

CHILD SAFETY MATTERS – VICTORIAN LEGISLATIVE REQUIREMENTS

Contents

Duty of Care
Mandatory Reporting
Working With Children Checks
Child Safe Standards
Reportable Conduct Scheme
Failure to Disclose
Failure to Protect
Grooming Offence

**This document is not intended to be and should not be used for, legal advice.
All references and content correct at date of production 08/08/2017*

Duty of Care:

All staff have a duty of care to take **reasonable steps** to prevent **reasonably foreseeable** injury to children and young people under their care. This includes taking reasonable steps to protect their safety, health and wellbeing.

In the case of a child who may be in need of protection or therapeutic treatment, or where there are significant concerns about the wellbeing of a child, reasonable steps may include (but are not necessarily limited to):

- acting on concerns and suspicions of abuse as soon as practicable
- seeking appropriate advice or consulting with other professionals or agencies when the staff member is unsure of what steps to take
- reporting the suspected child abuse to appropriate authorities such as Victoria Police and DHHS Child Protection
- arranging counselling and/or other appropriate welfare support for the child
- providing ongoing support to the child and young person – this may include attending DHHS Child Protection Case Planning meetings, and convening regular Student Support Group meetings
- sharing information with other school based staff who will also be responsible for monitoring and providing ongoing support to the child or young person.

<http://www.education.vic.gov.au/school/principals/spag/safety/Pages/dutyofcare.aspx>

Mandatory Reporting:

Mandatory reporting is a term used to describe the legislative requirement imposed on selected classes of people to report suspected cases of child abuse and neglect to government authorities.

In the Victorian context this means a “**Belief on reasonable grounds**” that (the) child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

Reporters include: Registered medical practitioners, nurses, midwives, a person registered as a teacher or an early childhood teacher under the Education and Training and Reform Act 2006 or teachers granted permission to teach under that Act; principals of government or non-government schools within the meaning of the Education and Training Reform Act 2006; and police officers.

What MUST be reported: Belief on reasonable grounds that a child is in need of protection formed in the course of practising his or her office, position or employment as soon as practicable after forming the belief and after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

Types of Abuse: Physical abuse, Sexual abuse.

<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>

Working With Children Checks

The Working with Children Check assists in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them are subject to a screening process. Passing a WWC is a legal requirement for everyone in Victoria doing paid or voluntary child-related work who doesn't qualify for an exemption.

The WWC does not assess a person's suitability to work with or care for children in a particular role. It is the responsibility of organisations to assess paid and voluntary workers' suitability to work with children and to establish sound, ongoing supervision practices so that children are safe from harm.

The following amendments to the *Working with Children Check Act 2005* implement these recommendations from 1st August 2017:

- Expand the definition of 'direct contact' in the Act. The definition of direct contact now includes oral, written or electronic communication as well as face-to-face and physical contact. The Act will continue to provide that a WWC is not required in circumstances where the contact with a child is occasional and incidental to the work.
- Remove references to 'supervision' from the Act. This means that even if a person's contact with children as part of their child-related work is supervised by another person, they will still need to apply for a Check.
- Create a new occupational category of 'child-related work', known as 'kinship care'. Family members or other persons of significance caring for a placed by Child Protection under the Youth and Families Act 2005 are required to obtain a WWC.

- Ensure that non-conviction charges (charges that have been finally dealt with other than by a conviction or finding of guilt) for serious sexual, violent or drug offences are considered as part of a WWC assessment or re-assessment.
- Enable the Secretary to the Department of Justice and Regulation to compel the production of certain information for the purposes of compliance monitoring.

<http://www.workingwithchildren.vic.gov.au/home/about+the+check/purpose/changes+to+legislation/>

Child Safe Standards:

The standards are compulsory for all organisations providing services to children and aim to drive cultural change in organisations so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers. This will assist organisations to:

- prevent child abuse
- encourage reporting of any abuse that does occur
- improve responses to any allegations of child abuse.
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The 7 Standards aim to create and maintain a child safe environment. To do so our organisation must have:

- strategies to embed an organisational culture of child safety, including through effective leadership arrangements
- a child safe policy or statement of commitment to child safety
- a code of conduct that establishes clear expectations for appropriate behaviour with children
- screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel
- processes for responding to and reporting suspected child abuse
- strategies to identify and reduce or remove risks of child abuse
- strategies to promote the participation and empowerment of children.

The Commission for Children and Young People are the oversight body for the Child Safe Standards.

<http://www.education.vic.gov.au/school/principals/spag/safety/Pages/childsafestandards.aspx>

Reportable Conduct Scheme:

This scheme requires the Commission for Children and Young People to oversee organisations' responses to allegations of child abuse or misconduct towards children. It aims to ensure that allegations are taken seriously and reduce the likelihood of people who pose a risk to children continuing in child-related work.

Heads of relevant organisations must report any allegation of child abuse or misconduct towards children made against their workers or volunteers. The Commission for Children and Young People will oversee and monitor how organisations respond to allegations.

<http://www.education.vic.gov.au/school/principals/spag/safety/Pages/reportableconductscheme.aspx>

Failure to Disclose:

All adults, not just professionals who work with children, have a legal obligation to report to Victoria Police where they form a **reasonable belief** that a sexual offence has been committed by an adult against a child under the age of 16. Failure to disclose the information may amount to a criminal offence unless you have a "reasonable excuse" or have an "exemption" from doing so.

What is a 'reasonable belief'?

A 'reasonable belief' is not the same as having proof. A 'reasonable belief' is formed if a reasonable person in the same position would have formed the belief on the same grounds. For example, 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 a child states that the child has been sexually abused
- professional observations of the child's behaviour or development leads a mandated professional to form a belief that the child has been sexually abused
- signs of sexual abuse leads to a belief that the child has been sexually abused.

Exemptions:

A person will not be guilty of the offence if he or she has a reasonable excuse for not disclosing the information. A reasonable excuse includes:

- fear for safety
- where the information has already been disclosed.
- the victim requests confidentiality where the information comes from a person aged 16 or over
- the person is a child when they formed a reasonable belief
- the information would be privileged – legal client, journalist privilege or religious confessions.

- the information is confidential communication - A registered medical practitioner or counsellor is not required to disclose information to police if the information is obtained from a child whilst providing treatment and assistance to that child in relation to sexual abuse. However, under the mandatory reporting obligations, a registered medical practitioner would still be required to report
- the information is in the public domain
- where police officers are acting in the course of their duty.

<http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/failure+to+protect+offence>

Failure to Protect:

Any staff member in a position of authority, who becomes aware that an adult associated with their organisation (such as an employee, contractor, volunteer or visitor) who poses a risk of sexual abuse to a child under the care, authority or supervision of the organisation, must take all reasonable steps to remove or reduce that risk. This may include, for example, removing the adult from child-related work pending investigation. If a staff member in a position of authority fails to take reasonable steps in these circumstances, this may amount to a criminal offence.

The offence applies only to adults in a position of authority within an organisation. In a TAFE context, this may include CEO, Executive Directors, Managers and Team Leaders.

<http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/failure+to+protect+offence>

Grooming Offence:

The offence of grooming concerns predatory conduct undertaken to prepare a child for sexual activity at a later time.

The offence applies where an adult communicates, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child with the intention of facilitating the child's involvement in sexual conduct, either with the groomer or another adult.

Grooming does not necessarily involve any sexual activity or even discussion of sexual activity – for example, it may only involve establishing a relationship with the child, parent or carer for the purpose of facilitating sexual activity at a later time.

The sexual conduct must constitute an indictable sexual offence. This includes offences such as sexual penetration of a child, indecent assault and indecent act in the presence of a child. It does **not** include summary offences, such as up-skirting and indecent behaviour in public.

The offence applies to communication with children under 16 years, but not communication with 16 and 17 year old children.

<http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/grooming+offence>