

CHILD PROTECTION: FAILURE TO DISCLOSE POLICY

INTRODUCTION

Victory Christian College is committed to creating and maintaining a child-safe and child-friendly environment, where children and young people are safe and feel safe. It is vital that we are diligent ambassadors for child safety as an expression of our Christian values and ethos.

SCOPE

This policy applies to the whole school community in supporting safe environments for all children and young people. The obligations of 'failure to disclose' are separate from, and in addition to, Mandatory Reporting obligations.

Its purpose concerns the new criminal offence under the Victorian Crimes Act, commencing 27 October 2014, 'failure to disclose, which provides that:

- All adults who form a reasonable belief that a sexual offence has been committed by an adult against a child under 16 have an obligation to report that information to the police.
- Failure to disclose the information to the police is a criminal offence.

KEY PRINCIPLES

A safe environment is required to protect children and young people from harm and to prevent staff from abusing their position of authority and trust.

The child and young person's ongoing safety and well-being must be the primary focus of all decision-making. School leaders and staff must be fully self-aware of, and comply with, their professional obligations and responsibilities.

The commitment to protecting children is embedded in the organisation's culture and responsibility for acting is understood and accepted at all levels of the organisation.

DEFINITIONS

- **Child**
For the purposes of this offence, a child is a person under the age of 16 years. A young person is any person who comes under or may come under the care, supervision or authority of the school.
- **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' is not the same as having proof.
- **Sexual Abuse of a child:**
Sexual abuse occurs when a person uses power or authority over a child to involve the child in sexual activity and the child's parent or caregiver has not protected the child. Physical force is sometimes involved. Child sexual abuse involves a wide range of sexual activity, including physical activity and/or exposure of the child to pornography.

REASONABLE EXCUSES AND EXEMPTIONS FROM THE OFFENCE

Reasonable Excuse

An adult will not be guilty of the Failure to Disclose offence if they have a **reasonable excuse** for not disclosing the information. A reasonable excuse includes fear for safety, and where the information has already been disclosed.

Fear for safety

You have an excuse for not reporting to the police if:

- you reasonably fear for your safety or the safety of another person, except the person you believe committed, or was involved in, the sexual offence, and
- your failure to report is a reasonable response in the circumstances.

Belief that the information has already been disclosed

You have an excuse for not reporting to the police if:

- you believe on reasonable grounds that another person has already disclosed the information to police, and
- you have no further information to add.

For example, you may have this belief if you have disclosed the information in a mandatory report to The Department of Families, Fairness and Housing (DFFH) Child Protection under the *Children, Youth and Families Act 2005*. This obligation requires teachers, doctors and other professionals to report concerns about child welfare to child protection authorities within the Department of Families, Fairness and Housing (DFFH Child Protection.)

Under the existing mandatory reporting system, DFFH Child Protection already passes on all allegations of child sexual abuse to police, so it will be a reasonable excuse for not reporting to police if a person has made a report to DFFH Child Protection or reasonably believes a report has been made to DFFH Child Protection. This ensures that people are not required to make multiple reports to different agencies.

Excuses that are not reasonable

A person **does not have a reasonable excuse** for failing to disclose sexual abuse if they are only concerned for the 'perceived interests' of the perpetrator or any organisation. 'Perceived interests' include reputation, legal liability or financial status.

Other Exemptions

Additional exemptions to the Failure to Disclose offence may apply where:

- The victim is aged 16 years or over AND requests confidentiality. You will still need to report to the police:
 - if the victim had an intellectual disability when they provided the information
 - the victim did not have the capacity to make an informed decision about disclosure when they provided the information, and
 - you are aware or should reasonably have been aware of these facts.
- The person is a child when they formed a reasonable belief (i.e. under 18 years of age)
- The information would be privileged. For example, if it is covered by legal professional privilege or journalist privilege. Religious confessions no longer apply to this offence.
- The information is a confidential communication disclosed to a counsellor or registered medical practitioner
- The information is in the public domain. i.e. you receive the information through the public domain OR you form a reasonable belief only from information in the public domain such as television, radio, newspapers or the internet.

IMPLEMENTATION

This policy applies to the whole school community in supporting safe environments for all children and young people.

- It applies to all adults in the school community to ensure they understand this responsibility (distinct from that of Mandatory Reporting) in protecting the safety and wellbeing of children and young people under the age of 16 in accordance with the *Crimes Act 1958 (Vic)*.
- This policy and its requirements will be communicated annually to all staff and the wider school community.
- This policy and its requirements will be communicated to new staff during induction.
- Victory Christian College students will be educated on their obligations to disclose once they are over eighteen years of age.
- Responses to any allegations will be undertaken promptly, with well-documented records retained securely and confidentially.
- Allegations of misconduct against a staff member, contractor or volunteer, which meet the Reportable Conduct Scheme criteria must be reported by the Principal to the Commission for Children and Young People, within three business days of the report to DFFH Child Protection being made.

LEGISLATION

- Crimes Amendment (Protection of Children) Act 2014, online, http://www.austlii.edu.au/au/legis/vic/num_act/caoca201436o2014417
- Children, Youth and Families Act (Vic) 2005
- DEECD and DHS 2010, Protecting the Safety and Wellbeing of Children and Young People, A joint protocol of the Department of Human Services Child Protection, Department of Education and Early Childhood Development, Licensed Children's Services and Victorian Schools.
- Victorian Parliamentary Inquiry into the Handling of Child Sexual Abuse by Religious and Other Non-Government Organisations, Final Report, Betrayal of Trust, November 2013.
- Institute of Teaching Act 2001

RELEVANT RESOURCES

- ['Failure to Disclose Offence'](#), Department of Justice and Community Safety

ASSOCIATED POLICIES AND PROCEDURES

This policy should be read in conjunction with the other policies and procedures of Victory Christian College concerned with Child Safety:

- Bullying and Harassment Policy
- Child Protection: Failure to Protect Policy
- Child Protection: Grooming Policy
- Child Protection: Mandatory Reporting Policy
- Child Protection Student Fact Sheet
- Child Safety and Wellbeing Policy
- Child Safety Code of Conduct
- ICT and Internet Acceptable Use Policy
- Privacy Policy
- Screening Checks Procedure for Working with Children