Melbourne Archdiocese
Catholic Schools

Responding to Offences under the *Crimes Act 1958* (Vic)

PROTECT Procedure

1. Purpose

To ensure that Melbourne Archdiocese Catholic Schools Ltd (MACS) staff (which includes the MACS board directors, board committee members, volunteers, contractors, other service providers and those in religious ministry (collectively **MACS Staff**)) are aware of, report, and respond in accordance with the three additional criminal offences introduced under the *Crimes Act 1958* (Vic). The:

- **Failure to disclose offence**, which requires adults to report to Victoria Police a reasonable belief that a sexual offence has been committed against a child by another adult
- **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; and
- **Grooming offence**, which targets communication with a child and/or their Parents / Carers with the intent of committing child sexual abuse.

2. Scope

The offence of Failure to disclose information to Victoria 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 and elsewhere, not just professionals who work with children. 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 must be considered in conjunction with the Reportable Conduct Scheme and the actions required under the Reportable Conduct Policy.

The Failure to protect offence in section 49O of the *Crimes Act 1958* (Vic) applies to any staff member in a position of authority who 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, who have the power or responsibility to remove risk, and is separate to the mandatory reporting framework.

The *Crimes Act 1958* (Vic) and the *Crimes Amendment (Grooming) Act 2014* comprises the offence of grooming for sexual conduct with a child under the age of 16 years. The offence of grooming concerns predatory conduct undertaken to prepare a child for sexual activity at a later time. The offence applies where any 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.

3. Failure to Disclose

- All adults must report to Victoria Police when they form a reasonable belief that a sexual offence has been committed in Victoria or elsewhere by an adult against a child under the age of 16.
- If an adult reasonably believes that a sexual offence has been committed against a child under the age of 16 by another adult, then they must call Victoria Police on 000 or the local police station. The obligation is to disclose that information to Victoria Police as soon as it is practicable to do so.
- This includes reporting information about historical sexual abuse if the alleged victim was under 16 years of age on 27 October 2014, when this offence came into effect.
- Failure to disclose the information may be a criminal offence unless there is a reasonable excuse, such as:
  - a reasonable belief that the information has already been reported to Victoria Police

  - the victim turned 16 years of age before 27 October 2014; or
  - a reasonable fear that the disclosure will place someone (other than the alleged perpetrator) at risk of harm.
- You may be exempt from this offence if:
  - a victim aged 16 years or over has provided the information and requests confidentiality
  - you were a child when you received the information about the alleged offence
  - the information would be privileged
  - 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 a religious confession to a member of the clergy. A 'counsellor' is a person who is treating a person for an emotional or psychological condition
  - the information is in the public domain
  - you are a police officer acting in the course of your duty.
- Further information can be found on the Department of Justice and Community Safety Victoria website.

Please note that mandatory reporting obligations under the *Children, Youth and Families Act 2005* (Vic) may override the exceptions to making a disclosure under the *Crimes Act 1958* (Vic).

The National Catholic Education Commission (NCEC) Privacy Compliance Manual (updated by the Catholic Education Commission of Victoria Ltd (CECV) in April 2023) also provides details relating to the role of school counsellors and their obligations to students, the schools at which the students are enrolled and the parents / carers of those students (refer to Section 4).

Where it is necessary for school counsellors to directly pass on information 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 a confidence (Section 4.5). A mandatory report may then need to be made by the person who receives the information (e.g. the principal).

4. Failure to Protect

Principals, school leadership staff or any staff in a position of authority who has the power or responsibility to remove risk and who becomes aware that an adult associated with the school (such as an employee, contractor, volunteer, sport coach or visitor) poses a substantial risk of sexual abuse (including grooming) to a child under the care of the school must take all reasonable steps to remove or reduce that risk.

This may include removing an adult from child-connected and child-related work pending investigation. Failure to take reasonable steps to protect a child in the school from the substantial risk of sexual abuse from an adult associated with the school is a criminal offence under section 49O (1) of the *Crimes Act 1958* (Vic).

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 the 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 the 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

- whether a reasonable person would have judged the risk of a sexual offence being committed against the child as substantial.

Schools should contact the MACS Employee Relations team for advice before removing a person from child-connected or child-related work.

Consideration must be given to the Reportable Conduct Scheme and the Reportable Conduct Policy must be followed.

For further information about the failure to protect offence, see the Department of Justice and Community Safety's Failure to protect webpage and Betrayal of trust fact sheet.

5. Grooming

A person commits the offence of grooming if they are 18 years of age or more; and communicates, by words or conduct (whether or not a response is made to the communication), with another person who is a child under the age of 16 years; or the person under whose care, supervision or authority the child is; and they intend that the communication will facilitate the child under the age of 16 engaging or being involved in the commission of a sexual offence by them or by another person who is 18 years of age or more.

Any staff member who forms a reasonable belief that another adult is grooming a child and/or their parents / carers, should report their concerns to Victoria Police by following the procedures in the PROTECT Procedures: Responding to all forms of child abuse.

Principals, school leadership staff or any staff in a position of authority who has the power or responsibility to remove risk and who becomes aware that an adult associated with the school (such as an employee, contractor, volunteer, sport coach or visitor) poses a substantial risk of sexual abuse (including grooming) to a child under the care of the school must take all reasonable steps to remove or reduce that risk.

This may include removing an adult from child-connected and child-related work pending investigation. Failure to take reasonable steps to protect a child in the school from the substantial risk of sexual abuse from an adult associated with the school is a criminal offence under section 49O (1) of the *Crimes Act 1958* (Vic).

Schools should contact the MACS Employee Relations team for advice before removing a person from child-connected or child-related work.

If any of these allegations involve employees, this should be considered an allegation of Reportable Conduct, and the Reportable Conduct Policy must be followed.

Further information regarding the offence of Grooming can be found on the Department of Justice and Community Safety Victoria website.

6. Definitions

Refer to the Protect Policy or Glossary of Terms for definitions of terms used in this procedure.

7. Support

MACS Child Safety Team provides support to schools on child safety and wellbeing

Email: childsafety@macs.vic.edu.au

Phone: 9267 0228

MACS Legal seeks to provide schools with support and advice on legal matters.

Phone: 9267 0228
Email: legal@macs.vic.edu.au

MACS Student Wellbeing Information and Support Service (SWISS) seeks to address matters that impact the wellbeing and educational outcomes of young people arising using a solution- focused framework, and empower and enhance the capacity, competence and confidence of staff to address matters related to the wellbeing of young people.
Phone: 9267 0228
Email: swb@macs.vic.edu.au

Reportable Conduct Team provides support and advice to schools on the implementation of the Reportable Conduct Scheme.
Phone: 9267 0288

8. Related policies and documents

Supporting documents

Informing Staff of Reporting Obligations: PROTECT Procedure
Police or DFFH Child Protection interviews at school: PROTECT Procedure
Police or DFFH Child Protection interviews at school – Student Interview Template
Responding to all forms of child abuse: PROTECT Procedure
Responding to police and Child Protection requests for further information: PROTECT Procedure
Responding to student sexual offending: PROTECT Procedure

Related MACS policies and documents

Child Safety and Wellbeing Policy
Child Safety and Wellbeing Policy – Schools
Child Safety and Wellbeing Recordkeeping Procedures
Child Safe Recruitment Procedures
Code of Conduct for MACS Staff
PROTECT: Identifying and Responding to Abuse – Reporting Obligations Policy
Reportable Conduct Policy

Resources

Charter of Human Rights and Responsibilities Act 2006 (Vic) Child Information Sharing Scheme
Child Information Sharing and Family Violence Reforms on the CEVN website DET Mature Minors and Decision Making (2020)
Family Violence Information Sharing Scheme
Four Critical Actions for Schools: Responding to Incidents, Disclosures and Suspicions of Child Abuse
Four Critical Actions for Schools: Responding to Student Sexual Offending National Framework for Protecting Australia's Children 2021–2031
PROTECT on the CEVN Website (schools only, log in required)
PROTECT: Identifying and Responding to All Forms of Abuse in Victorian Schools PROTECT: Identifying and Responding to Student Sexual Offending
PROTECT: Responding to Suspected Child Abuse: A Template for all Victorian Schools PROTECT: Responding to Student Sexual Offending: Principal Checklist
PROTECT: Responding to Student Sexual Offending: A Template for all Victorian Schools

Policy information table

Approving executive	Director, Child Safety and Risk
Procedure owner	General Manager, Child Safety
Approval date	1 July 2025
Review by	July 2027
Related policy	PROTECT: Identifying and Responding to Abuse – Reporting Obligations Policy
Publication	CEVN, Gabriel, School website
Superseded documents	Protect Procedure: Responding to Offences under the Crimes Act 1958 (Vic) – v1.0 - 2023