



## Holy Name Primary School

### Child Protection – Reporting Obligations Policy and Procedures

#### Introduction:

Protection for children and young people is based upon the belief that each person is made in the image and likeness of God and that the inherent dignity of all should be recognised and fostered.

Holy Name Primary School is entrusted with the holistic education of the child in partnership with their parents, guardians and caregivers, who are the primary educators of their children. Holy Name Staff therefore have a duty of care to students by taking all reasonable care to avoid acts or omissions, which they can reasonably foresee, would be likely to result in harm or injury to the student and to work for the positive wellbeing of the child.

Under the [National Framework for Protecting Australia's Children 2009–2020](#), protecting children is everyone's responsibility – parents, communities, governments and business all have a role to play. In Victoria, a joint protocol, [Protecting the safety and wellbeing of children and young people](#), involving the Department of Health and Human Services (DHHS) Child Protection, the Department of Education and Training (DET), the Catholic Education Commission of Victoria and licensed children's services, exists to protect the safety and wellbeing of children and young people. All teachers, other staff, parish priests, canonical and religious order administrators of Catholic schools within Victoria must understand and abide by the professional, moral and legal obligations to implement child protection and child safety policies, protocols and practices.

#### Purpose of this policy:

Holy Name Primary School complies with the legal obligations that relate to managing the risk of child abuse under the ***Children, Youth and Families Act 2005 (Vic.)***, the ***Crimes Act 1958 (Vic.)*** and the recommendations of the [Betrayal of Trust Report](#).

**This policy is designed to assist staff to:**

- identify the indicators of a child or young person who may be in need of protection
- understand how a 'reasonable belief' is formed
- make a report of a child or young person who may be in need of protection
- comply with mandatory reporting obligations under child protection law and their legal obligations relating to criminal child abuse and grooming under criminal law.

Child Protection reporting obligations fall under separate pieces of legislation with differing reporting requirements. This policy sets out the actions required under the relevant legislation when there is a reasonable belief that a child is in need of protection or a criminal offence has been committed and provides guidance and procedures on how to make a report.

1. [Children, Youth and Families Act 2005 \(Vic.\)](#)

1. [Mandatory reporting](#)
2. [Forming a 'reasonable belief'](#)
3. [Types of child abuse and indicators of harm](#)
4. [Reporting child protection concerns](#)
5. [When to make a mandatory report](#)
6. [When a report may be required, though not mandated](#)
7. [Flowchart – Responding to a possible mandatory reporting concern.](#)

1. [Crimes Act 1958 \(Vic.\)](#)

1. [Failure to disclose](#)
2. [Failure to protect](#)
3. [Grooming](#)
4. [When to report criminal offences.](#)

1. [How to make a report for mandatory reporting and criminal offences](#)

1. [Making a report](#)
2. [Potential consequences of making a report](#)
3. [Related resources.](#)

# **Procedures**

## **1. Children, Youth and Families Act 2005 (Vic.)**

### **1.1 Mandatory Reporting**

Mandatory reporting is a legal requirement under the **Children, Youth and Families Act 2005 (Vic.)** (Act) to protect children from harm relating to physical injury and sexual abuse. A child, for the purpose of the relevant parts of the Act, is any person **17 years** of age or younger. School personnel mandated under this Act who, in the course of carrying out their duties, form a **reasonable belief** that a child is in need of protection from physical, emotional, psychological, developmental harm or sexual abuse, and that the **child's parents are unwilling or unable to protect the child**, must report that belief to DHHS Child Protection and the grounds for it as soon as possible after forming the belief. A subsequent report must be made on each occasion on which the mandatory reporter becomes aware of further reasonable grounds for the belief.

### **1.2 Forming a 'reasonable belief'**

When staff are concerned about the safety and wellbeing of a child or young person, they must assess that concern to determine if a report should be made to the relevant agency. This process of considering all relevant information and observations is known as forming a 'reasonable belief'.

A 'reasonable belief' or a 'belief on reasonable grounds' is not the same as having proof but is more than mere rumour or speculation. 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 if:

- a child states that they have been physically or sexually abused
- a child states that they know someone who has been physically or sexually abused (sometimes the child may be talking about themselves)
- someone who knows a child states that the child has been physically or sexually abused
- a child or young person exhibits sexually-abusive or age-inappropriate behaviours
- professional observations of the child's behaviour or development leads a professional to form a belief that the child has been physically or sexually abused or is likely to be abused
- signs of abuse lead to a belief that the child has been physically or sexually abused.

### **1.3 Types of child abuse and indicators of harm**

Child abuse can have a significant effect on a child's physical or emotional health, development and wellbeing. The younger a child the more vulnerable he/she is and the more serious the consequences are likely to be. There are many indicators of child abuse and neglect. The presence of a single indicator, or even several indicators, does not prove that abuse or neglect has occurred. However, the repeated occurrence of an indicator, or the occurrence of several indicators together, should alert staff to the possibility of child abuse and neglect. While any indicators of possible child abuse or neglect are concerning, it is important to know which indicators **must** be reported.

It is **mandatory** to report concerns relating to:

- physical abuse
- sexual abuse.

While not mandated, making a report to DHHS Child Protection may also be needed for:

- emotional abuse
- neglect
- medical neglect
- family violence
- human trafficking (including forced marriage)
- sexual exploitation (including pornography and prostitution)
- risk-taking behaviour
- female genital mutilation
- risk to an unborn child
- a child or young person exhibiting sexually-abusive behaviours.

**Note:** For full definitions for all of the types of child abuse and a comprehensive list of the indicators of harm refer to [Appendix 2: Protecting the safety and wellbeing of children and young people](#)

## **1.4 Reporting child protection concerns**

All school staff who believe on reasonable grounds that a child or young person is in need of:

- protection from physical harm or sexual abuse – **must** report their concerns to DHHS Child Protection
- protection from harm that is not believed to involve physical harm or sexual abuse – are encouraged to report their concerns to DHHS Child Protection
- therapeutic treatment – are encouraged to report their concerns to DHHS Child Protection or Child FIRST.

**Child Protection** is the Victorian Government Agency, provided by the DHHS that protects children at risk of significant harm. Child Protection has statutory powers and can use these to protect children. **Child FIRST** is the Family Information Referral Support Team run by a registered community service in a local area that can receive confidential referrals about a child of concern. It does not have any statutory powers to protect a child but can refer matters to family services.

Mandatory reporters **must report their concern to DHHS Child Protection** if there is a reasonable belief that a child or young person is in need of protection from physical injury or sexual abuse. Refer to: [A step-by-step guide to making a report to Child Protection or Child FIRST \(PDF - 270Kb\)](#) It is essential to document the concerns and observations which contributed to the suspicion that a child is in need of protection. This information may be gathered over a period of time and should be treated confidentially and held securely.

It is recommended – not, however, a requirement – that concerns and observations regarding suspected physical injury or sexual abuse of a child are discussed with the principal or a senior school staff member and to ensure support is provided to all involved in matters of this nature. The confidentiality of these discussions must be maintained. If more than one mandated reporter has formed a belief about the same child on the same occasion, it is sufficient for one professional to make a report. The other is obliged to ensure the report has been made and that all grounds for their own belief were included in the report made by the other staff member (Section 184 (2)). If one mandated reporter directs another mandated reporter not to make a report, and the one professional continues to hold the belief that a child is in need of protection, then that professional is legally obliged to make a report to Child Protection.

The mandatory reporter may continue to suspect that a child is at risk and in need of protection. Any further observations should continue to be recorded and a report made on each separate occasion where a belief has been formed, on reasonable grounds, that a child is likely to be at risk and in need of protection. If there is any suspicion that this relates to a sexual offence involving an adult and a child **under 16** then it must be reported to the police. Refer to [Department of Justice and Regulations – Failure to disclose offence](#) and the [Betrayal of Trust: Fact Sheet](#).

### 1.5 When to make a mandatory report

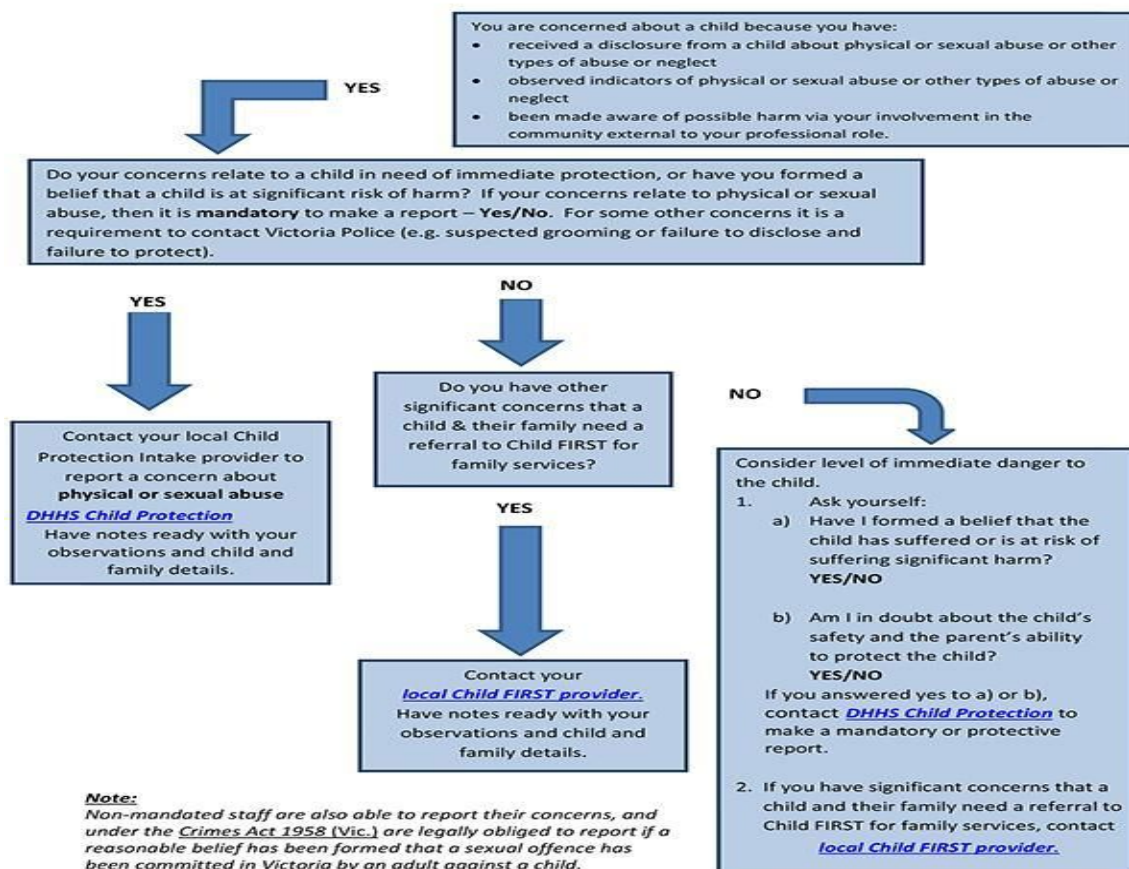
Type of Reporting	By Whom	To Whom
<p><b>Mandatory Reporting - DHHS Child Protection</b></p> <p>Mandatory reporters must make a report as soon as practicable if, in the course of practising their profession or carrying out their duties, they form a belief on reasonable grounds that a child or young person is in need of protection, as a result of physical injury or sexual abuse, and the child's parents are unable or unwilling to protect the child.</p>	<p><i>Mandatory reporters</i></p> <ul style="list-style-type: none"> <li>Teachers registered to teach or who have permission to teach pursuant to the <i>Education and Training Reform Act 2006</i> (Vic.)</li> <li>Principals of government and non-government schools</li> <li>Registered medical practitioners</li> <li>Nurses</li> <li>All members of the police force.</li> </ul>	<p><a href="#">Contact DHHS Child Protection</a></p>

### 1.6 When a report may be required, though not mandated

<p><b>Child in need of protection</b></p> <p>Any person may make a report if they believe on reasonable grounds that a child is in need of protection for any of the following reasons:</p> <ul style="list-style-type: none"> <li>The child has been abandoned and there is no other suitable person who is willing and able to care for the child.</li> <li>The child's parents are dead or incapacitated and there is no other suitable person who is willing and able to care for the child.</li> <li>The child has suffered or is likely to suffer significant harm as a result of physical injury and the parents are unable or unwilling to protect the child.</li> <li>The child has suffered or is likely to suffer significant harm as a result of sexual abuse and their parents are unable or unwilling to protect the child.</li> <li>The child has suffered or is likely to suffer emotional or psychological harm and the parents are unable or unwilling to protect the child.</li> </ul> <p>The child's physical development or health has been, or is likely to be significantly harmed and the parents are unable or unwilling to provide basic care, or effective medical or other remedial care.</p>	Any person	<p><a href="#">Contact DHHS Child Protection</a> and <a href="#">Victoria Police</a> if it is clear a crime has been committed.</p>
<p><b>Child in need of therapeutic treatment</b></p>	Any person	<p><a href="#">Contact DHHS Child Protection or Child FIRST</a></p>

Any person may make a report if they believe on reasonable grounds that a child who is 10 years of age or over, but under 15 years of age, is in need of therapeutic treatment because he or she has exhibited sexually-abusive behaviours. Contact Child FIRST if there is no significant concern about the immediate safety of the child.		
<p><b>Significant concerns about wellbeing of a child</b></p> <p>School staff can seek advice from or make referral to DHHS Child Protection or Child FIRST if they have a significant concern for the wellbeing of a child and where the immediate safety of the child is not compromised.</p> <p>The staff member should share relevant information with Child FIRST to help them complete their assessment of the referral.</p>	Any person	<a href="#">Contact DHHS Child Protection or Child FIRST</a>

## 1.7 Flowchart – Responding to a possible mandatory reporting concern



## 2. Crimes Act 1958 (Vic.)

Three new criminal offences have been introduced under the *Crimes Act 1958 (Vic.)*:

- [failure to disclose offence](#), which requires adults to report to police a reasonable belief that a sexual offence has been committed against a child (See Attachment 1)

- [failure to protect offence](#), which applies to people within organisations who knew of a risk of child sexual abuse by someone in the organisation and had the authority to reduce or remove the risk, but failed to do so (See Attachment 2)
- [grooming offence](#), which targets communication with a child or their parents with the intent of committing child sexual abuse. (See Attachment 3)

## 2.1 Failure to disclose

**Any staff member** who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a **child under 16** must disclose that information to police. Failure to disclose the information to police is a criminal offence under **section 327 of the Crimes Act 1958 (Victoria)** and applies to **all adults** in Victoria, not just professionals who work with children. The obligation is to disclose that information to the police as soon as it is practicable to do so, except in limited circumstances such as where the information has already been reported to DHHS Child Protection. For further information about the 'failure to disclose' offence, see: [Department of Justice and Regulations – Failure to disclose offence](#) and the [Betrayal of Trust: Fact Sheet](#).

## 2.2 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, sport coach or visitor) poses a risk of sexual abuse to a child **under 16** who is in the care or supervision of the organisation must take all reasonable steps to reduce or remove that risk. Failure to take reasonable steps to protect a child in the organisation from the risk of sexual abuse from an adult associated with the organisation is a criminal offence contained in **section 49C (2) of the Crimes Act 1958 (Vic.)**. In a school context this will include the principal and the business manager and may also extend to School Counsellors, heads of departments and heads of school. For further information about the 'failure to protect' offence, see: [Department of Justice and Regulations - Failure to protect offence](#) and the [Betrayal of Trust: Fact Sheet](#)

## 2.3 Grooming

The offence of grooming prohibits predatory conduct designed to prepare or 'groom' a child for future sexual activity and is contained in **section 49B (2) of the Crimes Act 1958 (Vic.)**. The offence applies to communication with children **under 16 years**. Grooming can be conducted in person or online, for example via interaction through social media, web forums and emails. 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. For further information about the 'grooming offence', see: [Department of Justice and Regulation – Grooming offence](#) and the [Betrayal of Trust: Fact Sheet](#). **For more information about managing and responding to the risk of abuse, see [Responding to Student Sexual Assault](#) and [Risk Management](#) in the [Department of Education and Training resources](#).**

## 2.4 When to report criminal offences

This table sets out when to report a concern that a child or a young person has been abused, or is in need of protection.

Types of Reporting	By Whom	To Whom
<p><b>Reasonable belief that a sexual offence has been committed by an adult against a child under 16.</b></p> <p>Any adult who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 must report that information to police.</p>	Any person aged 18 or over	<a href="#">Victoria Police</a>



<p>You will not be guilty of an offence if you do not report in the following circumstances:</p> <ul style="list-style-type: none"> <li>• The victim is 16 years of age or older and does not have an intellectual disability that limits his/her capacity to make an informed decision; and he/she does not want the information reported to the police.</li> <li>• The victim has disclosed the information in confidence in the course of a therapeutic relationship with you as a registered medical practitioner or counsellor.</li> <li>• The victim turned 16 years of age before 27 October 2014.</li> </ul> <p>Reasonable excuses for failing to comply with the requirement include:</p> <ul style="list-style-type: none"> <li>• a reasonable belief that the information has already been reported to police or DHHS Child Protection disclosing all of the information a reasonable fear that the disclosure will place someone (other than the alleged perpetrator) at risk of harm.</li> </ul>		
---	--	--

### 3. How to make a report for mandatory reporting and criminal offences

The following information provides practical guidance in relation to record-keeping for both mandatory reporting and criminal offences.

#### 3.1 Making a report

**In case of emergency or if a child is in life-threatening danger contact Triple Zero (000) or the local police station.** Alternatively, to report concerns about the immediate safety of a child within their family unit to DHHS Child Protection, call the local Child Protection Intake Provider (see [DHHS Child Protection contacts](#)). If after hours call the **Child Protection Crisis Line on 13 12 78**.

The table below describes the information to include when making a mandatory report about child abuse or child protection concerns.

Step	Description
1.	<p>Keep comprehensive notes that are dated and include the following information:</p> <ul style="list-style-type: none"> <li>• a description of the concerns (e.g. physical injuries, student behaviour)</li> <li>• the source of those concerns (e.g. observation, report from child or another person)</li> <li>• the actions taken as a result of the concerns (e.g. consultation with the principal, report to DHHS Child Protection etc.).</li> </ul>
2.	<p>Discuss any concerns about the safety and wellbeing of students with the principal or a member of the school leadership team.</p> <p>The individual staff member should then make their own assessment about whether they should make a report about the child or young person and to whom the report should be made.</p>
3.	<p>Gather the relevant information necessary to make the report. This should include the following information:</p>



	<ul style="list-style-type: none"> <li>• full name, date of birth and residential address of the child or young person</li> <li>• the details of the concerns and the reasons for those concerns</li> <li>• the individual staff member's involvement with the child or young person</li> <li>• details of any other agencies which may be involved with the child or young person.</li> </ul>
4.	<p><b>Make a report to the relevant agency:</b></p> <ul style="list-style-type: none"> <li>• To report concerns which are life-threatening <b>phone 000 or the local police station.</b></li> <li>• To find the nearest Victoria Police Sexual Offences and Child Abuse Investigation Team contact your local police station. Visit the <a href="#">Victoria Police website</a> for local contact numbers.</li> <li>• To report concerns about the immediate safety of a child within their family unit to DHHS Child Protection:</li> <li>• Call your <b>local Child Protection</b> Intake provider immediately, <a href="#">Child Protection</a></li> <li>• For <b>After Hours Child Protection Emergency</b> Services, call <b>13 12 78.</b></li> <li>• To report concerns to <a href="#">DHHS Child Protection</a>, contact your local child protection office.</li> </ul> <p><b>**Non-mandated staff members who believe on reasonable grounds that a child is in need of protection are able to report their concerns to Child Protection.</b></p>
5.	<p><b>Make a written record of the report including the following information:</b></p> <ul style="list-style-type: none"> <li>• the date and time of the report and a summary of what was reported</li> <li>• the name and position of the person who made the report and the person who received the report.</li> </ul>
6.	<p><b>Notify relevant school staff and/or Catholic Education Melbourne</b> staff of a report to DHHS Child Protection or Child FIRST.</p> <ul style="list-style-type: none"> <li>• School staff should advise the principal or a member of the leadership team if they have made a report.</li> <li>• School staff can seek further assistance by contacting the Catholic Education Melbourne Wellbeing &amp; Community Partnerships Unit.</li> </ul>
7.	<p>In the case of international students, the principal must notify the International Education Division of the Department of Education and Training on (03) 9637 2990 to ensure that appropriate support is arranged for the student.</p> <p>In the case of Koorie students, the principal must notify the Diocese or Regional Office (as appropriate) to ensure the regional Koorie support officer can arrange appropriate support for the student.</p>

### 3.2 Potential consequences of making a report

This table describes the potential consequences of making a report.

Potential consequence	Description
-----------------------	-------------

Confidentiality	<p>The identity of a reporter must remain confidential unless:</p> <ul style="list-style-type: none"> <li>• the reporter chooses to inform the child, young person or parent of the report</li> <li>• the reporter consents in writing to their identity being disclosed</li> <li>• a court or tribunal decides that it necessary for the identity of the reporter to be disclosed to ensure the safety and wellbeing of the child</li> <li>• a court or tribunal decides that, in the interests of justice, the reporter is required to provide evidence.</li> </ul>
Professional Protection	<p>If a report is made in good faith:</p> <ul style="list-style-type: none"> <li>• it does not constitute unprofessional conduct or a breach of professional ethics on the part of the reporter</li> <li>• the reporter cannot be held legally liable in respect of the report.</li> </ul>
Interviews	<p>DHHS Child Protection and/or Victoria Police may conduct interviews of children and young people at the school without their parent's knowledge or consent.</p> <ul style="list-style-type: none"> <li>• Interviewing children and young people at school should only occur in exceptional circumstances and if it is in the best interests of the child to proceed in this manner</li> <li>• DHHS Child Protection and/or Victoria Police will notify the principal or a member of the leadership team of their intention to interview the child or young person on the school premises</li> <li>• When DHHS Child Protection practitioners/Victoria Police officers come to the school premises, the principal or a member of the leadership team should request to see identification before permitting them to have access to the child or young person</li> <li>• When a child or young person is being interviewed by DHHS Child Protection and/or Victoria Police, school staff must arrange to have a supportive adult present with the child or young person.</li> </ul> <p>For more information on these requests and school responsibilities: see the Department of Education &amp; Training website: <a href="#">Police and DHHS Interviews</a>.</p>
Support for the child or young person	<p>The roles and responsibilities of staff members in supporting children who are involved with DHHS Child Protection may include the following:</p> <ul style="list-style-type: none"> <li>• acting as a support person for the child or young person</li> <li>• attending DHHS Child Protection case-planning meetings</li> <li>• observing and monitoring the child's behaviour</li> </ul> <p>liaising with professionals.</p>
Requests for Information	<p>DHHS Child Protection and/or Child FIRST and/or Victoria Police may request information about the child or family for the purpose of investigating a report and assessing the risk to the child or young person.</p>

	In certain circumstances, DHHS Child Protection can also direct school staff and Department staff to provide information or documents about the protection or development of the child. Such directions should be in writing and only be made by authorised persons within DHHS Child Protection: see the Department of Education & Training website: <a href="#">Requests for Information About Students</a> .
Witness Summons	If DHHS Child Protection makes a Protection Application in the Children's Court of Victoria, any party to the application may issue a Witness Summons to produce documents and/or to give evidence in the proceedings: see the Department of Education & Training website: <a href="#">Subpoenas and Witness Summonses</a>

### 3.3 Related resources

#### **Catholic Education Melbourne**

- [Catholic Schools Operational Guide](#) (CEVN website).

#### **Department of Education and Training**

- [Duty of care](#)
- [Police and DHHS Interviews](#)
- [Responding to Student Sexual Assault](#)
- [Requests for Information about Students](#)
- [Subpoenas and Witness Summonses](#)
- Flowchart: [A step-by-step guide to making a report to Child Protection or Child FIRST \(PDF - 270Kb\)](#)
- [Mandatory Reporting eLearning Module](#).

#### **Related legislation**

- *Children, Youth and Families Act 2005* (Vic.)
- *Crimes Act 1958* (Vic.)
- *Education and Training Reform Act 2006* (Vic.)
- *Victorian Institute of Teaching Act 2001* (Vic.).

#### **Department of Health and Human Services**

- [Child Protection](#)
- [Child FIRST](#)

#### **Victoria Police**

- [Victoria Police Sexual Offences and Child Abuse Investigation Teams \(SOCIT\)](#).

#### **Department of Justice and Regulations**

- [Failure to disclose offence](#)

- [Failure to protect offence](#)
- [Grooming offence.](#)

### **Other resources**

- [Daniel Morcombe Child Safety Curriculum](#)
- Parents, see: [Daniel Morcombe Child Safety Curriculum Parent Guides - Queensland Department of Education, Training and Employment.](#)

Policy Document derived from Updated Policy 2.19 Child Protection – Reporting Obligations

Catholic Education Melbourne October 2015 (updated) Policy Drafted November 2015

### **Evaluation:**

This policy will be reviewed in consultation with all members of the wider Holy Name Primary School community as part of the ongoing review cycle (Date of last review September 2016)

### **Appendix 1**

**Holy Name’s internal process and related documents:**

***Holy Name’s internal reporting processes are:***

***As listed in above policy***

***Related documents and policies here:***

***Code of Conduct***

***CEM – Catholic Schools Child Safe Schools Document – Child Safe Standard 5, process for responding to and reporting suspected child abuse (found on CEVN)***

**Attachment 1 – Betrayal of Trust Fact Sheet The New ‘Failure to Disclose’  
Offence - Victorian Government Department of Justice 2015**

# BETRAYAL OF TRUST: FACTSHEET

## 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.



# BETRAYAL OF TRUST: FACTSHEET

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 18 or over and this person requests that the offence not be reported. The law recognises that a child under 18 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 18. 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.

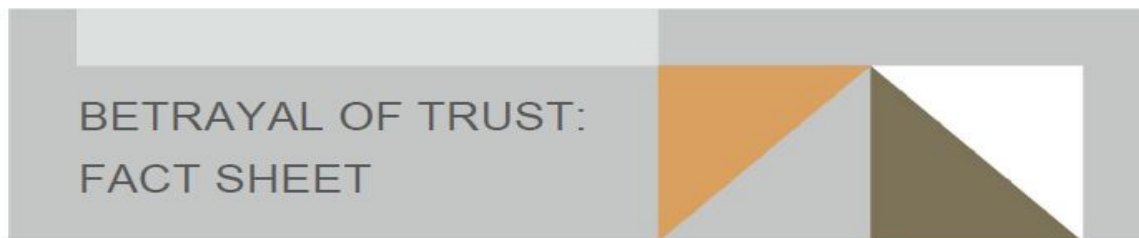
### **13. How do I contact Victoria Police to make a report?**

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](mailto:sanotaskforce@police.vic.gov.au)



## Attachment 2 – Betrayal of Trust: Fact Sheet - The New ‘Failure to Protect: a new criminal offence to protect children from sexual abuse’ - Victorian Government Department of Justice 2015



### Failure to Protect: a new criminal offence to protect children from sexual abuse

In response to the [Betrayal of Trust](#) report the Victorian Government is strengthening laws to protect our children from sexual abuse and exposure to sexual offenders. This is in recognition of the shared community responsibility to protect children from abuse and to provide a safe environment for children to develop, learn and play.

A new criminal offence for failing to protect a child under the age of 16 from a risk of sexual abuse will commence on 1 July 2015.

The offence will apply where there is a substantial risk that a child under the age of 16 under the care, supervision or authority of a relevant organisation will become a victim of a sexual offence committed by an adult associated with that organisation. A person in a position of authority in the organisation will commit the offence if they know of the risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

This offence will encourage organisations to actively manage the risks of sexual offences being committed against children in their care and further protect them from harm.

#### 1. What is the offence of failing to protect a child from a sexual offence?

The new offence provides that a person who:

- a) by reason of the position he or she occupies within a relevant organisation, has the power or responsibility to reduce or remove a substantial risk that a relevant child 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 relevant organisation; 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.

#### 2. What is a ‘relevant organisation’?

The offence applies to people in authority within a *relevant organisation*. A relevant organisation is one that exercises care, supervision or authority over children, whether as part of its primary function or otherwise.

Relevant organisations include, but are not limited to:

- churches
- religious bodies
- education and care services (such as childcare centres, family day care services, kindergartens and outside school hours care services)
- licensed children’s services such as occasional care services
- schools and other educational institutions
- organisations that provide accommodation to children and young people, such as boarding schools and student hostels

# BETRAYAL OF TRUST: FACT SHEET

- out-of-home care services
- community service organisations providing services for children
- hospitals and other health services
- government agencies or departments providing services for children
- municipal councils (for example those that deliver Maternal and Child Health services)
- sporting groups
- youth organisations
- charities and benevolent organisations providing services for children.

### 3. Who is a person in authority in an organisation?

A person in authority is someone who, by reason of their position within a relevant organisation, has the power or responsibility to reduce or remove a substantial risk that a child under the age of 16 years, who is under their care, supervision or authority, may become the victim of sexual abuse committed by an adult associated with the organisation.

Whether someone is considered to be a person in authority will depend on the degree of supervision, power or responsibility the person has to remove or reduce the substantial risk posed by an adult associated with the organisation. People in authority will usually have the ability to make management level decisions, such as assigning and directing work, ensuring compliance with the organisation's volunteer policy and other operational arrangements.

Examples of people in authority may include residential house supervisors, CEOs, board, council or committee members, school principals, service managers and religious leaders. It may also apply to people with less formal involvement in an organisation. For example, a volunteer parent coach responsible for the supervision of a junior sports team may be a person in authority, even if their role is informal or limited.

### 4. Who is a relevant child?

A person in authority will be guilty of an offence if he or she negligently fails to reduce or remove a substantial risk to a relevant child. A 'relevant' child is a child under the age of 16 who is, or may come, under the care, supervision or authority of a relevant organisation.

The child does not need to be identified. This means that the risk is not that a particular child will become the victim of sexual abuse. Instead, the substantial risk could be posed to any child who is, or who may be in the future, under the organisation's care, supervision or authority.

### 5. Who is a 'person associated with' an organisation?

The offence requires a person in authority to act if they know that a *person associated with their organisation* poses a substantial risk to a relevant child. This may include a person who is an officer, office holder, employee, manager, owner, volunteer, contractor or agent of the organisation. This definition does not include a person who solely receives services from the organisation.

For example, a parent living in the community who is involved with child protection services or who has a child in out-of-home care, and who may pose a risk of sexual abuse to a child, would *not* be considered to be 'associated with' the Department of Health & Human Services under the offence. Similarly, parents of children attending a school or service will generally only be 'associated with the organisation' if they are also engaged as a volunteer, for example to assist in the classroom or attend an excursion or camp.



## BETRAYAL OF TRUST: FACT SHEET

The offence relates to risk of sexual abuse by adults. Children under the age of 18 who pose a risk of sexually abusing other children are not covered by this offence.

### 6. What is a 'substantial risk'?

The offence requires a person in authority to reduce or remove a known 'substantial' risk that an adult associated with the organisation may commit a sexual offence against a relevant child. It does not make it a criminal offence to fail to address every possible risk that a sexual offence may be committed against a child.

There are a number of factors that may assist in determining whether a risk is a substantial risk. These include:

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

When determining whether a risk is substantial, the courts will consider a variety of factors, which may include those listed above. The courts will consider all the facts and circumstances of the case objectively, and will consider whether a reasonable person would have judged the risk of a sexual offence being committed against the child abuse as substantial. It is not necessary to prove that a sexual offence, such as indecent assault or rape, was committed.

### 7. When does a person 'know' there is a risk of child sexual abuse?

This offence requires a person in authority to act if they know that there is a substantial risk that a child may become the victim of a sexual offence. A person is generally taken to have knowledge of a circumstance if he or she is aware that it exists or will exist in the ordinary course of events. This requires a higher level of awareness than merely holding a tentative belief or suspicion.

However, it is expected that a person in authority will take steps to follow up on a suspicion or belief that children in their organisation were at risk of harm.

### 8. When does a person negligently fail to reduce or remove a substantial risk?

Under the offence, a person is taken to have *negligently failed* to reduce or remove a substantial risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances. The offence does not require a person in authority to eliminate all possible risks of child sexual abuse.

For example, a person in authority who knows that an adult associated with the organisation poses a substantial risk to children, and moves that adult from one location in an organisation to another location where they still have contact with children, is likely to be committing the offence. Another example is where a person in authority employs someone in a role that involves contact with children, when the person in authority knows the employee left their last job because of allegations of sexually inappropriate behaviour involving children.



## BETRAYAL OF TRUST: FACT SHEET

### 9. Will this criminalise mistakes made by adults who are caring for or working to protect children?

This law is aimed at protecting children and compelling those in authority to remove or reduce known substantial risks that children may become victims of sexual abuse.

As previously noted, the offence applies to a person in authority whose failure to protect a child from sexual abuse involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances.

The offence is unlikely to be committed where a person takes reasonable steps to protect a child from the risk of sexual abuse, for example, where an allegation is reported to appropriate authorities and the individual is removed from any role involving unsupervised contact with children pending an investigation.

### 10. What should a person in authority do to reduce or remove the risk of child sexual abuse posed by an adult associated with their organisation?

A person in authority in an organisation must take reasonable steps to reduce or remove a known substantial risk that an adult associated with their organisation will commit a sexual offence against a child.

For example:

- A current employee who is known to pose a risk of sexual abuse to children in the organisation should be immediately removed from contact with children and reported to appropriate authorities and investigated.
- A community member who is known to pose a risk of sexual abuse to children should not be allowed to volunteer in a role that involves direct contact with children at the organisation.
- 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.

If you want to report a child in **immediate** risk or danger of a sexual offence please call Triple Zero (000).

### 11. How can you improve child safety in your organisation, and remove or reduce the risk of harm?

There are a range of measures that organisations can adopt to improve child safety and reduce the risk of harm to children. New Victorian child-safe standards are expected to be introduced from January 2018, and will provide a framework to assist in ensuring child safety in the organisation. Under the standards, organisations will be expected to have policies, procedures and systems in place to protect children from abuse, including appropriate pre-employment screening arrangements and systems for reporting and responding to allegations of abuse.

In the meantime, organisations are encouraged to create and implement risk management strategies suitable to their environment to reduce the risk of harm to children. These may include:

- Adopting a child safety policy that outlines a commitment to child safety and provides guidance on how to create a child safe environment.
- Enforcing a code of conduct that sets clear expectations about appropriate behaviour towards children and obligations for reporting a breach of the code.
- Ensuring all new staff and volunteers are appropriately screened, including reference checks, before commencing employment with the organisation (in addition to Working with Children Checks or Victorian Institute of Teaching registration).
- Providing training to staff in prevention, identification and response to child safety risks, including reporting requirements and procedures.



# BETRAYAL OF TRUST: FACT SHEET

Organisations should review existing policies and practices to identify potential risks and ensure that risk management strategies and action plans are effective. To learn more about creating child-safe organisational environments, the *Guide to Creating a Child-safe Environment* produced by the Commission for Children and Young People provides practical information for organisations seeking to improve child safety and reduce the risk of harm.

Organisations operated, funded and/or regulated by Government can reduce the risk of child harm to children by continuing to comply with departmental standards, screening requirements, program requirements and policies on preventing, reporting and responding to child sexual abuse, for example:

- [\*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 \(Joint Protocol\)\*](#)
- [\*DHHS's Critical Client Incident Management Instruction; and the Instruction on Responding to Allegations of Physical or Sexual Assault \(RAPSA\)\*](#)
- [\*Schools Policy and Advisory Guide\*](#) (SPAG) for Victorian government schools

Sports and recreation organisations can also refer to the [\*Victorian Code of Conduct for Community Sport\*](#) and [\*VicSport 'Safeguarding Children'\*](#) websites for resources about creating child-safe organisations.

## **12. Will the offence criminalise members of the public who fail to protect a child from a risk of sexual abuse?**

No — the failure to protect offence applies to people in authority within an organisation that exercises care, supervision or authority over children. It does not apply to parents or other individuals not connected to these organisations. However, as noted above, a parent who volunteers in an organisation (for example as a sporting coach) may be in a position of authority and subject to the offence.

A separate [\*'failure to disclose'\*](#) offence applies to any adult who fails to report a reasonable belief to Victoria Police that a sexual offence has been committed against a child under the age of 16, unless there is a reasonable excuse for not doing so.

## **13. How does the failure to protect offence interact with mandatory reporting obligations?**

This offence is in addition to existing mandatory reporting obligations for specified staff under the *Children, Youth and Families Act 2005*. It applies to any person in authority within a relevant organisation, not just mandatory reporters.

## **14. What is the penalty for failing to protect a child?**

The maximum penalty is five years' imprisonment.

## **15. When will the offence take effect?**

The offence will commence on 1 July 2015.

## **16. How do I contact Victoria Police?**

If you want to report a child in **immediate** risk or danger of a sexual offence please call Triple Zero (000).

If the report is not in relation to an immediate risk, contact your [\*local police station\*](#) or call Crime Stoppers on 1800 333 000.



**Attachment 3 – Betrayal of Trust: Fact Sheet – The New ‘Grooming’ Offence -  
Victorian Government Department of Justice 2015**

# BETRAYAL OF TRUST: FACTSHEET

## 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.

## BETRAYAL OF TRUST: FACTSHEET

#### **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.