

# NEW FAILURE TO PROTECT LAW

## New law to protect children

In response to the institutional failings highlighted in the 'Betrayal of Trust' inquiry, the Victorian government introduced a new offence to the Crimes Act that places important new obligations on people who work with children. From 1 July 2015, it is a criminal offence to negligently fail to protect a child from sexual abuse perpetrated by someone associated with your organisation.

## What you need to know

The 'fail to protect' offence is set out in section 49C of the Crimes Act 1958 (Vic) and it says that a person will commit an offence if:

- they hold a position of authority within an organisation that works with children;
- they know of a substantial risk another adult associated with their organisation will commit a sex offence against a child (under 16) within the organisation's care; and
- they have the power or responsibility to remove or reduce that risk
- BUT they negligently fail to do so

**If you work in an organisation that works with children, it is important you are aware of recent changes to the law that affect your obligations to protect them from abuse**

The maximum penalty for this offence is 5 years imprisonment.

## Who does this law apply to?

This law applies to people who work in organisations that exercise care, supervision or authority over children – whether as part of their primary functions or otherwise. This means it will apply to organisations like:

- Churches & religious bodies
- Out of home care services
- Sporting groups
- Schools, educational and care services
- Hospitals
- Youth organisations
- Children's services
- Government departments
- Charities

## So, you work in an organisation that works with children? Here's what you need to look out for.

You need be mindful of any **substantial risk** posed to children by a person '**associated**' with your organisation.

The new fail to protect law doesn't set out a definition of what might constitute a substantial risk beyond saying that it is not necessary to prove that a sexual offence has already been committed for there to be a substantial risk to a child.

People associated with your organisation will include:

- The owner / director
- Managers / team leaders
- Other employees
- People who are coming into your organisation as contractors, volunteers, students on placement etc.

**Remember, while the new failure to protect law is concerned with what you do at work, it applies to you as an individual and takes precedence over your organisational policies and procedures. If you act negligently you can be held criminally liable.**

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## But doesn't this law only apply to people in positions of authority?

Yes – but it will apply to workers who are not necessarily in management roles. If you have the power or ability to reduce a risk to a child when you're at work, then this law will apply to you.

## Negligence

A person will contravene the 'fail to protect' law if they **negligently** fail to reduce or remove a risk to a child. Negligence involves a great falling short of the standard of care that a reasonable person would exercise in the circumstances.

So what does the law say I should do? You won't be prosecuted if you took reasonable steps to protect a child from the risk of abuse. For example, where you report an allegation and the person concerned is removed from any child-related role pending an investigation.

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

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