

Children Legislation Amendment (Reportable Conduct) Bill 2016 (Vic)

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Introduction

The *Children Legislation Amendment (Reportable Conduct) Bill (Vic)* (the **Bill**) which will amend the *Child Wellbeing and Safety Act 2005 (Vic)* (the **Act**) passed the Upper House of the Parliament of Victoria on 23 February 2017 and is awaiting Royal Assent.

The Bill is due to commence on 1 September 2017 (unless it comes into force earlier).

New reportable conduct scheme – who does it apply to?

The purpose of the Bill is to establish a new reportable conduct scheme (**scheme**) in Victoria that requires an allegation of *reportable conduct* involving a child, committed by an employee within or connected to certain entities, to be reported by the entity to the Commission for Children and Young People (**Commission**).

Reportable conduct includes a sexual offence or misconduct involving a child, physical violence against a child, significant neglect of a child and any behaviour that is likely to cause significant emotional or psychological harm to a child.

The scheme applies to entities listed in Schedules 3, 4 and 5 of the Bill (**entities**). Schedule 3 entities will be required to comply with the scheme from the day the Bill commences and those **Schedule 3 entities** include:

- out of home care service;
- registered schools;
- disability service providers that provide residential services for children with a disability;
- mental health service providers that provide in-patient beds;
- government departments;
- applicable entities that receive State funding to provide child protection services, in-patient beds for drug or alcohol treatment or overnight beds for children as part of housing services or assistance to homeless persons.



Those entities listed in Schedule 4 of the Bill (**Schedule 4 entities**)

will be required to

comply with the scheme from the day 6 months after the Bill commences. Schedule 4 entities include:

- religious bodies;
- hospitals;
- disability service providers;
- other entities providing disability services.

The entities listed in Schedule 5 of the Bill (**Schedule 5 entities**) will be required to comply with the Scheme from the day which is 18 months after the Bill commences. Schedule 5 entities include children's services; approved providers under the *Education and Care Services National Law (Victoria)*, and any prescribed entity that is constituted by or under any Act and that has functions of a public nature.

Obligations imposed on entities

Organisations that are Schedule 3, 4 or 5 entities in accordance with the Bill should be aware that the Bill will introduce section 16K to the Act which requires the head of an entity to ensure that systems are in place to prevent reportable conduct within the course of an employee's employment, and to investigate and respond to any *reportable allegation* (being a reasonable belief that an employee has committed reportable conduct), and to enable any person to notify the head of the entity of a reportable allegation.

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In addition, the newly introduced section 16M requires the head of an entity to notify the Commission of certain matters, and within a required timeframe when it becomes aware of a reportable allegation against an employee of the entity. Failure to comply with section 16M is a criminal offence incurring a sanction of 10 penalty units.

The new section 16N will impose an obligation on the head of an entity to respond to reportable allegations, by investigating the reportable allegation

or permitting a regulator or independent investigator engaged by the entity or regulator to do so.

Finally, organisations that are Schedule 3, 4 or 5 entities in accordance with the Bill should be aware the newly introduced section 16ZA requires an entity or the head of an entity to provide any assistance to the Commission that is required in connection with the performance of the Commission's functions under the Bill.

If you have any questions arising out of this article, please contact [Ksandra Maruna](tel:(03)98651320) on (03) 9865 1320 or email ksandra.maruna@healthlegal.com.au.