



10 Laceys Rd, PO Box 140, Cottles Bridge VIC 3099 Phone: 9718 1481  
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## Amendments to the *Crimes Act 1958* (Vic) Policy

**Date:**

### **1. Rationale/Introduction**

1.1 The Learning Co-operative is committed to fulfilling its duty of care to all students and specifically students under the age of 16 in relation to the *Crimes Act 1958* (Vic), which was amended in 2014 to include offences of: (i) failing to disclose a sexual offence<sup>1</sup>; (ii) grooming for sexual conduct<sup>2</sup>; and (iii) failing to protect a child from sexual offence<sup>3</sup>.

### **2. Aims**

2.1 Through the application of this policy, we at the Learning Co-operative aim to:

a. Ensure all reasonable steps are taken so that students are safe from sexual abuse and that they feel safe at all times

b. Enable the governing body members, 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). That is, to ensure individuals associated with the school who have the power or responsibility to reduce or remove a substantial risk, take steps to reduce or remove any substantial risk that a student under 16 years of age will become the victim of a sexual offence, including the recognition of 'grooming'.

c. Ensure all members of the school community aged 18 and over understand their reporting obligations in accordance with the *Crimes Amendment (Protection of Children) Act 2014* (Vic). That is, to ensure all members of the school community aged 18 and over (who are not Mandatory

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<sup>1</sup> *Crimes Act 1958* (Vic), s.327.

<sup>2</sup> *Crimes Act 1958* (Vic), s.49B.

<sup>3</sup> *Crimes Act 1958* (Vic), s.49C.



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Notifiers) who form a reasonable belief that a sexual offence has been committed by an adult against a child under 16, report that information to police<sup>4</sup>.

This policy is underpinned by the *Crimes Act 1958* (Vic).

### **3. Guidelines**

#### **3.1 The Principal will:**

- a. Ensure that all staff members, volunteers, students aged 18 and over, school board members and the school parent community are aware of the *Crimes Act 1958* (Vic) Policy and have access to a copy of the policy on the School's website and available in hard copy from the school office if requested.
- b. Ensure that all adults within the school community understand that they have an obligation to report suspected sexual abuse of a child under 16 years to the police.
- c. Provide support for staff in undertaking their responsibility in this area.

#### **3.2 All staff members will:**

- a. Be aware of the school's *Crimes Act 1958* (Vic) Policy, the school's Child Protection – Mandatory Notification Policy, the school's Child Safe Standards Policy and the reportable conduct notification obligations of the head of the school.
- b. Report any reasonable belief of child sexual abuse to the police or fulfil their obligation as Mandatory Notifiers.
- c. Provide an educational environment that is supportive of all children's emotional and physical safety.

**3.3** Parents/caregivers/volunteers/contractors and visiting health providers will be provided with ongoing training opportunities and induction checks to ensure they are aware of the school's related policies: Mandatory Reporting, Child Safety and Wellbeing and Reportable Conduct Policy

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<sup>4</sup> Victorian Department of Education and Training, *Child Protection - Reporting Obligations* (2019)  
<https://www.education.vic.gov.au/school/principals/spag/safety/Pages/childprotectobligation.aspx>. Accessed 24 July 2019.



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and to fully understand their obligations, including as adults (which includes students who are 18 years and over) in the community, to report a reasonable belief of child sexual abuse to the police.

3.4 Students will be provided with opportunities to raise their safety and wellbeing concerns in line with our Child Safety and Wellbeing policy guidelines.

#### 4. Specific Offences

4.1 **Failure to Disclose** – 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.

4.1.1 **Definition** – Under section 327 of the *Crimes Act*, any person (including any staff member) of or over the age of 18 years who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 years of age must disclose that information to police, as soon as it is practicable to do so<sup>5</sup>. Failure to disclose the information to police is a criminal offence, except in limited circumstances such as where the information has already been reported to DHS Child Protection.

The offence applies to **all adults** (whether in Victoria or elsewhere) not just professionals who work with children.

4.1.2 **Forming a 'Reasonable Belief'** – A 'reasonable belief' or a 'belief on reasonable grounds' is 'not the same as having proof'<sup>6</sup> but is more than mere rumors 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. a child states that they have been sexually abused

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<sup>5</sup> State Government of Victoria, *Betrayal of Trust Factsheet: Failure to Disclose* (2017) 1  
<[https://www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/07/f0/bbce5bd2b/failure\\_to\\_disclose\\_betrayal\\_of\\_trust\\_factsheet\\_2017.pdf](https://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/07/f0/bbce5bd2b/failure_to_disclose_betrayal_of_trust_factsheet_2017.pdf)>. Accessed 17 July 2019.

<sup>6</sup> Ibid.



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- b. a child states that they know someone who has been sexually abused (sometimes the child may be talking about themselves)
- c. someone who knows a child states that the child has been sexually abused
- d. 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
- e. signs of abuse lead to a belief that the child has been sexually abused.<sup>7</sup>

**4.1.3 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<sup>8</sup> by dialling 000 (or otherwise to a member of the police force of Victoria).

An adult will not be guilty of an offence if they do not report in the following circumstances:

- a. the victim is 16 years of age or older and does not have an intellectual disability that limits his/her capacity to make an informed decision; and he/she does not want the information reported to the police
- b. the victim has disclosed the information in confidence in the course of a therapeutic relationship with you as a registered medical practitioner or counsellor
- c. the victim turned 16 years of age before 27 October 2014.

Reasonable excuses for failing to comply with the requirement include:

- a. a reasonable belief that the information has already been reported to police or Department of Families, Fairness and Housing (DFFH) Child Protection disclosing all of the information

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<sup>7</sup> Ibid.

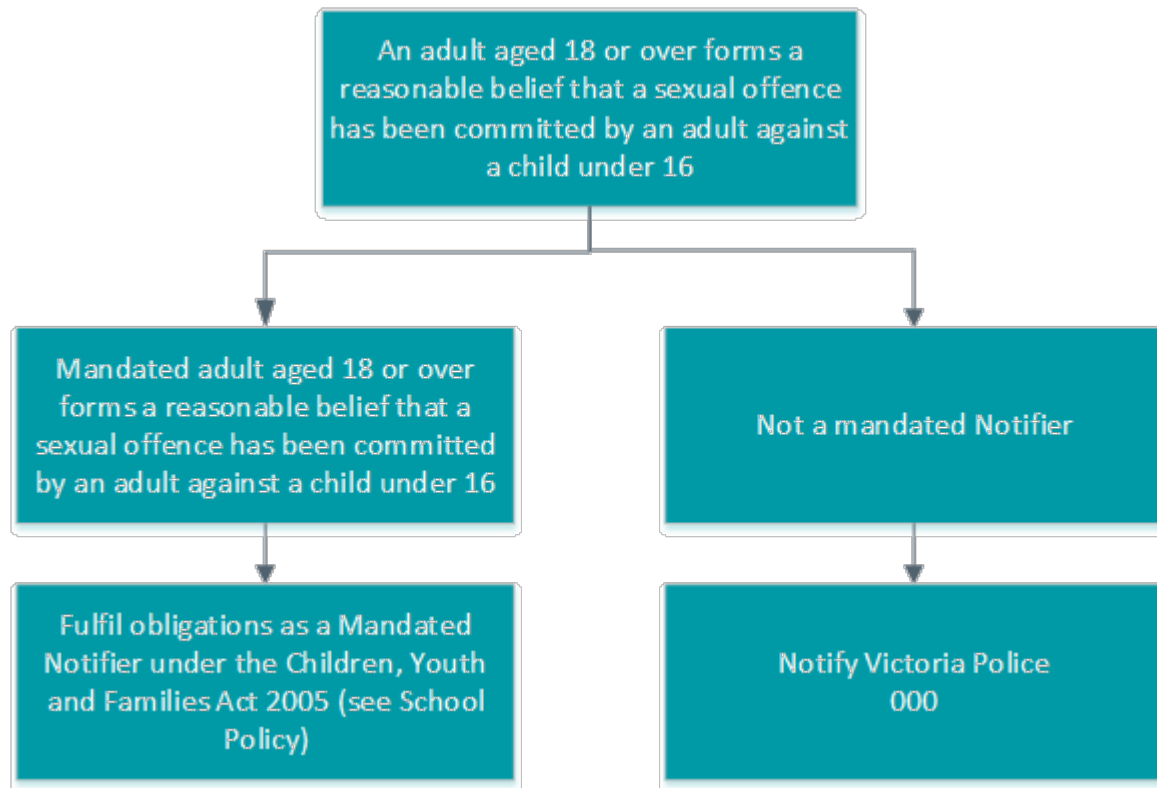
<sup>8</sup> Ibid.



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d. a reasonable fear that the disclosure will place someone (other than the alleged perpetrator) at risk of harm<sup>9</sup>.

A person in the school may have a mandatory reporting obligation under the *Children, Youth and Families Act 2005*. In summary, this obligation requires principals, teachers and registered nurses to report concerns about child welfare to child protection authorities within the Department of Fairness, Families and Housing (DFFH) passes child sexual abuse allegations onto police. As such, it will be considered a reasonable excuse for not reporting to police if a person has reported their concerns to DFFH or reasonably believes that a report has been made to DFFH (please refer to the school's Child Safety and Wellbeing Policy and Mandatory Notification Policy).



<sup>9</sup> Victorian Department of Education and Training, *Child Protection - Reporting Obligations* (2016)  
<https://www.education.vic.gov.au/school/principals/spag/safety/Pages/childprotectobligation.aspx>. Accessed 3 October 2016.



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**4.2 Grooming** – Section 49M of the *Crimes Act* relates to the offence of ‘Grooming for sexual conduct with a child under the age of 16’ years. The offence targets predatory conduct designed to facilitate later sexual activity. The offence can be committed by any person aged 18 years or over.

**4.2.1 Definition** – ‘The offence of grooming concerns predatory conduct undertaken to prepare a child for sexual activity at a later time.

The offence applies where an adult communicates, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child with the intention of facilitating the child’s engagement in or involvement in sexual conduct, whether with the groomer or another adult.

Grooming does not necessarily involve any sexual activity or even discussion of sexual activity – for example, it may only involve establishing a relationship with the child, parent or carer for the purpose of facilitating sexual activity at a later time.

The sexual conduct must constitute an indictable sexual offence. This includes offences such as sexual penetration of a child, indecent assault and indecent act in the presence of a child. It does not include summary offences, such as ‘upskirting’ and indecent behaviour in public.’<sup>10</sup>

**4.2.2** – Should any member of the school community aged 18 and over become aware of grooming behaviour by a person aged 18 years or over, they should notify the police and the principal or school’s Child Safety Officer immediately. If the allegation relates to an employee, parent, volunteer, contractor or visiting professional then report to the chair of the Board as per the school’s Reportable Conduct Policy.

It is the responsibility of the principal and/or others associated with the school 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).

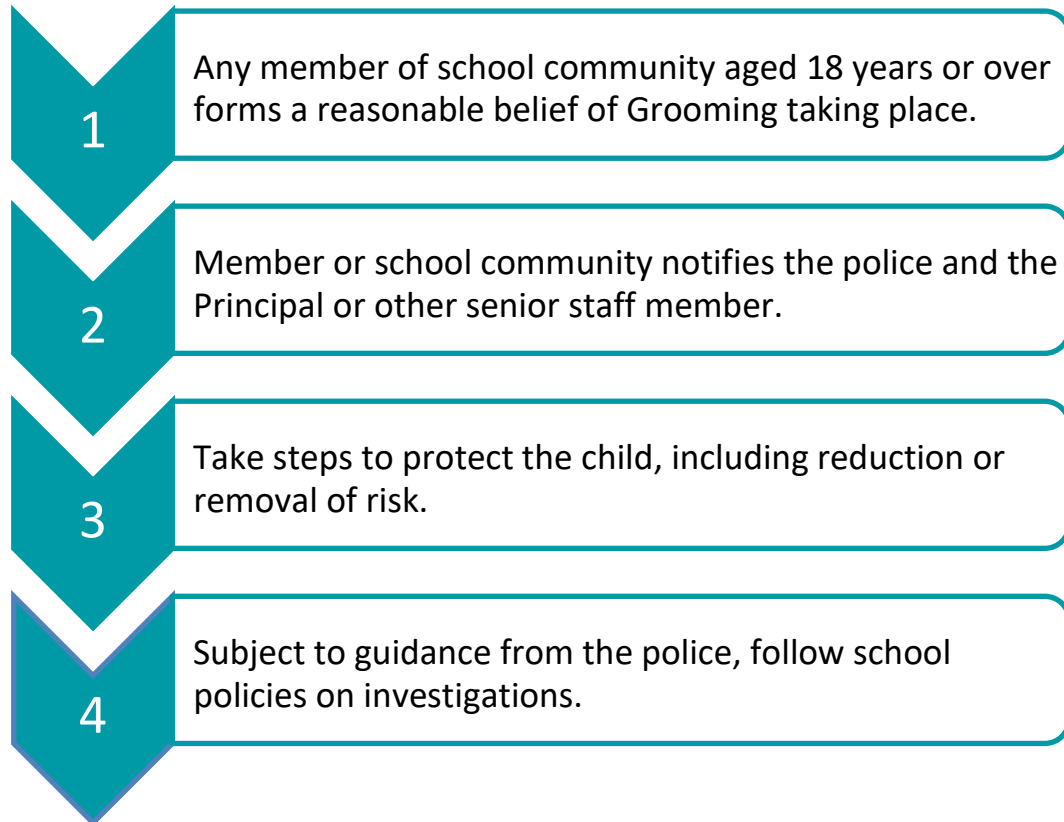
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<sup>10</sup> State Government of Victoria, *Betrayal of Trust Factsheet: The Grooming Offence* (2017) 1

<[https://www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/07/ea/2bff28cdf/grooming\\_betrayal\\_of\\_trust\\_factsheet\\_2017.pdf](https://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/07/ea/2bff28cdf/grooming_betrayal_of_trust_factsheet_2017.pdf)>. Accessed 17 July 2019.



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**4.3 Failure to Protect Offence**<sup>11</sup> – Section 490 of the *Crimes Act* makes it a criminal offence in Victoria for a person in authority to fail to protect a child under the age of 16 from criminal sexual abuse. This applies 'where there is substantial risk' that a child 'under the care, supervision or authority' of an organisation (including schools) 'will become a victim of a sexual offence by an adult associated with' the school<sup>12</sup>. The person in a position of authority may be guilty of an

<sup>11</sup> Under s.490(1), a *person associated with an organisation* includes, but is not limited to, a person who is an officer, an office holder, employee, manager, owner, volunteer, contractor or agent of the organisation but does not include a person solely because the person received services from the organisation.

<sup>12</sup> State Government of Victoria, *Betrayal of Trust Factsheet: Failure to Protect: a new criminal offence to protect children from sexual abuse* (2017) 1  
<[https://www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/07/a9/431cfe3d9/failure\\_to\\_protect\\_betrayal\\_of\\_trust\\_factsheet\\_2017.pdf](https://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/07/a9/431cfe3d9/failure_to_protect_betrayal_of_trust_factsheet_2017.pdf)>. Accessed 17 July 2019.



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offence if they know of the risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

**4.3.1 Definition** – If a person associated with the school<sup>13</sup> who ‘by reason of their position... has the power or responsibility to reduce or remove a substantial risk’ that a ‘child will become a victim of a sexual offence committed by’ an adult associated with the school<sup>14</sup>, they must not negligently fail to reduce or remove the risk.

That is, as soon as a person in authority becomes aware of a risk of child sexual abuse, they will be under a duty to take steps to remove or reduce that risk.

A person who has the power or responsibility to reduce or remove a risk will include the Principal, governing body members and senior staff, as well as teachers by virtue of their responsibilities. For the avoidance of doubt, any member of staff or person associated with the school who knows of a substantial risk that a child will become a victim of a sexual offence should notify the Principal as soon as is reasonably practicable.

**4.3.2 Procedure** - When aware of a substantial risk of criminal sexual abuse to a child in the school from an adult aged 18 or over associated with the school, the Learning Co-operative Chair and or the Principal will act to reduce or remove the risk. The person will be removed from any child-connected work, whether it is an employee of the school, volunteer and contractors that may have a standing arrangement at the school pending an investigation being conducted and outcome made. All procedures and policies must be adhered to.

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<sup>13</sup>

<sup>14</sup> Ibid.





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1

Principal becomes aware of risk of sexual abuse to a child in school from an adult aged 18 years or over associated with the school community.

2

Principal takes immediate action to reduce or remove the risk to the child. Such an action might include: if the adult concerned is a staff member, immediately standing that person down or otherwise removing their access to students while an investigation is underway.

3

Notify police and/or other authorities.

4

See school policy on investigations. Seek guidance from the police.

## 5. Resources

- [Department of Justice: Betrayal of Trust Factsheet: The new 'failure to disclose' offence](#)
- [Department of Justice: Betrayal of Trust Factsheet: The new 'grooming' offence](#)
- [Department of Justice: Betrayal of Trust Factsheet: The new 'failure to protect' offence](#)



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### Evaluation


This policy was ratified by the school board on:

This policy will be reviewed every year as part of the ongoing overall policy review process.

Chairperson's signature:

(MYRA THEISZ)

### Version and revision control record

Date	Version	Approver	Next Review Date
15/10/2021	1	Name: MYRA THEISZ  Position: Chair of the School Board  Signature: 	October 2022