

General Legal Obligations to Report Child Sexual Abuse and “Act to Protect” Policy

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 (Vic) s327*); and
- in authority within a school to act to remove or reduce a substantial risk that a sexual offence will be committed against a child (*Crimes Act (Vic) s49C*).

Details of these obligations are set out in the following sections:

- The Obligation to Report a Sexual Offence
- The Obligation to Act to Protect

The Obligation to Report a Sexual Offence

Source of Obligation

Under the *Crimes Act 1958 (Vic) (s 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 the Department of Health and Human Services (DHHS) 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 Sexual Offence?

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

- rape;
- indecent assault;
- incest;
- sexual penetration; and
- grooming a child for sexual conduct; and
- encouraging a child to engage in, or be involved in, sexual activity.

A "sexual offence" includes an attempted sexual offence.

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; or
- signs of sexual abuse led to a belief that the child has been sexually abused.

Exceptions - Failure to Disclose

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 he or she 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 the DHHS 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; or
- any organisation (such as the College).

A report made under the *Children, Youth and Families Act 2005* (Vic) mandatory reporting obligations may constitute a 'reasonable excuse' if you believe that you have no further information to provide to the Police.

International Students

The College must notify the VRQA if the alleged sexual offence 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

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

The Obligation to Act to Protect

Source of Obligation

Where a person in a position of authority at the College becomes aware 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 entails protecting all students from foreseeable risks while at school or engaging in College activities.

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

- A. by reason of the position they occupy at the College, has the power or responsibility to reduce or remove a substantial risk that a relevant child (under the age of 16) 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 is Responsible for Acting to Protect the Student/s?

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 school context usually a member of the school 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:

- College Board members;
- the Principal;
- members of the College executive group;
- teachers; and
- volunteers where they are in a position of supervision.

When Should Action Be Taken?

A person in a position of authority at Thomas Carr 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 College's Child Safety Officer.

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 i.e. 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; and
- any other relevant fact which may indicate a substantial risk of a sexual offence being committed against a child.

What is a Sexual Offence?

Action must be taken where there is a substantial risk of sexual offences occurring, including:

- rape;
- indecent assault;
- incest;
- sexual penetration;
- grooming a child for sexual conduct; and
- an attempted sexual offence or an assault with intent to commit a sexual offence.

Who is “a Person Associated with the School”?

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

- College Board members;
- Principal;
- teacher;
- boarding house supervisor;
- employee;
- volunteer (including parents); or
- 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 staff member, volunteer, or other 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 the College's Child Safety Officer, and the Principal, as soon as practicable;
- conduct an investigation unless this relates to a Mandatory Reporting situation; and
- make the appropriate report.

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 in a school should not be allowed to attend overnight school camps as a parent helper.

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

Record Keeping Obligations

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The content of this policy can be changed at the College Board's discretion at any time without notification.