



*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 June 2023.*

# FAILURE TO DISCLOSE

## INCLUDED IN THIS FACT SHEET ARE:

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

What you need to know

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

What is a 'reasonable belief'?

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

I'm concerned about a child, where should I go?

Watch this video

More Information

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## CHANGES TO THE LAW MAKES 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 of or over the age of 18) against a child (someone under the age of 16). 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 work with children in the course of their employment or not, and whether they come across information in their professional or private lives. If you do not pass on this information to 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; and
- 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.

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/ any other signs of sexual abuse.

For example, you might form a 'reasonable belief' if a child tells you they have been sexually abused.

## 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), and failing to disclose the information would be a reasonable response in the circumstances; or
- 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 to make an informed decision 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; or
- you were under 18 at the time you came across the information.

Importantly, you do not have a 'reasonable excuse' if you are only concerned for the perceived interests of the perpetrator or organisation. This includes any concern for the reputation, legal liability or financial status of the organisation or the person who committed the offence.

As of 17 February 2020, religious ministers who hear information in religious confession that leads them to form a "reasonable belief" of child sexual abuse must report that information to police.

## I'M CONCERNED ABOUT A CHILD, WHERE SHOULD I GO?

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 constitute unprofessional conduct, breach your professional ethics nor make you subject to any liability in respect of your report.

## WATCH THIS VIDEO

Watch the video "The new failure to disclose laws" here: <https://www.youtube.com/watch?v=e4KFB0deZhg>

*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) 9113 9500 between 9am and 5pm Monday to Friday.*

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](mailto:contact@ccyp.vic.gov.au)

Website: [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

Visit our website: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

Chat to us: 03 9113 9500

Email your questions: [legal@youthlaw.asn.au](mailto:legal@youthlaw.asn.au)

# YOUTHLAW

Young Peoples Legal Rights Centre

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