

## PROTECTION OF CHILDREN – FAILURE TO DISCLOSE POLICY

### 1.0 INTRODUCTION

This Protection of Children – Failure to Disclose Policy applies to all Diocese of Sale Catholic Education Limited (**DOSCEL**) workplaces.

Protecting children and young people against sexual abuse is a community wide responsibility. DOSCEL has 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 of 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 Victoria Police on 000 or the local police station.

Under the [Crimes Act 1958](#) (Vic.) and the [Crimes Amendment \(Protection of Children\) Act 2014](#) (Vic.) it is an offence for a person in authority to fail 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.

Employees mandated to report (e.g. school principals, registered teachers, registered psychologists, school counsellors and people in religious ministry) do so under the [Children, Youth and Families Act 2005](#) (Vic), the [Crimes Act 1958](#) (Vic.) and the [Crimes Amendment \(Protection of Children\) Act 2014](#) (Vic.).

This obligation **applies to all non-mandated employees and adult community members over the age of 18 years**, and is separate to the mandatory reporting framework. It is subject to some exclusions, such as:

- The person reasonably believes that the information has already been disclosed to the police
- 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
- The information is privileged (e.g. communications between a client and their lawyer)
- The information is in the public domain
- 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 informs DOSCEL employees of their responsibilities in relation to the disclosure/reporting responsibilities and removing the risk to children and young people of suspected abuse where practicable.

This policy acknowledges the particular duty DOSCEL employees have towards children and young people in their care.

It respects the dignity of children and young people and outlines the rights and responsibilities of DOSCEL employees.

## **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 employees from abusing their position of authority and trust.
- 3.3** Employees 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 and young people have the right to a thorough and systematic education in personal safety, including safety in relationships.
- 3.5** Abuse of children or young people by persons in positions of trust or authority is a serious matter. All allegations must receive a response and be dealt with promptly and the risk removed where practicable.
- 3.6** After a disclosure, any ongoing harm to the child or young person and the employee is minimised by:
  - adherence to agreed procedures
  - provision of appropriate social and emotional support and pastoral care
  - appropriate confidentiality.
- 3.7** The child or 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 or young person is a serious offence.

## 4.0 DEFINITIONS

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

**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.

**Confidential:** Being entrusted with private and restricted information that must be treated as such, both in written and verbal form.

**Duty of Care:** Employees, including volunteers and contractors working in Catholic schools have a duty of care to support and protect the children and young people with whom they are professionally involved.

When employees 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 employees this obligation is legally mandated.

Duty of care is breached if a person:

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

**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 or young person states that they have been sexually abused
- a child or young person states that they know someone who has been sexually abused (sometimes the child or young person may be talking about themselves)
- someone who knows a child or young person states that the child or young person has been sexually abused
- professional observations of the child or young person's behaviour or development leads a mandated professional to form a belief that the child or young person has been sexually abused
- signs of sexual abuse lead to a belief that the child or young person has been sexually abused.

**Reasonable excuse:** A 'reasonable excuse' for not reporting information about child sexual abuse to police may include:

- *Fear for Safety*

You have an excuse for not reporting to police if:

- you reasonably fear for your safety or the safety of another person, except the person you believe committed, or was involved in, the sexual offence, and
- your failure to report is a reasonable response in the circumstances.

This excuse helps to protect children, their families and others from harm where reporting information might risk people's safety. For example, a mother may decide not to report her partner sexually abusing her child because she fears violence against her or her child.

The fear must be reasonable from the perspective of that person in those circumstances. This recognises that this person is best placed to judge whether their safety, or the safety of another person, is endangered.

- *Belief that the information has already been disclosed*

You have an excuse for not reporting to police if:

- you believe on reasonable grounds that another person has already disclosed the information to police, and
- you have no further information to add.

For example, you may have this belief if you have disclosed the information in a 'mandatory report' to Department of Health and Human Services Child Protection under the *Children, Youth and Families Act 2005*, as Child Protection will provide the information you have reported to them to police.

DOSCEL employees who must make mandatory reports are:

- school principals
- registered teachers
- registered psychologists
- school counsellors
- people in religious ministry.

This excuse means that people do not need to report the same information to different agencies.

- *Excuses that are not reasonable*

You do not have a reasonable excuse for failing to disclose information if you are only concerned about the 'perceived interests' of:

- the person you believe committed, or was involved in, the sexual offence, or
- any organisation.

'Perceived interests' includes reputation, legal liability and financial status. For example, a religious minister's concern for the reputation of a church where an adult sexually abused a child is not a reasonable excuse for not reporting to police.

This ensures that a child's best interests are placed first.

## 5.0 EXPECTED OUTCOMES

- 5.1 DOSCEL employees are expected to be self-aware of their professional obligations and responsibilities and report to police any reasonable belief of the risk, or act, of sexual abuse against a child or young person.
- 5.2 A thorough and systematic education in personal safety, including safety in relationships, will be provided for all children and young people.
- 5.3 Approved professional learning in providing education in personal safety will be provided to all employees.
- 5.4 All allegations of grooming will receive a prompt response and be clearly documented.

## 6.0 REFERENCES

- [Crimes Act 1958](#) (Vic.)
- [Crimes Amendment \(Protection of Children\) Act 2014](#) (Vic.)
- [Children, Youth and Families Act 2005](#) (Vic.)

## 7.0 RELATED POLICIES

- DOSCEL Pastoral Care Policy
- DOSCEL Child Protection and Safety Policy
- DOSCEL Child Protection – Anti-Grooming Policy
- DOSCEL Child Protection – Failure to Protect Policy
- DOSCEL Guide to Reporting Conduct under the Reportable Conduct Scheme
- DOSCEL Mandatory Reporting Policy
- DOSCEL Reporting Obligations Procedure

## 8.0 REVIEW

**Implementation Date: December 2019**

**Review Date: December 2021**