
NEW FAILURE TO DISCLOSE LAWS

Changes to the law make keeping children safe a community-wide responsibility

In 2012, the Victorian government held an inquiry into the handling of child abuse by religious and non-government organisations. The 'Betrayal of Trust' inquiry led to the introduction of new laws aimed at protecting children from sexual abuse.

What you need to know

It is now a criminal offence for an adult in Victoria to 'fail to disclose' to the police any reasonable belief that a sex offence has been committed by an adult (someone over the age of 18) against a child under the age of 16.¹ You must report sexual offences against children to the police as soon as possible, unless you have a 'reasonable excuse' or an 'exemption' applies.

This law applies to all adults, whether they have a child related job or not and whether they come across information in their professional or private lives. If you do not pass this information onto the police you could be charged and subject to criminal consequences. This offence carries a maximum penalty of 3 years imprisonment.

What types of offences do you need to report to police?

You must report sexual offences committed by an adult against a child under 16, including:

- Rape
- Sexual assault
- Grooming
- Incest
- Sexual touching
- Any attempted sexual offence

What is a 'reasonable belief'?

You will form a reasonable belief that a sex offence has been committed if a reasonable person, with your skills and experience, would have formed such a belief. You do not need to have proof or concrete evidence. A reasonable belief means it is more likely than not that it happened.

¹The new 'Fail to Disclose' offence is set out in the Crimes Act 1958 (Vic), at section 327

You might base a reasonable belief on: things a young person tells you, things someone else tells you about a young person and / or your observations of a young person's behaviour.

Are there any situations where I don't need to make a report?

Yes. You have a 'reasonable excuse' not to report if:

- you fear that making a report to police will put your safety or someone else's safety at risk (other than the perpetrator)
- you have a reasonable belief that somebody else has already made a report to police and there is nothing further you could add.

In addition, you will be 'exempt' from reporting to police in situations where:

- the victim is over 16 years old, has capacity and requests confidentiality
- special laws of privilege or confidential communications apply (e.g. between lawyers and their clients, journalists and their sources etc).
- the information is already public
- you were under 18 at the time you came across the information

The new 'fail to disclose' laws extend the system of mandatory reporting which has been in place in Victoria since the 1990's. All Victorian adults - no matter their profession - are now obliged by law to report sexual offences against children to the police.

I'm concerned about a child, what should I do?

If you are worried about a child and you think they are in immediate danger, you can report this to police by phoning 000.

In all other situations, you can report abuse at your local police station or by phoning your local Sexual Offences and Child Abuse Investigation Team (also known as SOCIT).

Remember, any report you make in good faith will not breach your professional ethics or create any liability on you.

If you work with children and you're not sure about your reporting obligations or you would like more information, please call Youthlaw for a free and confidential secondary consult on (03) 9611 2412.

