

POLICY NUMBER: SWPOL - 071
VERSION: 1.1
APPROVED BY ELT: Feb 2017
ENDORSED BY COUNCIL: Feb 2017



Failure to Disclose Policy

1. Purpose

Cornish College is committed to fulfilling its duty of care to all students and specifically students under the age of 16 in relation to the Crimes Act 1958 (Vic), which was amended in 2014 to include offences of: (i) failing to disclose a sexual offence¹; (ii) grooming for sexual conduct²; and (iii) failing to protect a child from sexual offence³.

Through the application of this policy, Cornish College aims to:

- Ensure all reasonable steps are taken so that students are safe from sexual abuse and that they feel safe at all times
- Enable the governing body members, all persons in positions of authority, care or supervision, all employees of the school 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 Crimes Act 1958 (Vic). That is, to ensure individuals associated with the school who have the power or responsibility to reduce or remove a substantial risk, take steps to reduce or remove any substantial risk that a student under 16 years of age will become the victim of sexual assault, including the recognition of 'grooming'
- Ensure all members of the school community aged 18 and over understand their reporting obligations in accordance with the Crimes Amendment (Protection of Children) Act 2014 (Vic). That is, to ensure all members of the school community aged 18 and over (who are not Mandatory Notifiers) who form a reasonable belief that a sexual offence has been committed by an adult against a child under 16, report that information to police.

2. Scope

This policy applies to all members of the Cornish College Community including staff, volunteers, contractors, parents, students and alumni.

¹ Crimes Act Vic 1958 s.327.

² Crimes Act Vic 1958, s.49B.

³ Note: section 49C of the Crimes Act relating to the 'failure to protect' offence came into effect by 1 July 2015.

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3. Key responsibilities

Position/Roles	Responsibilities
Council	<ul style="list-style-type: none"> • Ensure all persons in positions of authority, care or supervision, all employees of the school 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 Crimes Act 1958 (Vic). • Ensure all members of the school community aged 18 and over understand their reporting obligations in accordance with the Crimes Amendment (Protection of Children) Act 2014 (Vic).
Executive Leadership Team (ELT)	<ul style="list-style-type: none"> • Ensure that all staff members, volunteers, students aged 18 and over, school board members and the school parent community are aware of the Crimes Act 1958 (Vic) Policy and have access to a copy of the policy • Ensure that all adults within the school community are aware of their obligation to report suspected sexual abuse of a child under 16 years to the police • Provide support for staff in undertaking their responsibility in this area
All staff	<ul style="list-style-type: none"> • Be aware of the school's Crimes Act 1958 (Vic) Policy and the school's Child Protection - Mandatory Notification Policy. • Report any reasonable belief of child sexual abuse to the police or fulfil 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:	<ul style="list-style-type: none"> • Be aware of the school's Crimes Act 1958 (Vic) Policy and the Child Protection - Mandatory Notification Policy • Understand their obligations to report reasonable belief of child sexual abuse to the police.

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4. Key elements of the policy

4.1 Failure to Disclose

Reporting child sexual abuse is a community-wide responsibility. The failure to disclose 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 Vic 1958, any person (including any staff member) of or over the age of 18 years 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.

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 dialing 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. 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

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4.2 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 'upskirting' and indecent behaviour in public.

Procedure

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

It is the responsibility of the Principal and/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 (see below).

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

4.3 Failure to Protect Offence⁴

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 (including schools) will become a victim of a sexual offence by an adult

⁴ Section 49C to come into effect 1 July 2015.

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associated with the school. 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 the school⁵ 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 the Principal, governing body members and senior staff, as well as teachers by virtue of their responsibilities. 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 in school 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.

5. References

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).

⁵ Under s.49C (1), a *person associated with an organisation* includes but is not limited to a person who is an officer, an office holder, employee, manager, owner, volunteer, contractor or agent of the organisation but does not include a person solely because the person received services from the organisation.