



## PROTECT RESPONDING & REPORTING OBLIGATIONS POLICY

### 1. Introduction

Protection for children and young people is based upon the belief that each person is made in the image and likeness of God and that the inherent dignity of all should be recognised and fostered.

Catholic schools are entrusted with the holistic education of the child, in partnership with parents, guardians and caregivers, who are the primary educators of their children. Catholic school staff therefore have a duty of care to students to take reasonable care to avoid acts or omissions that they can reasonably foresee would be likely to result in harm or injury to the student, and to work for the positive wellbeing of the child.

Under Ministerial Order No. 870: *Child Safe Standards – Managing the Risk of Child Abuse in Schools* and the *National Framework for Protecting Australia’s Children 2009–2020*, protecting children is everyone’s responsibility – parents, communities, governments and businesses all have a role to play.

In Victoria, a joint policy *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*, involving the Victorian Department of Education and Training (DET), the Catholic Education Commission of Victoria Ltd (CECV) and Independent Schools Victoria (ISV) exists to protect the safety and wellbeing of children and young people. DET has also produced *Four Critical Actions for Schools: Responding to Incidents, Disclosures and Suspicions of Child Abuse* and *Protect: Responding to Suspected Child Abuse: A Template for all Victorian Schools*, both of which are referred to in the joint protocol.

**All teachers, other school staff members, volunteers, contractors, other service providers, parish priests, and canonical and religious order administrators of Catholic schools within Victoria** must understand and abide by the professional, moral and legal obligations to implement child protection and child safety policies, protocols and practices.

### 2. Purpose

Ministerial Order No. 870: *Child Safe Standards – Managing the Risk of Child Abuse in Schools* was made under the *Education and Training Reform Act 2006* (Vic.) and sets out the specific actions that all Victorian schools must take to meet the requirements in the Child Safe

Standards for registration.

This policy is designed to enable Catholic Education Sandhurst Limited (CES Ltd) and all Sandhurst Catholic schools to comply with Standard 5 of the Victorian Child Safe Standards: processes for responding to and reporting suspected child abuse, as well as the school-specific requirements for procedures for responding to allegations of suspected abuse in Ministerial Order No. 870. All procedures for reporting and responding to an incident of child abuse are designed and implemented by taking into account the diverse characteristics of school communities.

Actions required under the relevant legislation and regulatory guidance when there is a reasonable belief that a child is in need of protection or a criminal offence has been committed are set out in this policy. It also provides guidance and procedures on how to make a report.

This policy assists school staff at St Patrick's Tongala (which includes volunteers, contractors, other service providers and religious leaders including clergy) to:

- identify the indicators of a child or young person who may be in need of protection
- understand how a 'suspicion' or 'reasonable belief' is formed
- where possible, refer to the principles of the Victorian Charter of Human Rights and Responsibilities as best practice in respecting and protecting the basic rights, freedoms and responsibilities of members of the school community
- make a report about a child or young person who may be in need of protection
- comply with obligations under the Victorian Reportable Conduct Scheme
- comply with mandatory reporting obligations under child protection law
- comply with legal obligations relating to criminal child abuse and grooming under criminal law.

### 3. Legislative and Regulatory Requirements

CES Ltd and the schools it owns and operates, must comply with the legal obligations that relate to managing the risk of child abuse under the *Children, Youth and Families Act 2005* (Vic), the *Crimes Act 1958* (Vic), the *Child Wellbeing and Safety Act 2005* (Vic), the *Education and Training Reform Act 2006* (Vic) and the *Family Violence Protection Act 2008* (Vic).

The *Child Wellbeing and Safety Act 2005* (Vic) introduced the seven Victorian Child Safe Standards, which aim to create a culture where protecting children from abuse is part of everyday thinking and practice. The Child Safe Standards were introduced in response to recommendations made by the Betrayal of Trust report.

Child protection reporting obligations for CES Ltd and its schools fall under five separate pieces of legislation with differing reporting requirements:

- the *Children, Youth and Families Act 2005* (Vic)
- the *Education and Training Reform Act 2006* (Vic)

- the *Crimes Act 1958* (Vic)
- the *Family Violence Protection Act 2008* (Vic)
- the *Wrongs Act 1958* (Vic).

Child abuse can take many forms. The perpetrator may be a parent, carer, school staff member, volunteer, another adult or even another child. The nature of child abuse is complex. The abuse may occur over time and potential risk indicators are often difficult to detect. Therefore, the legal obligations for reporting allegations of child abuse can vary depending on the circumstances of the incident.

Child abuse is defined in the *Child Wellbeing and Safety Act 2005* (Vic.) to include:

- sexual offences
- grooming offences under section 49M(1) of the *Crimes Act 1958* (Vic.)
- physical violence
- serious emotional or psychological harm
- serious neglect

Child abuse can have a significant effect on a child's physical, social, psychological or emotional health, development and wellbeing. The younger the child, the more vulnerable they are to abuse and the more serious the consequences are likely to be.

There can be physical or behavioural indicators of child abuse and neglect, or a combination of both.

While the presence of a single indicator, or even several indicators, does not necessarily prove that abuse or neglect has occurred, the repeated occurrence of either a physical or behavioural indicator, or the occurrence of several indicators together, should alert school staff to the possibility of child abuse or neglect.

Child sexual abuse is more commonly perpetrated by someone who is known to and trusted by the child, and is also often someone highly trusted within their families, communities, schools and/or other institutions, such as the Church.

For further definitions of all types of child abuse, a comprehensive list of the indicators of harm and advice on identifying perpetrators of child sexual abuse, refer to the protocol [Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools](#).

## 4. Sources of Child Protection Reporting Obligations

### Children, Youth and Families Act 2005 (Vic.)

#### **Mandatory reporting**

Mandatory reporting is a legal requirement under the *Children, Youth and Families Act 2005* (Vic) to protect children from harm relating to physical injury and sexual abuse. A child, for the purpose of the relevant parts of this Act, is any person under **17 years** of age. The principal, teachers, medical practitioners, religious clergy, school counsellors and nurses are mandatory reporters under this Act.

If, in the course of carrying out their duties, a mandatory reporter at St Patrick's Tongala forms a **reasonable belief** that a child is in need of protection from physical injury or sexual abuse, and that the **child's parents are unwilling or unable to protect the child**, they must report that belief to Department of Family, Fairness & Housing (DFFH) Child Protection and/or Victoria Police, including the information prescribed in *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools* as soon as possible after forming the belief.

A subsequent report must be made on each occasion on which the mandatory reporter becomes aware of further reasonable grounds for the belief and even if the reporter knows that another report has been made concerning the same child and suspected abuse.

The threshold for reporting child protection incidents, disclosures, concerns or suspicions has been set deliberately low by the joint policy *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*. This protocol focuses on *Four Critical Actions* (included at the end of this policy and detailed in the PROTECT: Reporting and Responding Obligations Procedures) that all school staff must take if they form a suspicion or reasonable belief that child abuse has occurred, or that a child is at risk of suffering abuse.

### **Reasonable belief**

Where school staff members are concerned about the safety and wellbeing of a child or young person, they must assess that concern to determine if a report should be made to the relevant agency. If a staff member has witnessed potentially abusive behaviour, has a suspicion or has received a disclosure of child abuse, they must determine whether these observations or receipt of such information have caused the staff member to form a 'reasonable belief'.

A 'reasonable belief' or a 'belief on reasonable grounds' is not the same as having proof, but is more than rumour or speculation. A reasonable belief is formed if a reasonable person in the same position would have formed the belief on the same grounds.

A reasonable belief might be formed if:

- a child states that they have been physically or sexually abused
- any person tells you that they believe someone has been abused; this may include a child who is talking about themselves
- you observe physical or behavioural indicators of abuse, as described in *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*
- a child or young person exhibits sexually abusive or age-inappropriate behaviour(s)
- professional observations of the child's behaviour or development cause you to form a belief that the child has been physically or sexually abused or is likely to be abused.

While any indicators of possible child abuse or neglect are concerning, it is important to understand that the presence of a number of indicators that suggest either physical or sexual abuse of a child may be sufficient to form a reasonable belief in a mandatory reporter's mind

which must be reported.

## **Child Wellbeing and Safety Act 2005 (Vic.)**

### **Reportable conduct**

The Reportable Conduct Scheme was created under the *Child Wellbeing and Safety Act 2005* (Vic.) and requires schools to notify the Commission for Children and Young People (CCYP) if an allegation of reportable conduct (a reportable allegation) is made against one of their employees.

Employees can include a principal, teacher, corporate staff member, board or school council employee, contractor, volunteer, school doctor/nurse/medical professional, allied health staff member, or minister of religion (clergy), and religious personnel (Brother, Sister, Monk).

Reportable conduct is defined under the *Child Wellbeing and Safety Act 2005* (Vic) to mean a sexual offence, sexual misconduct or physical violence committed against, with or in the presence of a child, behaviour causing significant emotional or psychological harm to a child, or significant neglect of a child.

A reportable allegation means any information that leads a person to form a reasonable belief that an employee has committed reportable conduct or misconduct that may involve reportable conduct, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

The Reportable Conduct Scheme requires CES Ltd to:

- have in place systems to prevent reportable conduct and, if reportable conduct is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response
- ensure that the CCYP is notified and given updates on the organisation's response to an allegation by contacting the relevant member of the CES Ltd Executive Leadership Team who has been sub-delegated with authority on behalf of head of entity. For the purposes of the reportable conduct scheme, the Head of Entity has been identified as the Executive Director of CES Ltd.
- report to Victoria Police as soon as they become aware that a reportable allegation may involve suspected child abuse or criminal conduct.

Reportable conduct may also include historical reportable allegations. More guidance can be found at Reportable Conduct Scheme – Historical allegations.

All school staff are required to notify the principal or, if the principal is involved in the allegation, the Leadership Team if they have a reportable allegation. The principal or a member of the Leadership Team (as applicable) must notify the relevant member of the CES Ltd Executive Leadership Team of the allegation of reportable conduct as soon as possible. In accordance with the requirements of the Reportable Conduct Scheme, the head of entity for CES Ltd is the Executive Director who must initially notify the Commission of a reportable allegation within three business days and update the Commission of progress within 30

calendar days. In accordance with *CES Ltd Policies and Procedures Framework* this notification responsibility has been sub-delegated to the Assistant Director: Pastoral Wellbeing.

The Reportable Conduct Scheme does not change mandatory reporting or other reporting obligations, including internal reporting and reporting criminal behaviour to Victoria Police. Reportable conduct reporting should be done in addition to these other reporting obligations.

See also the Reportable Conduct Scheme Procedures included in Form 9 in this Manual.

### Crimes Act 1958 (Vic.)

In response to the Betrayal of Trust report, three new criminal offences have been introduced under the Crimes Act 1958 (Vic.):

- **failure to disclose offence**, which requires adults to report to Victoria Police a reasonable belief that a sexual offence has been committed against a child
- **failure to protect offence**, which applies to people in positions of authority within organisations, who knew of a risk of child sexual abuse by someone in the organisation and failed to reduce or remove the risk
- **grooming offence**, which targets communication with a child or their parents with the intent of committing child sexual abuse.

#### Failure to disclose

Any school staff member who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child under 16 must disclose that information to Victoria Police.

Failure to disclose the information to Victoria Police is a criminal offence under section 327 of the *Crimes Act 1958* (Vic.) and applies to all adults (18 years and over) in Victoria, not just professionals who work with children.

The obligation is to disclose that information to Victoria Police as soon as it is practicable to do so, except in limited circumstances such as where the information has already been reported to DFFH Child Protection.

For further information about the failure to disclose offence, see the *Department of Justice and Community Safety 'Failure to disclose offence'* information.

#### Failure to protect

Any school staff member in a position of authority who has the power or responsibility to remove risk, and becomes aware that an adult associated with their organisation (such as an employee, contractor, volunteer, sport coach or visitor) poses a risk of sexual abuse to a child under 16 who is in the care or supervision of the organisation, must take all reasonable steps to reduce or remove that risk.

In a school context, this will include the principal, deputy principal and business manager and may also extend to school counsellors, heads of departments and heads of schools.

Failure to take reasonable steps to protect a child in the organisation from the risk of sexual

abuse from an adult associated with the organisation is a criminal offence under section 490(1) of the *Crimes Act 1958* (Vic.)

For further information about the failure to protect offence, see the [Department of Justice and Community Safety 'Failure to protect: a new offence to protect children from sexual abuse'](#) information.

### **Grooming**

The offence of grooming prohibits predatory conduct designed to prepare or 'groom' a child for future sexual activity and is contained in section 49M(1) of the *Crimes Act 1958* (Vic.). The offence applies to communication with children **under 16 years**.

Grooming can be conducted in person or online, for example via interaction through social media, web forums and emails. The offence can be committed by any person aged 18 years or over. It does not apply to communication between people who are both under 18 years of age.

For further information about the grooming offence, see the [Department of Justice and Community Safety 'Grooming offence'](#) information.

For more information about managing and responding to the risk of abuse, see DET's ['Identify and Respond to Student Sexual Offending'](#) webpage and CES Ltd Child Safe Risk Management Framework.

### **Education and Training Reform Act 2006 (Vic.) – Child safety obligations**

From a child safety perspective, the key functions of the *Education and Training Reform Act 2006* (Vic) are to:

- require schools to notify the Victorian Institute of Teaching (VIT) when a school has taken action against a teacher
- ensure compliance with the Victorian Child Safe Standards as a requirement of registration for all Victorian schools.

A registered school must ensure that the care, safety and welfare of all students attending the school are in accordance with all applicable Victorian and Commonwealth laws, and that all staff employed at the school are advised of their obligations to child safety.

### **Wrongs Act 1958 (Vic.) and duty of care**

#### **Organisational duty of care**

The *Wrongs Act 1958* (Vic) creates an organisational liability for child abuse for organisations that exercise care, supervision or authority over children. This is colloquially referred to as an 'organisational duty of care'.

CES Ltd and its schools owe a duty to take reasonable precautions to prevent the abuse (sexual or physical) of a child (under 18) by an individual associated with the school while the child is under the care, supervision or authority of the school.

Individuals associated with a Sandhurst Catholic school can include employees, volunteers,

office holders, contractors, ministers of religion and religious leaders.

Reasonable precautions that CES Ltd and its schools could take are not defined in the *Wrongs Act 1958* (Vic.) but, as examples, the following measures are what courts have previously considered to be reasonable precautions in the context of organisational child abuse:

- conducting employment screening and reference checking
- providing supervision and training
- implementing systems to provide early warning of possible offences
- performing random and unannounced inspections to deter misconduct
- encouraging children and adults to notify authorities or parents about any signs of aberrant or unusual behaviour.

#### **Sandhurst Catholic School staff duty of care**

School staff have a duty to take reasonable steps to protect children and young people under their care and supervision from harm that is reasonably foreseeable (this duty applies to all school staff). The question of what constitutes reasonable steps will depend on the individual circumstances of each case.

A staff member may breach their duty of care towards a student if they fail to act in the way a reasonable or diligent professional would have acted in the same situation.

For more information on the scope of staff duty of care obligations and examples of reasonable steps they can take in relation to suspected child abuse, refer to the protocol *Protect: Identifying and Responding to All Forms of Abuse in Victorian Schools*.

#### **Victorian Charter of Human Rights and Responsibilities**

While CES Ltd is not bound by the *Charter of Human Rights and Responsibilities Act 2006* (Vic.), the following principle should be noted:

*School staff are required to respond to suspected child abuse with proper consideration for human rights, and, when making decisions and taking actions in response to suspected child abuse, to act compatibly with human rights. This means that school staff should take into account the right to protection without discrimination, the right to protection from torture and cruel, inhuman or degrading treatment and the right to privacy when responding to suspected child abuse.*

## **5. Policy Statement**

- The child or young person's ongoing safety and wellbeing should be the primary focus of decision making
- All children and young people have the right to a thorough and systematic education in personal safety, including safety in relationships

- School staff must be aware of and comply with their legal obligations with respect to reporting suspected child abuse and providing ongoing appropriate support
- All Sandhurst Catholic Schools follow the [PROTECT: Identifying and Responding to All Forms of Abuse in Victorian Schools](#)
- Where a school staff member has reported a concern to DFFH Child Protection but they continue to have concerns for the child after DFFH Child Protection has closed the case, they may escalate the matter through DFFH complaints management processes or reporting concerns from the principal to the relevant member of the CES Ltd Executive Leadership Team.

## 6. Review

This policy is scheduled for review every three years or as required by changes in legislation to ensure it is adequate and effective for meeting the requirements for compliance with legislation.

## 7. Revisions made to this document

October 2020	New document created for CES Ltd Board
[Date of 1 <sup>st</sup> approval]	New Document approved by CES Ltd Board

## 8. Further Assistance

### **Related policies within the Child Safety Framework and other Frameworks**

FORM 1: Commitment Statement to Child Safety

FORM 2: Child Safety Policy

FORM 3: Child Safety Code of Conduct

FORM 5: PROTECT Responding & Reporting Obligations Procedures

FORM 6: Mandatory Reporting Policy

FORM 7: Police and DFFH Interview Protocol

FORM 8: Child Safe Standards Implementation in Schools Checklist

FORM 9: Reportable Conduct Scheme Policy

FORM 10: Child Safety Risk Management

FORM 11: Child Safety Risk Register

## Other Resources

- CECV Child Safety – S5 Responding & Reporting
- Failure to Protect offence
- Failure to Disclose offence
- Grooming offence
- PROTECT Four Critical Actions for Schools Responding to Incidents, Disclosures and Suspicions of Child Abuse
- PROTECT Identifying and Responding to All Forms of Abuse in Victorian Schools
- VRQA - Child Safe

## Relevant legislation

- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *Child Wellbeing and Safety Act 2005 (Vic)*
- *Children, Youth and Families Act 2005 (Vic)*
- *Crimes Act 1958 (Vic)*
- *Education and Training Reform Act 2006 (Vic)*
- *Family Violence Protection Act 2008 (Vic)*
- *Ministerial Order 870 — Child Safe Standards — Managing the risk of child abuse in schools*
- *Occupational Health and Safety Act 2004 (Vic)*