

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 (direct and indirect), 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.

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

Obligation to Report a Sexual Offence Policy

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 School).

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.