

## Obligation to Report a Sexual Offence (Failure to Disclose) Policy

### 1. PURPOSE

Cornish College is committed to fulfilling its duty of care to all students and in raising awareness of all adults in the Cornish Community to their obligations to report a sexual offence under the Crimes Act 1958 (Vic). which was recently amended to include offences of:

- (i) failing to disclose a sexual offence<sup>1</sup>;
- (ii) grooming for sexual conduct<sup>2</sup>;
- (iii) encouraging a child to engage in sexual activity<sup>3</sup>; and
- (iv) failing to protect a child from sexual offence<sup>4</sup>.

### 2. SCOPE

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

### 3. KEY RESPONSIBILITIES

Position/Roles	Responsibilities
Board	<ul style="list-style-type: none"><li>• Ensure all members of the school community aged 18 and over understand their reporting obligations in accordance with the Crimes Act 1958 (Vic)</li><li>• 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)</li></ul>
Executive Leadership Team	<ul style="list-style-type: none"><li>• Ensure that all staff members, volunteers, students aged 18 and over and the College community are aware of the Crimes Act 1958 (Vic) and have access to a copy of this policy</li></ul>

<sup>1</sup> Crimes Act (Vic) section.327

<sup>2</sup> Crimes Act (Vic) section.49M

<sup>3</sup> Crimes Act (Vic) sections 49K and 49L

<sup>4</sup> Crimes Act (Vic) section 49C



	<ul style="list-style-type: none"> <li>• Ensure that all adults within the College community are aware of their obligation to report suspected sexual abuse of a child under 16 years to the police</li> <li>• Provide support for staff in undertaking their responsibility in this area</li> </ul>
<p>All Staff, Students, Volunteers, Contractors, Parents/Caregivers and Alumni</p>	<ul style="list-style-type: none"> <li>• Be aware of the school’s Crimes Act 1958 (Vic) and the College’s Mandatory Reporting and Reportable Conduct Policies</li> <li>• Report any reasonable belief of child sexual abuse to the police or fulfil their obligation as Mandatory Reporters</li> <li>• Provide an educational environment that is supportive of all children’s emotional and physical safety</li> </ul>

#### 4. KEY ELEMENTS OF THE POLICY

##### 4.1 AIMS

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

- Ensure all reasonable steps are taken so that students are safe and protected from sexual abuse and grooming at Cornish College
- Ensure all members of the College community aged 18 and over understand their reporting obligations under the Crimes Act 1958 (Vic)
- Enable all persons in positions of authority, care or supervision of children at Cornish College, including Board members, volunteers, staff, contractors and, where applicable, students over 18 years of age, 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 College community understand that any act by an adult to encourage a child to engage in sexual activity including the activity of grooming a child to facilitate sexual activity at a later time is a criminal offence

##### 4.2 FAILURE TO DISCLOSE A SEXUAL OFFENCE

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 the Crimes Act 1958 (Vic) (section 327), anyone aged 18 years or over must make a report to the Police if they form a reasonable belief that a sexual offence has been committed against a child under the age of 16 years, by a person aged 18 years or over. The person must disclose the information to the Police as soon as it is practicable to do so. Failure to make a report without reasonable excuse is an offence and carries a prison term.

If a report is made to the Department of Families, Fairness and Housing (Child Protection) in accordance with Mandatory Reporting requirements, an additional report to the Police will not usually be required unless further information is obtained.

This obligation applies to anyone aged 18 years or over, including all non-teaching staff, contractors, volunteers, parents and students aged 18 and over. The legislation also applies to teaching staff if not already covered by the mandatory reporting obligation.

### **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
- Signs of abuse lead to a belief 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

### **Reporting 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 dialling 000 (or otherwise to a member of the police force of Victoria).

If you fail to disclose a sexual offence against a child to the Police, you will not be held liable where your reason for not reporting is that:

- You fear on reasonable grounds for the safety of any person (other than the offender), and a failure to report is reasonable
- The victim told you about the sexual offence (directly or indirectly), the victim was over 16 years old when they told you about the sexual offence, and the victim requested that the information not be disclosed (unless the victim has an intellectual disability and does not have the capacity to make an informed decision about this)
- You believe on reasonable grounds that the information has already been disclosed to the Police by another person (such as to Child Protection as part of Mandatory Reporting) and you have no further information

Unacceptable reasons for not reporting include if you are concerned with the interests (including the reputation, legal liability or financial status) of:

- The person involved in the sexual offence

- Any organisation (such as the College)

A report made under the Children, Youth and Families Act 2005 (Vic) Mandatory Reporting obligations may constitute a 'reasonable excuse' if you believe that you have no further information to provide to the Police (please refer to the College's *Mandatory Reporting Policy*).



## 5. GROOMING

Grooming is defined by the Royal Commission into Institutional Responses to Child Sexual Abuse as behaviours that manipulate and control a child, their family and other support networks, or institutions with the intent of gaining access to the child, obtaining the child's compliance, maintaining the child's silence and avoiding discovery of the sexual abuse.

Grooming by an adult of a child under 16, as well as grooming by an adult of a person who has the care, supervision or authority of a child aged under 16, are sexual offences under section 49M of the Crimes Act 1958 (Vic). They are therefore "child abuse" as defined in Ministerial Order No. 870.

Grooming does not necessarily involve any sexual activity or even discussion of sexual activity. For example, it may only involve establishing a relationship with a child or a person who has care, supervision or authority for a child for the purpose of facilitating sexual activity at a later time. Conduct which occurred outside Victoria or while the child was outside Victoria can still constitute an offence.

Certain behaviours or acts will not in isolation constitute grooming behaviour. However, where there is a repeating pattern of indicative behaviour, or several incidents of indicative behaviour, it may constitute grooming behaviour.

### **Online Grooming**

The sexual offence of grooming under section 49M **includes online grooming** which occurs when an adult (18 years or over) uses electronic means to communicate with a child under the age of 16, or a person who has the care, supervision or authority of a child aged under 16, in a predatory fashion to try and lower the child's inhibitions, or heighten their curiosity regarding sexual behaviour or activity, with the aim of eventually meeting them in person for the purposes of sexual activity. This can include communications through social media, online chat rooms, sexting or emails.

## **6. ENCOURAGING A CHILD TO ENGAGE IN SEXUAL ACTIVITY**

Sections 49K and 49L of the Crimes Act 1958 (Vic) outline offences relating to the encouragement of a child (under 18) to engage in, or be involved in, sexual activity. "Encourage" is defined in the Act to include suggest, request, urge and demand. The type of sexual activity a child may be encouraged to engage in, or be involved in, does not necessarily have to be sexual offence in its own right to be captured by these offences, for example encouraging a child to masturbate or watch pornography.

Section 49K does overlap with the grooming offence as both are preparatory offences against children, however not all grooming behaviour may be covered by the encouraging offence. Grooming goes further than the encouragement offence as it covers conduct that doesn't include active encouragement but assists in the cultivation of a relationship where sexual offending is more likely. For example, building a relationship with a child's parent or carer to gain trust may be an act of grooming, but is not an act of encouragement for the child to engage in, or be involved in, a sexual activity under sections 49K and 49L.

Additionally, the encouragement offences differ from the grooming offence as they do not require proof that the perpetrator intended to encourage the child to engage in, or be involved in, a sexual activity (in that the perpetrator meant to encourage the child in that way), or that they intended the child to engage in, or be involved in, a sexual activity.

While the encouragement and grooming offences are distinct and separate, due to the possibility for overlap, the following reporting procedure applies to both.

### **Reporting Procedure**

Should any member of the Cornish College community aged 18 and over become aware of encouragement and grooming behaviour by a person aged 18 years or over, they should **notify the police and the Principal** (or College Child Safety Officer) immediately.

It is the responsibility of the Principal and/or others associated with the College 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).

## **7. FAILURE TO PROTECT OFFENCE**

Under section 490 of the Crimes Act 1958 (Vic) a person commits an offence if:

- By reason of the position they occupy within or in relation to the College, they have the power or responsibility to reduce or remove a substantial risk that a relevant child (under the age of 16 who is, or may come under the care, supervision or authority of the College) will become the victim of a sexual offence committed by a person of or over the age of 18 years who is associated with the College; and
- They know that there is a substantial risk that the person will commit a sexual offence against a relevant child; and
- They negligently fail to reduce or remove that risk

### **Who must act to protect?**

Whether a person has the power or responsibility to take steps to remove or reduce the risk to the student will depend on their role at the College and the source of the risk.

In a normal school context, the Principal and members of the Executive Leadership Team would always have the necessary degree of supervision, power and authority to remove or reduce a risk posed by another adult working at the College.

However, on a day-to-day basis, and on tours, excursions, or camps, others at the College could have the requisite power and responsibility.

Examples of people who may have the power and responsibility, by reason of their position, to act could include:

- Teachers
- Volunteers where they are in a position of supervision, such as volunteer coaches
- College Board

### **When action should be taken?**

The Failure to Protect offence means that any staff member, volunteer or contractor who has the requisite power or responsibility must act when they know that an adult associated with the College poses a substantial risk that a student or students may become the victim of a sexual offence.

Action must be taken as soon as the risk becomes known.

"Knowledge" is more than holding a tentative belief or mere suspicion.

If a staff member, volunteer or contractor has a suspicion or belief that students are at risk of harm, they must take steps to follow up on that suspicion or belief by investigating further and should raise the issue with the Principal or a College Child Safety Officer.

The duty to act extends to situations where the students at risk or the person in authority is outside of Victoria.

### **Procedure to Reduce or Remove a Substantial Risk**

Where any staff member, volunteer or contractor who has the requisite power or responsibility becomes aware of a risk of a sexual offence against a student or students under their care, they should immediately:

- Take reasonable steps which would remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- Report the matter to a College Child Safety Officer, and the Principal, as soon as practicable
- Conduct an investigation unless this relates to a Mandatory Reporting situation
- Make the appropriate report

Appropriate action to be taken may include, for example:

- A current employee who is known to pose a risk to a student or students should be immediately removed from contact with students and reported to authorities and investigated
- A parent who is known to pose a risk of sexual abuse to children should not be allowed to attend overnight College camps as a parent helper

**Whenever there are concerns that a child is in immediate danger call the Police on 000.**

## **8. RECORDS**

All reports made by College staff to external authorities such as Department of Families, Fairness and Housing, Victoria Police, Commission of Children and Young People should be detailed on the PROTECT ['Responding to Suspected Child Abuse Form'](https://www.education.vic.gov.au/) on the <https://www.education.vic.gov.au/> website

All records or reports about suspected or alleged child abuse and inappropriate behaviour will be retained by the Principal (or Chair of the College Board, if made about Principal) in a separate, confidential and secure file.

## **9. CONFIDENTIALITY AND PRIVACY**

All personal information considered or recorded will respect the privacy of the individuals involved unless there is a risk to someone's safety. Cornish College will have safeguards and practices in place to ensure any personal information is protected in accordance with the Australian Privacy Principles contained in the Commonwealth Privacy Act 1988 and Privacy Amendment (Enhancing Privacy Protection) Act 2012. See the College's *Privacy Policy* for further details.

## **10. RELATED COLLEGE POLICIES**

*Child Safe Policy*

*Code of Conduct*

*Privacy Policy*

**POLICY NUMBER:** SWPOL - 071  
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*Mandatory Reporting Policy*

*Reportable Conduct of Staff, Volunteers and Others Policy*

Responding to Concerns of Child Abuse, Neglect, or Child Safety

## **11. REFERENCES**

Crimes Act 1958 (Vic) and amendments

Complispace – Child Safety Program – Failure to Disclose, Failure to Protect, Grooming pages July 2021