Justice Legislation Amendment (Victims) Act 2018

**No. of 2018**

**table of provisions**

*Clause Page*

Part 1—Preliminary 1

1 Purposes 1

2 Commencement 3

Part 2—Sexual offences and forensic information 4

Division 1—Amendment of Crimes Act 1958 4

3 Definitions 4

4 Effect of intoxication on reasonable belief 4

5 Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child's consent 4

6 Failure to disclose sexual offence committed against child under the age of 16 years 5

7 Section 425 repealed 6

8 Records of juvenile 6

9 Forensic information from juveniles 6

10 New section 633 inserted 7

Division 2—Amendment of Criminal Procedure Act 2009 8

11 Definitions 8

12 Section 4 substituted 9

13 Application of Division 5 of Part 8.2 12

14 Application of Division 7A of Part 8.2 12

15 Audiovisual link evidence from overseas in certain proceedings 14

16 New section 450 inserted 14

17 Schedule 1 amended 15

Division 3—Amendment of other Acts 15

18 Judicial Proceedings Reports Act 1958 15

19 Jury Directions Act 2015 15

20 Summary Offences Act 1966 15

21 Victims' Charter Act 2006 15

22 Victims of Crime Assistance Act 1996 16

Part 3—Amendment of Children, Youth and Families Act 2005 17

23 Restriction on publication of proceedings 17

24 New section 534A inserted 17

Part 4—Amendment of Criminal Procedure Act 2009 19

Division 1—New Part 8.2A inserted 19

25 New Part 8.2A inserted 19

Division 2—Consequential and statute law revision amendments 26

26 Definitions 26

27 Special rules applicable to sexual offences 27

28 When accused is not legally represented 27

29 Application of this Division 27

30 Regulations 27

31 New section 451 inserted 28

Part 5—Amendment of Sentencing Act 1991 29

32 Sentencing guidelines 29

33 New section 5AA inserted 29

34 New section 164 inserted 30

35 Schedule 1 amended 30

Part 6—Amendment of Serious Sex Offenders (Detention and Supervision) Act 2009 31

36 Schedule 1 amended 31

Part 7—Amendment of Victims of Crime Assistance Act 1996 32

37 Time for making application 32

38 New section 82 inserted 32

Part 8—Amendment of Family Violence Protection Act 2008 33

39 Information sharing entity authorised to share confidential information despite specified provisions 33

40 Procedural requirements for person directed to a police station, or person apprehended and detained 33

41 Schedule 1 amended 33

Part 9—Statute law revision 34

42 Crimes Act 1958 34

43 Jury Directions Act 2015 34

Part 10—Repeal of amending Act 35

44 Repeal of amending Act 35

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Endnotes 36

1 General information 36

**Justice Legislation Amendment (Victims) Act 2018[[1]](#endnote-2)**

**No. of 2018**

[Assented to ]

**The Parliament of Victoria** **enacts:**

Part 1—Preliminary

 1 Purposes

The purposes of this Act are—

 (a) to amend the **Crimes Act 1958**—

 (i) in relation to sexual offences; and

 (ii) in relation to the destruction of fingerprints, DNA samples and related forensic material and information; and

 (iii) to make other minor and technical changes; and

 (b) to amend the **Sentencing Act 1991**—

 (i) in relation to the presence of certain mitigating factors in the sentencing of an offender in respect of a child sexual offence; and

 (ii) to provide for a further historical sexual offence to which Part 2A applies in the sentencing of a serious sexual offender; and

 (c) to amend the **Criminal Procedure Act 2009**—

 (i) in relation to sexual offences; and

 (ii) to provide for ground rules hearings in relation to the questioning of certain witnesses; and

 (iii) to provide for intermediaries for certain witnesses; and

 (d) to amend the **Victims of Crime Assistance Act 1996** to provide that an application may be made at any time in respect of an act of violence against a person under 18 years that consists of physical abuse or sexual abuse; and

 (e) to amend various other Acts to update and modify references to various sexual offences; and

 (f) to make other minor and consequential amendments to various other Acts.

 2 Commencement

 (1) This Act (other than sections 32 and 33 and Parts 6, 7 and 8) comes into operation on the day after the day on which this Act receives the Royal Assent.

 (2) Subject to subsection (3), sections 32 and 33 and Parts 6, 7 and 8 come into operation on a day or days to be proclaimed.

 (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2018, it comes into operation on that day.

Part 2—Sexual offences and forensic information

Division 1—Amendment of Crimes Act 1958

 3 Definitions

 (1) In section 35(1) of the **Crimes Act 1958**, for the definition of ***vagina*** **substitute**—

"***vagina*** includes the external genitalia;".

 (2) After section 35(2) of the **Crimes Act 1958** **insert**—

 "(3) For the purposes of Subdivisions (8A) to (8FA), a reference to a part of the body includes a reference to a surgically altered or constructed part of the body.".

 4 Effect of intoxication on reasonable belief

 (1) In section 36B(2) of the **Crimes Act 1958**—

 (a) after paragraph (c) **insert**—

 "(ca) from the use of a medicinal cannabis product in accordance with a patient medicinal cannabis access authorisation; or";

 (b) in paragraph (d), after "not required" **insert** "(other than a medicinal cannabis product)".

 (2) In section 36B(3) of the **Crimes Act 1958**, for "(2)(c) or (d)" **substitute** "(2)(c), (ca) or (d)".

 5 Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child's consent

In section 51P(1)(d) of the **Crimes Act 1958**, for "did" **substitute** "does".

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

In section 327(1) of the **Crimes Act 1958**, for the definition of ***sexual offence*** **substitute**—

"***sexual offence*** means—

 (a) an offence committed under Subdivision (8A), (8B), (8C), (8E), (8F) or (8FA) of Division 1 of Part I on or after 1 July 2017; or

 (b) an offence committed under Subdivision (8D) of Division 1 of Part I on or after 1 July 2017 other than an offence that only relates to child abuse material of a kind described in paragraph (a)(i)(A) of the definition of ***child abuse material*** in section 51A(1), where the torture, cruelty or abuse is not sexual; or

**Example**

An offence committed under Subdivision (8D) of Division 1 of Part I that relates to child abuse material that depicts or describes a child as a victim of sexual abuse.

 (c) an offence committed before 1 July 2017 under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) as then in force; or

 (d) an attempt to commit an offence referred to in paragraph (a), (b) or (c); or

 (e) an assault with intent to commit an offence referred to in paragraph (a), (b) or (c).".

 7 Section 425 repealed

Section 425 of the **Crimes Act 1958** is **repealed**.

 8 Records of juvenile

For section 464P(2) of the **Crimes Act 1958** **substitute**—

 "(2) Subsection (1) does not apply to fingerprints retained as a result of a finding of guilt of an offence if—

 (a) the offence is—

 (i) an offence against this Act; or

 (ii) an offence at common law the maximum penalty for which is specified by this Act; and

 (b) the offence is punishable by level 4 imprisonment (15 years maximum) or more (however the penalty is described).".

 9 Forensic information from juveniles

For section 464ZGA(2) of the **Crimes Act 1958** **substitute**—

 "(2) Subsection (1) does not apply if—

 (a) the person from whom the sample was taken is found guilty of—

 (i) the offence in relation to which the forensic procedure was conducted; or

 (ii) an offence arising out of the same circumstances as the offence referred to in subparagraph (i); or

 (iii) an offence in respect of which evidence obtained as a result of the forensic procedure had probative value; and

 (b) the offence of which the person is found guilty is—

 (i) an offence against this Act; or

 (ii) an offence at common law the maximum penalty for which is specified by this Act; and

 (c) the offence of which the person is found guilty is punishable by level 4 imprisonment (15 years maximum) or more (however the penalty is described); and

 (d) the sample—

 (i) was taken in accordance with an order under section 464ZF(2); or

 (ii) is the subject of an order under section 464ZFB(1).".

 10 New section 633 inserted

At the end of Part 7 of the **Crimes Act 1958** **insert**—

 "633 Transitional provision—Justice Legislation Amendment (Victims) Act 2018

 (1) Despite the amendment made to section 464ZGA by section 9 of the **Justice Legislation Amendment (Victims) Act 2018**, section 464ZGA as in force immediately before the commencement day continues to apply to—

 (a) a sample that was taken in accordance with an order under section 464ZF(2) that was made before the commencement day; or

 (b) a sample in respect of which an order under section 464ZFB(1) was made before the commencement day.

 (2) Section 464ZGA, as amended by section 9 of the **Justice Legislation Amendment (Victims) Act 2018**, applies in relation to a sample—

 (a) taken in accordance with an order under section 464ZF(2) that was made on or after the commencement day; or

 (b) that is the subject of an order under section 464ZFB(1) that was made on or after the commencement day.

 (3) In this section—

***commencement day*** means the day on which section 9 of the **Justice Legislation Amendment (Victims) Act 2018** comes into operation.".

Division 2—Amendment of Criminal Procedure Act 2009

 11 Definitions

 (1) In section 3 of the **Criminal Procedure Act 2009** **insert** the following definition—

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

 (2) In section 3 of the **Criminal Procedure Act 2009**, for the definition of ***sexual offence*** **substitute**—

"***sexual offence*** has the meaning given by section 4;".

 12 Section 4 substituted

For section 4 of the **Criminal Procedure Act 2009** **substitute**—

 "4 Meaning of sexual offence

 (1) In this Act, ***sexual offence*** means any of the following offences (other than an offence excluded by subsection (2))—

 (a) an offence against—

 (i) a provision of Subdivision (8A), (8B), (8C), (8D), (8E), (8F) or (8FA) of Division 1 of Part I of the **Crimes Act 1958**; or

 (ii) section 327(2) (failure to disclose a sexual offence committed against a child under the age of 16 years) of the **Crimes Act 1958**; or

 (iii) section 5(1), 6(1), 7(1), 8(1), 9(1) or 11(1) of the **Sex Work Act 1994**;

 (b) an offence an element of which involves—

 (i) any person engaging in sexual activity; or

 (ii) any person taking part in a sexual act; or

 (iii) commercial sexual services; or

 (iv) a sexual performance involving a child;

 (c) an offence an element of which involves—

 (i) an intention that any of the conduct referred to in paragraph (b) is to occur; or

 (ii) soliciting, procuring, enabling or threatening any of the conduct referred to in paragraph (b); or

 (iii) inducing or knowingly allowing a child to enter or remain on premises so that any of the conduct referred to in paragraph (b) may occur;

 (d) an offence an element of which involves child abuse material;

 (e) an offence an element of which involves indecency;

 (f) an offence of attempting to commit, or of incitement or conspiracy to commit, an offence referred to in paragraph (a), (b), (c), (d) or (e);

 (g) an offence against section 49C(2) (failure by person in authority to protect child from sexual offence) of the **Crimes Act 1958** as in force before the commencement of section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

 (2) An offence against a provision of the **Sex Work Act 1994** that is not referred to in subsection (1)(a)(iii) is not a sexual offence.

 (3) In determining whether an offence at common law is a sexual offence, it does not matter that the offence has since been abolished.

 (4) In determining whether an offence against an enactment is a sexual offence, it does not matter that the enactment has since been repealed.

 (5) In determining whether an offence is a sexual offence, it does not matter that the offence is described in this section—

 (a) differently from how it is described in the enactment or common law that establishes the offence; or

 (b) by reference to an enactment that was not in operation on the date on which the offence is alleged to have been committed.

**Example**

Subdivision (13) of Division 1 of Part I of the **Crimes Act 1958** previously included offences involving child pornography. That Subdivision has been repealed and replaced by new offences that refer to child abuse material rather than child pornography. ***Child pornography*** was defined to include material of a certain kind, and ***child abuse material*** is now defined as also including material of that kind. An offence against a provision of repealed Subdivision (13) is therefore a sexual offence under subsection (1)(d).

 (6) In this section—

***commercial sexual services*** has the meaning given by section 53A of the **Crimes Act 1958**;

***sexual***, in relation to an activity, has the meaning given by section 35D of the **Crimes Act 1958**;

***sexual performance*** has the meaning given by section 49Q(3) of the **Crimes Act 1958**;

***taking part in a sexual act*** has the meaning given by section 35C of the **Crimes Act 1958**.".

 13 Application of Division 5 of Part 8.2

In section 366(1)(b) of the **Criminal Procedure Act 2009**, for "person." **substitute** "person; or".

 14 Application of Division 7A of Part 8.2

For section 387A(1) of the **Criminal Procedure Act 2009** **substitute**—

 "(1) This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for—

 (a) an offence against any of the following provisions of the **Crimes Act 1958**—

 (i) section 38 (rape);

 (ii) section 39 (rape by compelling sexual penetration);

 (iii) section 49A (sexual penetration of a child under the age of 12);

 (iv) section 49B (sexual penetration of a child under the age of 16);

 (v) section 49C (sexual penetration of a child aged 16 or 17 under care, supervision or authority);

 (vi) section 49D (sexual assault of a child under the age of 16);

 (vii) section 49E (sexual assault of a child aged 16 or 17 under care, supervision or authority);

 (viii) section 49F (sexual activity in the presence of a child under the age of 16);

 (ix) section 49G (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority);

 (x) section 49H (causing a child under the age of 16 to be present during sexual activity);

 (xi) section 49I (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity);

 (xii) section 49J (persistent sexual abuse of a child under the age of 16);

 (xiii) section 50C (sexual penetration of a child or lineal descendant);

 (xiv) section 50D (sexual penetration of a step-child);

 (xv) section 50E (sexual penetration of a parent, lineal ancestor or step‑parent);

 (xvi) section 50F (sexual penetration of a sibling or half-sibling); or

 (b) an offence of attempting to commit, or of incitement or conspiracy to commit, an offence referred to in paragraph (a).".

 15 Audiovisual link evidence from overseas in certain proceedings

 (1) For section 389(1) of the **Criminal Procedure Act 2009** **substitute**—

 "(1) This section applies to a criminal proceeding that relates (wholly or partly) to a charge for an offence against—

 (a) section 49S(1) of the **Crimes Act 1958**; or

 (b) section 49A(1) of the **Crimes
Act 1958** as in force before the commencement of section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.".

 (2) In section 389(8) of the **Criminal Procedure Act 2009**, for "an offence against section 49A(1) of the **Crimes Act 1958**" **substitute** "an offence referred to in subsection (1)".

 16 New section 450 inserted

At the end of Chapter 10 of the **Criminal Procedure Act 2009** **insert**—

 "450 Transitional provision—Justice Legislation Amendment (Victims)
Act 2018—section 387A

Section 387A(1) as in force immediately before the commencement of section 14 of the **Justice Legislation Amendment (Victims) Act 2018** continues to apply to a criminal proceeding as if section 387A(1) had not been amended if—

 (a) the criminal proceeding is commenced after the commencement of section 14 of that Act; and

 (b) the proceeding relates (wholly or partly) to a charge for an offence against a provision referred to in section 387A(1) before that commencement.".

 17 Schedule 1 amended

In Schedule 1 to the **Criminal Procedure Act 2009**, for the note at the foot of clause 4A(1) **substitute**—

"**Note**

***Sexual offence*** is defined in section 4.".

Division 3—Amendment of other Acts

 18 Judicial Proceedings Reports Act 1958

In section 4(1) of the **Judicial Proceedings Reports Act 1958**, in the definition of ***sexual offence***, after "(8C)," **insert** "(8D),".

 19 Jury Directions Act 2015

In the note at the foot of section 46(2) of the **Jury Directions Act 2015**, for "section 36" **substitute** "Section 36".

 20 Summary Offences Act 1966

After section 19(6) of the **Summary Offences Act 1966** **insert**—

 "(7) In this section, a reference to genitals includes a reference to surgically altered or constructed genitals.".

 21 Victims' Charter Act 2006

In section 3(1) of the **Victims' Charter Act 2006**, in the definition of ***victim***, in paragraph (d)—

 (a) for "section 49B" **substitute** "section 49M";

 (b) after "sexual conduct with" **insert** "a";

 (c) **omit** "years".

 22 Victims of Crime Assistance Act 1996

In section 3(1) of the **Victims of Crime Assistance Act 1996**, in the definition of ***relevant offence***, in paragraph (b), for "(8E) or (8FA)" **substitute** "(8D), (8E), (8F) or (8FA)".

Part 3—Amendment of Children, Youth and Families Act 2005

 23 Restriction on publication of proceedings

 (1) In section 534(4) of the **Children, Youth and Families Act 2005**, after "(3B)" **insert** "or section 534A(2)".

 (2) At the foot of section 534 of the **Children, Youth** **and Families Act 2005** **insert**—

"**Note**

See section 534A for a further exception to section 534(1).".

 24 New section 534A inserted

After section 534 of the **Children, Youth and Families Act 2005** **insert**—

 "534A Certain publications exempted from the restriction on publication of proceedings

 (1) Subject to subsection (2), section 534(1) does not apply to the publication of—

 (a) a report of a proceeding in the Criminal Division of the Court, or of a proceeding in any other court arising out of a proceeding in that Division, that contains particulars likely to lead to the identification of a witness in the proceeding, if the witness—

 (i) is a victim or alleged victim; and

 (ii) is of or above the age of 18 years at the time of publication; or

 (b) a picture as being or including a picture of a witness referred to in paragraph (a).

 (2) Subsection (1) does not apply if the publication would be likely to lead to the identification of—

 (a) the particular venue of the Children's Court, other than the Koori Court (Criminal Division) or the Neighbourhood Justice Division, in which the proceeding was heard; or

 (b) a child or other party to the proceeding; or

 (c) a witness in the proceeding, other than a witness referred to in subsection (1)(a).

 (3) For the purposes of this section, ***alleged*** ***victim*** means a person who would be a victim in relation to an offence if the offence were proven.".

Part 4—Amendment of Criminal Procedure Act 2009

Division 1—New Part 8.2A inserted

 25 New Part 8.2A inserted

After Part 8.2 of the **Criminal Procedure Act 2009 insert**—

"Part 8.2A—Ground rules hearings and intermediaries

Division 1—Ground rules hearings

 389A Application of Division

 (1) This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for—

 (a) a sexual offence; or

 (b) an offence if the conduct constituting the offence consists of family violence within the meaning of the **Family Violence Protection Act 2008**; or

 (c) an indictable offence which involves an assault on, or injury or a threat of injury to, a person; or

 (d) any offences against section 23 or 24 of the **Summary Offences Act 1966** if the offences are related offences to an offence specified in paragraph (a) or (c), despite whether any such related offences are withdrawn or dismissed before an offence against section 23 or 24 of the **Summary Offences Act 1966** is heard and determined.

 (2) This Division applies at any stage of the criminal proceeding, including an appeal or rehearing.

 (3) This Division applies to a witness (including a complainant) other than the accused in a criminal proceeding referred to in subsection (1) if the witness is—

 (a) a person under the age of 18 years; or

 (b) a person with a cognitive impairment.

 (4) In this Division, ***witness*** means a witness referred to in subsection (3).

 389B Ground rules hearing to be held

 (1) The court may direct that a ground rules hearing under this Division is to be held.

**Note**

Section 337(1) enables this direction to be made by the court on the application of a party or on its own motion.

 (2) An application for the court to direct that a ground rules hearing is to be held may be made orally or in writing.

 (3) A ground rules hearing must be held if an intermediary is appointed under Division 2.

 389C Time limits for ground rules hearing

 (1) If a ground rules hearing is to be held, it must be held before the commencement of any hearing at which a witness is to give evidence.

 (2) The court may extend the time for holding a ground rules hearing if the court considers that it is in the interests of justice to do so.

 (3) The court may extend time under subsection (2) before or after the time expires.

 (4) More than one extension of time may be granted under subsection (2).

 389D Attendance for ground rules hearings

 (1) The following persons must attend a ground rules hearing—

 (a) a person acting for the prosecution;

 (b) the legal practitioner representing the accused or, if the accused is unrepresented, the accused;

 (c) the intermediary appointed for a witness, if any.

 (2) A witness is not required to attend a ground rules hearing.

 (3) The court may make an order that a witness for whom an intermediary is appointed not attend a ground rules hearing.

 389E Directions which may be given at ground rules hearings

 (1) At a ground rules hearing, the court may make or vary any direction for the fair and efficient conduct of the proceeding.

 (2) Without limiting subsection (1), the court may give one or more of the following directions—

 (a) a direction about the manner of questioning a witness;

 (b) a direction about the duration of questioning a witness;

 (c) a direction about the questions that may or may not be put to a witness;

 (d) if there is more than one accused, a direction about the allocation among the accused of the topics about which a witness may be asked;

 (e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;

 (f) a direction that if a party intends to lead evidence that contradicts or challenges the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.

**Note**

A direction referred to in paragraph (f) may exclude all or part of the operation of the rule attributed to *Browne v Dunn* (1893) 6 R 67 followed and applied in criminal proceedings in Victoria in *R v McDowell* [1997] 1 VR 473 (CA), *R v MG* (2006) 175 A Crim R 342,
*R v SWC* (2007) 175 A Crim R 71 and *R v Ferguson* (2009) VR 531 in the circumstances in which, and in relation to witnesses to which, this Division applies.

Division 2—Intermediaries

 389F Application of Division

 (1) This Division applies to a witness (other than the accused) in a criminal proceeding if—

 (a) at the time at which the proceeding commences, the witness—

 (i) is under the age of 18 years; or

 (ii) has a cognitive impairment; and

 (b) the criminal proceeding is in a participating venue of a court.

 (2) This Division applies at any stage of the criminal proceeding, including an appeal or rehearing.

 (3) In this Division (other than in section 389J(4)(c)), ***witness*** means a witness referred to in subsection (1).

 389G Participating venues of courts

The Minister may, by notice published in the Government Gazette, declare a venue of a court to be a participating venue for the purposes of this Division.

 389H Panel of intermediaries

 (1) The Secretary to the Department of Justice and Regulation must establish a panel of persons who the Secretary is satisfied are suitable persons to be appointed as intermediaries.

 (2) A person must not be on the panel unless the person—

 (a) has a tertiary qualification in psychology, social work, speech pathology or occupational therapy; or

 (b) has other prescribed qualifications, training, experience or skills.

 (3) The Secretary to the Department of Justice and Regulation must remove a person from the panel if the Secretary is no longer satisfied that the person is a suitable person to be appointed as an intermediary.

 389I Function of intermediaries

 (1) The function of an intermediary is—

 (a) to communicate or explain to a witness for whom an intermediary is appointed, questions put to the witness to the extent necessary to enable them to be understood by the witness; and

 (b) to communicate or explain to a person asking questions of a witness for whom an intermediary is appointed, the answers given by the witness in reply to the extent necessary to enable them to be understood by the person.

 (2) An intermediary is an officer of the court and has a duty to act impartially when assisting communication with the witness.

 389J Appointment of intermediaries

 (1) A court may appoint an intermediary for a witness from the panel established under this Division.

**Notes**

1 Section 337(1) enables this appointment to be made by the court on the application of a party or on its own motion.

2 Section 337(2) provides that this appointment may be varied or revoked.

 (2) An application for a court to appoint an intermediary may be made orally or in writing.

 (3) A court must not appoint an intermediary for a witness if the court is satisfied that the witness—

 (a) is aware of the right of the witness to make an application for an intermediary to be appointed; and

 (b) is able and wishes to give evidence in the criminal proceeding without the assistance of an intermediary.

 (4) A court must not appoint a person as an intermediary for a witness if the person—

 (a) is a relative, friend or acquaintance of the witness or the accused; or

 (b) has assisted the witness (other than as an intermediary) or the accused in a professional capacity; or

 (c) is a party or potential witness (other than by reason of the person's role as an intermediary) in the relevant proceeding.

 389K Witness to give evidence in presence of intermediary

 (1) In a proceeding in which an intermediary has been appointed, the evidence of the witness must be given in the presence of the intermediary.

 (2) Subject to any direction of the court and rules of court, the evidence of the witness given in the presence of the intermediary must be given in circumstances in which—

 (a) the court and any legal practitioner appearing in the proceeding are able to see and hear the witness giving evidence and to communicate with the intermediary; and

 (b) the jury (if any) is able to see and hear the witness giving evidence (including any assistance given by the intermediary), other than evidence given in accordance with an arrangement made under section 360(a) as directed by the
court.

 (3) The provisions of Division 2 (other than section 22(2)) of Part 2.1 of the **Evidence Act 2008** which apply to interpreters are taken to apply to an intermediary.

**Note**

Section 22(2) of the **Evidence Act 2008** requires interpreters to take an oath or make an affirmation in accordance with a form in Schedule 1 to that Act or a similar form.

 (4) A person must not act as an intermediary in a particular proceeding unless the person has taken an oath or made an affirmation in the prescribed form.".

Division 2—Consequential and statute law revision amendments

 26 Definitions

In section 3 of the **Criminal Procedure Act 2009 insert** the following definitions—

"***ground rules hearing*** means a hearing conducted in accordance with Division 1 of Part 8.2A;

***intermediary*** means a person appointed under section 389J;".

 27 Special rules applicable to sexual offences

After section 133(3)(c) of the **Criminal Procedure Act 2009 insert**—

 "(ca) a person who is appointed as an intermediary for the complainant;".

 28 When accused is not legally represented

In section 357(5) of the **Criminal Procedure Act** **2009**, for "If" **substitute** "Subject to any direction given under section 389E(f), if".

 29 Application of this Division

In section 366(1)(d) of the **Criminal Procedure Act 2009**, for "paragraph (a), (b) or (c)" **substitute** "paragraph (a), (ab) or (b)".

 30 Regulations

In section 420(1) of the **Criminal Procedure Act 2009**—

 (a) in paragraph (c)—

 (i) after "witnesses" **insert** ", intermediaries";

 (ii) in subparagraph (ii), after "Magistrates' Court" **insert** "and Children's Court";

 (b) for paragraph (ea) **substitute**—

 "(ea) the making, use (including for training and evaluation purposes), possession, copying, storage, access to and destruction of an audio or audiovisual recording referred to in Chapter 4 or 5 or Part 8.2 or made in a proceeding in which an intermediary is appointed under Part 8.2A or any copy or transcript of such an audio or audiovisual recording.".

 31 New section 451 inserted

At the end of Chapter 10 of the **Criminal Procedure Act 2009 insert**—

 "451 Transitional provision—Justice Legislation Amendment (Victims) Act 2018—Part 8.2A

Part 8.2A as inserted by section 25 of the **Justice Legislation Amendment (Victims) Act 2018** applies to a criminal proceeding commenced, or in which the accused is committed for trial, on or after the day on which that section comes into operation, irrespective of when the offence is alleged to have been committed.".

Part 5—Amendment of Sentencing Act 1991

 32 Sentencing guidelines

At the foot of section 5(2) of the **Sentencing Act 1991** **insert**—

"**Note**

See section 5AA in relation to the court having regard to previous good character or lack of previous findings of guilt or convictions in certain circumstances.".

 33 New section 5AA inserted

After section 5 of the **Sentencing Act 1991** **insert**—

 "5AA Court not to have regard to previous good character or lack of previous findings of guilt or convictions in certain circumstances

 (1) Despite section 5(2), in sentencing an offender for a child sexual offence, a court must not have regard to the offender's previous good character or lack of previous findings of guilt or convictions if the court is satisfied the offender's previous good character or lack of previous findings of guilt or convictions was of assistance to the offender in the commission of the offence.

 (2) Subsection (1) does not apply to an offender who is under the age of 18 years at the time of the commission of the offence.

 (3) In this section—

***child sexual offence*** means a sexual offence within the meaning of section 3 of the **Criminal Procedure Act 2009**, committed in relation to a person under the age of 18 years.".

 34 New section 164 inserted

At the end of Part 12 of the **Sentencing Act 1991** **insert**—

 "164 Transitional—Justice Legislation Amendment (Victims) Act 2018

 (1) The amendments made to this Act by sections 32 and 33 of the **Justice Legislation Amendment (Victims)** **Act 2018** apply to the sentencing of an offender on or after the commencement of those sections, irrespective of when the offence was committed.

 (2) The amendment made to this Act by section 35 of the **Justice Legislation Amendment (Victims) Act 2018** applies to a sentence imposed after the commencement of that section, irrespective of when the offence was committed.

 (3) For the purpose of this section, a sentence imposed by an appellate court on setting aside a sentencing order must be taken to have been imposed at the time the original sentencing order was made.".

 35 Schedule 1 amended

After clause 1(c) of Schedule 1 to the **Sentencing Act 1991** **insert**—

 "(ca) an offence, committed on or after 1 April 1959 and before 8 November 1967, against section 68(3) of the **Crimes Act 1958** as then in force, consisting of an indecent assault upon a male person;".

Part 6—Amendment of Serious Sex Offenders (Detention and Supervision) Act 2009

 36 Schedule 1 amended

In item 35 of Schedule 1 to the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "(c)," **substitute** "(c), (ca),".

Part 7—Amendment of Victims of Crime Assistance Act 1996

 37 Time for making application

 (1) After section 29(1) of the **Victims of Crime Assistance Act 1996** **insert**—

 "(1A) Despite subsection (1), an application may be made by avictim at any time after the occurrence of an act of violence consisting of physical abuse or sexual abuse if the act occurred when the victim was under the age of 18 years.".

 (2) After section 29(4) of the **Victims of Crime Assistance Act 1996** **insert**—

 "(5) In this section—

***sexual abuse*** means—

 (a) taking part in a sexual act within the meaning of section 35C of the **Crimes Act 1958**; or

 (b) an activity that is sexual within the meaning of section 35D of that Act.".

 38 New section 82 inserted

After section 81 of the **Victims of Crime Assistance Act 1996 insert**—

 "82 Transitional provision—Justice Legislation Amendment (Victims) Act 2018

Section 29 as in force on or after the commencement of section 37 of the **Justice Legislation Amendment (Victims) Act 2018** applies to an application that is in existence but not decided immediately before that commencement.".

Part 8—Amendment of Family Violence Protection Act 2008

 39 Information sharing entity authorised to share confidential information despite specified provisions

 (1) In the heading to section 144QC of the **Family Violence Protection Act 2008**, after "**sharing entity**" **insert** "**or Central Information Point**".

 (2) In section 144QC of the **Family Violence Protection Act 2008**, after "sharing entity" **insert** "or the Central Information Point".

 40 Procedural requirements for person directed to a police station, or person apprehended and detained

In section 17(7) of the **Family Violence Protection Act 2008**, after "property of the affected family member" **insert** "or of the protected person".

 41 Schedule 1 amended

For item 8 of Schedule 1 to the **Family Violence Protection Act 2008** **substitute**—

 "8 Section 178 of the **Fines Reform Act 2014**".

Part 9—Statute law revision

 42 Crimes Act 1958

In the heading to section 629 of the **Crimes Act 1958** (where first occurring), for "**629**" **substitute** "**628A**".

 43 Jury Directions Act 2015

In the note at the foot of section 46(2) to the **Jury Directions Act 2015**, for "section 36" **substitute** "Section 36".

Part 10—Repeal of amending Act

 44 Repeal of amending Act

This Act is **repealed** on 1 July 2019.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Endnotes

1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

By Authority. Government Printer for the State of Victoria.

1. *Minister's second reading speech—*

 *Legislative Assembly:*

 *Legislative Council:*

 The long title for the Bill for this Act was "A Bill for an Act to amend the **Children, Youth and Families Act 2005**, the **Crimes Act 1958**, the **Criminal Procedure Act 2009**, the **Family Violence Protection Act 2008**, the **Judicial Proceedings Reports Act 1958**, the **Jury Directions Act 2015**, the **Sentencing Act 1991**, the **Serious Sex Offenders (Detention and Supervision) Act 2009**, the **Summary Offences Act 1966**, the **Victims' Charter Act 2006** and the **Victims of Crime Assistance Act 1996** and for other purposes." [↑](#endnote-ref-2)