

Duty of Care – Crimes Act 1958 (Vic) Policy

In fulfilling Preshil's duty of care to all students and specifically students under the age of 16 in relation to the amended (2014) Crimes Act 1958 (Vic), this policy addresses the: (i) failure to disclose a sexual offence; (ii) grooming for sexual conduct; and (iii) failure to protect a child from sexual offence.

Through the application of this policy, Preshil aims to:

- Ensure all reasonable steps are taken so that students are safe from sexual abuse.
- Enable the Board of Directors, all persons in positions of authority, care or supervision, all employees of Preshil and where applicable, students of 18 years or over to understand their role and responsibility in protecting the safety and wellbeing of children and young people under the age of 16 in accordance with the amended Crimes Act 1958 (Vic).
- Ensure all members of the Preshil community aged 18 and over understand their reporting obligations in accordance with the Crimes Amendment (Protection of Children) Act 2014 (Vic).

Guidelines The Principal will:

- Ensure that all staff members, volunteers, students aged 18 and over, Preshil Board members and the Preshil parent community are aware of the Duty of Care - Crimes Act 1958 (Vic) Policy and have access to a copy of the policy.
- Ensure that all adults within the Preshil community are aware of their obligation to report suspected sexual abuse of a child under 16 years to the police.
- Provide reasonable support for staff in undertaking their responsibility in this area. Report de-identified notifications of sexual abuse to the Board of Directors.

All staff members will:

- Be aware of the Preshil Duty of Care - Crimes Act 1958 (Vic) Policy the schools Child Protection and Mandatory Reporting Policy and Procedures Manual – Student Protection.
- Report any reasonable belief of child sexual abuse to the police and Preshil Principal, or fulfill their obligation as Mandatory Notifiers.
- Provide an educational environment that is supportive of all children's emotional and physical safety.

Parents/Caregivers/Volunteers/Students 18 and over will:

- Be made aware of the Preshil Duty of Care – Crimes Act 1958 (Vic) Policy the schools Child Protection - Mandatory Reporting Policy and Procedures Manual – Student Protection.
- Understand their obligations to report reasonable belief of child sexual abuse to the police.
- In addition to the legislative requirement for parents and caregivers to report to police, if a disclosure of sexual abuse or grooming of a child under 16 involving a Preshil staff member or student is made to a Preshil parent, the parent is expected to report that disclosure to the Principal or other senior staff member as soon as practicable.

Specific Offences

Failure to Disclose

Reporting child sexual abuse is a community-wide responsibility. The failure to disclose an offence imposes a clear legal duty upon all adults aged 18 and over to report information about child sexual abuse to police.

Definition

Under section 327 of the crimes Act, any person of age 18 years or more who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 years of age must disclose that information to police, as soon as it is practicable to do so. Failure to disclose the information to police is a criminal offence, except in limited circumstances such as where the information has already been reported to DHS Child Protection.

The offence applies to all adults in Victoria, not just professionals who work with children.

Forming a 'Reasonable Belief'

A 'reasonable belief' or a 'belief on reasonable grounds' is not the same as having proof but is more than mere 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. For example, a 'reasonable belief' might be formed if:

- 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 professional to form a belief that the child has been sexually abused or is likely to be abused
- signs of abuse lead to a belief that the child has been sexually abused.

Procedure

Any adult aged 18 or over 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 by phoning 000 (or otherwise to a Member of the police force of Victoria).

An adult will not be guilty of an offence if they do not report in the following circumstances:

- The victim is 16 years of age or older and does not have an intellectual disability that limits his/her capacity to make an informed decision; and he/she does not want the information reported to the police.
- The victim has disclosed the information in confidence in the course of a therapeutic relationship with you as a registered medical practitioner or counsellor.
- The victim turned 16 years of age before 27 October 2014.

Reasonable excuses for failing to comply with the requirement include:

- A reasonable belief that the information has already been reported to police or DHS 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.

Grooming

Section 49B of the Crimes Act relates to the offence of “Grooming for sexual conduct with a child under the age of 16 years.” The offence targets predatory conduct designed to facilitate later sexual activity. The offence can be committed by any person aged 18 years or over.

Definition

- The offence of grooming concerns predatory conduct undertaken to prepare a child for sexual activity at a later time.
- The offence applies where an 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 engagement in or involvement in sexual conduct, whether with the groomer or another adult.
- Grooming does not necessarily involve any sexual activity or even discussion of sexual activity – for example, it may only involve establishing a relationship with the child, parent or carer for the purpose of facilitating sexual activity at a later time.
- The sexual conduct must constitute an indictable sexual offence. This includes offences such as sexual penetration of a child, indecent assault and indecent act in the presence of a child. It does not include summary offences, such as ‘up-skirting’ and indecent behaviour in public.

Procedure

Should any member of the Preshil community aged 18 and over become aware of grooming behaviour by a person aged 18 years or over, they must notify the police and the Preshil Principal immediately.

It is the responsibility of the Principal or others associated with the school with authority or responsibility, to take action upon becoming aware of grooming behaviour to protect (so as to reduce or remove a substantial risk) in accordance with the ‘failure to protect’ offence.

1. Any member of the Preshil community aged 18 years or over forms a reasonable belief of Grooming taking place.
2. Member of the Preshil community notifies the police and the Principal or other senior staff member.
3. Take steps to protect child including reduction or removal of risk.
4. Subject to guidance from the Police, follow Preshil policies on Investigations.

Failure to Protect Offence

Section 49C of the Crimes Act will make it a criminal offence in Victoria for a person in authority to fail to protect a child under the age of 16 from criminal sexual abuse. This applies where there is substantial risk that a child under the care, supervision or authority of an organisation will become a victim of a sexual offence by an adult associated with the organisation. The person in a position of authority may be guilty of an offence if they know of the risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

Definition

If a person associated with Preshil who by reason of their position has the power or responsibility to reduce or remove a substantial risk that a child will become a victim of a

sexual offence committed by an adult associated with the school, they must not negligently fail to reduce or remove the risk.

That is, as soon as a person in authority becomes aware of a risk of child sexual abuse, they will be under a duty to take steps to remove or reduce that risk.

A person who has the power or responsibility to reduce or remove a risk will include a Director of the Governing Body, Principal, and senior staff, as well as teachers by virtue of their duty of care. For the avoidance of doubt, any member of staff or person associated with the school who knows of a substantial risk that a child will become a victim of a sexual offence should notify the Principal as soon as is reasonably practicable.

Procedure

When aware of a substantial risk of criminal sexual abuse to a child in the school from an adult aged 18 or over associated with the school, the Principal will act to reduce or remove the risk. The person will be removed from any child-related role pending an investigation.

1. Principal becomes aware of risk of sexual abuse to a child at Preshil from an adult aged 18 years or over associated with the school community.
2. Principal takes immediate action to reduce or remove the risk to the child. Such an action might include: if the adult concerned is a staff member, immediately standing that person down or otherwise removing their access to students while an investigation is underway.
3. Notify Police and/or other authorities.
4. See school Policy on investigations. Seek guidance from Police.

Resources

Department of Justice: Betrayal of Trust Factsheet: The new 'failure to disclose' offence.
Department of Justice: Betrayal of Trust Factsheet: The new 'grooming' offence.
Department of Justice: Betrayal of Trust Factsheet: The new 'failure to protect' offence.
VRQA Newsletter 'New obligations to help protect children: Betrayal of Trust implementation' (Edition 41).

Appendix

The Grooming Process

How Abusers Groom Children

Grooming is a subtle, gradual, and escalating process of building trust with a child. It is deliberate and purposeful. Abusers may groom children for weeks, months, or even years—before any sexual abuse actually takes place. It usually begins with behaviours that may not even seem to be inappropriate. Grooming children may include:

- Befriending a child and gaining his or her trust.
- Testing a child's boundaries through telling inappropriate jokes, roughhousing, backrubs, tickling, or sexual games.
- Moving from non-sexual touching to "accidental" sexual touching. This typically happens during play so the child may not even identify it as purposeful, inappropriate touching. It is often done slowly so the child is gradually desensitized to the touch.
- Manipulating the child to not tell anyone about what is happening. The abuser may use a child's fear, embarrassment, or guilt about what has happened. Sometimes, the abuser uses bribery, threats, or coercion.
- Confusing the child into feeling responsible for the abuse. Children may not notice or may become confused as the contact becomes increasingly intimate and sexual.

How Abusers Groom Adolescents

Grooming adolescents may include additional strategies, such as:

- Identifying with the adolescent. The abuser may appear to be the only one who understands him/her.
- Displaying common interests in sports, music, movies, video games, television shows, etc.
- Recognizing and filling the adolescent's need for affection and attention.
- Giving gifts or special privileges to the adolescent.
- Allowing or encouraging the adolescent to break rules (e.g., smoking, drinking, using drugs, viewing pornography).
- Communicating with the adolescent outside of the person's role (e.g., teacher, or coach). This could include, for example, texting or emailing the teen without the parents' knowledge.

How Abusers Groom Adults

It is not just children and adolescents who are groomed. Abusers also work hard to gain the trust of the adults around a child/youth (e.g., parents, other family members, and co-workers).

This may include:

- Befriending the parents or other caregivers.
- Looking for opportunities to have time alone with a child (e.g., offering to babysit or inviting the child for a sleepover).