

Schedule 1

Failure to disclose sexual offence committed against child under the age of 16 years

Section 327 – Crimes Act 1958 (Vic)

327 Failure to disclose sexual offence committed against child under the age of 16 years

(1) In this section—

interests includes reputation, legal liability and financial status;

organisation includes a body corporate or an unincorporated body or association, whether the body or association—

(a) is based in or outside Australia; or

(b) is part of a larger organisation;

sexual offence means—

- (a) an offence under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) of Division 1 of Part I or under any corresponding previous enactment; or
- (b) an attempt to commit an offence referred to in paragraph (a); or
- (c) an assault with intent to commit an offence referred to in paragraph (a).

(2) Subject to subsections (5) and (7), a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a police officer as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

Penalty: 3 years imprisonment.

(3) For the purposes of subsection (2) and without limiting that subsection, a person has a reasonable excuse for failing to comply with that subsection if—

- (a) the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the sexual offence) were the person to disclose the information to police (irrespective of whether the fear arises because of the fact of disclosure or the information disclosed) and the failure to disclose the information to police is a reasonable response in the circumstances; or

- (b) the person believes on reasonable grounds that the information has already been disclosed to police by another person and the firstmentioned person has no further information.

Example

A person may believe on reasonable grounds that the information has already been disclosed to police by another person if the person has made a report disclosing all of the information in his or her possession in compliance with mandatory reporting obligations under the **Children, Youth and Families Act 2005**.

- (4) For the purposes of subsection (2) and without limiting that subsection, a person does not have a reasonable excuse for failing to comply with that subsection only because the person is concerned for the perceived interests of—
- (a) the person reasonably believed to have committed, or to have been involved in, the sexual offence; or
- (b) any organisation.
- (5) A person does not contravene subsection (2) if—
- (a) the information forming the basis of the person's belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and
- (b) the victim was of or over the age of 16 years at the time of providing that information to any person; and
- (c) the victim requested that the information not be disclosed.
- (6) Subsection (5) does not apply if—
- (a) at the time of providing the information, the victim of the alleged sexual offence—
- (i) has an intellectual disability (within the meaning of the **Disability Act 2006**); and
- (ii) does not have the capacity to make an informed decision about whether or not the information should be disclosed; and
- (b) the person to whom the information is provided is aware, or ought reasonably to have been aware, of those facts.
- (7) A person does not contravene subsection (2) if—
- (a) the person comes into possession of the information referred to in subsection (2) when a child; or
- (b) the information referred to in subsection (2) would be privileged under Part 3.10 of Chapter 3 of the **Evidence Act 2008**; or

- (c) the information referred to in subsection (2) is a confidential communication within the meaning of section 32B of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (d) the person comes into possession of the information referred to in subsection (2) solely through the public domain or forms the belief referred to in subsection (2) solely from information in the public domain; or
- (e) the person is a police officer acting in the course of his or her duty in respect of the victim of the alleged sexual offence; or
- (f) the victim of the alleged sexual offence has attained the age of 16 years before the commencement of section 4 of the **Crimes Amendment (Protection of Children) Act 2014**.

328 Protection of those who disclose under section 327

A disclosure made under section 327(2) 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
- (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 346 of the **Mental Health Act 2014**.

329 Evidence and legal proceedings

- (1) In any legal proceeding evidence may be given as to the information contained in a disclosure under section 327(2).
- (2) However in a legal proceeding evidence that a particular matter is contained in information disclosed under section 327(2) or evidence that identifies the person who made that disclosure, or is likely to lead to the identification of that person is only admissible in the proceeding if—
 - (a) the court or tribunal grants leave for the evidence to be given; or
 - (b) the person who made the disclosure consents in writing to the admission of that evidence.
- (3) A witness appearing in a legal proceeding 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 disclosure under section 327(2) or would or might lead to the identification of that person; or

- (b) any question as to whether a particular matter is contained in information disclosed under section 327(2)—

unless the court or tribunal grants leave for the question to be asked or the person who made the disclosure has consented in writing to the question being asked.

- (4) A court or tribunal may only grant leave under subsection (2) or (3) if it is satisfied that the interests of justice require that the evidence be given.

330 Confidentiality

- (1) If a disclosure is made under section 327(2), 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 a police officer or the Secretary (within the meaning of the **Children, Youth and Families Act 2005**) or any other person to the extent reasonably required for law enforcement purposes—

- (a) the name of the person who made the disclosure; or
- (b) any information that is likely to lead to the identification of the person who made the disclosure.

Penalty: Level 8 imprisonment (1 year maximum).

- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 329.
- (3) Part 4.4 of Chapter 4 of the **Children, Youth and Families Act 2005** applies to information disclosed under subsection (1) to the Secretary (within the meaning of that Act) as if it were a report under Division 2 of that Part.