commissioner's report

- (1) The Child Safety Commissioner must submit an annual report on the operation of this Part to the Minister on or before 31 December in each year.
- (2) The Minister must cause a report received under sub-section (1) to be laid before each House of Parliament within 21 sitting days of that House after it is received.

PART 7—BIRTH NOTIFICATION

42. Application of Part

- (1) This Part applies in the case of every birth in Victoria, whether the child is born alive or dead, except for the delivery of a non-viable foetus.
- (2) This Part applies in addition to the requirements of the **Births, Deaths and Marriages Registration Act 1996**.

43. Early notification of births

- (1) If a child is born in Victoria notice of the birth of the child (the "**birth notice**") must be given by the responsible person to—
 - (a) the Chief Executive Officer of the council of the municipal district in which the mother of the child usually resides; or
 - (b) if the municipal district is not known to the person giving notice, the Chief Executive Officer of the council of the municipal district in which the birth occurs; or
 - (c) if the mother of the child usually resides outside Victoria, the Secretary.
- (2) The notice must be in the prescribed form.
- (3) In this section, "**responsible person**" has the same meaning as it has in section 12 of the **Births, Deaths and Marriages Registration Act 1996**.

44. How must the birth notice be given?

- (1) The birth notice must be given—
 - (a) personally; or
 - (b) by post; or
 - (c) by facsimile transmission; or
 - (d) by electronic communication.
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Part 7—Birth Notification

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- (2) The birth notice must be given within—
- (a) 48 hours after the birth to which the notice relates; or
 - (b) if a longer period is prescribed in respect of a particular municipal district, that longer period.

45. What must be done once notice is received?

On receipt of the birth notice the Chief Executive Officer of a council must, as soon as practicable, send a copy of the notice—

- (a) if in the municipal district of the council there is a Maternal and Child Health Centre under the control of and subsidised by the council, to the nurse whose duty it is to visit or communicate with the house to which the notice relates; or
- (b) in any other case, to the Secretary.

46. Offence to fail to give notice

- (1) Any person who fails to give notice of a birth in accordance with this Part is guilty of an offence and is liable to a penalty of not more than 1 penalty unit.
 - (2) It is a defence to a prosecution for an offence under sub-section (1) if the person—
 - (a) satisfies the court that he or she had reasonable grounds to believe that notice had been duly given by another person; or
 - (b) had other reasonable grounds for not giving the notice.
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Part 8—General

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PART 8—GENERAL

47. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

48. Repeal

Part IX of the **Health Act 1958** is repealed.

See:
Act No.
6270.
Reprint No. 10
as at
1 July 2002
and
amending
Act Nos
48/1988,
46/2003,
36/2004,
108/2004,
12/2005,
42/2005 and
62/2005.
LawToday:
www.dms.
dpc.vic.
gov.au

Child Wellbeing and Safety Act 2005
Act No. 83/2005

Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 6 October 2005

Legislative Council: 15 November 2005

The long title for the Bill for this Act was "to establish principles for the wellbeing of children, to establish the Victorian Children's Council and the Children's Services Co-ordination Board, to provide for the Child Safety Commissioner and to confer functions and powers on the Child Safety Commissioner in relation to the safety of children, to provide for the notification of births to municipal councils, to repeal Part IX of the **Health Act 1958** and for other purposes."

Child Wellbeing and Safety Act 2005
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