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Child Protection Reporting Obligations Policy

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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.

Monivae College are entrusted with the holistic education of the child, in partnership with parents, guardians and caregivers, who are the primary educators of their children. Monivae College staff therefore have a duty of care to students to take reasonable care to avoid acts or omissions that 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 businesses all have a role to play.

In Victoria, a joint protocol, *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*, involving the Victorian Department of Education and Training (DET), the Catholic Education Commission of

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Victoria Ltd (CECV) and Independent Schools Victoria (ISV) exists to protect the safety and wellbeing of children and young people.

DET has also produced *Four Critical Actions for Schools: Responding to Incidents, Disclosures and Suspicions of Child Abuse* and *Responding to Suspected Child Abuse: A Template for all Victorian Schools*, both of which are referred to in the joint protocol.

All teachers, other staff members, volunteers, contractors, other service providers, 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

Schools must comply 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.), the *Child Wellbeing and Safety Act 2005* (Vic.) and the *Education and Training Reform Act 2006* (Vic.).

The *Child Wellbeing and Safety Act 2005* (Vic.) introduced the seven Victorian Child Safe Standards which aim to create a culture where protecting children from abuse is part of everyday thinking and practice. The Child Safe Standards were introduced in response to recommendations made by the *Betrayal of Trust* report.

Ministerial Order No. 870 – *Managing the Risk of Child Abuse in Schools* was made under the *Education and Training Reform Act 2006* (Vic.) and sets out the specific actions that all Victorian schools must take to meet the requirements in the Child Safe Standards.

This policy is designed to enable Monivae College to comply with Standard 5 of the Victorian Child Safe Standards: processes for responding to and reporting suspected child abuse, as well as the school-specific requirements for procedures for responding to allegations of suspected abuse in Ministerial Order No. 870.

This policy is designed to assist Monivae College staff (which includes volunteers, contractors, other service providers and religious leaders, including clergy) 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 three separate pieces of legislation with differing reporting requirements:

- *Children, Youth and Families Act 2005* (Vic.)
- *Education and Training Reform Act 2006* (Vic.)
- *Crimes Act 1958* (Vic.)

These legislative obligations exist in addition to moral and duty-of-care obligations, which require the school community members to protect any child under their care and supervision from foreseeable harm.

This policy sets out the actions required under the relevant legislation and regulatory guidance when there is a reasonable belief that a child is in need of protection or a criminal offence has been committed. It also provides guidance on how to make a report.

All procedures for reporting and responding to an incident of child abuse are designed and implemented by taking into account the diverse characteristics of school communities.

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Scope

This policy applies to school staff, including school employees, volunteers, contractors and clergy.

Legislative Context

- *Children, Youth and Families Act 2005 (Vic)*
- *Child Wellbeing and Safety Act 2005 (Vic)* and the Child Safe Standards (Vic)
- *Crimes Act 1958 (Vic)*
- *Education and Training Reform Act 2006 (Vic.)*
- *Equal Opportunity Act 2010 (Vic.)*
- *Privacy Act 1988 (Cth)*
- VRQA Guidelines to Minimum Standards 2015
- *Working with Children Act 2005 (Vic)*

Definitions

Types of Child Abuse and Indicators of Harm

Child abuse can take many forms. The perpetrator may be a parent, carer, school staff member, volunteer, another adult or even another child. The nature of child abuse is complex. The abuse may occur over time and potential risk indicators are often difficult to detect. Therefore, the legal obligations for reporting allegations of child abuse can vary depending on the circumstances of the incident.

Child abuse is defined in the *Child Wellbeing and Safety Act 2005 (Vic.)* to include:

- sexual offences
- grooming
- physical violence
- serious emotional or psychological harm
- serious neglect.

Family violence is defined under the *Family Violence Protection Act 2008 (Vic.)* to include behaviour that causes a child to hear, witness, or be exposed to the effects of family violence such as abusive, threatening, controlling or coercive behaviour. While family violence does not form part of the official definition of 'child abuse' in the *Child Wellbeing and Safety Act*, the impact of family violence on a child can be a form of child abuse; for example, where it causes serious emotional or psychological harm to a child.

Child abuse can have a significant effect on a child's physical or emotional health, development and wellbeing. The younger a child is, the more vulnerable he/she is to abuse and the more serious the consequences are likely to be.

There can be physical or behavioural indicators of child abuse and neglect, or a combination of both. While the presence of a single indicator, or even several indicators, does not necessarily prove that abuse or neglect has occurred, the repeated occurrence of either a physical or behavioural indicator, or the occurrence of several indicators together, should alert school staff to the possibility of child abuse or neglect.

Child sexual abuse is more commonly perpetrated by someone who is known to and trusted by the child and is also often someone highly trusted within their families, communities, schools and/or other institutions, such as the Church.

For full definitions of all types of child abuse, a comprehensive list of the indicators of harm and advice on identifying perpetrators of child sexual abuse refer to the protocol [Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools](#).

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Sources of Child Protection Reporting Obligations

Children, Youth and Families Act 2005 (Vic)

Mandatory Reporting

Mandatory reporting is a legal requirement under the *Children, Youth and Families Act 2005 (Vic.)* to protect children from harm relating to physical injury and sexual abuse. A child, for the purpose of the relevant parts of this Act, is any person 17 years of age or younger. The principal, teachers, medical practitioners and nurses at a school are mandatory reporters under this Act.

If, in the course of carrying out their duties, a mandatory reporter forms a reasonable belief that a child is in need of protection from physical harm or sexual abuse, and that the child's parents are unwilling or unable to protect the child, they must report that belief to DHHS Child Protection and/or Victoria Police, including the information prescribed in the [Responding to Suspected Child Abuse: A Template for all Victorian Schools](#), 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 and even if the reporter knows that another report has been made concerning the same child and suspected abuse.

The threshold for reporting child protection incidents, disclosures, concerns or suspicions has been set deliberately low by the joint protocol [Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools](#). This protocol focuses on [Four Critical Actions](#) that all school staff must take if they form a suspicion or reasonable belief that child abuse has occurred, or that a child is at risk of suffering abuse.

Reasonable Belief

Where school staff members 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. If a staff member has witnessed potentially abusive behaviour, has a suspicion or has received a disclosure of child abuse, they must determine whether these observations or receipt of such information has caused the staff member to form a 'reasonable belief'.

A 'reasonable belief' or a 'belief on reasonable grounds' is not the same as having proof but is more than 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.

A 'reasonable belief' might be formed if:

- a child states that they have been physically or sexually abused
- any person tells you that they believe someone has been abused; this may include a child who is talking about themselves
- you observe physical or behavioural indicators of abuse, as described in [Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools](#)
- a child or young person exhibits sexually abusive or age-inappropriate behaviour(s)
- professional observations of the child's behaviour or development cause you to form a belief that the child has been physically or sexually abused or is likely to be abused.

While any indicators of possible child abuse or neglect are concerning, it is important to understand that the presence of a number of indicators that suggest either physical or sexual abuse of a child may be sufficient to form a 'reasonable belief' in a mandatory reporter's mind which must be reported.

Crimes Act 1958 (Vic)

In response to the [Betrayal of Trust](#) report three new criminal offences have been introduced under the *Crimes Act 1958 (Vic.)*:

- **failure to disclose offence**, which requires adults to report to the Police a reasonable belief that a sexual offence has been committed against a child.

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- **failure to protect offence**, which applies to people in positions of authority within organisations, who knew of a risk of child sexual abuse by someone in the organisation and failed to reduce or remove the risk.
- **grooming offence**, which targets communication with a child or their parents with the intent of committing child sexual abuse.

Failure to Disclose

Any school 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 Victoria Police.

Failure to disclose the information to the Police is a criminal offence under Section 327 of the *Crimes Act 1958* (Vic.) and applies to all adults (18 years and over) 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.

Refer to the below table for information on when to report a concern that a child or a young person has been sexually abused or is in need of protection from sexual abuse.

Reporting Criteria – Failure to Disclose

In accordance with the *Crimes Act 1958* (Vic.), this table sets out when to report a concern that a child or young person has been sexually abused or is in need of protection from sexual abuse.

Type of Reporting	By Whom	To Whom
<p>Reasonable belief that a sexual offence has been committed by an adult against a child under 16.</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 Victoria Police.</p> <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"> ▪ The victim is 16 years of age or older and does not want the information reported to the Police. However, this exception does not apply where the victim is aged under 16 years or is aged over 16 years and has an intellectual disability and does not have the capacity to make an informed decision about whether or not to report. ▪ The victim has disclosed the information in confidence in the course of a therapeutic relationship with you as a registered medical practitioner, counsellor or in religious confession to a member of the clergy. A ‘counsellor’ is a person who is treating a person for an emotional or psychological condition. <p>Please note that under the <i>Children, Youth and Families Act 2005</i> (Vic.) the exceptions to making a disclosure under the <i>Crimes Act 1958</i> (Vic.) may be overridden.</p> <p>The National Catholic Education Commission (NCEC) Privacy Compliance Manual (updated by the Catholic Education Commission of Victoria Ltd (CECV): Dec 2015) also provides details relating to the role of school counsellors and their obligations to pupils, the school at which the pupils are enrolled and the parents of those pupils (refer to Section 26).</p> <p>Where it is necessary for school counsellors to directly pass on information,</p>	<p>Any person aged 18 or over</p>	<p>Victoria Police</p>

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<p>which relates to the wellbeing of a student at a school, this information must be conveyed to a person (i.e. school principal) who has a legal obligation to receive it without betraying confidence (Section 26.3).</p> <p>A mandatory report may then need to be made.</p> <ul style="list-style-type: none"> ▪ The victim turned 16 years of age before 27 October 2014. <p>Reasonable excuses for failing to comply with the requirement include:</p> <ul style="list-style-type: none"> ▪ a reasonable belief that the information has already been reported to the 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. 		
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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](#).

Failure to Protect

Any school 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 under 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 schools.

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](#).

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](#).

Education and Training Reform Act 2006 (Vic)


From a child safety perspective, the key functions of the *Education and Training Reform Act 2006* (Vic.) are to:

- require schools to notify the Victorian Institute of Teaching (VIT) when a school has taken action against a teacher.
- make compliance with the [Victorian Child Safe Standards](#) a requirement for registration of all Victorian schools.

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Duty of Care

School staff have a duty to take reasonable steps to protect children and young persons under their care and supervision from harm that is reasonably foreseeable (this duty applies to all school staff). The question of what constitutes reasonable steps will depend on the individual circumstances of each case. A staff member may breach their duty of care towards a student if they fail to act in the way a reasonable or diligent professional would have acted in the same situation.

For more information on the scope of staff duty-of-care obligations and examples of reasonable steps they can take in relation to suspected child abuse, refer to the protocol *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*. 

Supporting Documents

- Child Protection Reporting Obligations Procedure

Responsibility

- The Board Directors (*as the Approval Authority*) are responsible for monitoring the implementation, outcomes and scheduled review of this policy and its accompanying procedure/s
- The Deputy Principal (*as the Policy Sponsor*) is responsible for maintaining the content of this policy as delegated by the above title.
- The Compliance and Risk Manager is responsible for the administration support for the maintenance of this policy as directed by the above title.

Promulgation

The Child Protection Reporting Obligations Policy will be communicated throughout the School community in the form of:

1. Policies section of the Monivae website to alert the School-wide community of the approved Policy;
2. distribution of e-mails to all staff.

Implementation

The Child Protection Reporting Obligations Policy will be implemented throughout the School via:

1. Policies section of SIMON knowledge banks to alert the School-wide community of the approved Policy;
2. Staff briefing sessions
3. Training sessions

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