

PARLIAMENT OF VICTORIA

Sex Offenders Registration Amendment Bill 2014

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PARLIAMENT OF VICTORIA

Introduced in the Council

**Sex Offenders Registration Amendment
Bill 2014**

A Bill for an Act to amend the **Sex Offenders Registration Act 2004**,
the **Children, Youth and Families Act 2005** and the **Freedom of
Information Act 1982** and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to amend—

- (a) the **Sex Offenders Registration Act 2004**
to—
 - (i) further provide for reporting obligations
under Part 3 of that Act; and

5

(ii) further provide for the retention of certain material for law enforcement, crime prevention and child protection purposes; and

(iii) provide for the disclosure of information contained in the Register established and maintained under section 62 of that Act; and

(b) the **Children, Youth and Families Act 2005** to provide for the disclosure of information relating to registrable offenders; and

(c) the **Freedom of Information Act 1982** to provide for the exemption of documents contained in the Register established and maintained under section 62 of the **Sex Offenders Registration Act 2004** from the operation of that Act.

2 Commencement

(1) This Part and sections 13, 14, 15, 16 and 20 come into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act 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 June 2015, it comes into operation on that day.

**PART 2—AMENDMENT OF SEX OFFENDERS
REGISTRATION ACT 2004**

3 Definitions

(1) In section 3 of the **Sex Offenders Registration Act 2004** insert the following definition—

"*contact*—see section 4A;".

(2) In section 3 of the **Sex Offenders Registration Act 2004**, for the definition of *detainee* substitute—

"*detainee* means a person detained in a youth justice centre or youth residential centre within the meaning of the **Children, Youth and Families Act 2005**;"

(3) In section 3 of the **Sex Offenders Registration Act 2004**, in the definition of *existing controlled registrable offender*, for paragraph (b) substitute—

"(b) a person detained in a youth training centre or youth residential centre within the meaning of the **Children and Young Persons Act 1989**; or".

4 New section 4A inserted

After section 4 of the **Sex Offenders Registration Act 2004** insert—

"4A When does a registrable offender have contact with a child?

For the purposes of this Act, a registrable offender has contact with a child if the offender—

- (a) resides with the child; or
- (b) stays overnight at a place of residence where the child resides or is staying overnight; or

See:
Act No.
56/2004.
Reprint No. 4
as at
16 July 2012
and
amending
Act Nos
82/2012,
32/2013,
76/2013,
7/2014,
17/2014,
26/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

- 5
- (c) cares for, or supervises, the child; or
- (d) provides the offender's contact details to the child or receives the child's contact details from the child; or
- (e) engages in any of the following with the child for the purpose of forming a personal relationship with the child—
- 10
- (i) any form of actual physical contact;
- (ii) any form of oral communication (whether face to face, by telephone or by use of the internet);
- 15
- (iii) any form of written communication (whether electronic or otherwise)."

5 Sex offender registration order

- 20
- (1) In section 11(1) of the **Sex Offenders Registration Act 2004**, after "guilty of an offence" **insert** "committed as an adult".
- (2) After section 11(2A) of the **Sex Offenders Registration Act 2004** **insert**—
- 25
- "(2B) An order under subsection (2A), for any period during which the person is a child, may—
- (a) exempt the person from any particular reporting obligation; or
- (b) modify any particular reporting obligation.".
- 30
- (3) In section 11(6) of the **Sex Offenders Registration Act 2004**, for "30 days" **substitute** "45 days".

6 Initial report by registrable offender of personal details

(1) For section 14(1)(e) of the **Sex Offenders Registration Act 2004** substitute—

5 "(e) the name of each child with whom he or she has contact;

(ea) in respect of each child with whom he or she has contact—

10 (i) the child's age, residential address and telephone number; or

(ii) if the child's age, residential address or telephone number is not known to him or her—the location where the contact takes place;".

15 (2) In section 14(2)(a) of the **Sex Offenders Registration Act 2004**, for "14 days" substitute "7 days".

(3) Section 14(2)(b) and (c) of the **Sex Offenders Registration Act 2004** is repealed.

20 **7 Registrable offender must report changes to relevant personal details**

(1) In section 17(1) of the **Sex Offenders Registration Act 2004**, for "14 days" substitute "7 days".

25 (2) In section 17(1A) of the **Sex Offenders Registration Act 2004**, for "14(2)(b) or (2)(c)" substitute "14(1)(d) or (1)(e)".

(3) In section 17(1B) of the **Sex Offenders Registration Act 2004**, for "14 days" (wherever occurring) substitute "7 days".

30 (4) In section 17(2) of the **Sex Offenders Registration Act 2004** for "or a child generally resides, or as to when the registrable offender has unsupervised contact" substitute "generally

resides, or as to when the registrable offender has contact".

5 (5) In section 17(3) of the **Sex Offenders Registration Act 2004**, for "14 days after entering and remaining in Victoria for 14" **substitute** "7 days after entering and remaining in Victoria for 7".

10 (6) In section 17(4)(a) of the **Sex Offenders Registration Act 2004**, for "28 days" **substitute** "7 days".

8 Intended absence from Victoria to be reported

In section 18(1)(a) of the **Sex Offenders Registration Act 2004**, for "14 or more" **substitute** "2 or more".

15 **9 Change of travel plans while out of Victoria to be given**

In section 19(1)(a) of the **Sex Offenders Registration Act 2004**, for "13 days" **substitute** "2 days".

20 **10 Registrable offender to report return to Victoria or decision not to leave**

(1) For section 20(2) of the **Sex Offenders Registration Act 2004 substitute—**

25 "(2) If the registrable offender left Victoria and was elsewhere in Australia, he or she must report his or her return to Victoria to the Chief Commissioner of Police within 7 days after entering and remaining in Victoria for 7 or more consecutive days, not counting any days spent in government custody.

30 (2A) If the registrable offender left Victoria and was out of Australia, he or she must report his or her return to Victoria to the Chief Commissioner of Police within 1 day after entering and remaining in Victoria for 2 or

more consecutive days, not counting any days spent in government custody."

- 5 (2) In section 20(3) of the **Sex Offenders Registration Act 2004**, for "14 days" substitute "7 days".

11 New section 21A inserted

After section 21 of the **Sex Offenders Registration Act 2004** insert—

10 **"21A Additional reporting obligation in relation to travel out of Australia**

- 15 (1) This section applies if a registrable offender is required to report in accordance with—
- (a) section 18 that the registrable offender intends to leave Victoria to travel out of Australia; or
 - (b) section 20(2A) that the registrable offender has returned to Victoria after the period of travel referred to in paragraph (a).
- 20 (2) The registrable offender must, at the time of making a report referred to in subsection (1), produce to the Chief Commissioner of Police—
- 25 (a) the registrable offender's passport; and
 - (b) documents specified by the regulations for the purposes of this section to verify or support the details in the report; and
 - 30 (c) in the case of a report referred to in subsection (1)(b)—if the registrable offender, during the period of travel referred to in subsection (1)(a), made a report under section 19, documents specified by the regulations for the

purposes of this section to verify or support the details in that report."

12 How reports to be made

After section 23(1)(b) of the **Sex Offenders Registration Act 2004** insert—

- "(ba) a report required by section 18(1)(b) (intended absence from Victoria to travel out of Australia); and
- (bb) a report required by section 20(2A) (registrable offender to report return to Victoria after travel out of Australia); and"

13 Section 30 substituted

For section 30 of the **Sex Offenders Registration Act 2004** substitute—

"30 Retention of material for certain purposes

- (1) The Chief Commissioner of Police may retain for law enforcement, crime prevention or child protection purposes any of the following taken under this Division from, or in relation to, a registrable offender whose reporting period ends on or after the commencement day—
 - (a) copies of any documents;
 - (b) any fingerprints or fingerscans;
 - (c) any photographs.
- (2) In this section, *commencement day* means the day on which section 13 of the **Sex Offenders Registration Amendment Act 2014** comes into operation."

14 Suspension and extension of reporting obligations

In section 32(1) of the **Sex Offenders Registration Act 2004**—

(a) in paragraph (c), for "jurisdiction."
substitute "jurisdiction); or";

(b) after paragraph (c) **insert**—

"(d) is the subject of a notice under section 45A."

15 Headings

(1) For the heading to Division 6 of Part 3 of the **Sex Offenders Registration Act 2004** **substitute**—

"Division 6—Suspension from reporting obligations".

(2) In the heading to section 39 of the **Sex Offenders Registration Act 2004**, for **"exempt certain registrable offenders"** **substitute** **"suspend certain registrable offenders' reporting obligations"**.

(3) In the heading to section 39A of the **Sex Offenders Registration Act 2004**, for **"exemption"** **substitute** **"suspension"**.

(4) In the heading to section 44A of the **Sex Offenders Registration Act 2004**, for **"exemption"** **substitute** **"suspension"**.

16 New section 45A inserted

After section 45 of the **Sex Offenders
Registration Act 2004 insert—**

**"45A Chief Commissioner of Police may
suspend reporting obligations for period
not exceeding 12 months in certain
circumstances**

- (1) Subject to subsection (2), the Chief
Commissioner of Police, by written notice
served on a registrable offender, may
suspend the registrable offender's reporting
obligations for a period (not exceeding
12 months) specified in the notice.
- (2) The Chief Commissioner of Police must not
act under subsection (1) unless satisfied that
the registrable offender does not pose a risk
to the sexual safety of one or more persons
or of the community.
- (3) In deciding whether to act under
subsection (1), the Chief Commissioner of
Police must take into account—
- (a) the seriousness of the registrable
offender's registrable offences and
corresponding registrable offences; and
 - (b) the period of time since those offences
were committed; and
 - (c) the age of the registrable offender, the
age of the victims of those offences and
the difference in age between the
registrable offender and the victims of
those offences, as at the time those
offences were committed; and
 - (d) the registrable offender's present age;
and

- 5
- (e) the registrable offender's total criminal record; and
- (f) the extent to which the registrable offender has complied with their reporting obligations; and
- 10 (g) the registrable offender's physical or cognitive capacity to comply with their reporting obligations; and
- (h) any other matter that the Chief Commissioner of Police considers appropriate.
- (4) The Chief Commissioner of Police—
- 15 (a) may suspend a registrable offender's reporting obligations more than once; and
- (b) may cancel a suspension under this section at any time.
- 20 (5) A suspension under this section is taken to be cancelled if during the period of the suspension an order is made under section 40 in respect of the registrable offender."

17 Offence of failing to comply with reporting obligations

25 For section 46(1) of the **Sex Offenders Registration Act 2004 substitute—**

- 30 "(1) A registrable offender who without reasonable excuse fails to comply with any of the registrable offender's reporting obligations (other than reporting obligations in respect of details to which section 14 applies) is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

5 (1A) A registrable offender who without reasonable excuse fails to comply with any of the registrable offender's reporting obligations in respect of details to which section 14(1)(d), (da), (db), (dc), (dd), (e), (ea), (f), (g), (j), (k) or (m) applies is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

10 (1B) A registrable offender who without reasonable excuse fails to comply with any of the registrable offender's reporting obligations in respect of details to which section 14(1)(a), (b), (c), (h), (i) or (l) applies is guilty of an offence and liable to level 7 imprisonment (2 years maximum)."

15 **18 Section 47 substituted**

For section 47 of the **Sex Offenders Registration Act 2004 substitute—**

20 **"47 Offence of furnishing false or misleading information**

25 (1) A registrable offender who in purported compliance with this Part furnishes details (other than details to which section 14 applies) that the registrable offender knows to be false or misleading in a material particular is guilty of an offence and liable to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units).

30 (2) A registrable offender who in purported compliance with this Part furnishes details to which section 14(1)(d), (da), (db), (dc), (dd), (e), (ea), (f), (g), (j), (k) or (m) applies that the registrable offender knows to be false or misleading in a material particular is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

5 (3) A registrable offender who in purported compliance with this Part furnishes details to which section 14(1)(a), (b), (c), (h), (i) or (l) applies that the registrable offender knows to be false or misleading in a material particular is guilty of an offence and liable to level 7 imprisonment (2 years maximum)."

10 **19 Modification of ongoing reporting obligations**

In section 61 of the **Sex Offenders Registration Act 2004**, for "21" substitute "21A".

15 **20 Access to register to be restricted**

After section 63(1B) of the **Sex Offenders Registration Act 2004** insert—

15 "(1C) Despite subsection (1)(b), for the purposes of administering the **Firearms Act 1996**, the Chief Commissioner of Police may notify the Firearms Appeals Committee established under Part 9 of that Act, and any person assisting that Committee, of part or all of the information relating to a registrable offender that is in the Register."

20 **21 Person with access to Register not to disclose personal information from it**

25 In section 64(2)(b) of the **Sex Offenders Registration Act 2004**, for "as required" substitute "as authorised or required".

30 **22 New section 64A inserted**

After section 64 of the **Sex Offenders Registration Act 2004** insert—

"64A Disclosure of de-identified information

(1) The Chief Commissioner of Police, if the Chief Commissioner considers it appropriate to do so, may provide to any person information in the Register in respect of one

or more registrable offenders if the information is de-identified information.

(2) The Chief Commissioner of Police may impose any restriction or condition that the Chief Commissioner thinks fit on the use of de-identified information disclosed under subsection (1).

(3) A person to whom de-identified information is disclosed under subsection (1) must comply with any restriction or condition on its use that is imposed by the Chief Commissioner.

Penalty: 10 penalty units in the case of a natural person;

50 penalty units in the case of a body corporate.

(4) In this section—

de-identified information means information about an individual whose identity, or the identity of any other individual, is not apparent or cannot reasonably be ascertained from the information."

23 Definitions

In section 67(1) of the **Sex Offenders Registration Act 2004**, the definition of *contact* is repealed.

24 New section 73E inserted

After section 73D of the **Sex Offenders Registration Act 2004** insert—

"73E Transitional provisions—Sex Offenders Registration Amendment Act 2014

(1) Section 11(6), as amended by section 5(3) of the **Sex Offenders Registration Amendment Act 2014**, applies only to a

sentence that is imposed on or after the commencement of section 5(3) of the **Sex Offenders Registration Amendment Act 2014**.

- 5
- (2) Section 17(1), (1A), (1B), (2) and (3), as amended by section 7 of the **Sex Offenders Registration Amendment Act 2014**, applies only to a change to personal details that
- 10 occurs on or after the commencement of section 7 of the **Sex Offenders Registration Amendment Act 2014**.
- (3) Section 17(4), as amended by section 7 of the **Sex Offenders Registration Amendment Act 2014** applies only to a
- 15 registrable offender who ceases to be in government custody on or after the commencement of section 7 of the **Sex Offenders Registration Amendment Act 2014**.
- (4) Section 18(1)(a), as amended by section 8 of the **Sex Offenders Registration Amendment Act 2014**, applies only in
- 20 respect of an absence from Victoria that is to commence on or after the day that is 9 days after the commencement of section 8 of the **Sex Offenders Registration Amendment Act 2014** comes into operation.
- 25
- (5) Section 19(1)(a), as amended by section 9 of the **Sex Offenders Registration Amendment Act 2014**, applies only in
- 30 respect of an extension of a stay elsewhere in Australia that commences on or after the day that is 9 days after the commencement of section 9 of the **Sex Offenders Registration Amendment Act 2014** comes into operation.
- 35

5 (6) Section 20(2), as substituted by section 10(1) of the **Sex Offenders Registration Amendment Act 2014**, applies only to a registrable offender who returns to Victoria on or after the commencement of section 10(1) of the **Sex Offenders Registration Amendment Act 2014**.

10 (7) Section 20(2A) applies only to a registrable offender who returns to Victoria on or after the commencement of section 10(1) of the **Sex Offenders Registration Amendment Act 2014**.

15 (8) Section 20(3), as amended by section 10(2) of the **Sex Offenders Registration Amendment Act 2014**, applies only to a registrable offender's decision on or after the commencement of section 10(2) of the **Sex Offenders Registration Amendment Act 2014** not to leave Victoria.

20 (9) Section 21A applies only in respect of a report of a kind referred to in that section that is made on or after the commencement of section 11 of the **Sex Offenders Registration Amendment Act 2014**."

25 **Regulations**

After section 75(1)(a)(iii) of the **Sex Offenders Registration Act 2004** insert—

30 "(iv) without limiting any other power under this section, for the purposes of section 21A, the documents to be produced to verify or support the details in a report referred to in that section;"

26 Schedule 1—Class 1 offences

(1) Item 7 of Schedule 1 to the **Sex Offenders Registration Act 2004** is repealed.

(2) After item 8 of Schedule 1 to the **Sex Offenders Registration Act 2004** insert—

"8A. An offence against any of the following sections of the Criminal Code of the Commonwealth—

(i) section 272.8(1) and (2) (sexual intercourse with child outside Australia);

(ii) section 272.9(1) and (2) (sexual activity (other than sexual intercourse) with child outside Australia);

(iii) section 272.10(1) (aggravated offence—child with mental impairment or under care, supervision or authority of defendant);

(iv) section 272.11(1) (persistent sexual abuse of child outside Australia);

(v) section 272.12(1) and (2) (sexual intercourse with young person outside Australia—defendant in position of trust or authority);

(vi) section 272.13(1) and (2) (sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority);

(vii) section 272.14(1) (procuring child to engage in sexual activity outside Australia);

(viii) section 272.15(1) ("grooming" child to engage in sexual activity outside Australia).".

27 Schedule 2—Class 2 offences

(1) Item 27 of Schedule 2 to the **Sex Offenders Registration Act 2004** is **repealed**.

(2) After item 28AA of Schedule 2 to the **Sex Offenders Registration Act 2004** insert—

"28AB. An offence against any of the following sections of the Criminal Code of the Commonwealth—

(i) section 272.18(1) (benefiting from offence against this Division);

(ii) section 272.19(1) (encouraging offence against this Division);

(iii) section 272.20(1) and (2) (preparing for or planning offence against this Division);

(iv) section 273.5(1) (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia);

(v) section 273.6(1) (possessing, controlling, producing, distributing or obtaining child abuse material outside Australia);

(vi) section 273.7(1) (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people).".

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Part 2—Amendment of Sex Offenders Registration Act 2004

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(3) In item 28A of Schedule 2 to the **Sex Offenders Registration Act 2004**—

(a) in paragraph (vi), for "age)." **substitute** "age);";

(b) after paragraph (vi) **insert**—

"(vii) section 474.27A(1) (using a carriage service to transmit indecent communication to person under 16 years of age).".

5

PART 3—AMENDMENT OF OTHER ACTS

Division 1—Children, Youth and Families Act 2005

28 New Part 3.2A inserted

After Part 3.2 of the **Children, Youth and Families Act 2005** insert—

"PART 3.2A—DISCLOSURE OF INFORMATION ABOUT CHILD'S CONTACT WITH REGISTRABLE OFFENDER

42A Interpretation

(1) In this Part—

authorised person means a person who is authorised in writing by the Secretary under subsection (2);

contact has the same meaning as in the **Sex Offenders Registration Act 2004**;

registrable offence has the same meaning as in the **Sex Offenders Registration Act 2004**;

registrable offender has the same meaning as in the **Sex Offenders Registration Act 2004**;

sex offender registration order has the same meaning as in the **Sex Offenders Registration Act 2004**.

(2) The Secretary, in writing, may authorise a person, or a class of person, to act under section 42D(2).

5 See:
Act No.
96/2005.
Reprint No. 4
as at 27 March
2013 and
amending
Act Nos
96/2005,
9/2013,
30/2013,
52/2013,
10 63/2013,
67/2013,
74/2013,
17/2014,
19/2014,
26/2014,
29/2014,
36/2014,
15 37/2014,
42/2014 and
47/2014.
LawToday:
www.
legislation.
vic.gov.au

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42B Secretaries may disclose information relating to registrable offenders

5 (1) The Secretary to the Department of Justice may disclose to the Secretary any information about a registrable offender that is obtained or received by the Secretary to the Department of Justice in the performance of a function under the **Sex Offenders Registration Act 2004** that indicates that the registrable offender has, or has had, contact with a child.

10 (2) The Secretary may disclose to the Secretary to the Department of Justice any information about a registrable offender that is obtained or received by the Secretary in the performance of a function under this Act in relation to a child who has, or has had, contact with the registrable offender.

15
20 **42C Chief Commissioner of Police and Secretary may disclose information relating to registrable offenders**

25 (1) The Chief Commissioner of Police may disclose to the Secretary any information contained in a report the Chief Commissioner receives under Part 3 of the **Sex Offenders Registration Act 2004** from a registrable offender if the report indicates that the registrable offender has, or has had, contact with a child.

30 (2) The Secretary may disclose to the Chief Commissioner of Police any information about a registrable offender that is obtained or received by the Secretary in the performance of a function under this Act in relation to a child who has, or has had, contact with the registrable offender.

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42D Disclosure of certain information relating to registrable offender in certain circumstances

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(1) This section applies if the Secretary receives information about a registrable offender under section 42B(1) or 42C(1) that includes information of a kind referred to in subsection (2)(a) to (d).

10

(2) The Secretary or an authorised person may disclose the following information to any other person if the Secretary or authorised person believes on reasonable grounds that the disclosure of the information to that person is in the interests of the safety and wellbeing of the child referred to in the information—

15

(a) the registrable offender's name;

20

(b) details of each offence of which the registrable offender has been found guilty that resulted in the making of a sex offender registration order;

25

(c) the date on which the registrable offender was sentenced for any registrable offence;

30

(d) the length of the reporting period under the **Sex Offenders Registration Act 2004** that applies to the registrable offender;

35

(e) any other information that the Secretary or authorised person believes on reasonable grounds is in the interests of the safety and wellbeing of the child.

(3) Before acting under subsection (2), the Secretary or authorised person must take reasonable steps to notify the registrable offender of the Secretary or authorised

5 person's intention to act under that subsection unless the Secretary or authorised person believes on reasonable grounds that doing so would endanger the life or safety of any person.

- (4) An authorised person must not act under subsection (2) other than in accordance with the terms of their authorisation.

10 Penalty: 60 penalty units or 6 months imprisonment or both.

- (5) Subsection (2) applies despite anything to the contrary in this or the **Sex Offenders Registration Act 2004**.

15 **42E Information obtained in certain circumstances not to be disclosed without authority**

20 A person who is employed or engaged in the administration of this Act or the **Sex Offenders Registration Act 2004**, or a police officer, must not disclose information of a kind referred to in section 42D(2)(a) to (d) to any other person if the person or officer—

- 25 (a) receives that information in the course of that employment or engagement or in the course of performing a duty as a police officer; and
(b) is not an authorised person; and
(c) is not otherwise authorised to do so.

30 Penalty: 120 penalty units or imprisonment for 12 months or both.

_____".

Division 2—Freedom of Information Act 1982

29 Law enforcement documents

See:
Act No. 9859.
Reprint No. 8
as at 1
5 December
2012 and
amending
Act Nos
82/2012,
70/2013,
1/2014,
10 17/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

After section 31(3) of the **Freedom of Information Act 1982** insert—

"(4) Despite anything to the contrary in this section, a document is an exempt document if it is a document contained in the Register established and maintained under section 62 of the **Sex Offenders Registration Act 2004**".

PART 4—REPEAL OF AMENDING ACT

30 Repeal of amending Act

This Act is **repealed** on 1 June 2016.

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**).

5

ENDNOTES

By Authority. Government Printer for the State of Victoria.
