

TASMANIA

**CHILD AND YOUTH SAFE ORGANISATIONS
BILL 2022**

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CHILD AND YOUTH SAFE ORGANISATIONS BILL 2022

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*
30 March 2023

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to establish standards for the safety and wellbeing of children and youths, to provide for the responsibilities of certain entities in relation to those standards, to establish a reportable conduct scheme, to provide for the application, administration and monitoring of that scheme and for related matters

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Child and Youth Safe Organisations Act 2022*.

2. Commencement

This Act commences on 1 July 2023.

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3. Object of Act

Without limiting the provisions of the Act, the object of the Act is to protect and promote the best interests of children.

4. Interpretation

In this Act, unless the contrary intention appears –

child means a person who has not attained the age of 18 years;

conviction, in relation to an offence, includes –

(a) a finding of guilt; and

(b) the acceptance of a guilty plea –

whether or not a conviction is recorded in respect of the offence or the offence was committed in this State or elsewhere;

Deputy Regulator means the person appointed as the Deputy Independent Regulator under section 11;

document has the same meaning as in the *Evidence Act 2001*;

entity – see section 5;

entity regulator, in relation to an entity, means a body, determined to be the entity

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regulator in relation to the entity under section 9, that is one of the following:

- (a) a Government Agency that is responsible for regulating the entity;
- (b) a Government Agency that provides funding to the entity;
- (c) any other body –
 - (i) that regulates or funds the entity or a worker of the entity; and
 - (ii) that is prescribed for the purposes of this definition;

Government Agency means an Agency within the meaning of the *State Service Act 2000*;

guardian has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

head, in relation to an entity, means –

- (a) if the entity is a Government Agency, the Head of Agency within the meaning of the *State Service Act 2000*, or the delegate of the Head of Agency; or
- (b) if the regulations prescribe a person or class of persons as the

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head of an entity, the prescribed person or a member of the prescribed class of persons; or

(c) in any other case –

- (i) the chief executive officer of the entity (however titled or described); or
- (ii) if there is no chief executive officer, the principal officer of the entity (however titled or described); or
- (iii) if there is no chief executive officer or principal officer, a person, or the holder of a position, in the entity who is nominated by the entity as its head and approved by the Regulator;

independent investigator means an independent body or person that has appropriate qualifications, training, or experience, to investigate reportable allegations or reportable convictions;

law means a law of the Commonwealth, a State or a Territory;

recognised Aboriginal organisation means an organisation prescribed as a recognised

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Aboriginal organisation for the purposes of this Act;

recognised Torres Strait Islander organisation means an organisation prescribed as a recognised Torres Strait Islander organisation for the purposes of this Act;

Registrar means the Registrar appointed under section 11 of the *Registration to Work with Vulnerable People Act 2013*;

regulations means regulations made and in force under this Act;

Regulator means the person appointed as the Independent Regulator under section 11;

relevant entity means an entity, or a member of a class of entities –

- (a) specified in Schedule 3; or
- (b) prescribed for the purposes of this definition;

reportable allegation means information that leads a person to form a reasonable suspicion that a worker of an entity has committed reportable conduct, whether or not the alleged reportable conduct occurred within the course of the worker's duties in respect of the entity, and regardless of whether the alleged reportable conduct occurred before the commencement of this Act;

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reportable conduct – see section 7;

reportable conviction means a conviction for an offence that involves reportable conduct, regardless of whether the conduct or conviction occurred before the commencement of this Act;

scheme means the obligations and requirements in relation to reportable conduct set out in Part 4;

standards means the child and youth safe standards set out in Schedule 1;

worker – see section 8;

universal principle – means the requirement set out in section 15;

youth means a person who has attained the age of 16 years but has not attained the age of 18 years.

5. Meaning of *entity*

(1) In this section –

relevant body includes, but is not limited to –

- (a) the Crown; and
- (b) an individual who carries on a business; and
- (c) an incorporated body or association; and

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- (d) an unincorporated body or association (however structured).
- (2) For the purposes of this Act, a relevant body is an entity if –
- (a) the relevant body is an entity or a member of a class of entities –
 - (i) specified in Schedule 2 or 3; or
 - (ii) prescribed for the purposes of this section; and
 - (b) in performing the functions of, or undertaking the business of, the relevant body, all or any part of the relevant body –
 - (i) provides services specifically for children; or
 - (ii) provides facilities specifically for use by children who are under the supervision of the entity.

6. Meaning of *grooming*

- (1) For the purposes of section 7, grooming, in relation to a child, means conduct of a person that –
- (a) is intended to establish trust with the aim of normalising sexually harmful behaviour towards, or allowing the person to engage in an unlawful act,

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sexual offence, or sexual misconduct,
against, the child; and

(b) forms part of a pattern of manipulative or
controlling behaviour in relation to –

(i) the child; or

(ii) the child’s guardian, family or
friends; or

(iii) a worker of a relevant entity that
provides services to, or has
dealings with, the child.

(2) Without limiting subsection (1), grooming may –

(a) take place in a range of interpersonal and
social settings; and

(b) employ a variety of forms of
communication.

7. Meaning of *reportable conduct*

(1) In this section –

emotional or psychological harm means harm
to a child’s wellbeing or development or
both;

neglect, of a child, means the deliberate or
reckless failure to meet the basic needs of
the child;

physical violence means –

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- (a) the intentional or reckless application of physical force to a person without lawful justification or excuse; or
 - (b) any act which intentionally or recklessly causes a person to apprehend immediate and unlawful violence to the person;

relevant offence means –

- (a) a sexual offence; or
- (b) an offence under section 105A of the *Criminal Code*; or
- (c) an offence under section 178A of the *Criminal Code*; or
- (d) an offence under section 298, 299 or 300 of the *Criminal Code* in respect of an offence specified in paragraphs (b) and (c);

sexual misconduct includes but is not limited to the following conduct when performed in a sexual manner or with a sexual intention:

- (a) inappropriate behaviour;
- (b) physical contact;
- (c) voyeurism;

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- (d) speech or other communication including electronic communication;

sexual offence means an offence of a sexual nature under a law such as, but not limited to, the following offences:

- (a) an offence under section 122, 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 130A, 130B, 130C, 130D, 133, 137 or 185 of the *Criminal Code*;
- (b) an offence under section 298, 299 or 300 of the *Criminal Code* in respect of an offence specified in paragraph (a);
- (c) an offence under section 72, 72A, 73, 73A, 74 or 74A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*;
- (d) an offence under section 8(1A)(a) or 35(3) of the *Police Offences Act 1935*;
- (e) an offence under section 4, 7, 8(2) or 9 of the *Sex Industry Offences Act 2005*;

significant, in relation to emotional or psychological harm or neglect, means that the harm or neglect is more than trivial or insignificant, but is not required

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to be deemed serious or deemed to have a lasting permanent effect.

(2) For the purposes of this Act, ***reportable conduct*** is –

- (a) a relevant offence committed against, with or in the presence of, a child, whether or not criminal proceedings in relation to the offence have been commenced or concluded; or
- (b) sexual misconduct, that does not form part of a sexual offence, against, with or in the presence of a child; or
- (c) physical violence against a child; or
- (d) grooming of a child; or
- (e) conduct that causes, or is likely to cause, significant emotional or psychological harm to a child; or
- (f) significant neglect of a child; or
- (g) conduct prescribed for the purposes of this section –

regardless of whether or not the alleged conduct occurred within the course of a worker's duties in respect of an entity.

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8. Meaning of *worker*

For the purposes of this Act, a ***worker***, of an entity, is a person who has attained the age of 18 years who –

- (a) is employed by the entity, whether or not the person is employed in connection with any work or activity of the entity that relates to children; or
- (b) is engaged by the entity to provide services, including as a volunteer, contractor, subcontractor, consultant, director, member of a management committee, office holder or officer, whether or not the person is engaged in connection with any work or activity of the entity that relates to children; or
- (c) is elected to a role in respect of an entity, such as as an alderman, councillor or member of Parliament, whether or not the person provides services to children in that elected role; or
- (d) is engaged in training or work experience with the entity, whether or not the person is engaged in connection with any work or activity of the entity that relates to children; or
- (e) is carrying out work under the supervision of the entity in accordance with the order of a court, whether or not the person is working in connection with

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any work or activity of the entity that relates to children; or

- (f) if the entity is a religious body, is a minister of religion, a religious leader, a worker (within the meaning of this definition) or officer of the religious body, whether or not the person is engaged in connection with any work or activity of the entity that relates to children; or
- (g) is a member, in respect of the entity, of a class of persons prescribed for the purposes of this section.

9. Regulator to determine entity regulators

- (1) The Regulator is to determine the entity regulator in relation to each entity.
- (2) The Regulator is to ensure that a list of entity regulators, and the entities in relation to which they are an entity regulator, is published on a website maintained by, or on behalf of, the Regulator.

10. Delegations

- (1) The Regulator may delegate, to a person employed or engaged by the Regulator, any of the functions or powers of the Regulator under this Act other than this power of delegation.

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- (2) The Regulator may delegate, for the purposes of section 36, to an entity regulator any of the following powers of the Regulator:
 - (a) the power to inspect premises under section 25;
 - (b) the power to interview persons under sections 26, 27 and 28;
 - (c) the power to give a notice to produce a document or information under section 29.
- (3) A head of an entity may delegate, to a worker of the entity, any of the functions or powers of the head under this Act other than this power of delegation.

**PART 2 – INDEPENDENT REGULATOR AND DEPUTY
INDEPENDENT REGULATOR**

**11. Appointment of Independent Regulator and Deputy
Independent Regulator**

(1) In this section –

*known to be Aboriginal or Torres Strait
Islander*, in relation to a person, means
that the person –

- (a) is of Aboriginal or Torres Strait
Islander descent; and
- (b) identifies as Aboriginal or Torres
Strait Islander; and
- (c) is accepted as Aboriginal by a
recognised Aboriginal
organisation or as a Torres Strait
Islander by a recognised Torres
Strait Islander organisation.

(2) The Governor may appoint a person –

- (a) as the Independent Regulator; and
- (b) as the Deputy Independent Regulator.

(3) If the Governor appoints a person under each of
subsection (2)(a) and (b), the Governor is to
ensure that at least one of the persons so
appointed, at any one time, is known to be
Aboriginal or Torres Strait Islander.

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Part 2 – Independent Regulator and Deputy Independent Regulator

- (4) Schedule 4 has effect in respect of an appointment made under subsection (2).

12. Deputy Independent Regulator

- (1) During any illness or absence of the Regulator or during any vacancy in the office of the Regulator, the Deputy Regulator has the functions and powers of the Regulator.
- (2) Any function performed or power exercised by the Deputy Regulator while acting under subsection (1) is taken to have been performed or exercised by the Regulator.
- (3) The Deputy Regulator, in performing and exercising the functions and powers of the Regulator, is taken to have sufficient authority to do so.

13. Performance and exercise of Regulator's functions and powers generally

- (1) The Regulator and Deputy Regulator are not subject to the direction or control of the Minister in respect of the performance or exercise of the functions or powers of the Regulator.
- (2) In addition to any other powers that are conferred on the Regulator under this or any other Act, the Regulator and Deputy Regulator have the power to do all things reasonably necessary or convenient to be done for or in connection with the performance of the functions of the Regulator under this or any other Act.

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- (3) Unless otherwise specified, the Regulator and Deputy Regulator must act independently, impartially and in the public interest when performing a function, or exercising a power, under this Act.

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PART 3 – CHILD AND YOUTH SAFE STANDARDS

14. Entities to comply with child and youth safe standards

- (1) Subject to subsections (2) and (3), an entity is to comply with the standards.
- (2) An entity, or member of a class of entities, specified in clause 2 of Schedule 2 is not required to comply with the standards until on and after 1 January 2024.
- (3) An entity, or member of a class of entities, specified in clause 3 of Schedule 2 is not required to comply with the standards until on and after 1 July 2024.

15. Universal principle relating to child and youth safe standards

In complying with the standards in accordance with section 14, an entity must provide an environment that ensures that the right to cultural safety of children who identify as Aboriginal or Torres Strait Islander is respected.

16. Functions of Regulator in relation to child and youth safe standards and universal principle

The Regulator has the following functions in relation to the standards and the universal principle:

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- (a) educating, and providing advice to, entities to promote compliance by entities with the standards and the universal principle;
 - (b) educating, and providing advice to, entities to ensure that, in the operation of the entity –
 - (i) the safety of children is promoted; and
 - (ii) child abuse is prevented; and
 - (iii) allegations of child abuse are responded to properly;
 - (c) oversight and enforcement of compliance by entities with the standards and the universal principle;
 - (d) coordinating the ongoing provision of information, relating to the compliance by entities with the standards and the universal principle, between entity regulators;
 - (e) collecting, analysing and publishing data in relation to the standards and the universal principle;
 - (f) reporting –
 - (i) to Parliament in accordance with section 60; and
 - (ii) in relation to any matter arising in connection with the performance

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of the functions, or exercise of the powers, of the Regulator, at any other time that the Regulator thinks fit;

- (g) such other functions as may be prescribed.

17. Powers of Regulator in relation to child and youth safe standards and universal principle

The Regulator has the following powers in relation to compliance with the standards and the universal principle:

- (a) to request a document or information in accordance with section 18;
- (b) to inspect premises in accordance with section 19;
- (c) to issue a notice to produce a document or information in accordance with section 20;
- (d) to issue a notice to comply with standards or the universal principle in accordance with section 21;
- (e) to share information in accordance with Part 5.

18. Requests for document or information

The Regulator may, by written notice, request the worker of an entity, an entity or an entity

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regulator to provide any document or information that the Regulator reasonably requires to determine whether an entity is complying with the standards or the universal principle.

19. Inspection of premises

- (1) The Regulator may enter premises occupied or used by an entity, at any reasonable time, to inspect the premises, or any thing on or within the premises, if the Regulator believes on reasonable grounds that entering the premises is necessary to determine whether the entity is not complying, or not reasonably likely to comply, with the standards or the universal principle.
- (2) An entry onto premises may be made under subsection (1) with, or without, the consent of the person with management or control of the premises.
- (3) An entry onto premises may be made under subsection (1) without prior notice to any person.
- (4) The Regulator is to, as soon as practicable after entering premises under this section, take all reasonable steps to give notice of the entry to a worker conducting the business or undertaking of the entity in relation to which the power to enter is being exercised.
- (5) Despite subsection (4), the Regulator is not required to notify a worker under that subsection if to do so would defeat the purpose for which

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the premises were entered or cause unreasonable delay.

- (6) During an inspection of premises under subsection (1), the Regulator may –
- (a) observe the activities carried out at the premises; and
 - (b) search, examine, record or film any part of the premises, or any thing on or within the premises; and
 - (c) inspect, take an extract from, copy or remove for the purpose of copying, any document that the Regulator reasonably requires to determine whether the entity is complying with the standards or the universal principle; and
 - (d) request any person to provide to the Regulator any information that the Regulator reasonably requires to determine whether the entity is complying with the standards or the universal principle; and
 - (e) remain at the premises for the time necessary to achieve the purpose of the inspection of the premises.

20. Notice to produce document or information

- (1) If the Regulator believes on reasonable grounds that a document or information is necessary to determine whether an entity is not complying, or

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is not reasonably likely to comply, with the standards or the universal principle, the Regulator may give a written notice to a worker of the entity, or to the entity itself, requiring the worker or entity to produce such a document or information.

- (2) A notice given under subsection (1) is to specify the following:
- (a) the worker or entity to whom the notice is given;
 - (b) the document or information, or the category of document or information, that must be produced;
 - (c) the standards or the universal principle to which the document or information relates or in relation to which it is to be used;
 - (d) the date by which the document or information must be produced, being not less than 14 days after the day on which the notice is given to the worker or entity;
 - (e) any action that may be taken against the worker or entity under this Act for failing to comply with the notice;
 - (f) the maximum penalty under section 45 for failing to comply with the notice;

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- (g) the process that the worker or entity may use to seek an internal review of the decision to issue the notice;
 - (h) any other prescribed matter.
- (3) Despite subsection (2)(d), the Regulator may, if satisfied that exceptional circumstances exist, specify a date by which the document or information must be produced that is less than 14 days after the day on which the notice is given.
- (4) The Regulator may, by further written notice given to a worker or entity, and at any time, vary or revoke a notice given to the worker or entity under subsection (1) to produce a document or information.

21. Notice to comply with child and youth safe standards or universal principle

- (1) If the Regulator believes on reasonable grounds that an entity is not complying with the standards or the universal principle, the Regulator may give to the entity a written notice requiring the entity to comply with the standards or the universal principle.
- (2) A notice given under subsection (1) –
 - (a) is to specify the following:
 - (i) the reason for the issue of the notice to comply;
 - (ii) each standard or the universal principle with which the

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Regulator believes the entity is not complying and the grounds for that belief;

- (iii) the action that the entity is required to take to address the matters that have been specified in the notice to comply;
 - (iv) the date by which the entity must take the action specified in the notice to comply, being not less than 14 days after the day on which the notice is given;
 - (v) any action that may be taken against the entity under this Act for failing to comply with the notice;
 - (vi) the maximum penalty under section 45 for failing to comply with the notice;
 - (vii) the process that the entity may use to seek an internal review of the decision to issue the notice;
 - (viii) any other prescribed matter; and
- (b) may be accompanied by any recommendations or advice available to assist the entity to address the matters specified in the notice.
- (3) Despite subsection (2)(a)(iv), the Regulator may, if satisfied that exceptional circumstances exist,

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specify a date by which the standards or the universal principle must be complied with that is less than 14 days after the day on which the notice is given.

- (4) The Regulator may, by further written notice given to an entity, and at any time, vary or revoke a notice given to the entity under subsection (1) to comply with the standards or the universal principle.

PART 4 – REPORTABLE CONDUCT SCHEME

Division 1 – Functions and powers of Regulator

22. Functions of Regulator in relation to scheme

The Regulator has the following functions in relation to the scheme:

- (a) administering, overseeing and monitoring the scheme;
- (b) educating, and providing advice to relevant entities to assist them to identify reportable conduct and to report and investigate reportable allegations and reportable convictions;
- (c) educating and providing advice to entity regulators to promote compliance by relevant entities with the scheme;
- (d) monitoring the investigation of reportable allegations or reportable convictions by a relevant entity or entity regulator;
- (e) conducting, on the Regulator's own motion, investigations in relation to reportable allegations or reportable convictions, and making findings and recommendations in relation to those investigations, in accordance with section 24;
- (f) investigating whether reportable allegations or reportable convictions

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have been appropriately handled by a relevant entity or entity regulator and making findings and recommendations in relation to that handling;

- (g) monitoring compliance by relevant entities with investigations conducted by other independent persons or bodies in relation to reportable conduct or reportable convictions;
- (h) providing information relevant to reportable convictions, reportable allegations and reportable conduct to, and receiving such information from, the following persons and bodies:
 - (i) entity regulators;
 - (ii) relevant entities;
 - (iii) the Commissioner of Police;
 - (iv) the Registrar;
 - (v) police authorities of the Commonwealth, a State or a Territory;
 - (vi) a person, in the Commonwealth, a State or a Territory, who holds an office that substantially corresponds with that of the Regulator;
 - (vii) a person, in the Commonwealth, a State or a Territory, who holds

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an office that substantially
corresponds with that of the
Registrar;

- (i) collecting, analysing and publishing data
in relation to the scheme;
- (j) reporting –
 - (i) to Parliament in accordance with
section 60; and
 - (ii) in relation to any matter arising in
connection with the performance
of the functions, or exercise of
the powers, of the Regulator, at
any other time that the Regulator
thinks fit;
- (k) such other functions as may be
prescribed.

23. Powers of Regulator in relation to scheme

The Regulator has the following powers in
relation to the scheme:

- (a) to require any person to provide
information, answer questions, or
produce documents, so far as may be
relevant to the performance of the
functions, or the exercise of the powers,
of the Regulator or the administration of
this Act;
- (b) to inspect premises in accordance with
section 25;

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- (c) to enter premises to conduct an interview in accordance with section 26, 27 or 28;
- (d) to issue a notice to produce a document or information in accordance with section 29;
- (e) to issue a notice to investigate in accordance with section 36;
- (f) to share information in accordance with Part 5.

24. Regulator may investigate reportable allegation or reportable conviction

- (1) The Regulator may, of the Regulator's own motion, conduct an investigation concerning a reportable allegation made against or reportable conviction recorded against a worker of a relevant entity if the Regulator –
 - (a) receives information about the reportable allegation or reportable conviction from any person; and
 - (b) believes on reasonable grounds that reportable conduct may have been committed by a worker of the relevant entity; and
 - (c) considers that it is in the public interest that the Regulator investigate the reportable allegation or reportable conviction.

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- (2) The Regulator may, of the Regulator's own motion, conduct an investigation concerning a reportable allegation or reportable conviction against a worker of a relevant entity if the Regulator is advised by the head of the relevant entity that the relevant entity is not able, or does not intend, to comply with section 35(1) in relation to the reportable allegation or reportable conviction.
- (3) The Regulator may, of the Regulator's own motion or in response to a complaint, conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation or a reportable conviction by a relevant entity or an entity regulator if the Regulator considers that it is in the public interest to do so.
- (4) At the conclusion of an investigation by the Regulator in relation to the relevant entity to which the investigation was related, the Regulator –
- (a) must make findings, give reasons for the findings and make recommendations, if any, for action to be taken in relation to the matter investigated; and
 - (b) must provide to the head of the relevant entity the findings, reasons and recommendations, if any, of the Regulator, together with any necessary information relating to the recommendations; and

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- (c) may provide to the entity regulator in relation to the relevant entity the recommendations of the Regulator for action to be taken by the entity regulator.

25. Inspection of premises

- (1) The Regulator may enter premises occupied or used by an entity, at any reasonable time, to inspect the premises, or any thing on or within the premises, for the purposes of an investigation being conducted under section 24.
- (2) An entry onto premises may be made under subsection (1) with, or without, the consent of the person with management or control of the premises.
- (3) An entry onto premises may be made under subsection (1) without prior notice to any person.
- (4) The Regulator is to, as soon as practicable after entering premises under this section, take all reasonable steps to give notice of the entry to a worker conducting the business or undertaking of the entity in relation to which the power to enter is being exercised.
- (5) Despite subsection (4), the Regulator is not required to notify a worker under that subsection if to do so would defeat the purpose for which the premises were entered or cause unreasonable delay.
- (6) During an inspection of premises under subsection (1), the Regulator may –

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- (a) observe the activities carried out at the premises; and
 - (b) search, examine, record or film any part of the premises, or any thing on or within the premises; and
 - (c) inspect, take an extract from, copy or remove for the purpose of copying, any document that the Regulator reasonably requires in connection with the performance of the functions of the Regulator in respect of the scheme; and
 - (d) request any person to provide to the Regulator any information that the Regulator reasonably requires in connection with the performance of the functions of the Regulator in respect of the scheme; and
 - (e) remain at the premises for the time necessary to achieve the purpose of the inspection of the premises.

26. Regulator may interview a person

In conducting an investigation under section 24, the Regulator may interview a person at any reasonable time if the Regulator considers that the person may have information about a reportable allegation, reportable conduct or reportable conviction.

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27. Regulator may interview child

- (1) In conducting an investigation under section 24, the Regulator may arrange for the interview of a child –
 - (a) in relation to whom a worker of a relevant entity is alleged to have committed reportable conduct; or
 - (b) who may be a witness to reportable conduct or alleged reportable conduct.
- (2) Before arranging an interview under subsection (1), the Regulator must gain consent to conduct the interview –
 - (a) if the child is a youth, from the youth; or
 - (b) subject to subsection (3), if the child is not a youth, from a guardian of the child.
- (3) Despite subsection (2), the Regulator is not required to gain the consent of a guardian of a child if the only guardian of the child is the worker referred to in subsection (1)(a).
- (4) The Regulator must engage a person with appropriate qualifications, training or experience in interviewing child complainants of alleged abuse to conduct an interview on behalf of the Regulator under subsection (1).
- (5) Before arranging an interview under subsection (1), the Regulator, and any person conducting an interview on the Regulator's behalf, must consider, and take all reasonable

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steps to mitigate, any negative effect that the interview may have on the child.

- (6) Without limiting subsection (5), the Regulator must consider whether it is appropriate for the guardian of the child to be present during the interview.
- (7) Despite subsection (6), a child must be offered the opportunity for a support person to be present at an interview of the child.
- (8) In relation to the opportunity offered under subsection (7), a child who identifies as Aboriginal or Torres Strait Islander must be offered the opportunity for the support person referred to in that subsection to be a person who is a member of a recognised Aboriginal organisation, or recognised Torres Strait Islander organisation.

28. Regulator may interview worker subject of reportable allegation or reportable conviction

In conducting an investigation under section 24, the Regulator may interview a worker, of a relevant entity, who is the subject of a reportable allegation or reportable conviction.

29. Notice to produce document or information

- (1) The Regulator may give to a worker of a relevant entity, a relevant entity or an entity regulator a written notice requiring the worker, relevant entity or entity regulator to produce any

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document or information that the Regulator reasonably requires to perform the functions of the Regulator.

- (2) A notice given under subsection (1) must specify the following:
- (a) the worker, relevant entity or entity regulator to whom the notice is issued;
 - (b) the document or information, or the category of document or information, that must be produced;
 - (c) the date by which the document or information must be produced, being not less than 14 days after the day on which the notice is given to the relevant entity or entity regulator;
 - (d) the maximum penalty under section 46 for failing to comply with the notice;
 - (e) the process that the worker, relevant entity or entity regulator may use to seek an internal review of the decision to issue the notice;
 - (f) any other prescribed matter.
- (3) Despite subsection (2)(c), the Regulator may, if satisfied that exceptional circumstances exist, specify a date by which the document or information must be produced that is less than 14 days after the day on which the notice is given.

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- (4) The Regulator may, by further written notice given to the worker, relevant entity or entity regulator, and at any time, vary or revoke a notice given under subsection (1) to the worker, relevant entity or entity regulator to produce a document or information.

30. Regulator may monitor investigation

The Regulator may monitor the progress of an investigation of a reportable allegation or reportable conviction by the head of a relevant entity or an entity regulator if the Regulator considers it is in the public interest to do so.

31. Liaison with entity regulators

The Regulator must regularly liaise with entity regulators –

- (a) to avoid unnecessary duplication in the oversight of the investigation of reportable allegations or reportable convictions; and
- (b) to avoid duplication of an investigation by the entity regulator; and
- (c) to share information and provide advice and guidance in relation to the protection of children.

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Part 4 – Reportable Conduct Scheme

Division 2 – Reportable conduct scheme

32. Application of scheme

- (1) A relevant entity, or member of a class of relevant entities, specified in clause 2 of Schedule 3 is not required to comply with the scheme until on and after 1 January 2024.
- (2) A relevant entity, or member of a class of relevant entities, specified in clause 3 of Schedule 3 is not required to comply with the scheme until on and after 1 July 2024.

33. Disclosure of reportable allegation or conviction

Any person may disclose a reportable allegation or reportable conviction in relation to a worker of a relevant entity to –

- (a) the head of the relevant entity; or
- (b) the Regulator.

34. Head of relevant entity to notify Regulator of reportable allegation or reportable conviction

- (1) If the head of a relevant entity becomes aware of a reportable allegation or a reportable conviction against a worker of the relevant entity, the head must notify the Regulator, in writing, of the following:

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- (a) within 3 business days after becoming aware of the reportable allegation or reportable conviction –
- (i) that a reportable allegation has been made against, or a reportable conviction recorded against, a worker of the relevant entity; and
 - (ii) the name (including any former names or aliases, if known) and date of birth, if known, of the worker concerned; and
 - (iii) if the notification relates to a reportable allegation, whether Tasmania Police has been informed about the reportable allegation; and
 - (iv) the name, address and telephone number of the relevant entity; and
 - (v) the name of the head of the relevant entity;
- (b) as soon as practicable, and no later than 30 days after becoming aware of the reportable allegation –
- (i) all known detailed information about the reportable allegation or reportable conviction; and
 - (ii) whether or not the head of the relevant entity has taken, or

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intends to take, any action in relation to the worker and the reasons why the head has taken, or intends to take or not to take, any such action; and

- (iii) any written submissions, made to the head of the relevant entity concerning the reportable allegation or reportable conviction, that the worker requested to have considered in determining what, if any, action should be taken by the head in relation to the worker.

- (2) The head of a relevant entity must not fail, without reasonable excuse, to comply with subsection (1).

Penalty: Fine not exceeding 120 penalty units.

- (3) A requirement under this section is in addition to, and does not derogate from, the requirement, under a provision of another law, for the head of a relevant entity to notify of, or report, information.

35. Investigation by head of relevant entity

- (1) As soon as practicable after the head of a relevant entity becomes aware of a reportable allegation or reportable conviction against a worker of the relevant entity, the head –

- (a) must –

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- (i) investigate the reportable allegation or reportable conviction; or
 - (ii) engage an independent investigator to investigate the reportable allegation or reportable conviction on behalf of the head; and
 - (b) must inform the Regulator of the identity of the body or person who will conduct the investigation.
- (2) If the head of a relevant entity is unable, or does not intend, to comply with subsection (1), the head of the relevant entity is to –
- (a) notify the Regulator as soon as practicable; and
 - (b) provide reasons for the non-compliance.
- (3) An investigation conducted under this section must be completed despite the person who is the subject of the investigation ceasing to be a worker of the relevant entity during the period in which the investigation is being conducted.
- (4) As soon as practicable after an investigation has been completed, the head of the relevant entity must give the Regulator –
- (a) a copy of the findings of the investigation and the reasons for those findings; and

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- (b) details of any disciplinary or other action that the relevant entity has taken, or proposes to take, in relation to the worker, and the reasons for that action; and
- (c) if the relevant entity does not propose to take any disciplinary or other action in relation to the worker, the reasons why no action is to be taken.

36. Notice to entity regulator to investigate

(1) If –

- (a) the head of a relevant entity notifies the Regulator in accordance with section 35(2); and
- (b) the Regulator has gained the agreement of the entity regulator of the relevant entity to investigate a reportable allegation or reportable conviction in respect of a worker of the relevant entity –

the Regulator may, by written notice given to the entity regulator of the relevant entity, require the entity regulator to investigate the reportable allegation or reportable conviction in respect of a worker of the relevant entity.

- (2) A notice given to an entity regulator under subsection (1) must specify the following:

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- (a) the reportable allegation or reportable conviction in relation to which the investigation is to take place;
 - (b) any powers of the Regulator that the Regulator intends to delegate to the entity regulator under section 10(2);
 - (c) the maximum penalty for failing to comply with the notice;
 - (d) the process for seeking an internal review of the decision to issue the notice;
 - (e) any other prescribed matter.
- (3) The Regulator may, by further written notice given to the entity regulator, and at any time, vary or revoke a notice given to the entity regulator under subsection (1).

37. Investigation by entity regulator

- (1) If the Regulator gives to an entity regulator a notice to investigate under section 36, the entity regulator to whom the notice is given is to conduct an investigation into the reportable allegation or reportable conviction specified in the notice.
- (2) As soon as practicable after an investigation under subsection (1) has been completed, the entity regulator must give to the Regulator, and to the relevant entity in respect of the worker to whom the reportable allegation or reportable conviction specified in the notice relates –

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- (a) a copy of the findings of the investigation and the reasons for those findings; and
- (b) details of any disciplinary or other action in relation to the worker that the entity regulator recommends be taken by the relevant entity, and the reasons for that action; and
- (c) if the entity regulator does not recommend that any disciplinary or other action is taken in relation to the worker, the reasons why no action is to be taken.

PART 5 – INFORMATION SHARING

38. Use of information by Regulator

- (1) Despite any other Act or law to the contrary, the Regulator may, subject to this section –
 - (a) obtain information; and
 - (b) make a record of information; and
 - (c) disclose information to any person; and
 - (d) otherwise use information.
- (2) The Regulator may only take an action under subsection (1) in respect of information if –
 - (a) the identity of the child who is the subject of the information is protected as far as is practicable; and
 - (b) the action is taken for one or more of the following purposes:
 - (i) to protect and promote the safety and wellbeing of children;
 - (ii) to enable the investigation or the enforcement of a law;
 - (iii) for investigatory, disciplinary or employment-related purposes related to the safety or wellbeing of children;
 - (iv) to share information with other jurisdictions and other child

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safety oversight bodies for the purposes of those jurisdictions or bodies in collecting, analysing and publishing data on approaches to child safety;

(v) for the purposes of, or in connection with, the performance of functions or the exercise of powers under this Act;

(vi) for a prescribed purpose.

(3) In the event of an inconsistency between this Part and another provision of this Act or a provision of another Act, this section prevails unless specifically excluded.

39. *Right to Information Act 2009 and Personal Information Protection Act 2004 do not apply in certain circumstances*

(1) In this section –

relevant person means –

(a) the Regulator; or

(b) a person required, or engaged by, the Regulator to do or not to do a thing; or

(c) a person engaged in the administration of this Act; or

(d) a person prescribed for the purposes of this section.

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- (2) The *Right to Information Act 2009* does not apply to information in the possession, for the purposes of this Act, of a relevant person unless the information relates to the administration of a public authority within the meaning of that Act.
- (3) The *Personal Information Protection Act 2004* does not apply to the obtaining or possession of information, or to information so obtained or possessed, by a relevant person for the purposes of this Act.

40. Disclosure of information to and by Regulator, head of an entity, relevant entity, entity regulator, Tasmania Police, authorities of other jurisdictions &c.

- (1) In this section –

contractor includes –

- (a) a subcontractor; and
- (b) an employee of the contractor;
and
- (c) an employee of a third-party employer;

third-party employer means an entity, other than a relevant entity, who engages a person to provide services to children on behalf of a relevant entity, including as a contractor.

- (2) This section applies to information or documents in relation to the following matters:

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- (a) a failure to comply, or a concern that there has been a failure to comply, with the standards or the universal principle;
 - (b) a reportable allegation or reportable conviction;
 - (c) a concern or belief that reportable conduct has been committed;
 - (d) the investigation under Part 4 of a matter referred to in paragraphs (a), (b) and (c);
 - (e) the findings, reasons for the findings, and the recommendations made, at the conclusion of that investigation;
 - (f) the action taken in response to those findings.
- (3) Subject to subsection (4), and despite any law to the contrary, each of the following persons and bodies may disclose the information or documents referred to in subsection (2) to the following persons or bodies:
- (a) the Regulator;
 - (b) an entity regulator;
 - (c) the head of an entity;
 - (d) the Commissioner of Police or a commissioned police officer;
 - (e) if necessary for the purposes of an investigation, an independent investigator;

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- (f) the Registrar;
 - (g) the Chief Commissioner appointed under section 15 of the *Integrity Commission Act 2009*;
 - (h) a Minister of the Crown;
 - (i) the police authority of the Commonwealth, another State or a Territory;
 - (j) if the worker who is the subject of the reportable allegation or reportable conviction is a contractor, the head of each relevant entity with whom the worker is engaged as a contractor;
 - (k) a prescribed person or body, for a prescribed purpose or in relation to a prescribed matter, or a prescribed class of matters;
 - (l) a prescribed person or body, for a prescribed purpose or in relation to a prescribed matter, or a prescribed class of matters, if the information relates to the performance of a function conferred on the person or body by or under the laws of the Commonwealth, a State or a Territory.
- (4) The disclosure of information under subsection (3) must relate to one or more of the following:
- (a) the purposes of the Act;

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- (b) the promotion of the safety and wellbeing of children;
 - (c) a prescribed purpose.
- (5) Despite any law to the contrary, the head of an entity may disclose the information or documents referred to in subsection (2) to a worker of the entity if it is necessary or appropriate to do so for one or more of the following purposes:
 - (a) the purposes of the Act;
 - (b) the promotion of the safety and wellbeing of children;
 - (c) a prescribed purpose.

41. Disclosure of information about investigation to worker concerned

- (1) This section applies to the following information in relation to an investigation conducted under section 24, section 35 or section 37:
 - (a) information that a reportable allegation or reportable conviction has been disclosed;
 - (b) details of the method employed in conducting the investigation;
 - (c) the findings, reasons for the findings, and the recommendations made, at the conclusion of the investigation;

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(d) information on any action that is to be taken in response to those findings.

(2) The Regulator, the head of a relevant entity or an entity regulator may disclose information, to which this section applies, to a worker who is the subject of the reportable allegation or reportable conviction to which the investigation relates.

42. Disclosure of information about investigation to children, youths and guardians

(1) This section applies to the following information in relation to an investigation conducted under section 24, section 35 or section 37:

(a) information about the progress of the investigation;

(b) the findings, reasons for the findings, and the recommendations made, at the conclusion of the investigation;

(c) information on any action that is to be taken in response to those findings.

(2) The Regulator, the head of a relevant entity or an entity regulator may disclose the information, to which this section applies, to one or more of the following persons:

(a) a child in relation to whom the investigation is being conducted;

(b) the guardian of a child, other than a youth, referred to in paragraph (a);

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- (c) if the child referred to in paragraph (a) is a youth who consents to the disclosure, to the guardian of the youth;
 - (d) a person who has daily care and control, within the meaning of the *Children, Young Persons and Their Families Act 1997*, of a child referred to in paragraph (a), other than a youth;
 - (e) if the child referred to in paragraph (a) is a youth who consents to the disclosure, to a person who has daily care and control, within the meaning of the *Children, Young Persons and Their Families Act 1997*, of the youth;
 - (f) a person who has disclosed, under section 33, the reportable allegation or reportable conviction to which the investigation relates;
 - (g) an authority or other body prescribed for the purposes of this section.
- (3) Despite subsection (2), disclosure of information in relation to an investigation is not to be made under this section to a person referred to in paragraph (b), (c), (d) or (e) if that person is the subject of the reportable allegation or reportable conviction to which the investigation relates.
- (4) Nothing in this section limits any disclosure that may otherwise be made under any Act or law.

43. Regulator to notify Registrar of finding of reportable conduct

(1) In this section –

relevant finding means –

- (a) a finding made by the Regulator under this Act that a worker of a relevant entity has committed reportable conduct; or
 - (b) if the Regulator is given a copy of findings under section 35(4)(a) or section 37(2)(a), a finding by the head of a relevant entity, or an entity regulator, that a worker of the relevant entity has committed reportable conduct.
- (2) The Regulator is to notify the Registrar of each of the following matters, for the purposes of assessing registration under the *Registration to Work with Vulnerable People Act 2013*:
- (a) the fact that a relevant finding has been made;
 - (b) an outline of the relevant finding and the reasons for the relevant finding;
 - (c) the name (including any former names or aliases, if known) of the worker who is the subject of the finding;
 - (d) the date of birth (if known) of the worker.

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- (3) The Regulator may, but need not, notify the Registrar of a relevant finding if –
- (a) the finding has already been referred to the Registrar by another person or body; or
 - (b) for any other reason, the Regulator considers that it is not appropriate for the Regulator to give the notification in respect of the relevant finding.

44. Prohibition on disclosing identifying information other than in accordance with a law

- (1) A person must not disclose any information that would enable the identification of a person who has notified the Regulator of –
- (a) a reportable allegation or reportable conviction; or
 - (b) a concern that reportable conduct has occurred.

Penalty: Fine not exceeding 120 penalty units.

- (2) A person must not disclose any information that would enable the identification of a child in relation to whom –
- (a) a reportable allegation was made or a reportable conviction was notified under this Act; or
 - (b) a finding of reportable conduct was made under this Act.

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Penalty: Fine not exceeding 120 penalty units.

- (3) It is a defence to proceedings for an offence against subsection (2) if –
- (a) the person disclosing the identifying information is the child to whom the identifying information relates; and
 - (b) the disclosing of the information by the person does not enable any other child to be identified in relation to that or any other matter under this Act.
- (4) A person must not disclose any information, during the period in which an investigation is being conducted, that would enable the identification of the person who is the subject of the investigation.

Penalty: Fine not exceeding 120 penalty units.

- (5) Nothing in this section prevents a person –
- (a) who is the head of an entity from disclosing information to a worker of the entity if the head reasonably believes that the disclosure is necessary or appropriate for –
 - (i) the purposes of this Act; or
 - (ii) the promotion of the safety and wellbeing of children; or
 - (b) from disclosing information if authorised or required to do so by this Act, another Act or a law; or

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- (c) from disclosing information to Tasmania Police or an equivalent authority of the Commonwealth, a State or a Territory.

PART 6 – OFFENCES

45. Failure to comply with notice in relation to child and youth safe standards or universal principle

A worker of an entity or an entity must comply with a notice given to that worker or entity, respectively, by the Regulator under section 20 or 21.

Penalty: In the case of –

- (a) a worker, a fine not exceeding 120 penalty units; and
- (b) an entity, a fine not exceeding 360 penalty units.

46. Failure to comply with notice in relation to scheme

A worker of a relevant entity, a relevant entity or an entity regulator must comply with a notice given to that worker, relevant entity or entity regulator, respectively, by the Regulator under section 29 or 36.

Penalty: In the case of –

- (a) a worker, a fine not exceeding 120 penalty units; and
- (b) an entity or entity regulator, a fine not exceeding 360 penalty units.

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Part 6 – Offences

47. False or misleading information

(1) A person must not give information in complying or purportedly complying with this Act that the person knows –

- (a) to be false or misleading in a material particular; or
- (b) omits any matter or thing without which the information is misleading.

Penalty: Fine not exceeding 120 penalty units.

(2) It is a defence in proceedings for an offence under subsection (1) if, at the time of giving the information in complying or purportedly complying with this Act, the person –

- (a) indicated the respect in which it was false or misleading and, if practicable, provided correct information; or
- (b) accompanied the information with a written statement signed by the person –
 - (i) stating that the information was, to the knowledge of the person, false or misleading in a material particular or omission; and
 - (ii) setting out, or referring to –
 - (A) the material particular in which the information was, to the knowledge of the person, false or misleading; and

- (B) the matter or thing that had, to the knowledge of the person, been omitted from the information.

48. Unauthorised use of information

A person to whom information is disclosed in accordance with this Act must not use or disclose that information other than –

- (a) for the purpose for which the information was disclosed to the person; or
- (b) in accordance with this Act, another Act or a law.

Penalty: Fine not exceeding 120 penalty units.

49. Interference with records and documents

A person must not interfere with, alter, remove without reasonable excuse or destroy any record or document in the possession of, or under the control of, an entity that is, or is likely to be –

- (a) requested by the Regulator in accordance with section 18; or
- (b) specified in a notice to produce a document or information given under section 20 or section 29.

Penalty: Fine not exceeding 120 penalty units.

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Part 6 – Offences

50. Proceedings for offences

- (1) Proceedings for an offence –
 - (a) are to be dealt with summarily; and
 - (b) may be instituted by the Regulator; and
 - (c) must be instituted within 3 years after the day on which the offence is alleged to have been committed.
- (2) A court of competent jurisdiction may permit proceedings to be instituted outside of the period specified in subsection (1)(c).

51. Court may make orders

In addition to any penalty imposed on a person or entity for an offence under this Act, a court may make one or more of the following orders:

- (a) an order requiring the person or entity to provide information, answer questions, or produce documents, to the Regulator in accordance with the order;
- (b) an order requiring any information or documents in relation to the proceedings for the offence to be returned to any person or entity or to be destroyed.

PART 7 – REVIEW OF DECISIONS

52. Internal review

- (1) The Regulator must prepare and implement a process for the internal review of –
 - (a) a decision to give a notice to produce a document or information under section 20; and
 - (b) a decision to give a notice to comply with the standards or the universal principle under section 21; and
 - (c) a finding made by the Regulator at the conclusion of an investigation under section 24; and
 - (d) a decision to give a notice to produce a document or information under section 29; and
 - (e) a decision to give a notice to investigate under section 36.
- (2) A worker of an entity, an entity, relevant entity or entity regulator may seek an internal review by the Regulator of the following decisions of the Regulator, or a delegate of the Regulator, in relation to the worker, entity, relevant entity or entity regulator:
 - (a) to give a notice to produce under section 20;

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Part 7 – Review of Decisions

- (b) to give a notice to comply with the standards or the universal principle under section 21;
 - (c) to give a notice to produce a document or information under section 29;
 - (d) to give a notice to investigate, or provide information in relation an investigation under section 36.
- (3) A worker of a relevant entity may seek a review of a finding made by the Regulator, or a delegate of the Regulator, at the conclusion of an investigation under section 24.
- (4) If a worker of an entity, entity, relevant entity, entity regulator or worker of an entity seeks an internal review under subsection (2) or (3), the Regulator is to undertake and complete the internal review in accordance with the process prepared and implemented under subsection (1).

53. External review

- (1) In this section –

reviewable decision means –

- (a) a decision to give a notice to produce under section 20;
- (b) a decision to give a notice to comply with the standards or the universal principle under section 21;

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-
- (c) a finding made by the Regulator at the conclusion of an investigation under section 24;
 - (d) a decision to give a notice to produce a document or information under section 29;
 - (e) a decision to give a notice to investigate under section 36.
 - (2) If the Regulator, or a person acting as the delegate of the Regulator, makes a reviewable decision, and an internal review of that decision has been completed in accordance with section 52(4) –
 - (a) a person aggrieved by the outcome of the internal review may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision; and
 - (b) that decision is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.
 - (3) Despite section 36 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, the review by the Magistrates Court (Administrative Appeals Division) of a reviewable decision made under this Act is to be held in private.
 - (4) Despite subsection (3), the Magistrates Court (Administrative Appeals Division) –

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- (a) is to order that the review, or any part of the review, of a reviewable decision made under this Act is to be held in public or only partly in private if the Regulator requests it; and
 - (b) may, on its own motion or the application of the applicant for the review, order that the review, or any part of the review, of a reviewable decision made under this Act is to be held in public or only partly in private if satisfied that it is desirable to do so.
- (5) Without limiting an order under subsection (4)(a) or (b) such an order may specify the persons who may or may not be present at the review, or any part of the review, of a reviewable decision made under this Act.
- (6) The Magistrates Court (Administrative Appeals Division) –
 - (a) is to revoke or amend an order made under subsection (4)(a) if the Regulator so requests; and
 - (b) may, on its own motion or the application of the applicant for the review, revoke or amend an order made under subsection (4)(b).
- (7) In hearing and determining an application for a review made under subsection (2) and in giving its reasons for that decision, the Magistrates Court (Administrative Appeals Division) is not

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to disclose any information to the extent that to do so would –

- (a) prejudice –
 - (i) the enforcement, or proper administration, of a law in a particular instance; or
 - (ii) the fair trial of a person for an offence against a law; or
 - (iii) the impartial adjudication of proceedings relating to an offence against a law; or
- (b) disclose, or enable the person to ascertain, the existence or identity of a confidential source of information in relation to the investigation of a contravention, or possible contravention, of the law or the enforcement, or proper administration, of the law; or
- (c) disclose methods or procedures for preventing, detecting or investigating, or dealing with matters arising out of, contraventions or evasions of a law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (d) endanger the life or physical, emotional or psychological safety of another person, or increase the likelihood of

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harassment of or discrimination against another person; or

(e) disclose information gathered, collated or created for intelligence, including but not limited to databases of criminal intelligence, forensic testing or anonymous information from the public; or

(f) hinder, delay or prejudice an ongoing investigation of a contravention, or possible contravention, of a law.

(8) In order to prevent the disclosure of any information referred to in subsection (7), the Magistrates Court (Administrative Appeals Division), may receive evidence and hear argument in the absence of the applicant for the review and the applicant's representative.

(9) Section 46(3) of the *Magistrates Court (Administrative Appeals Division) Act 2001* does not apply to the Magistrates Court (Administrative Appeals Division) in hearing and determining an application for a review made under subsection (2) and in accordance with subsection (7).

PART 8 – LEGAL MATTERS

54. Abrogation of privilege against self-incrimination

- (1) A person is not excused from answering a question, or providing information or a document, under this Act on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
- (2) Despite subsection (1), the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than –
 - (a) in proceedings for an offence under the Act; or
 - (b) in proceedings under any Act arising out of the false or misleading nature of the answer, information or document.

55. Disclosure to Regulator in good faith

The disclosure of information or documents to the Regulator, head of an entity or entity regulator by a person that is made in good faith under this Act does not cause the person by whom it is made –

- (a) to incur any civil or criminal liability in respect of the disclosure; or
- (b) to be held to have –

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- (i) breached any code of professional etiquette or ethics; or
- (ii) departed from any accepted standard of professional conduct; or
- (iii) contravened any Act.

56. Legal professional privilege not affected by this Act

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

57. Civil liability not affected by this Act

Nothing in this Act is to be construed as –

- (a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act; or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, in relation to breaches of duties or obligations imposed by the regulations.

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58. Immunity from liability

- (1) A person engaged in the administration of this Act incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or performance, or purported execution or performance, of powers and functions under this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

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Part 9 – Miscellaneous

PART 9 – MISCELLANEOUS

59. Infringement notice offences

(1) In this section –

infringement offence means an offence under this Act that is prescribed as an infringement offence.

(2) The Regulator may issue and serve an infringement notice on a person, entity or entity regulator if the Regulator reasonably believes that the person, entity or entity regulator has committed an infringement offence.

(3) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to 4 or more offences.

(4) The regulations may prescribe –

(a) the penalty that is payable, for that offence, under an infringement notice; and

(b) different penalties for entities and individuals.

60. Annual reports

(1) Within 4 months after the end of each financial year, the Regulator must prepare a report on the

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activities of the Regulator during that financial year.

- (2) The report prepared under subsection (1) is to include –
- (a) a report on the performance of the powers, and the exercise of the functions of the Regulator; and
 - (b) information prescribed for the purposes of this section, if any.
- (3) Before 31 October in each year, the Regulator must cause a copy of the annual report prepared by the Regulator for the preceding financial year to be laid before each House of Parliament.
- (4) If the Regulator is unable to comply with subsection (3) for any reason other than that a House of Parliament is not sitting, the Regulator must cause to be laid before each House of Parliament a statement specifying –
- (a) the reasons for the failure to comply with that subsection; and
 - (b) an estimate of the day by which a copy of the annual report will be ready to be laid before each House of Parliament.
- (5) If the Regulator is unable to comply with subsection (3) because a House of Parliament is not sitting, the Regulator must –
- (a) forward a copy of the annual report to the Clerk of that House; and

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- (b) within the next 7 sitting-days of that House, cause a copy of the annual report to be laid before that House.

61. Persons assisting Regulator

- (1) A person (an *assistant*), including an interpreter, may accompany the Regulator upon entering premises under section 19 or section 25 to assist the Regulator if the Regulator considers the assistance is necessary.
- (2) An assistant –
 - (a) may do the things at the premises, and in the manner that the Regulator reasonably requires, to assist the Regulator to perform the functions and exercise the powers of the Regulator; and
 - (b) must not do anything that the Regulator does not have power to do, unless permitted to do so under a search warrant.
- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the Regulator.

62. Service of documents

- (1) In this section –

electronic communication means an
electronic communication within the

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meaning of the *Electronic Transactions Act 2000*.

- (2) A document that is authorised or required by this Act to be served on or given to a person, entity, or entity regulator is served by –
- (a) in the case of an individual –
 - (i) handing it to the person; or
 - (ii) leaving it at, or sending it by post to, the person's postal or residential address, or place or address of business or employment, last known to the person seeking to serve the document; or
 - (iii) communicating it to the person by way of an electronic communication; or
 - (b) in the case of an entity or entity regulator –
 - (i) handing it to the principal officer of the entity or entity regulator, or the head of the entity; or
 - (ii) leaving it at, or sending it by post to, the last known or usual place or address of business of the entity; or

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- (iii) communicating it to the entity by way of an electronic communication.

63. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
 - (a) authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

64. Review of Act

The Minister is to –

- (a) cause a review of this Act to be made in respect of the 3-year period commencing on the commencement of this Act; and
- (b) is to ensure that the review is completed, and cause a copy of a report of the review to be laid before each House of Parliament, within 4 years after the commencement of this Act.

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65. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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**SCHEDULE 1 – CHILD AND YOUTH SAFE
STANDARDS**

Section 4

The standards set out below are the child and youth safe standards:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved in promoting child safety and wellbeing
4. Equity is upheld and diverse needs respected in policy and practice
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice
6. Processes to respond to complaints and concerns are child-focused
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed
9. Implementation of the child and youth safe standards is regularly reviewed and improved

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10. Policies and procedures document how the entity is safe for children and young people

**SCHEDULE 2 – ENTITIES TO COMPLY WITH CHILD
AND YOUTH SAFE STANDARDS**

Section 14

1. Interpretation

In this Schedule –

religious community service means an organisation that is based in religion but that provides only practical or support services;

religious entity means an organisation which conducts religious services to congregations or carries out religious work but does not include a religious community service.

2. Entities to comply on and after 1 January 2024

The following entities, or classes of entities, are to comply with the standards on and after 1 January 2024:

- (a) the following entities that provide accommodation or residential services:
 - (i) an entity that provides housing services or other assistance to homeless persons and that provides overnight beds for children;

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- (ii) an entity that provides or facilitates overnight excursions, camps or stays for children;
- (b) a religious community service or a religious entity that provides activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children;
- (c) the following entities that provide child care or child-minding services:
 - (i) a child care service within the meaning of the *Child Care Act 2001*;
 - (ii) commercial babysitting services or *au pair* services;
- (d) the following entities that provide child protection services or out-of-home care:
 - (i) a Community-Based Intake Service within the meaning of the *Children, Young Persons and Their Families Act 1997*;
 - (ii) an entity that provides services or facilities for the care of children under the *Children, Young Persons and Their Families Act 1997*;
 - (iii) an entity that provides an adoption service under the

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Adoption Act 1988 pending the adoption of the child under that Act;

- (iv) an entity that provides children's contact services, including safe, supervised environments provided for children to spend time with a parent with whom they do not live, or to facilitate the transfer of children from the care of one parent to another;
- (e) a disability services provider within the meaning of the *Disability Services Act 2011*;
- (f) the following entities that provide educational services:
 - (i) an approved provider within the meaning of the *Education and Care Services National Law (Tasmania)*;
 - (ii) an entity that provides an approved service within the meaning of the *Education and Care Services National Law (Tasmania)*;
 - (iii) a State school within the meaning of the *Education Act 2016*;
 - (iv) a non-government school within the meaning of the *Education Act 2016*;

- (v) a centre, unit or institute of the State which provides educational instruction at any level up to, and including, the final year of secondary education within the meaning of the *Education Act 2016*;
- (vi) TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*;
- (vii) the University of Tasmania as continued by the *University of Tasmania Act 1992*;
- (viii) a group training organisation as defined by the *Training and Workforce Development Act 2013*;
- (ix) a host employer as defined by the *Training and Workforce Development Act 2013*;
- (x) a training organisation registered under the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;
- (xi) a registered higher education provider registered under the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth that operates a campus located in Tasmania;

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- (g) the following entities that provide health services:
 - (i) a public hospital within the meaning of the *Tasmanian Health Service Act 2018*;
 - (ii) a private hospital licensed under the *Health Service Establishments Act 2006*;
 - (iii) an approved facility within the meaning of the *Mental Health Act 2013*;
 - (iv) a residential care service licensed under the *Health Service Establishments Act 2006*;
 - (v) a day-procedure centre licensed under the *Health Service Establishments Act 2006*;
 - (vi) Ambulance Tasmania as established by the *Ambulance Service Act 1982*;
 - (vii) a NEPT Service as defined in the *Ambulance Service Act 1982*;
 - (viii) an entity that provides counselling services;
 - (ix) an entity that provides a health program as defined in the *Health Practitioner Regulation National Law (Tasmania)*;

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- (x) an entity that provides a health service as defined in the *Health Practitioner Regulation National Law (Tasmania)*;
 - (h) the following entities that provide justice or detention services:
 - (i) an entity that provides a service specifically for, or a service specifically to, a youth, for the purposes of the *Youth Justice Act 1997*;
 - (ii) an Australian lawyer who provides representation or advice to children;
 - (i) the Governor and any person holding appointment under the *Governor of Tasmania Act 1982*;
 - (j) the Parliament of Tasmania;
 - (k) a Government Agency;
 - (l) a council.

3. Entities to comply on and after 1 July 2024

The following entities, or classes of entities, are to comply with the standards on and after 1 July 2024:

- (a) a club, association or cadet organisation that has a significant membership of, or involvement by, children;

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- (b) an entity that provides a coaching or tuition service to children;
- (c) an entity that provides commercial services to children including, but not limited to –
 - (i) entertainment or party services; and
 - (ii) gym or play facilities; and
 - (iii) photography services; and
 - (iv) talent or beauty competitions;
- (d) an entity that provides, on a publicly funded or commercial basis, a transport service specifically for children;
- (e) an entity operating as a Neighbourhood House that provides community development, support, training and activity programs and is –
 - (i) a member of the of the Neighbourhood House Program managed by the Department of Premier and Cabinet; or
 - (ii) receives Commonwealth funding for the purpose of such programs.

**SCHEDULE 3 – RELEVANT ENTITIES TO WHICH
REPORTABLE CONDUCT SCHEME APPLIES**

Section 32

1. Interpretation

In this Schedule –

religious community service means an organisation that is based in religion but that provides only practical or support services;

religious entity means an organisation which conducts religious services to congregations or carries out religious work but does not include a religious community service.

2. Relevant entities to which the scheme applies on and after 1 January 2024

The scheme applies to the following entities, and classes of entities on and after 1 January 2024:

- (a) the following entities that provide accommodation or residential services:
 - (i) an entity that provides housing services or other assistance to homeless persons and that provides overnight beds for children; and

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- (ii) an entity that provides or facilitates overnight excursions, camps or stays for children;
- (b) a religious community service or a religious entity that provides activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children;
- (c) the following entities that provide child care or child-minding services:
 - (i) a child care service within the meaning of the *Child Care Act 2001*;
 - (ii) professional babysitting services or *au pair* services;
- (d) the following entities that provide child protection services or out-of-home care:
 - (i) a Community-Based Intake Service within the meaning of the *Children, Young Persons and Their Families Act 1997*;
 - (ii) an entity that provides services or facilities for the care of children under the *Children, Young Persons and Their Families Act 1997*;
 - (iii) an entity that provides an adoption service under the

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Adoption Act 1988 pending the adoption of the child under that Act;

- (iv) an entity that provides children's contact services, including safe, supervised environments provided for children to spend time with a parent with whom they do not live, or to facilitate the transfer of children from the care of one parent to another;
- (e) a disability services provider within the meaning of the *Disability Services Act 2011*;
- (f) the following entities that provide educational services:
 - (i) an approved provider within the meaning of the *Education and Care Services National Law (Tasmania)*;
 - (ii) an entity that provides an approved service within the meaning of the *Education and Care Services National Law (Tasmania)*;
 - (iii) a State school within the meaning of the *Education Act 2016*;
 - (iv) a non-government school within the meaning of the *Education Act 2016*;

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- (v) a centre, unit or institute of the State which provides educational instruction at any level up to, and including, the final year of secondary education within the meaning of the *Education Act 2016*;
- (vi) TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*;
- (vii) the University of Tasmania as continued by the *University of Tasmania Act 1992*;
- (viii) a group training organisation as defined by the *Training and Workforce Development Act 2013*;
- (ix) a host employer as defined by the *Training and Workforce Development Act 2013*;
- (x) a training organisation registered under the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;
- (xi) a registered higher education provider registered under the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth that operates a campus located in Tasmania;

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- (g) the following entities that provide health services:
 - (i) a public hospital within the meaning of the *Tasmanian Health Service Act 2018*;
 - (ii) a private hospital licensed under the *Health Service Establishments Act 2006*;
 - (iii) an approved facility within the meaning of the *Mental Health Act 2013*;
 - (iv) Ambulance Tasmania as established by the *Ambulance Service Act 1982*;
 - (v) an entity that provides counselling services;
- (h) an entity that provides a service specifically for, or a service specifically to, a youth, for the purposes of the *Youth Justice Act 1997*;
- (i) the Governor and any person holding appointment under the *Governor of Tasmania Act 1982*;
- (j) the Parliament of Tasmania;
- (k) a Government Agency;
- (l) a council.

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3. Relevant entities to which the scheme applies on and after 1 July 2024

The scheme applies to the following entities, and classes of entities, on and after 1 July 2024:

- (a) a club, association or cadet organisation that has a significant membership of, or involvement by, children;
- (b) An entity that provides a coaching or tuition service to children.

SCHEDULE 4 – TERMS OF APPOINTMENT

Section 11(4)

1. Duration of appointment

- (1) The Regulator and Deputy Regulator each hold office for such term, not exceeding 5 years, as is specified in the instrument of appointment for that person.
- (2) A person who has been appointed as the Regulator or the Deputy Regulator may from time to time be reappointed for a single further term, not exceeding 5 years, as may be specified in the instrument of appointment for that person.

2. Terms of appointment

- (1) The Regulator and Deputy Regulator hold office, respectively, on such conditions relating to matters not provided for by this Act as are specified in the instrument of appointment for that person.
- (2) The Regulator and Deputy Regulator must not, except in so far as authorised to do so by the Governor –
 - (a) hold any office of profit, or trust, other than the office to which the Regulator or Deputy Regulator is appointed under this Act; or
 - (b) engage in paid employment outside the duties of that office.

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- (3) The *State Service Act 2000* does not apply in relation to the Regulator and Deputy Regulator.

3. Remuneration

- (1) The remuneration and allowances payable to the Regulator and Deputy Regulator are to be specified in the instrument of appointment for that person or otherwise determined by the Governor.
- (2) The Regulator and Deputy Regulator are employees for the purposes of the *Public Sector Superannuation Reform Act 2016*.

4. Vacation of office

A person appointed as the Regulator or Deputy Regulator is taken to vacate that office if the person –

- (a) is, without good reason, absent from that office for an extended period of time; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for their benefit; or
- (c) is convicted –
- (i) in Tasmania of any crime or offence punishable by

imprisonment for a term of 12 months or longer; or

(ii) elsewhere of any crime or offence which, if committed in Tasmania, would be punishable by imprisonment for a term of 12 months or longer; or

(iii) of an offence against this Act; or

(d) is unable to perform adequately, or competently, the duties of the office; or

(e) has neglected to perform the duties of the office; or

(f) is guilty of misconduct of such a nature that the Governor forms the opinion that the person is unsuitable to continue to hold the office.

5. Defect does not invalidate appointment

An appointment of a person as the Regulator or Deputy Regulator is not invalid merely because of a defect or irregularity in relation to that appointment.