

PROTECTION OF CHILDREN – FAILURE TO PROTECT POLICY

1.0 INTRODUCTION

This Protection of Children – Failure to Disclose Protect Policy applies to all primary and secondary Catholic schools managed and operated by Diocese of Sale Catholic Education Limited (**DOSCEL**), specifically Marist-Sion College (**Marist-Sion College**). This Policy also applies to the DOSCEL Secretariat.

Protecting children and young people against sexual abuse is a community wide responsibility. DOSCEL and Marist-Sion College 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.

The [Crimes Act 1958](#) (Vic.) and the [Crimes Amendment \(Protection of Children\) Bill 2014](#) (Vic.) includes an offence for failure by a person with power, authority and responsibility within an organisation, to protect a child under the age of 16 years, who is under the care or supervision of the organisation.

As soon as a DOSCEL employee becomes aware of a risk of child sexual abuse, he/she will be under a duty of care to remove or reduce that risk.

A criminal offence applies where the person in authority:

- knows that there is a substantial risk of a sexual offence being committed against a child by a person over 18 years associated with the organisation and
- negligently fails to reduce or remove that risk.

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

Where appropriate, consideration should also be given to whether information should be requested from another prescribed Information Sharing Entity (**ISE**) or whether information should be voluntarily provided to an ISE under the Child Information Sharing Scheme (**CISS**) or Family Violence Information Sharing Scheme (**FVISS**), in order to improve child wellbeing or safety, or help to assess or manage the risk of family violence. These schemes complement existing mandatory reporting obligations. For more information, see: DOSCEL Child and Family Violence Information Sharing Schemes Policy and Procedure, [Information Sharing and Family Violence Reforms Contextualised Guidance](#), [Child Information Sharing Scheme Ministerial Guidelines](#), [Family Violence Information Sharing Guidelines](#), and [Family Violence Multi-Agency Risk Assessment and Management Framework](#).

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/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/young person's ongoing safety and wellbeing should be the primary focus of decision making.
- 3.8** Failing to reduce the risk of sexual abuse against a child/young person is a serious offence.

4.0 DEFINITIONS

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

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 DOSCEL 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 act 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 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 mandated professional to form a belief that the child has been sexually abused
- signs of sexual abuse lead to a belief that the child 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.
- 5.5** Where appropriate, information will be shared with other ISEs under the CISS and FVISS.

6.0 REFERENCES

- *Crimes Act 1958 (Vic.)*
- *Crimes Amendment (Protection of Children) Act 2014 (Vic.)*
- *Children, Youth and Families Act 2005 (Vic.)*
- *Four Critical Actions for Schools: Responding to Incidents, Disclosures and Suspicions of Child Abuse*
- *Protect: Responding to Suspected Child Abuse: A Template for all Victorian Schools*
- Victorian Institute of Teaching (VIT) Code of Conduct and Ethics

7.0 RELATED POLICIES

- Child and Family Violence Information Sharing Schemes Policy
- Child Safety and Wellbeing Policy
- Duty of Care Policy
- Family and Domestic Violence: A guide to supporting staff
- Guide to Reporting Conduct under the Reportable Conduct Scheme
- Mandatory Reporting Policy
- Pastoral Care Policy
- Protection of Children – Anti-Grooming Policy
- Protection of Children – Failure to Disclose Policy
- Protection of Children – Failure to Protect Procedure
- Reporting Obligations Procedure

8.0 REVIEW

Implementation Date: December 2019

Updated: August 2021

Review Date: August 2022