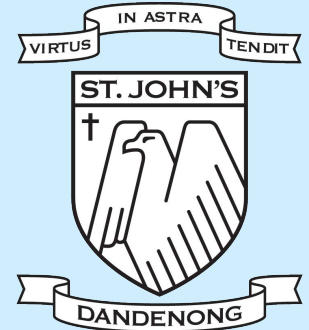




PROTECT Procedure

Responding to offences under the *Crimes Act 1958* (Vic.)



Purpose

To ensure that MACS staff (which includes the MACS board directors, board committee members, volunteers, contractors, other service providers and those in religious ministry) 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
- **Grooming offence**, which targets communication with a child and/or their parents/guardians/carers with the intent of committing child sexual abuse.

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, 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.

Procedures

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 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
- 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/guardians/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 school principal).

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](#).

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/guardians/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](#).

Definitions

Child abuse

Child abuse includes:

- (a) any act committed against a Child involving:
 - (i) a sexual offence
 - (ii) an offence under section 49B(2) of the *Crimes Act 1958* (grooming)
- (b) the infliction, on a Child, of:
 - (i) physical violence
 - (ii) serious emotional or psychological harm
- (c) serious neglect of a Child.

Child Information Sharing Scheme (CISS)

The CISS, implemented by the Victorian Government is a scheme enabling information sharing between authorised organisations to promote a child's wellbeing or safety. All Victorian children and young people from 0 to 18 years of age are covered by the CISS.

Child safety

Child safety encompasses matters related to protecting all children from child abuse, managing the risk of child abuse, providing support to a child at risk of child abuse, and responding to suspicions, incidents, disclosures or allegations of child abuse ([Ministerial Order No. 1359](#)).

Department of Education (DE)

Victorian government department that leads the delivery of education and development services to children, young people and adults.

Family Violence

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 2005* (Vic.), 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. A child can also be a direct victim of family violence.

Family Violence Information Sharing Scheme (FVISS)

Implemented by the Victorian government under the Family Violence Protection Act 2008. The scheme enables the sharing of information between authorised organisations to assess and manage family violence risk and supports effective assessment and management of family violence risk.

Grooming

Grooming refers to predatory conduct undertaken by an adult (18 years or over) to prepare a child for sexual activity at a later time. It is a sexual offence under section 49M of the *Crimes Act 1958* (Vic.) carrying a maximum 10-year term of imprisonment. Under section 49M, the adult's words or conduct must be intended to facilitate the child engaging or being involved in the commission of, or attempt to commit, a sexual offence by the adult or another adult.

Melbourne Catholic Archdiocese Schools Ltd (MACS)

MACS is a reference to Melbourne Archdiocese Catholic Schools Ltd, and / or its subsidiaries, MACSS and/or MACSEYE (as the context requires).

MACS board or board

The board of Melbourne Archdiocese Catholic Schools Ltd (MACS), being also the board of Melbourne Archdiocese Catholic Specialist Schools Ltd (MACSS) and the board of Melbourne Archdiocese Catholic Schools Early Years Education Ltd (MACSEYE) in an ex officio capacity (as the context requires).

MACS executive

A member of the executive leadership team (ELT) of MACS or the ELT as a group.

MACS school or school

A school which operates with the consent of the Catholic Archbishop of Melbourne and is owned, operated and governed by MACS, directly or through MACSS (as the context requires). References to schools or MACS schools also includes boarding premises of schools operated by MACS and specialist schools operated by MACSS.

Melbourne Archdiocese Catholic Schools Early Years Education Ltd (MACSEYE)

Melbourne Archdiocese Catholic Early Years Education Ltd, a subsidiary of MACS established to conduct early childhood education and care services.

MACSEYE service

An early childhood education and care service which is owned, operated and governed by MACSEYE.

Melbourne Archdiocese Catholic Specialist Schools Ltd (MACSS)

Melbourne Archdiocese Catholic Specialist Schools Ltd, a wholly owned subsidiary of MACS established to conduct and operate specialist schools.

Mandatory reporters

Mandatory reporters listed under the *Children, Youth and Families Act 2005* (Vic.) include:

- VIT Registered teachers (including principals and early childhood teachers)

- school staff who have been granted permission to teach by VIT
- registered medical practitioners, nurses and midwives
- people in religious ministry
- youth justice workers
- out-of-home-care workers (excluding voluntary and kinship carers)
- school counsellors including staff who provide direct support to students for mental, emotional and psychological wellbeing, including (but not limited to) school health and wellbeing staff, primary welfare officers, student wellbeing coordinators, mental health practitioners, and chaplains.

Mandatory reporting

Mandatory reporting is the legal requirement under the *Children, Youth and Families Act 2005* (Vic.) to protect children from harm relating to physical and sexual abuse. A child, for the purposes of the relevant parts of this Act, is any person under the age of 17 years ([PROTECT: Identifying and responding to all forms of abuse in Victorian schools](#)).

Mature minor

A mature minor is an individual in a MACS school who is assessed by the principal of that school to be a mature minor.

Physical violence

Physical violence occurs when a child suffers or is likely to suffer significant harm from a non-accidental injury or injuries inflicted by another person. Physical violence can be inflicted in many ways including beating, shaking, burning or using weapons (such as belts and paddles). Physical harm may also be caused during student fights.

Policy

A high-level, principles-based directive that must be complied with across MACS, MACSS and MACSEYE.

Principal/director

Individual appointed by MACS as principal in a MACS school or director in a MACSEYE service.

Procedure

A step-by-step or detailed instruction for the implementation of MACS policy that is mandatory across MACS, MACS schools and MACSEYE.

Process

A process is a method of implementation of a MACS framework, policy or procedure.

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.

Reportable allegation

A reportable allegation means any information that leads a person to form a reasonable belief that an employee has committed reportable conduct or misconduct that may involve reportable conduct, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

Reportable conduct

Reportable conduct for the purposes of the Reportable Conduct Scheme is:

- a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- sexual misconduct, committed against, with or in the presence of, a child
- physical violence committed against, with or in the presence of, a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child as defined in the *Child Wellbeing and Safety Act 2005* (Vic).

Risk

Risk is defined as the effect of uncertainty on objectives. An effect is a deviation from the expected – positive and/or negative. Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances or knowledge) and the associated likelihood of occurrence.

Risk management

The coordinated activities to direct and control an organisation regarding risk.

School Advisory Council

Supports the principal of a MACS school by providing a forum for discussion and discernment where parent voice and community perspective can help inform decision-making.

School/service environment

Means any of the following physical, online or virtual places used during or outside school/service hours:

- a campus of the school
- a campus of a MACSEYE service
- online or virtual school/service environments made available or authorised by MACS or a MACS school or MACSEYE service for use by a child or student (including email, intranet systems, software, applications, collaboration tools and online services)
- other locations provided by the school/service or through a third-party provider for a child or student to use including, but not limited to, locations used for camps, approved homestay accommodation, delivery of education and training, sporting events, excursions, competitions and other events) ([Ministerial Order No. 1359](#)).

School/service staff

Means an individual working in a school/service environment who is:

- directly engaged or employed by a school/service governing authority
- a contracted service provider engaged by MACS or MACSEYE (whether or not a body corporate and whether or not any other person is an intermediary) engaged to perform child-related work for a MACS school or MACSEYE service
- a minister of religion, a religious leader or an employee or officer of a religious body associated with MACS ([Ministerial Order No. 1359](#)).

Serious emotional or psychological harm

Serious emotional or psychological abuse may occur when a child is repeatedly rejected, isolated or frightened by threats or the witnessing of family violence. It also includes hostility, derogatory name-calling and put-downs, or persistent coldness from a person, to the extent where the behaviour of the child is disturbed or their emotional development is at serious risk of being impaired. Serious emotional or psychological harm could also result from conduct that exploits a child without necessarily being criminal, such as encouraging a child to engage in inappropriate or risky behaviours.

Serious neglect

Neglect includes a failure to provide a child with an adequate standard of nutrition, medical care, clothing, shelter or supervision. Significant neglect causes harm to a child that is more than trivial or temporary. Serious neglect is when the child is exposed to an extremely dangerous or life-threatening situation and there is a continued failure to provide a child with the basic necessities of life.

Sexual offences

For the purposes of this policy, a sexual offence occurs when a person involves a child in sexual activity, or deliberately puts the child in the presence of sexual behaviours that are exploitative or inappropriate to the child's age and development. Sexual offences are governed by the *Crimes Act 1958* (Vic.). Sexual abuse can involve a wide range of sexual activity and may include fondling, masturbation, oral sex, penetration, voyeurism and exhibitionism. It can also include exploitation through pornography or prostitution.

Student

Student means a person who is enrolled at or attends a MACS school.

Volunteer

A person who performs work without remuneration or reward for MACS, a MACS school or MACSEYE service in the school/service environment.

Support

MACS Legal and Professional Standards Unit 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

Related policies and documents

Supporting documents

PROTECT: Identifying and Responding to Abuse – Reporting Obligations Policy

PROTECT Procedure: Informing staff of reporting obligations

PROTECT Procedure: Police or DFFH Child Protection interviews at school

PROTECT Procedure: 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

Student Interview Template: Police or DFFH Child Protection interviews at school

Related MACS policies and documents

Child Safety Code of Conduct
Child Safety and Wellbeing Policy
Child Safety and Wellbeing Record Keeping Policy
Complaints Handling Policy
ICT Acceptable Usage Policy – Schools
Duty of Care Policy for MACS Schools
Pastoral Care Policy for MACS Schools
Recruitment Policy – Schools
Reportable Conduct Policy
Supervision 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](#)
[Policy and Advisory Library \(PAL\): Police and Child Protection Interviews](#)
[PROTECT on the CEVN Website](#)
[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](#)

Legislation and standards

Child Wellbeing and Safety Act 2005 (Vic.)
Children, Youth and Families Act 2005 (Vic.)
Crimes Act 1958 (Vic.)
Education and Training Reform Act 2006 (Vic.)
Education and Training Reform Regulations 2017 (Vic.)
Family Violence Protection Act 2008 (Vic.)
Information Privacy Act 2000 (Vic.)
Ministerial Order 1359: Implementing the Child Safe Standards – Managing the Risk of Child Abuse in Schools and School Boarding Premises
Victorian Institute of Teaching Act 2001 (Vic.)
Working with Children Act 2006 (Vic.)
Wrongs Act 1958 (Vic.).

Policy information table

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