

Protection of Children – Failure to Protect Policy

1.0 Introduction:

Protecting children and young people against sexual abuse is a community wide responsibility. Schools have a moral and legal responsibility to ensure children or young people are safe in their care and to ensure that all forms of abusive behaviours towards children are prevented.

The Crimes Act 1958 (Vic) and the Crimes Amendment (Failure to Protect) Act 2014 includes an offence for failure by a person with power, authority and responsibility within an organisation to protect a child under the age of 16 years who is under the care or supervision of the organisation.

As soon as a person in authority becomes aware of a risk of child sexual abuse, he/she will be under a duty of care to remove or reduce that risk. A criminal offence applies where the person in authority:

- Knows that there is a substantial risk of a sexual offence being committed against a child by a person over 18 years associated with the organisation; and
- Negligently fails to reduce or remove that risk.

It is imperative to prevent, reduce and minimise child abuse and exploitation in all their forms.

2.0 Purpose:

This policy informs schools of their responsibilities in relation to child protection and disclosure/reporting obligations. The policy acknowledges the particular duty of care and legal responsibilities assigned to school principals and staff in senior leadership roles.

3.0 Principles:

- 3.1** The dignity of each person, made in the image of God, is a fundamental tenet of the Catholic Church and therefore of Catholic education.
- 3.2** A safe environment is required to protect children/young people from harm and to prevent staff from abusing their position of authority and trust.
- 3.3** School leaders and staff need to be informed of matters related to child sexual abuse and be fully self-aware of their professional obligations and responsibilities.
- 3.4** All children/young people have the right to a thorough and systematic education in personal safety, including safety in relationships.
- 3.5** Abuse of children by persons in positions of trust or authority is a serious matter. All allegations must receive a response and be dealt with promptly.
- 3.6** After a disclosure, any ongoing harm to the child/young person and the employee is minimised by:
 - Adherence to agreed procedures.
 - Provision of appropriate social and emotional support and pastoral care.

- Appropriate confidentiality.
- 3.7** The child/young person's ongoing safety and wellbeing should be the primary focus of decision making.
- 3.8** Failing to reduce the risk of sexual abuse against a child/young person is a serious offence.

4.0 Definitions:

For the purposes of this policy, the following definitions apply:

- 4.1 Child and Young Person:** A child is legally defined as 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.
- 4.2 Confidential:** Being entrusted with private and restricted information that must be treated as such, both in written and verbal form.
- 4.3 Duty of Care:** Staff or volunteers working in Catholic schools have a duty of care to support and protect the children and young people with whom they are professionally involved.

When staff members form a reasonable belief that a child or young person has been harmed or is at risk of harm, they are ethically bound to take action to protect the safety and wellbeing of that child or young person. For some staff members this obligation is legally mandated (*cf* DEECD and DHS 2010).

Duty of care is breached if a person:

- Does something that a reasonable person in that person's position would not do in a particular situation.
 - Fails to do something that a reasonable person in that person's position would do in the circumstances.
 - Acts or fails to act in a way that causes harm to someone to whom the person owes a duty of care.
 - Fails to report when mandated.
- 4.4 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.

5.0 Procedures:

This policy should be read in conjunction with the CEO Sale Pastoral Care and Child Protection Policies (see 8). The successful implementation of this policy will include the following:

- Development of a school-based policy and procedures to respond to this policy.
- Regularly communicating this policy to staff and the wider community.
- Educating children in personal safety and sexual abuse.
- Educating school staff to identify possible sexual abuse.
- Taking action that is timely, respectful and coordinated when a person in authority forms a belief that a child/young person is at risk of being harmed through sexual abuse, or has been harmed. The matter must be reported to the Police and the Principal. Victoria Police has primary responsibility for conducting investigations into the alleged matter.
- If a mandated staff member, reporting to DHS unless otherwise advised by the police.
- Ensuring the child/young person and the child's/young person's family have access to appropriate services in order to reduce any long-term effects of the grooming abuse.
- Documenting all allegations and retaining records in a secure area, ensuring their confidentiality.

6.0 Expected Outcomes:

- 6.1 Schools develop their own policy and procedures to respond to the *Crimes Amendment (Protection of Children) Act 2014*.
- 6.2 Catholic education employees are informed of the Failure to Protect amendment and are expected to be self-aware of their professional obligations and responsibilities.
- 6.3 A thorough and systematic education in personal safety, including safety in relationships, will be provided for all children/young people.
- 6.4 Approved professional learning in providing education in personal safety will be provided to all staff.
- 6.5 All allegations will receive a prompt response and be clearly documented.

7.0 References:

Crimes Amendment (Protection of Children) Act 2014, online,
http://www.austlii.edu.au/au/legis/vic/num_act/caoca201436o2014417

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.

8.0 Related Policies:

- Pastoral Care Policy
- Child Protection and Safety Policy
- Child Protection – Grooming Policy
- Child Protection – Failure to Disclose Policy

9.0 Review:

Draft Review:	July 2015
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