

OBLIGATIONS TO REPORT AND PROTECT POLICY

Context

Christian Brothers' College St Kilda (CBC St Kilda) is a Catholic school for girls and boys in the Edmund Rice tradition, established in 1878. CBC St Kilda is committed to providing a caring, supportive and safe environment where every student has a place, a voice and their story is known. As a Catholic school in the Edmund Rice tradition, our Christian values are those expressed in the Touchstones of our governing body, Edmund Rice Education Australia (EREA): Liberating Education, Gospel Spirituality, Inclusive Community, Justice and Solidarity. The charism of Blessed Edmund Rice expressed through these touchstones, underpins our continued commitment to a safe and inclusive environment for all, providing a preferential option to those at the margins, to grow in empathy and to respond in faith and action.

Rationale

In Victoria there are specific criminal offences which impose general obligations on persons:

- aged 18 years or over to report any belief that a sexual offence has been committed, against a child under the age of 16 years, by a person over the age of 18 years (Crimes Act 1958 section 327);
- in authority within a College to act to remove or reduce a substantial risk that a sexual offence will be committed against a child (Crimes Act 1958 section 49O).

Scope

This Policy applies to all College employees, board members, students, parents and guardians, third party service providers, volunteers and contractors involved in the College environment.

Principles

What is a sexual offence

The Crimes Act sets out what constitutes a "sexual offence". This includes:

- rape
- indecent assault
- incest
- sexual penetration
- grooming a child for sexual conduct
- encouraging a child to engage in, or be involved in, sexual activity
- an attempted sexual offence or an assault with intent to commit a sexual offence.

A "sexual offence" includes an attempted sexual offence.

Policy Statement

Statement of Commitment to Child Safety

CBC St Kilda is committed to providing a child safe and child friendly environment, where children and young people are safe and feel safe, and are able to actively participate in decisions that affect their lives.

At CBC St Kilda we have a zero tolerance for child abuse and are committed to acting in children's best interests and keeping them safe from harm. The College regards its child protection responsibilities with the utmost importance and as such, is committed to providing the necessary resources to ensure compliance with all relevant child protection laws and regulations and maintain a child safe culture.

Failure to Disclose

Obligation

Any school staff member who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 must disclose that information to Victoria Police.

Under the Crimes Act 1958 (section 327), anyone aged 18 years or over must make a report to the Police if they form a reasonable belief that a sexual offence has been committed against a child under the age of 16 years, by a person aged 18 years or over. Failure to make a report without reasonable excuse is an offence and carries a prison term.

If a report is made to Department of Health and Human Services (DHHS) Child Protection in accordance with Mandatory Reporting requirements, an additional report to the Police will not usually be required unless further information is obtained.

This obligation applies to anyone aged 18 years or over, including all non-teaching staff, Volunteers, and students aged 18 and over. The legislation also applies to teaching staff if not already covered by the mandatory reporting obligation.

What must be reported

Any person aged 18 or over who forms a reasonable belief that a sexual offence has been committed by an adult (a person aged 18 years or over) against a child under 16 has an obligation to report that information to the Police.

What is a 'reasonable belief'

A "reasonable belief" is formed if a reasonable person in the same position would have formed the belief on the same grounds.

A "reasonable belief" might be formed when:

- a child states that they have been sexually abused
- a child states that they know someone who has been sexually abused (sometimes the child may be talking about themselves)

- someone who knows the child states that the child has been sexually abused
signs of sexual abuse lead to a belief that the child has been sexually abused.

How to Report

Any adult who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 must report that information to police.

In case of emergency or if a child is in life-threatening danger contact (000) or the local police station. Alternatively, to report concerns about the immediate safety of a child within their family unit to DHHS Child Protection, call the local Child Protection Intake Provider (see DHHS Child Protection contacts). If after hours call the Child Protection Crisis Line on 13 12 78.

College staff members play a critical role in protecting children in their care. All school staff who believe on reasonable grounds that a child or young person is in need of:

- protection from physical harm or sexual abuse – **must** report their concerns to DHHS Child Protection
- protection from harm that is not believed to involve physical harm or sexual abuse – are encouraged to report their concerns to DHHS Child Protection
- therapeutic treatment – are encouraged to report their concerns to DHHS Child Protection or Child FIRST.

You must act, by following the PROTECT Four Critical Actions, as soon as you witness an incident, receive a disclosure or form a 'reasonable belief' that a child has, or is at risk of being abused.

You must act if you form a suspicion/reasonable belief, even if you are unsure and have not directly observed child abuse (eg. if the victim or another person tells you about the abuse).

CBC St Kilda's procedures for responding to and reporting allegations of child abuse and student sexual offending are those stated in the Catholic Education Melbourne Policy 2.19 Child Protection – Reporting Obligations and are contained in the College Child Protection Program.

CBC St Kilda has appointed Child Safety Officers (the College Child Safety Team). Each Child Safety Officer is available to answer any questions that you may have with respect to our Child Protection and Safety Policy and Child Protection Program.

If you have any concern that a child may be experiencing any form of abuse, whether or not you have formed a belief on reasonable grounds that the abuse has occurred, you should raise your concerns with the Principal or Deputy, and/or one of our other Child Safety Officers. If the concern relates to the Principal or Deputy Principal, report to the EREA Regional Director via the EREA National Office at (03) 9426 3200.

Please be aware that consulting with a Child Safety Officer does not change any obligation you have under legislation to report to an external authority. *Refer to our Procedures for Responding to and Reporting Allegations of Child Abuse.*

The welfare and best interests of the child are paramount. Whenever there are concerns that a child is in immediate danger the Police should be called on 000.

Exceptions

If you fail to disclose a sexual offence against a child to the Police, you will not be held liable where your reason for not reporting is that:

- you fear on reasonable grounds for the safety of any person (other than the offender), and a failure to report is reasonable
- the victim told you about the sexual offence (directly or indirectly), the victim was over 16 years old when they told you about the sexual offence, and the victim requested that the information not be disclosed (unless the victim has an intellectual disability and does not have the capacity to make an informed decision about this)
- you believe on reasonable grounds that the information has already been disclosed to the Police by another person (such as to DHHS Child Protection as part of Mandatory Reporting) and you have no further information.

Unacceptable reasons for not reporting include if you are concerned with the interests (including the reputation, legal liability or financial status) of:

- the person involved in the sexual offence
- any organisation (such as the College).

A report made under the Children, Youth and Families Act 2005 Mandatory Reporting obligations may constitute a 'reasonable excuse' if you believe that you have no further information to provide to the Police.

Failure to Protect

Obligation

Any school staff member in a position of authority who has the power or responsibility to remove risk, and becomes aware that an adult associated with their organisation (such as an employee, contractor, volunteer, sport coach or visitor) poses a risk of sexual abuse to a child under 16 who is in the care or supervision of the organisation, must take all reasonable steps to reduce or remove that risk. In the CBC St Kilda school context, this includes the principal, deputy principal and business manager and may also extend to other members of the College Leadership Team, the student counsellor, program leaders and learning leaders.

Where a person in a position of authority at the College knows that a staff member, Volunteer, Third Party Contractor, or other person associated with the College poses a substantial risk of committing a sexual offence against a student or students, the person has a duty to take immediate action to ensure that the student or students are protected from that risk.

The College has a duty of care which requires the protection of all students from foreseeable risks while at College or engaging in College activities.

In addition, under section 49O of the Crimes Act 1958 (Crimes Act) a person who:

- a) by reason of the position they occupy within or in relation to the College, has the power or responsibility **to reduce or remove a substantial risk** that a relevant child (under the age of 16 who is, or may come under the care, supervision or authority of the College) will become the victim of a sexual offence committed by a person of or over the age of 18 years who is **associated with the College**; and
- b) **knows that there is a substantial risk** that the person will commit a sexual offence against a relevant child, **must not negligently fail to reduce or remove that risk.**

Who must act to protect

The person responsible for taking steps to remove or reduce the risk to the student will depend upon the source of the risk. In a normal College context usually a member of the Leadership Team would have the necessary degree of supervision, power and authority to remove or reduce the risk. On tours, excursions, or camps a teacher or a volunteer coach could have the requisite power and responsibility.

Examples of people in a position of authority include:

- the College Board
- the Principal
- members of the College Leadership Team
- middle leaders (Program Leaders, Learning Leaders)
- the student counsellor
- and may also include teachers

Volunteers where they are in a position of supervision.

When should action be taken

A person in a position of authority at the College is required to act if they know that there is a substantial risk that a student or students may become the victim of a sexual offence, and the risk is caused by a person associated with the College.

Knowledge is more than holding a tentative belief or mere suspicion.

If a person in authority has a suspicion or belief that students are at risk of harm they must take steps to follow up on that suspicion or belief by investigating further and should raise the issue with the Principal or Deputy, and a College Child Safety Officer. Where the concern relates to the Principal or Deputy, report to the EREA Regional Director via the EREA National Office at (03) 9426 3200

The duty to act extends to situations where the students at risk or the person in authority is outside of Victoria.

What is a substantial risk

A risk will be a substantial risk if a reasonable person would have judged the risk of a sexual offence being committed against the student as being substantial.

It is not necessary to prove that a sexual offence was committed in order for the substantial risk to exist – a person in a position of authority should not wait for a student to be harmed before acting.

A number of factors will contribute to determining if a risk is a substantial risk, including:

- the likelihood or probability that a child will become the victim of a sexual offence
- the nature of the relationship between a child and the adult who may pose a risk to the child
- the background of the adult who may pose a risk to the child, including any past or alleged misconduct
- any vulnerabilities particular to a child which may increase the likelihood that they may become the victim of a sexual offence
- any other relevant fact which may indicate a substantial risk of a sexual offence being committed against a child.

A person associated with the College

A person associated with the College is an adult and can be a:

- College Board member
- Principal
- teacher
- College Boarding house supervisor
- employee
- Volunteer (including parent/carer volunteers)
- Third Party Contractor

A person will not be considered to be associated with the College purely because they receive services from the College.

Procedure to Reduce or Remove a Substantial Risk

Where any person in a position of authority at the time, becomes aware of a risk of a sexual offence against a student or students under their care, they should immediately:

- take reasonable steps which would remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- **report** the matter to a College Child Safety Officer, and the Principal, as soon as practicable
- conduct an investigation unless this relates to a Mandatory Reporting situation
- make the appropriate report.

Where the concern relates to the Principal or Deputy, report to the EREA Regional Director via the EREA National Office at (03) 9426 3200.

Appropriate action to be taken may include, for example:

- a current employee who is known to pose a risk to a student or students should be immediately removed from contact with students and reported to authorities and investigated

- a parent who is known to pose a risk of sexual abuse to children should not be allowed to attend overnight College camps as a parent helper.

Whenever there are concerns that a child is in immediate danger call the Police on 000.

International Students

The College must notify the VRQA if the alleged abuse relates to an international student and the College has issued a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter in relation to that student thereby assuming responsibility for approving the student's accommodation, support and general welfare.

Record Keeping Obligations

CBC St Kilda use the PROTECT: Responding to Suspected Child Abuse template for recording comprehensive notes regarding any suspected child abuse.

For the College's record keeping obligations relating to child protection incidents, please refer to Child Protection Record Keeping.

Breaches of this policy

If you believe that the College has breached its obligations, please contact the Principal or the College governing body, Edmund Rice Education Australia (EREA) in writing or by telephone. EREA and/or the College will investigate your notification and will inform you of the outcome as soon as is practicable after a decision has been made.

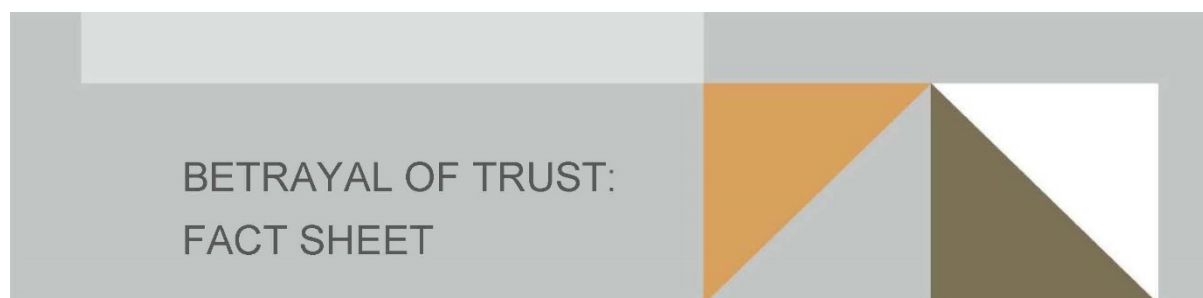
A breach of this Policy may lead to disciplinary action including possible termination of employment or appointment and/or referral to the appropriate authorities.

References

- Child Protection and Safety Policy
- Child Protection Program
- CEM Policy 2.19 PROTECT: Identifying and Responding to Abuse – Reporting Obligations
- Betrayal of Trust: Fact Sheet – The new 'failure to disclose' offence (*Appendix 1*)
- Betrayal of Trust: Fact Sheet – Failure to Protect: a new criminal offence to protect children from sexual abuse (*Appendix 2*)

Review

This policy will be reviewed December 2021.



The new 'failure to disclose' offence

Fact sheet for Department of Human Services staff and funded organisations

A new offence for failure to disclose child sexual abuse came into force on 27 October 2014. This offence has been introduced as part of the *Crimes Amendment (Protection of Children) Act 2014*, in response to a recommendation from the report of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, *Betrayal of Trust*.

The new offence requires that any adult (aged 18 and over) who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) disclose that information to police (unless they have a reasonable excuse).

This fact sheet is intended to clarify reporting obligations for Department of Human Services (DHS) staff and funded organisations. It should be read together with the general fact sheet on the new 'failure to disclose' offence available on the [Department of Justice website](#).

1. Does the new offence change my obligations in relation to reporting to police?

The simple rule is: if you have a reasonable belief that a sexual offence has been committed by an adult against a child in Victoria, you must report that belief to Victoria Police.

In many circumstances, DHS staff and funded organisations are already required to report sexual offences against a child to police, for example under *Protecting Children: Protocol between Department of Human Services – Child Protection and Victoria Police* (Child Protection Protocol); the *Critical Client Incident Management Instruction*; and the *Instruction on Responding to Allegations of Physical or Sexual Assault* (RAPSA).¹

¹Under *Protecting Children: Protocol between Department of Human Services – Child Protection and Victoria Police* (2012) and existing procedures, child protection practitioners already have an obligation to notify police where they receive a report relating to, or a disclosure of, child sexual abuse. Under the *Critical Client Incident Management Instruction* (technical update, 2014), service providers are required to report to police alleged criminal acts that occur 'during service delivery'. The new offence means that all service providers are now required to report to police all incidents involving a sexual offence against a child, regardless of whether the offence occurred during service delivery.

The *Instruction on Responding to Allegations of Physical or Sexual Assault* (technical update, 2014) (RAPSA) supplements the *Critical Client Incident Management Instruction* by providing additional instructions where the incident involves physical or sexual assault. Under the RAPSA, there is a mandatory requirement to report sexual assaults against certain clients to police. This includes assaults where the client is a statutory child protection client; resides in out-of-home care; resides in a residential service directly managed by DHS; or is in receipt of a funded disability service.

Any allegations of criminal conduct by DHS employees and contractors must also be promptly reported to Victoria Police under the *Reporting Employee Criminal Conduct Policy* and the protocol between Victoria Police and the department, *Reporting Employee Criminal Conduct*.

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The new offence applies to all adults, not just professionals who work with children. This means that **all DHS staff and funded organisations are now required to report to police where they hold a reasonable belief that a sexual offence has been committed by an adult against a child in Victoria**. This obligation applies regardless of:

- the type of service the child is receiving
- whether the offence occurred during service delivery or
- whether the child is a client of the department or funded organisation at all.

2. Does the new offence change my reporting obligations under the Critical Client Incident Management Instruction?

The reporting requirements of the *Critical Client Incident Management Instruction* remain unchanged. The new offence does not change the reporting obligations of DHS and funded organisation staff in relation to reporting of critical incidents to **DHS**.

If the allegation involves a client and meets the criteria of the *Critical Client Incident Management Instruction*, DHS and funded organisation staff are still required to report the incident to DHS using the Client Incident Report form.

The new offence does change the reporting requirements of some DHS and funded organisation staff in relation to reporting information about sexual abuse of children to **police** (see Question 1).

3. What if I have already reported the abuse to DHS (Child Protection)?

It is a reasonable excuse for not reporting under the offence if the person believes on reasonable grounds that the information has already been disclosed to police by another person and they have no further information. This ensures that:

- people are not required to report the same information to different organisations; and
- multiple people within the same organisation are not required to report the same information to police.

Consequential amendments to the *Children, Youth and Families Act 2005* (CYF Act) reinforce DHS' current practice of passing on all allegations of child sexual assault to police. **It is therefore a reasonable excuse for not reporting to police if a person reasonably believes a report has been made to DHS (Child Protection) and they have no additional information.**

Child Protection intake workers may advise people reporting child sexual abuse that they have fulfilled their obligations under the offence by reporting to DHS (Child Protection).

Similarly, if a person working in an organisation reasonably believes that another person within the organisation has reported the information to police, then the first person will have a reasonable excuse for not reporting to police. It is important for organisations to have procedures in place for reporting allegations of sexual abuse to police which clearly set out staff members' roles and responsibilities. This will minimise duplication of reporting and ensure staff are protected from liability under the offence if they do not report.

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4. How does the new offence differ from mandatory reporting?

The new offence differs from mandatory reporting under the CYF Act because:

- it applies to all adults, not just certain professionals who work with children;
- it is limited to the reporting of sexual abuse. Mandatory reporters are required to report suspected physical and sexual abuse;
- it requires the person to report a suspected crime to police, rather than reporting a concern about a child needing protection to DHS (Child Protection); and
- the suspected sexual offence must be reported even if the child's parents are acting to protect the child.

5. What if a person discloses knowledge of child sexual abuse to me but doesn't want me to report it?

If someone discloses information about a sexual offence against a child to you, and they are not the victim of the offence, you are required to report this information to police, unless you have a reasonable excuse for not reporting. You should advise the person of your obligation to report this information to police, and tell them about their own obligations under the failure to disclose offence as well as the relevant defences.

If the person who discloses the information is the victim of the offence, you are not required to disclose this information to police **provided that the person is over 16** and requests that the information not be reported (see also Questions 8 and 9).

6. What is the 'fear for safety' defence and what does it mean for women and children experiencing family violence?

One situation where a person may have a reasonable excuse for not reporting is where the person fears on reasonable grounds for the safety of any person (apart from the perpetrator) if they disclosed the information to the police, and the failure to disclose was a reasonable response in the circumstances. This is most likely to be relevant in the context of family violence, where a woman may fear for her own or her child's safety if she discloses information about sexual abuse to the police. If or when a woman feels safe enough to report, she may have an obligation to report the offence.

Victoria Police has developed procedures and training for their members about use of the offence. The training is delivered to specialist sexual offence investigators and considers issues specific to family violence. Charges for this offence will only be able to be authorised by senior specialist officers who are suitably qualified. Police and prosecutors are also required to apply the Director of Public Prosecutions' Policy on the Prosecutorial Discretion. This policy sets out that a prosecution may only proceed if there is a reasonable prospect of conviction and prosecution of the charge is required in the public interest.

7. What if a woman experiencing family violence discloses information about child sexual abuse to me but doesn't want me to report it?

If you are working with a woman experiencing family violence and information about a sexual offence against a child emerges, you are required to report this information to police, unless you have a reasonable excuse for not reporting. You should advise the woman of your obligation to report this information to police. If it appears she may have known about the offence against the child, you should tell her about her obligations under the failure to disclose offence and the relevant defences. You should make clear that the intent of the

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offence is to protect children, not to further victimise or impact on the safety of women experiencing family violence, and that Victoria Police understands the situation of women in these circumstances.

You may have a reasonable excuse for not reporting if you reasonably fear for the safety of the woman who disclosed the information, or for the safety of her children, if you report. However, the decision not to report must be reasonable in the circumstances. For example, if action could be taken to protect the woman and/or her children from danger, it may not be considered reasonable not to report.

Even if you believe you have a reasonable excuse for not reporting, you should consider any ongoing risk to the child, and decide whether other action (for example, a report to child protection) should be taken to protect them.

8. What if a child discloses to me that they have been abused and doesn't want me to report the offence to police?

The new offence respects the position of a victim who does not want the offence disclosed and who is sufficiently mature to make that judgment. The obligation to report therefore does not apply where the information about the sexual offence **comes directly from a victim** who has turned 16 years of age and who requests that the information not be disclosed to police. However, this exception does not apply where the victim is aged under 16 years, or is aged over 16 years and has an intellectual disability and does not have the capacity to make an informed decision about whether or not to report (see Question 9).

9. What if a person with an intellectual disability discloses information to me about sexual abuse?

The exception in Question 8 **does not apply** where the victim has turned 16, but has an intellectual disability at the time of disclosing the information and does not have the capacity to make an informed decision about not reporting. That is:

- if a person over 16 who has an intellectual disability (and lacks capacity to make an informed decision about reporting) discloses sexual abuse that occurred **before they turned 16**, you are still obliged to report to police.
- reporting of a sexual offence against a person with an intellectual disability who is **over 16 at the time of the sexual offence** is **not** covered by the failure to disclose offence. However, mandatory reporting requirements specified in the Responding to Allegations of Physical or Sexual Assault (technical update, 2014) apply in relation to disability clients in receipt of funded disability services.

10. What if someone discloses information about child sexual abuse to me during counselling or medical treatment?

There is an additional exception to the offence where a child under 16 discloses the information to a registered medical practitioner or counsellor during treatment. However, consistent with their obligations as mandated reporters, **registered medical practitioners will still be required to report to DHS (Child Protection) if they form a reasonable belief that a child has been sexually abused and is in need of protection.** Counsellors should consider any ongoing risk to the child and their ethical and policy obligations, and decide whether other action (for example, a report to child protection) should be taken to protect the child.

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If an adult provides information to a medical practitioner or counsellor regarding the abuse of a child, the medical practitioner or counsellor is required to disclose that information to police unless another exemption applies.

Further information:

If you require further information, please contact the Royal Commission Response Branch on 9096 0684 or royalcommissionresponse@dhs.vic.gov.au

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Failure to Protect: a new criminal offence to protect children from sexual abuse

In response to the Betrayal of Trust report the Victorian Government has strengthened laws to protect our children from sexual abuse and exposure to sexual offenders. This is in recognition of the shared community responsibility to protect children from abuse and to provide a safe environment for children to develop, learn and play.

A new criminal offence for failing to protect a child under the age of 16 from a risk of sexual abuse commenced on 1 July 2015.

The offence applies where there is a substantial risk that a child under the age of 16 under the care, supervision or authority of a relevant organisation will become a victim of a sexual offence committed by an adult associated with that organisation. A person in a position of authority in the organisation will commit the offence if they know of the risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

This offence encourages organisations to actively manage the risks of sexual offences being committed against children in their care to protect them from harm.

1. What is the offence of failing to protect a child from a sexual offence?

The offence provides that a person who:

- a. by reason of the position he or she occupies within a relevant organisation, has the power or responsibility to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person of or over the age of 18 years who is associated with the relevant organisation; and
- b. knows that there is a substantial risk that the person will commit a sexual offence against a relevant child –

must not negligently fail to reduce or remove that risk.

2. What is a 'relevant organisation'?

The offence applies to people in authority within a *relevant organisation*. A relevant organisation is one that exercises care, supervision or authority over children, whether as part of its primary function or otherwise. Relevant organisations include, but are not limited to:

- churches
- religious bodies
- education and care services (such as childcare centres, family day care services, kindergartens and outside school hours care services)
- licensed children's services such as occasional care services
- schools and other educational institutions

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- organisations that provide accommodation to children and young people, such as boarding schools and student hostels
- out-of-home care services
- community service organisations providing services for children
- hospitals and other health services
- government agencies or departments providing services for children
- municipal councils (for example those that deliver Maternal and Child Health services)
- sporting groups
- youth organisations
- charities and benevolent organisations providing services for children.

3. Who is a person in authority in an organisation?

A person in authority is someone whose, position within a relevant organisation, means that they have the power or responsibility to reduce or remove a substantial risk that a child under the age of 16 years, who is under their care, supervision or authority, may become the victim of sexual abuse committed by an adult associated with the organisation.

Whether someone is considered to be a person in authority will depend on the degree of supervision, power or responsibility the person has to remove or reduce the substantial risk posed by an adult associated with the organisation. People in authority will usually have the ability to make management level decisions, such as assigning and directing work, ensuring compliance with the organisation's volunteer policy and other operational arrangements.

Examples of people in authority may include residential house supervisors, CEOs, board, council or committee members, school principals, service managers and religious leaders. It may also apply to people with less formal involvement in an organisation. For example, a volunteer parent coach responsible for the supervision of a junior sports team may be a person in authority, even if their role is informal or limited.

4. Who is a relevant child?

A person in authority will commit an offence if he or she negligently fails to reduce or remove a substantial risk to a relevant child, or children. A 'relevant' child is a child under the age of 16 who is, or may come, under the care, supervision or authority of a relevant organisation.

The child does not need to be identified. This means that the risk is not that a particular child will become the victim of sexual abuse. Instead, the substantial risk could be posed to any child who is, or who may be in the future, under the organisation's care, supervision or authority.

5. Who is a 'person associated with' an organisation?

The offence requires a person in authority to act if they know that a person associated with their organisation poses a substantial risk to a relevant child. This may include a person who is an officer, office holder, employee, manager, owner, volunteer, contractor or agent of the organisation. This definition does not include a person who solely receive services from the organisation.

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For example, a parent of a child who is involved with receiving child protection services or who has a child in out-of-home care, and who may pose a risk of sexual abuse to a child, would not be considered to be 'associated with' the Department of Health and Human Services (DHHS) under the offence. Similarly, parents of children attending a school or service will generally only be 'associated with the organisation' if they are also engaged as a volunteer, for example to assist in the classroom or attend an excursion or camp. The offence relates to risk of sexual abuse by adults. Children under the age of 18 who pose a risk of sexually abusing other children are not covered by this offence.

6. What is a 'substantial risk'?

The offence requires a person in authority to reduce or remove a known 'substantial' risk that an adult associated with the organisation may commit a sexual offence against a relevant child. It does not make it a criminal offence to fail to address every possible risk that a sexual offence may be committed against a child.

There are a number of factors that may assist in determining whether a risk is a substantial risk. These include:

- the likelihood or probability that the child will become the victim of a sexual offence
- the nature of the relationship between a child and the adult who may pose a risk to the child
- the background of the adult who may pose a risk to the child, including any past or alleged misconduct
- any vulnerabilities particular to a child which may increase the likelihood that they may become the victim of a sexual offence
- any other relevant fact which may indicate a substantial risk of a sexual offence being committed against a child.

When determining whether a risk is substantial, the courts will consider a variety of factors, which may include those listed above. The courts will consider all the facts and circumstances of the case objectively, and will consider whether a reasonable person would have judged the risk of a sexual offence being committed against the child abuse as substantial. It is not necessary to prove that a sexual offence, such as indecent assault or rape, was committed.

7. When does a person 'know' there is a risk of child sexual abuse?

This offence requires a person in authority to act if they *know* that there is a substantial risk that a child may become the victim of a sexual offence. A person is generally taken to know that there is a risk if he or she is aware that it exists or will exist in the ordinary course of events. This is more than merely holding a tentative belief or suspicion.

However, it is expected that a person in authority will take steps to follow up on a suspicion or belief that children in their organisation were at risk of harm.

8. When does a person negligently fail to reduce or remove a substantial risk?

Under the offence, a person is taken to have negligently failed to reduce or remove a substantial risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances. The offence does not require a person in authority to eliminate all possible risks of child sexual abuse.

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For example, a person in authority who knows that an adult associated with the organisation poses a substantial risk to children, and moves that adult from one location in an organisation to another location where they still have contact with children, is likely to be committing the offence. Another example is where a person in authority employs someone in a role that involves contact with children, when the person in authority knows the employee left their last job because of allegations of sexually inappropriate behaviour involving children.

9. Does this criminalise mistakes made by adults who are caring for or working to protect children?

This law is aimed at protecting children and compelling those in authority to remove or reduce known substantial risks that children may become victims of sexual abuse.

As previously noted, the offence applies to a person in authority whose failure to protect a child from sexual abuse involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances.

The offence is unlikely to be committed where a person takes reasonable steps to protect a child from the risk of sexual abuse, for example, where an allegation is reported to appropriate authorities and the individual is removed from any role involving unsupervised contact with children pending an investigation.

10. What should a person in authority do to reduce or remove the risk of child sexual abuse posed by an adult associated with their organisation?

A person in authority in an organisation must take reasonable steps to reduce or remove a known substantial risk that an adult associated with their organisation will commit a sexual offence against a child.

For example:

- A current employee who is known to pose a risk of sexual abuse to children in the organisation should be immediately removed from contact with children and reported to appropriate authorities and investigated.
- A community member who is known to pose a risk of sexual abuse to children should not be allowed to volunteer in a role that involves direct contact with children at the organisation.
- A parent who is known to pose a risk of sexual abuse to children in a school should not be allowed to attend overnight school camps as a parent helper.

If you want to report a child in **immediate** risk or danger of a sexual offence please call Triple Zero (000).

11. How can you improve child safety in your organisation, and remove or reduce the risk of harm?

There are a range of measures that organisations can adopt to improve child safety and reduce the risk of harm to children. The child-safe standards provide a framework to assist in ensuring child safety in the organisation. Under the standards, organisations are expected to have policies, procedures and systems in place to protect children from abuse, including appropriate pre-employment screening arrangements and systems for reporting and responding to allegations of abuse.

Organisations are encouraged to create and implement risk management strategies suitable to their environment to reduce the risk of harm to children. These may include:

- Adopting a child safety policy that outlines a commitment to child safety and provides guidance on how to create a child safe environment.
- Enforcing a code of conduct that sets clear expectations about appropriate behaviour towards children and obligations for reporting a breach of the code.

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- Ensuring all new staff and volunteers are appropriately screened, including reference checks, before commencing employment with the organisation (in addition to Working with Children Checks or Victorian Institute of Teaching registration).
- Providing training to staff in prevention, identification and response to child safety risks, including reporting requirements and procedures

The Reportable Conduct Scheme commenced implementation on 1 July 2017 and requires organisations that have a high level of responsibility for children to report allegations of child abuse and how they have been investigated and managed centrally to the Commission for Children and Young People.

For further information and guidance on how organisations may reduce the risk of harm, refer to Appendix A and Appendix B of this fact sheet.

12. Does the offence criminalise members of the public who fail to protect a child from a risk of sexual abuse?

No — the failure to protect offence applies to people in authority within an organisation that exercises care, supervision or authority over children. It does not apply to parents or other individuals not connected to these organisations. However, as noted above, a parent who volunteers in an organisation (for example as a sporting coach) may be in a position of authority and subject to the offence.

A separate ['failure to disclose'](#) offence applies to any adult who fails to report a reasonable belief to Victoria Police that a sexual offence has been committed against a child under the age of 16, unless there is a reasonable excuse for not doing so.

13. How does the failure to protect offence interact with mandatory reporting obligations?

This offence is in addition to existing mandatory reporting obligations for specified staff under the *Children, Youth and Families Act 2005*. It applies to any person in authority within a relevant organisation, not just mandatory reporters.

14. What is the penalty for failing to protect a child?

The maximum penalty is five years' imprisonment.

15. How do I contact Victoria Police?

If you want to report a child in **immediate** risk or danger of a sexual offence please call Triple Zero (000).

If the report is not in relation to an immediate risk, contact your [local police station](#) or call Crime Stoppers on 1800 333 000.

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Appendix A – Reportable conduct scheme, Working with Children Checks and organisational duty of care

Reportable conduct scheme

A Victorian reportable conduct scheme will commence operation on 1 July 2017, and it will be administered by the Commission for Children and Young People.

The scheme will require organisations that have a high level of responsibility for children to report allegations of child abuse and child related misconduct to the Commission for Children and Young People. Certain community service organisations funded by the Department of Health and Human Services will be covered by the scheme.

Central oversight of how organisations respond to allegations of reportable conduct will help embed a child-safe culture across all organisations.

Further information about the reportable conduct scheme, including a full list of organisations covered by the scheme, is available on the websites of the:

- [Commission for Children and Young People](#)
- [Department of Health and Human Services](#)

Working with Children Checks

The [Working with Children Check](#) is one of the safety measures organisations need to put in place to protect children from sexual and physical harm.

A list of additional resources can be found on the website for Commission for Children and Young People, including:

- [tip sheets on what to look for in a child safe organisation](#)
- [a guide to creating child safe organisations](#)

Organisational duty of care

A new 'organisational duty of care to prevent child abuse' applies to any organisation that exercises care, supervision or authority over children in Victoria.

This duty of care creates a presumption of liability, such that certain organisations will need to prove that they took "reasonable precautions" to prevent child abuse if they are defending a legal claim.

The duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

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Appendix B – Child safe standards resources

The child safe standards (the standards) are compulsory minimum requirements to create and maintain a child safe environment and better protect children from the risks of abuse and apply to **organisations** that provide services for children.

The standards aim to drive cultural change in organisations so that protecting children from abuse is embedded in everyday thinking and practice.

The Commission for Children and Young People is responsible for monitoring organisations' compliance with the standards and has [a range of resources to help organisations](#) available on its website.

Community service organisations

Further information about the Standards for Community service organisations can be found on the Department of Health and Human Services website:

- [Child safe standards resources](#)
- [Child safe standards information in the Service Agreement Information Kit for Funded Organisations](#)

Departmentally-funded organisations are still required to comply with all terms and conditions set out in their service and funding agreements, including compliance with the Human Services standards, as relevant, and safety screening checks such as:

- obtaining [Working with Children Checks](#) for relevant staff
- undertaking a Disqualified Carer Check on all prospective out-of-home carers
- registering a carer on the Carer Register
- revoking a carer's registration when ceasing to be a carer.

Further information on [safety screening](#) is available on the Department of Health and Human Services website.

Schools, Early Childhood Services, VET and Higher Education and other Education Providers

Further information about the child safe standards for schools, early childhood services and other education providers is available from the websites of the [Department of Education and Training](#) and the [Victorian Registration and Qualifications Authority](#)

Fact sheets and other resources to assist approved providers and education and care services [comply with the requirements of the National Quality Framework](#) are also available from the Department of Education and Training.

As for community service organisations, departmentally-funded organisations education providers are still required to comply with all terms and conditions set out in their service and funding agreements.