

RESPONDING TO SUSPECTED & DISCLOSED SEXUAL AND OTHER CRIMINAL ABUSE



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Review Date:	January 2023		
Purpose:	To ensure Jesuit Social Services staff respond appropriately and transparently when they are concerned that a participant is at risk of sexual and/or other criminal abuse and when participants disclose sexual or other criminal abuse (past or current).		
Relevant legislation and/or standards:	<ul style="list-style-type: none"> • Children Youth and Families Act 2005 (Vic) • Crimes Amendment (Protection of Children) Act 2014 (Vic) • Crimes Amendment (Grooming) Act 2014 (Vic) • Criminal Legislation Amendment (Child Sexual Abuse Act) 2018 No. 33 (NSW) • Children Legislation Amendment (Information Sharing) Bill 2017 (Vic) • Working with Children Act 2005 (Vic) • Child Wellbeing and Safety Act 2005 (Vic) • Children Legislation Amendment (Reportable Conduct) Bill 2016 (Vic) • Reportable Conduct Scheme (Vic) • The Charter of Human Rights and Responsibilities Act 2006 (Vic) • Family Law Act 1975 (Cth) • Children & Young Persons (Care & Protection) Act 1998 (NSW) • Care & Protection of Children Act 2007 (NT) • United Nations Convention on the Rights of the Child (UNCRC) • United Nations Declaration on the Rights of Indigenous People • Victorian Government Aboriginal Inclusion Framework • Victorian Crimes Act 1958 • Wrongs Amendment (Organisational Child Abuse) Bill 2016 (Vic) • Guidelines Criminal Abuse of Children and Vulnerable People in Organisations: Reporting to Victoria Policy (Version 12.2, March 2016). • Client Incident Management Guide, DHHS November 2017 		
Risk Awareness:	Operational, Reputational, Compliance		

Related Documents:	<ul style="list-style-type: none"> • Practice Framework • Duty of Care • Working with Children, Young People & Families • Participants Privacy Policy • Incident, Hazard and Near Miss Reporting & Procedures Policy • Child Safety Policy • Code of Conduct • Child Information Sharing – Vic policy
Scope:	All Staff
Definitions:	N/A
Policy:	<p>This policy relates to criminal abuse including sexual assault, which includes all sexual activity that a person has not consented to such as rape, incest, indecent assault, child sexual assault and sexual molestation. It also relates to the criminal offences of grooming behaviour, failing to protect children from abuse and failing to report criminal abuse of children to the Police.</p> <p>See Appendix A – Context Appendix B – Betrayal of Trust Fact Sheets Appendix C – The new Grooming Offence Fact Sheet Appendix D – Checklist Appendix E – Reportable Conduct Scheme Appendix F – Criminal Legislation Amendment (Child Sexual Abuse Act) 2018 No. 33 (NSW)</p>
Responsibilities:	Program Managers, Executive Director Programs, CEO.

1. PROCEDURE

Read this policy in conjunction with:

- Context (**Appendix A**)
- 'Betrayal of Trust' Fact Sheets (**Appendix B**)
- 'The new Grooming offence' Fact Sheets (**Appendix C**)
- Checklist (**Appendix D**)
- Reportable Conduct Scheme (**Appendix E**)
- Failure to reduce or remove risk of child becoming victim of child abuse offence NSW (**Appendix F**).

Allegations or Disclosures of sexual assault or other criminal abuse

People disclosing sexual or other criminal abuse should be provided with support that:

- acknowledges that sexual assault is a crime and is unacceptable
- understands that disclosure can be traumatic in itself and is respectful of the needs and wishes of the victim. This includes working at the victim's pace and not overwhelming them with information or the staff member's own feelings about the abuse
- includes referral and support to engage with specialist supports such as the Centre Against Sexual Assault
- recognises the person's legal right to pursue criminal redress and encourages and supports pursuit of this option
- encourages the reporting of perpetrator details to police to reduce the risk of potential harm to others.

Note: it is an offence to fail to report abuse of a child and/ or fail to protect a child in a range of jurisdictions.

If the alleged perpetrator is within Jesuit Social Services (staff, student or volunteer)

The matter must immediately be reported to the CEO or the Executive Director of Programs (ED Programs) via line management. The CEO or ED Programs will ensure that a report is made to the Police (with or without the participant's consent) and Jesuit Social Services will co-operate fully with any investigation. The CEO or ED Programs will also take immediate action to suspend the staff member, student or volunteer from all duties while the investigation is undertaken.

The CEO or ED Programs will also fulfil their obligations under the Reportable Conduct Scheme (see Appendix E).

If the alleged perpetrator is a Jesuit Social Services participant

- Staff must consider making a report to police or to other relevant persons (e.g. Corrections Officer)
- If there is a reasonable belief that a child under 18 is at risk, a report must be made to Victoria Police and to Child Protection
- All decisions must be made in consultation with line management and the relevant General Manager
- Staff must ensure that the participant is supported, including referral to independent information, expert advice and specialist services.

In light of these reporting obligations, Jesuit Social Services staff should advise participants about the limitations of confidentiality as a part of participant welcome and induction to programs.

If the victim is aged 17 years or under

- A report **must** be made to Victoria Police and, if relevant, to Child Protection Authorities. This report must be done in consultation with the relevant Program Manager (see *Working with Children, Young People and Families* policy).

If the victim is aged 18 years or above

- Jesuit Social Services staff should encourage the person to make a report to the Police and offer support for this to occur. If the adult victim decides not to involve the police, this decision should be respected unless the adult victim has a diagnosed cognitive impairment. In such cases further advice on potentially reporting to police without consent of the adult victim should be sought from the relevant General Manager or Professional Standards Officer.
- If the adult victim discloses an offence that occurred when they were under 17 AND the offence was committed by someone 18 years or over, the offence must be reported to the Police UNLESS the victim requests confidentiality. ANY report to the Police must be done in conjunction with line management and the relevant General Manager.
- If the adult participant does not consent to report AND identifying details are known about the alleged perpetrator (e.g. name, address), consideration must be given to providing these details to the Police regardless of consent. The decision regarding whether to report these details to the Police must be made in consultation with the relevant General Manager and take into account factors such as age of the victim when the offence occurred, what action (if any) was taken at the time and potential risk to the community. Decisions regarding whether to make a report to the Police must be

documented and recorded in the Allegations of Abuse register maintained by the Professional Standards Officer.

Suspected abuse – children & young people

- If a staff member or volunteer is concerned that a participant who is aged 17 or under is at risk of, or experiencing, sexual or other criminal abuse, they have a responsibility to report the matter to Victoria Police and, if relevant the local Child Protection Authorities. This report must be done in consultation with the relevant Program Manager (*see Working with Children, Young People and Families policy*).
- Suspected abuse includes suspected grooming behaviour such as inappropriate gifts, inappropriate contact (e.g. email, social media), inappropriate boundaries (such as talking about sex or undressing in front of the child), or asking children to keep their relationship, or any aspect of their relationship, secret by an adult such as a family member, teacher or other adult.

Jesuit Social Services has an appointed Child Safety & Professional Standards Officer (General Manager, Practice Development & Innovation) whose role is to oversee the adherence to practice and policy standards and to act as a resource for staff responding to disclosures and allegations of criminal abuse.

Staff dealing with disclosures and suspected abuse are encouraged to seek secondary consultation, with endorsement from the relevant program manager from:

- The Centre Against Sexual Assault
- The relevant Police contact for the State of Territory (e.g. Victoria Police – Sexual Offences and Child Abuse Investigations Team (SOCIT) in Victoria).
- Commission for Children and Young People (Victoria)
- Jesuit Social Services Child Safety & Professional Standards Officer.

Staff are also encouraged to seek support from their line manager and, where appropriate, the Employee Assistance Program.

Reporting

- All allegations or disclosures of sexual assault or abuse and actions taken must be clearly documented in participant files and discussed in supervision with line managers
- Allegations or disclosures must be documented on a Jesuit Social Services Incident Report form and sent to the email address JSS Incidents. The Incident Report form should be overseen by the relevant General Manager and include details regarding the disclosure or allegation and any actions taken (including decision making processes)
- Depending on requirements, the Incident Report might also need to be submitted to the funding body (Refer to *Incident, Hazard and Near Miss Reporting & Procedures Policy*)
- Disclosure of sexual or other criminal abuse that involves Jesuit Social Services staff, students or volunteers must be reported to the Professional Standards Officer. The Child Safety & Professional Standards Officer will keep a record of all relevant documentation (e.g. incident reports, emails, records of phone conversations, notes from meetings) at Jesuit Social Services Central Office
- Allegations that a staff member, volunteer, carer or member of a carer's household has assaulted a participant must be reported to the relevant funding body as a Category One/Major incident or equivalent

- Allegations of reportable conduct involving a child, committed by an employee within or connected to Jesuit Social Services must also be reported to the Commission for Children and Young People (for Victoria only)

If the alleged perpetrator is a member of the Society of Jesus, the CEO, in consultation with the Child Safety & Professional Standards Officer, must make a report to the Province.

END OF DOCUMENT

Document history table

Version	Reason for update	Date approved
9	Inclusion of Reportable Conduct Scheme Requirements and put in new Policy format	November 2017
10	Inclusion of Criminal Legislation Amendment (Child Sexual Abuse Act) 2018 No 33 (NSW)	August 2018
11	Updated legislation and contacts	January 2019
12	Clarification of reporting obligations	January 2020

Appendix A - Context

Jesuit Social Services understands that participants may have been a victim of child sexual and other criminal abuse. This abuse might have occurred during their early childhood and while in the family home, in institutional settings such as residential care and justice facilities or in other community settings. Perpetrators of the abuse might include:

- Family members
- Carers, including staff in health, education, out-of-home care, justice facilities or support services
- Other participants in out-of-home care, justice facilities and support services
- Members of the general community (teachers, sporting coaches)
- Members of the clergy.

Jesuit Social Services also recognises that people might be experiencing, or be at risk of, sexual or other criminal abuse in their current living situations.

Further, Jesuit Social Services recognises that some participants might be perpetrators of sexual or other criminal abuse.

Jesuit Social Services recognises the importance of a transparent, independent, confidential, just and timely response to disclosure of sexual or other criminal abuse.

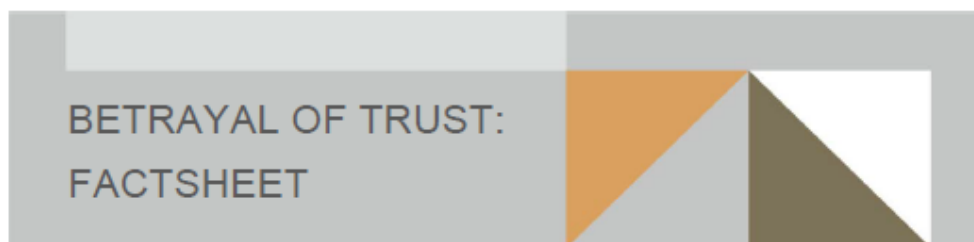
Responding appropriately when people disclose criminal abuse is critical to ensure:

- People, especially children are safe and free from sexual and other abuse
- People are fully supported to access assistance and expert advice independent from Jesuit Social Services
- People who have been criminally abused understand their right to pursue criminal redress and are fully supported to pursue this option if they choose
- People are fully supported to receive counselling or other assistance as appropriate
- Adults who have experienced criminal abuse are respected if they decide not to pursue criminal redress. In these situations, however, Jesuit Social Services recognises its duty of care to the community and the importance of preventing further abuse (particularly in relation to children).

Jesuit Social Services acknowledges its moral and legal obligation to report to the Police allegations or disclosure of abuse or suspected abuse by its staff, volunteers or contractors. Jesuit Social Services also understands its moral and legal obligation to report to the Police, concerns relating to suspected grooming behaviour and that failing to protect children is a criminal offence.

Jesuit Social Services also acknowledges its legislative obligations and its duty of care to all participants and to the broader community. This includes unaccompanied children (0-17 years) and children who accompany parents receiving services from Jesuit Social Services.

Appendix B –



The new 'failure to disclose' offence

Reporting child sexual abuse is a community-wide responsibility. Accordingly, a new criminal offence has been created in Victoria that imposes a clear legal duty upon all adults to report information about child sexual abuse to police.

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

1. 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 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.

2. Are there any excuses for not reporting child sexual abuse to police?

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.

➤ Fear for safety

A reasonable excuse exists in cases where a person has a reasonable fear for their own safety or the safety of another person (such as a child or another family member) and they do not report to police due to those circumstances.

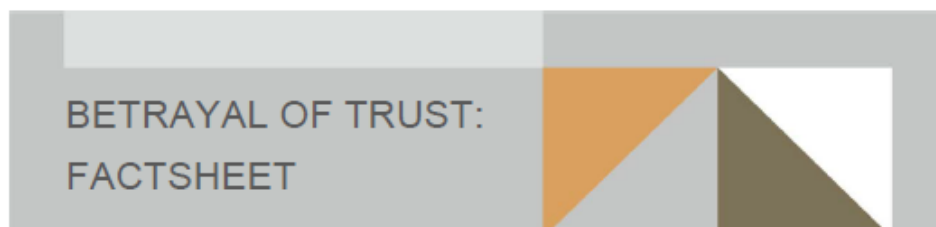
This defence may apply, for example, if a mother decides not to disclose information about her partner sexually abusing her child due to fear of violence to her or her child.

The person's fear must be subjectively reasonable, that is, it must be reasonable from the perspective of that person in those circumstances. This recognises that the person in question is best placed to judge whether their safety is in danger.

The court or jury will consider whether it was reasonable for the person not to report in the circumstances.

➤ Where the information has already been disclosed

It is a reasonable excuse to not disclose where a person believes on reasonable grounds that the information has already been disclosed to police and they have no further information to add.



An important example of this exception is where the person has already made a report under the mandatory reporting obligation specified in 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 Human Services (DHS).

Under the existing mandatory reporting system, DHS 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 DHS or reasonably believes a report has been made to DHS. This ensures that people are not required to make multiple reports to different agencies.

3. What is not a reasonable excuse?

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' includes reputation, legal liability or financial status.

For example, a principal's concern for the reputation of a school, or a clergyman's concern for the reputation of a church where the abuse happened will not be regarded as a reasonable excuse.

4. Are there any other exemptions to the offence?

There are a number of other exemptions, which include:

- the victim requests confidentiality
- the person is a child when they formed a reasonable belief
- the information would be privileged
- the information is confidential communication
- the information is in the public domain
- where police officers are acting in the course of their duty.

➤ The victim requests confidentiality

The new offence respects the position of a victim who does not want the offending disclosed and who is sufficiently mature to make that judgment. The obligation to report therefore does not apply where the information comes from a person aged 16 or over and this person requests that the offence not be reported. The law recognises that a child under 16 is not able to make this kind of decision and sometimes lacks the capacity to fully understand the effects of sexual abuse.

A person will still be required to disclose information to police if:

- the victim who requested confidentiality has an intellectual disability, and
- the victim does not have the capacity to make an informed decision about a disclosure, and
- the person who received the information is aware or should be reasonably aware of those facts.

➤ The person is a child when they formed a reasonable belief

If a person was under the age of 18 when they formed a reasonable belief, they will not be obliged to make a disclosure when they turn 18. This protects children from the burden of knowing that they will have to disclose to police when they turn 18.

➤ The information would be privileged

People will not be required to disclose where the information would be privileged. This includes:

BETRAYAL OF TRUST: FACTSHEET

- client legal privilege
- journalist privilege
- religious confessions.

For example, if a priest obtains information made in good faith through a rite of confession (as long as the admission is not given for a criminal purpose), the priest is exempt from disclosing.

➤ 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 to DHS if they form a reasonable belief that a child has been sexually abused and is in need of protection. This exemption is not designed to prevent the reporting of child sexual abuse, but rather to protect the registered medical practitioner or counsellor from criminal liability.

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

➤ The information is in the public domain

A person does not have to disclose to police if they get the information through the public domain, or form the belief solely from information in the public domain such as television or radio reports.

➤ Where police officers are acting in the course of their duties

A police officer acting in the course of their duty in respect of a victim of child sexual abuse is exempt from the offence.

5. If it is going to be compulsory for everyone to report child sexual abuse, why are there exemptions?

We need to ensure that in creating this legal obligation, we do not put children and their families at even greater risk of harm, especially those who may be experiencing family violence.

6. Won't child sexual abuse continue to occur if exemptions are allowed?

There is currently no requirement for people to report child sexual abuse to police, so introducing this new legal obligation is a big step towards preventing child sexual abuse in our community and ensuring people understand that it is a community-wide responsibility.

Certain exemptions are required to avoid any unintended consequences of this new obligation. It is not intended, for example, that this offence criminalise victims of family violence who don't report due to fear for their own or someone else's safety.

For example, women in family violence situations may have a reasonable fear for the safety of their child or another family member, especially in cases where threats have already been made. They may fear that making a report to police will escalate the situation, putting their child or another family member at even greater risk of harm – or even death.

Preventing the sexual abuse of children is a community responsibility. Other people connected with the child will still be required to make a report, unless they have a reasonable excuse not to do so.

BETRAYAL OF TRUST: FACTSHEET

7. Won't this offence discourage people from seeking help where they have experienced child sexual abuse?

The law will not require a medical practitioner or counsellor to disclose information to police when it has been obtained from a victim during treatment for sexual abuse.

Disclosures for the purpose of obtaining legal advice will also be protected by client legal privilege. There are also other exemptions which have been listed above.

8. The offence requires 'any adult' to report suspected child sexual abuse. Isn't this too broad? Won't it lead to people reporting unfounded suspicions?

The offence requires a person to report to police where they have information that leads them to form a 'reasonable belief' that a sexual offence has been committed against a child under 16. Under the offence, people will not be expected to disclose unfounded suspicions as a suspicion does not constitute a 'reasonable belief'.

The failure to disclose offence is a big step towards preventing child sexual abuse in our community and ensuring people understand that protecting children and preventing sexual abuse is a community-wide responsibility.

9. How will I be protected if I make a disclosure to police?

Your identity will remain confidential unless:

- you disclose it yourself or you consent in writing to your identity being disclosed
- a court or tribunal decides that it is necessary in the interests of justice for your identity to be disclosed.

10. Will any person who knows of child sexual abuse happening in the past be required to report?

A person who knows of child sexual abuse having occurred in the past will not have to report to police unless the victim is still a child when the offence comes into effect.

11. What is the penalty for failing to disclose child sexual abuse?

The maximum penalty is three years imprisonment.

12. When will the failure to disclose offence take effect?

27 October 2014.

13. How do I contact Victoria Police to make a report?

If you want to report a child in immediate risk or danger of sexual abuse please call [Triple Zero \(000\)](tel:000). Alternatively, you can [contact your local police station](#).

If you or someone you know has experienced child sexual abuse in an institutional context, we encourage you to contact Victoria Police's Sano Taskforce via email at sanotaskforce@police.vic.gov.au

BETRAYAL OF TRUST: FACT SHEET

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*.

PAGE 1

FAILURE TO DISCLOSE OFFENCE:
FACT SHEET FOR DEPARTMENT OF HUMAN SERVICES STAFF AND FUNDED ORGANISATIONS



BETRAYAL OF TRUST: FACT SHEET

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.

PAGE 2

FAILURE TO DISCLOSE OFFENCE:
FACT SHEET FOR DEPARTMENT OF HUMAN SERVICES STAFF AND FUNDED ORGANISATIONS



BETRAYAL OF TRUST: FACT SHEET

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

PAGE 3

FAILURE TO DISCLOSE OFFENCE:
FACT SHEET FOR DEPARTMENT OF HUMAN SERVICES STAFF AND FUNDED ORGANISATIONS



BETRAYAL OF TRUST: FACT SHEET

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.

PAGE 4

FAILURE TO DISCLOSE OFFENCE:
FACT SHEET FOR DEPARTMENT OF HUMAN SERVICES STAFF AND FUNDED ORGANISATIONS



BETRAYAL OF TRUST: FACT SHEET

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:

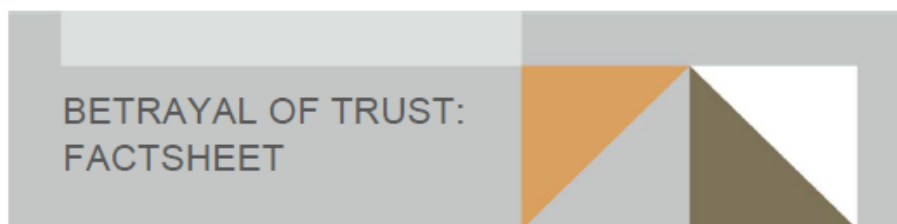
If you require further information, please contact the Royal Commission Response Branch on 9096 0684 or royalcommissionresponse@dhs.vic.gov.au

PAGE 5

FAILURE TO DISCLOSE OFFENCE:
FACT SHEET FOR DEPARTMENT OF HUMAN SERVICES STAFF AND FUNDED ORGANISATIONS



Appendix C –



The new 'grooming' offence

The *Crimes Amendment (Grooming) Act 2014*, which commenced in Victoria on 9 April 2014, introduces the offence of Grooming for sexual conduct with a child under the age of 16 years. This offence targets predatory conduct designed to facilitate later sexual activity with a child.

The Betrayal of Trust report recommended the grooming offence, given the way in which many sex offenders target their victims. Grooming can be conducted in person or online, for example via interaction through social media, web forums and emails.

Many perpetrators of sexual offences against children purposely create relationships with victims, their families or carers in order to create a situation where abuse could occur. For this reason, parents, carers or other family members who have been targeted by perpetrators in order to gain access to a child are also victims.

The *Victim's Charter Act 2006* was amended to expressly provide that a child and a family member of that child are victims of a grooming offence and are entitled to provide a victim impact statement to a court.

GROOMING IS NOW A CRIMINAL OFFENCE

1. What is grooming?

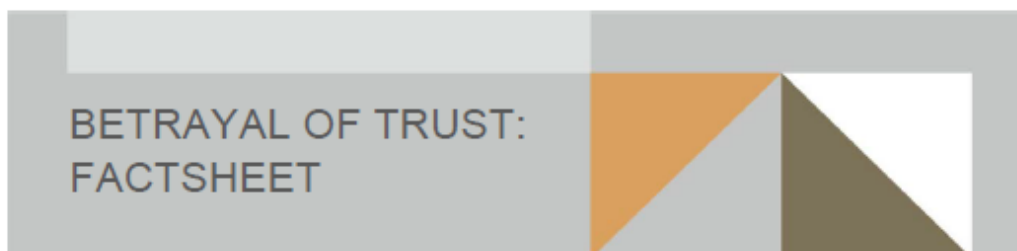
- The offence of grooming concerns predatory conduct undertaken to prepare a child for sexual activity at a later time.
- The offence applies where an adult communicates, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child 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 upskirting and indecent behaviour in public.

2. Who can commit the offence?

The offence can be committed by any person aged 18 years or over. It does not apply to communication between people who are both under 18 years of age.

3. What age are the children who are protected by the offence?

The offence applies to communication with children under 16 years, but not communication with 16 and 17 year old children. This distinction between children aged below 16 and those aged 16 or 17 reflects the general age of consent (16 years) recognised by the criminal law in relation to sexual offences.



4. What are the key differences between the Victorian grooming offence and the grooming offences that have been implemented in New South Wales and by the Commonwealth?

The New South Wales grooming offence is confined to circumstances in which an adult engages in conduct that exposes a child to indecent material or provides the child with an intoxicating substance with the intention of making it easier to procure the child for sexual activity. The Victorian offence is broader than this and prohibits an adult from engaging in any form of communication with the intention of facilitating sexual conduct. This is not limited to exposing the child to indecent material or providing them with an intoxicating substance and may include such acts as inappropriately giving them gifts or favours with the intention of engaging in later sexual activity.

The offence is similar to the Commonwealth grooming offence. The key distinction is that the Commonwealth offence is limited to grooming via a communication transmitted through a carriage service. The Victorian offence applies to any form of communication between the adult and child, including communication that occurs in person.

5. What is the purpose of amending the *Victim's Charter Act 2006*?

Amending the *Victim's Charter Act 2006* to expressly include a family member of the child as a victim of a grooming offence (eg. the child's parents) entitles the parents, or another family member, to provide a victim impact statement to the court.

6. What is the penalty for grooming?

The maximum penalty is 10 years imprisonment.

Appendix D – Checklist for practitioners

Is the participant's current age 17 years or under?	YES <input type="checkbox"/> <ul style="list-style-type: none"> •Notification to Child Protection authorities (in consultation with relevant Program Manager). Child Protection will notify Police when appropriate. (this may include the Victorian Commissioner for Children and Young People). •Support for participant and referral to specialist services •Incident report to ED Programs.
Is the participant's current age 18 years or over?	YES <input type="checkbox"/> <ul style="list-style-type: none"> •Support for participant and referral to specialist services. •Provision of information regarding legal options available. •Encouragement and offer of support to pursue legal avenues including reporting to police and specialist support. •If identifying information about the alleged perpetrator is known to Jesuit Social Services (e.g. name, address) a discussion must be had with line manager and relevant General Manager to determine whether a report should be made to the Police regardless of participant consent. •Incident report to ED Programs.
If the participant's current age is 18 years or over, was the participant under 18 at the time of the offence?	YES <input type="checkbox"/> <ul style="list-style-type: none"> •If the offence was committed by someone 18 years or older, the offence must be reported to police UNLESS the victim requests confidentiality. Any report to the Police must be done in consultation with the relevant General Manager. •Incident report to ED Programs.
Is the alleged perpetrator within Jesuit Social Services-staff or volunteer?	YES <input type="checkbox"/> <ul style="list-style-type: none"> •Immediate report to the CEO or the ED Programs (via line management). •CEO or ED Programs will make a report to the Police and co-operate fully with the investigation. •CEO or ED Programs will suspend the staff member or volunteer from all duties while the investigation is undertaken (in consultation with police). •Report to Professional Standards Officer. •Fulfil requirements of Reportable Conduct Scheme.
Is the alleged offender a participant?	YES <input type="checkbox"/> <ul style="list-style-type: none"> •Involve line management and relevant General Manager in decision making and reporting process. •Consider a report to the Police or other relevant personnel (e.g. Corrections Officer). •If a child under 18 is at risk of sexual abuse, report to Child Protection who will notify the Police if appropriate. •Support for participant and referral to specialist services. •Incident report to ED Programs.

Appendix E – Reportable Conduct Scheme

Reportable conduct

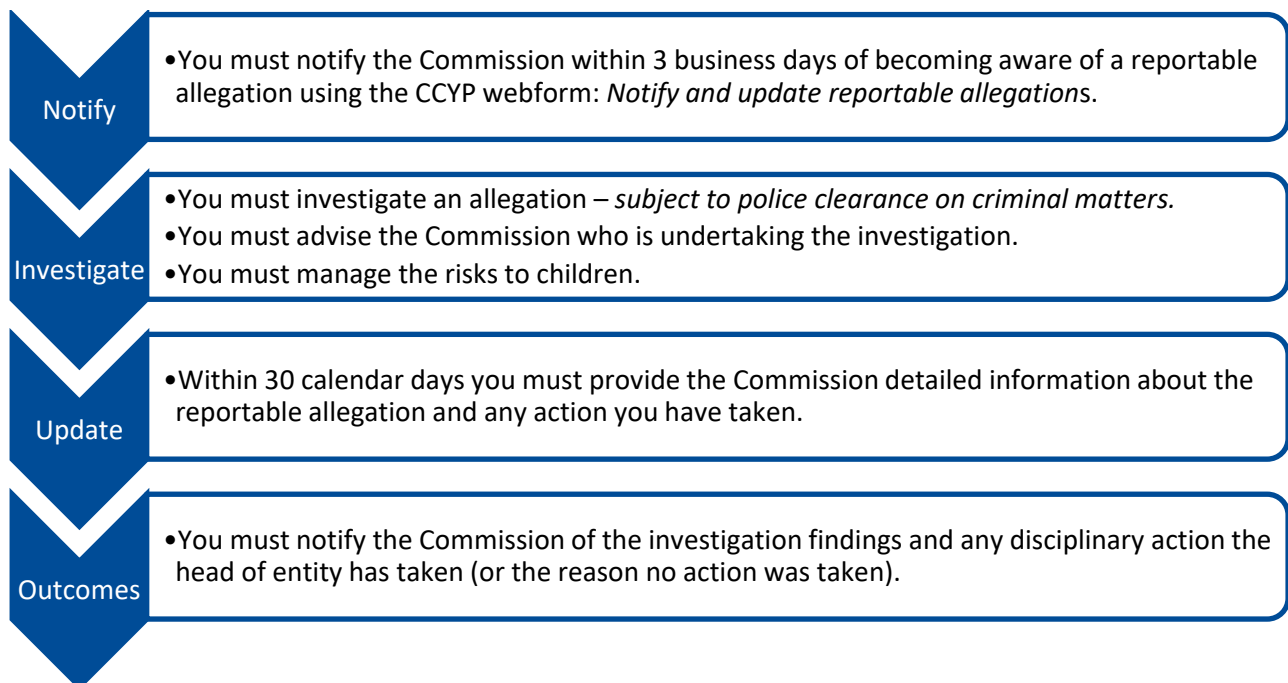
Reportable conduct includes:

- sexual offences (against, with or in the presence of a child)
- sexual misconduct (against, with or in the presence of a child)
- physical violence (against, with or in the presence of a child)
- behaviour that is likely to cause significant emotional or psychological harm
- significant neglect.

Reportable Conduct Scheme (Victoria)

If there is a finding that a staff member or volunteer has engaged in reportable conduct and it involves a child (i.e. anyone who is under 18 years of age) there are obligations under the Reportable Conduct Scheme on heads of organisations. Staff must be aware of these obligations in order to assist the heads of the organisation fulfil their obligations.

The requirements are:



Appendix F – Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No. 33 (NSW)

NOTE: This became law in NSW in December 2018 and can be found in the CRIMES ACT 1900 (NSW) - SECT 43B



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NSW Legislative Compliance Alert

June 2018

Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No. 33 (NSW)

This alert applies to organisations that provide child-related services and will likely amend the NSW – Working with Children module.

Please be advised that the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No. 33 (NSW)* (the Amending Act) was assented on 27 June 2018. The Amending Act will commence on a date which has not yet been proclaimed.

The Amending Act will amend the *Crimes Act 1900* (NSW) to insert a new offence, section 43A (Failure to reduce or remove risk of child becoming victim of child abuse).

This new section provides that a person commits an offence if:

- the person is an adult who carries out work for an organisation, whether as an employee, contractor, volunteer or otherwise (a position holder); and
- the organisation is the employer of an adult worker who engages in child-related work; and
- there is a serious risk that the adult worker will commit a child abuse offence against a child who is, or may come, under the care, supervision or authority of the organisation; and
- the position holder knows that the risk exists; and
- the position holder, by reason of the person's position, has the power or responsibility to reduce or remove that risk; and
- the position holder negligently fails to reduce or remove that risk.

The new offence will carry a maximum penalty of imprisonment for 2 years.

Subscribers that provide child-related services should ensure that all relevant staff, including any volunteer staff, are aware of this new offence, and ensure that any relevant policies and procedures should be also updated upon commencement.

Please [click here](#) to access the full Bill.

Contact

For further information please contact the Law Compliance team:

Phone: 1300 862 667

Email: info@lawcompliance.com.au



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