



Mary MacKillop College South Gippsland

Child Safety and Protection – Failure to Disclose Policy

Ratified – June 2020, to be reviewed June 2021

1.0 Introduction

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

It is a clear legal duty on **all** adults to report 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 has an obligation to report that information to police.

Under the Crimes Act 1958 (Vic) and the Crimes Amendment (Protection of Children) Act 2014 (Vic), it is now an offence for failure by a person in authority to protect a child under the age of 16 years from a sexual offence when:

- The person has information sufficient to form a reasonable belief that a sexual offence has been committed in Victoria against a child; and
- Without reasonable excuse, the person fails to report the information to Victoria Police as soon as practicable.

Staff mandated to report (e.g. principals, teaching staff, psychologists and school nurses) now do so under the Children, Youth and Families Act 2005 (Vic) and the Crimes Act 1958 (Vic) and the Crimes Amendment (Protection of Children) Act 2014 (Vic).

This new obligation **applies to all non-mandated staff and adult community members** and is separate to the mandatory reporting framework. It is subject to some exclusions, such as:

- 1.1 The person reasonably believes that the information has already been disclosed to the police;
- 1.2 The victim is over the age of 16 at the time that the information is received, does not have an intellectual disability and requests that the information not be disclosed;
- 1.3 The information is privileged (e.g. religious confession or communications between a client and their lawyer);
- 1.4 The information is in the public domain;
- 1.5 The person fears on reasonable grounds for the safety of any person (except the offender) if the information is disclosed and the failure to disclose is a reasonable response in the circumstances.

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

2.0 Purpose

This policy acknowledges the particular duty Mary MacKillop College employees have towards children/young people in their care. It respects the dignity of children/young people and Catholic Education employees and it outlines their rights and responsibilities.

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 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:
 - a) adherence to agreed procedures
 - b) provision of appropriate social and emotional support and pastoral care
 - c) 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 disclose the risk or act 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 [sic] 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 DHHS 2010).
Duty of care is breached if a person:

 - a. does something that a reasonable person in that person's position would not do in a particular situation
 - b. fails to do something that a reasonable person in that person's position would do in the circumstances
 - c. acts or fails to act in a way that causes harm to someone to whom the person owes a duty of care
 - d. 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) a child states that they have been sexually abuse
 - b) a child states that they know someone who has been sexually abused (sometimes the child may be talking about themselves)
 - c) someone who knows a child states that the child has been sexually abused
 - e. professional observations of the child's behaviour or development leads a mandated professional to form a belief that the child has been sexually abused
 - f. 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 Mary MacKillop Pastoral Care and Child Protection Policies (see 8). The successful implementation of this policy will include the following:

- 5.1 Development of a school-based policy and procedures to respond to this policy
- 5.2 Regularly communicating this policy to staff and the wider community
- 5.3 Educating children in personal safety and sexual abuse
- 5.4 Educating school staff to identify possible sexual abuse
- 5.5 Taking action that is timely, respectful and coordinated when a staff member 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
- 5.6 If a mandated staff member, reporting to DHHS unless otherwise advised by the police
- 5.7 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
- 5.8 Documenting all allegations and retaining records in a secure area, ensuring their confidentiality.

6.0 Expected Outcomes

- 6.1 Mary MacKillop College employees are expected to be self-aware of their professional obligations and responsibilities and report to police any reasonable believe of the risk, or act, of sexual abuse against a child/young person.
- 6.2 A thorough and systematic education in personal safety, including safety in relationships, will be provided for all children/young people.
- 6.3 Approved professional learning in providing education in personal safety will be provided to all staff.
- 6.4 All allegations of grooming 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 DHHS 2010, Protecting the Safety and Wellbeing of Children and Young People, A joint protocol of the DHHS 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

- 8.1 Pastoral Care Policy
- 8.2 Child Safety and Protection Policy
- 8.3 Child Safety and Protection – Grooming Policy
- 8.4 Child Safety and Protection – Failure to Protect Policy