



Disclaimer: the material in this fact sheet is intended as a general guide only. You should not act on the basis of the information in this fact sheet without first getting legal advice about your own particular reason. The information is based on the laws in Victoria as of July 2020.

FAILURE TO PROTECT

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FAILURE TO PROTECT

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.

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.

WHAT YOU NEED TO KNOW

The 'Failure to protect' offence is set out in section 49O 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 that another adult (18 years or more) associated with their organisation will commit a sexual offence against a child (under 16 years old) 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 want to report a child in immediate risk or danger of a sexual offence, call 000, or if the risk is not immediate, contact your local police station or call Crime Stoppers on 1800 333 000.

The maximum penalty for this offence is 5 years imprisonment.

WHO DOES THIS LAW APPLY TO?

This law applies to people in a position of authority in their organisation to reduce or remove the risk of sexual abuse of a child by an adult associated with their organisation. Such people work at 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 and religious bodies;;
- Schools, educational and care services
- Children's services;
- Out of home care services;;
- Hospitals;
- Government departments;
- Municipal councils
- Sporting groups;
- Youth organisations; and
- 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. This definition excludes people who are only associated with an organisation because they receive services from the organisation.

The 'Failure 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; and
- Other employees.

People who are coming into your organisation as contractors, volunteers, students on placement etc can also be people associated with an organisation.

Remember, while the '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.

BUT DOESN'T THIS LAW ONLY APPLY TO PEOPLE IN POSITIONS OF AUTHORITY?

Yes – but it will apply to workers and agents 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 'Failure 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.

WATCH THIS VIDEO

Watch the "What are the new 'Failure to Protect' laws video at this link:

<https://www.youtube.com/watch?v=vnnWF3fqNos>.

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) 9113 9500 from 9am to 5pm, Monday to Friday, or visit www.youthlaw.asn.au.

For training requests and information click [here](#).

MORE INFORMATION

If you are the head of an organisation that works with children then you are likely to be subject to the Reportable Conduct Scheme, The Reportable Conduct Scheme aims to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers. Organisations governed by the Reportable Conduct Scheme should contact the Commission for Children and Young People at:

Telephone: 8601 5281

Email: contact@ccyp.vic.gov.au

Website: www.ccyp.vic.gov.au

Visit our website: www.youthlaw.asn.au

Chat to us: 03 9113 9500

Email your questions: legal@youthlaw.asn.au

YOUTHLAW

Young Peoples Legal Rights Centre

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