

1. INTRODUCTION

New laws to protect children and to respond to the sexual abuse of children have been passed by the Victorian Parliament following recommendations made in *Betrayal of Trust*, the report of the Parliamentary Inquiry into the handling of child abuse by religious and other non-government organisations.

The legislation is wide reaching and its application extends well beyond the Catholic Church and other religious organisations. These guidelines refer only to those parts of the legislation that are most relevant to the Catholic Church.

The laws reflect Parliament's intention to provide better protection for children. The laws ensure that a failure to protect children, or a failure to report sexual abuse against children, is to be understood to be of such seriousness to amount to a criminal offence.

The new laws add three new criminal offences to the Victorian Crimes Act:

1. Grooming;
2. Failing by persons in authority to **protect** children from sexual abuse;
3. Failing to **report** to police sexual offences committed against children under 16 years of age.

2. GROOMING

Key Points

- Engaging in grooming behaviour for sexual conduct with a child under 16 years is now an offence
- The offence applies to any adult 18 years of age or older
- Grooming occurs when communication or conduct is linked to the intention of facilitating the involvement of a child under 16 years of age in a sexual offence with an adult
- A maximum penalty of 10 years imprisonment applies

The Victorian Parliamentary Inquiry in *Betrayal of Trust* highlighted the use of grooming techniques by abusers to develop a relationship over time calculated to lead to the abuse of a child.

The Family and Community Development Committee of the Victorian Parliament in *Betrayal of Trust* recognised the difficulty in defining grooming behaviour and noted that the critical feature of grooming is not the conduct itself, rather the intention that accompanies it.

Application

The new grooming offence will be committed by any person 18 years or older who communicates with a child under 16 or with a person having the care, supervision or authority in respect of the child with the intention of facilitating the child's involvement in a sexual offence with that person or another adult.

Persons who have a child under their care, supervision or authority include:

- Parent or step parent;
- Child's teacher;
- Child's legal guardian;
- Religious official or spiritual leader (including a lay member) who provides religious care or instruction;
- Child's employer;
- Child's youth worker;
- Child's sports coach;
- Out of home carer.

It is not necessary to prove that a sexual offence was actually committed with a child in order to prove the offence of grooming to have been committed. Nor is it necessary that there was any **particular** conduct involved such as exposing the child to indecent material or seeking to persuade the child to take part in sexual activity.

The offence can apply to any communication with either a child, or a person with a child under their care, which occurs with the intention of making it easier to engage or involve the child in a sexual offence.

Grooming Behaviour

The following examples of grooming behaviour have been identified by the NSW Ombudsman in a 2013 child protection practice update. The examples can serve as a useful guide in understanding the Victorian legislation. Examples of offending behaviour might include:

- Persuading a child or group of children that they have a 'special relationship', for example by:
 - » Spending **inappropriate** special time with a child;
 - » **Inappropriately** giving gifts;
 - » **Inappropriately** showing special favours to one child but not other children.
- **Inappropriately** allowing the child to overstep the rules.
- Asking the child to keep the relationship to themselves.
- **Testing boundaries**, for example by:
 - » Undressing in front of a child;
 - » Encouraging inappropriate physical contact (even where it is not overtly sexual);
 - » Talking about sex;
 - » 'Accidental' intimate touching.
- **Inappropriately** extending a relationship outside of work (noting of course that relationships out of work can so often be appropriate – for example, where there is an existing friendship with the child's family or as part of normal social interactions in the community);
- **Inappropriate** personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
- An adult requesting that a child keep any aspect of their relationship secret, or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

The new Victorian law on grooming is not limited however by any set of examples.

Penalty

The offence will have a maximum penalty of 10 years imprisonment.

Commencement

The Commencement date for the offence on grooming is 9 April 2014.

3. FAILURE BY PERSONS IN AUTHORITY TO PROTECT CHILDREN FROM SEXUAL ABUSE

Key Points

- Negligently failing to reduce or remove a substantial risk that a person will commit a sexual offence against a child will be an offence
- The offence applies to a person in a position of authority or responsibility within an organisation that has children under its care, supervision or authority where there is a substantial risk of a sexual offence being committed by any person associated with the organisation
- The offence applies to the failure to reduce or remove a substantial risk that a child under 16 years will become the victim of a sexual offence committed by an adult person associated with the organisation
- A maximum penalty of 5 years imprisonment applies

The Victorian Parliamentary Inquiry in *Betrayal of Trust* recommended the creation of an offence of child endangerment to impose criminal responsibility on those who understand that their action or inaction may pose a **substantial and unjustifiable risk of harm to children** but who disregard that risk and proceed to act with knowledge of the risk.

Application

The new offence applies to persons within an organisation that exercises care, supervision or authority over children including:

- A Church;
- A religious body;
- A school;
- Out of home care service;
- Government departments and agencies;
- A hospital;
- Sporting group;
- Youth organisation;
- A charity or benevolent organisation.

The offence will be committed by a person in such an organisation with power and responsibility:

- To reduce or remove a substantial risk that a child will become a victim of a **sexual offence** by a person over 18 years associated with the organisation;
- Who **knows** that there is a **substantial** risk of a sexual offence being committed against a child; and
- Who **negligently** fails to reduce or remove that risk;

and the child

- Is under 16 years of age;
- Comes under or may come under the care, supervision or authority of the organization.

The legislation does not address whether or how in any particular case a risk is to be reduced or removed.

A key objective of the new offence is to promote cultural change in how organisations deal with the risk of sexual abuse of children under their care.

The offence does not require that a specific child be identified as being at risk.

The offence requires proof of negligence involving “a great falling short” by the person with power and responsibility of the standard of care that a reasonable person would exercise.

The offence is committed as soon as a person in authority becomes aware of a person’s history and the risk the person poses to children and negligently fails to act to remove or reduce that risk.

It is not necessary to prove that a sexual offence has been committed for a “failing to protect” offence to have occurred.

Within the Church, a person with power or responsibility to reduce or remove a substantial risk of a sexual offence being committed will include but is not limited to:

- Bishop;
- Vicar General;
- Auxiliary Bishops;
- Congregational Leaders;
- Parish Priests;
- School Principals;
- School Boards;
- Business Managers;
- Chairs, Executive Leaders of organisations and managers with responsibility and authority which includes caring for children.

Other classes of persons could be subject to the new offence if they occupy a role within an organisation and have the power or responsibility to reduce or remove a substantial risk that a child will become the victim of a sexual offence by an adult.

The offence requires that the person with power or responsibility understood that their action posed a substantial risk of harm and yet disregarded that risk and continued to perform the action.

In his second reading speech, the Attorney General stated that the new offence will apply, for example, if a person in authority within an organisation simply moves a person who poses a risk to children to another place within the organisation involving care, supervision or authority over children. It will also apply where someone in authority at the new location becomes aware of a person’s history and fails to act to take steps to remove or reduce that risk.

Penalty

The offence will have a maximum penalty of 5 years imprisonment.

Commencement

The Commencement date for the offence is the date of proclamation or 1 July 2015.

When the new offence commences, it will apply to a failure to address an ongoing and relevant risk.

If a relevant risk of a sexual offence being committed already exists those with authority should already have taken appropriate steps to reduce or remove that risk. When the new offence commences, a failure to do so will also be a criminal offence.

4. FAILURE TO REPORT TO POLICE SEXUAL OFFENCES COMMITTED AGAINST CHILDREN UNDER 16 YEARS OF AGE

Key Points

- The obligations apply to every adult in Victoria
- Any adult who has sufficient information to form a reasonable belief that a sexual offence has been committed against a child under 16 years of age and without a reasonable excuse fails to report the information to Victoria police as soon as practicable will have committed an offence
- The offence applies to any person over the age of 18 years with information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under 16 by an adult
- It is not an offence if the person has a reasonable excuse, as set out in the Crimes Act, for not disclosing the information or the victim is sufficiently mature (aged 16 or above) to make a decision and the victim requests that details of the offending not be disclosed
- Existing mandatory reporting obligations to the Secretary of the Department of Human Services continue to apply
- A maximum penalty of 3 years imprisonment applies

The Victorian Parliamentary Inquiry in *Betrayal of Trust* considered that there was a need to reform the law to place an enforceable obligation on people who have knowledge of sexual offences against children, to make a report to police. The Committee wanted to send a clear message to the community that withholding information about crimes against children, or concealing that criminal activity without reasonable excuse, may carry severe legal consequences.

Application

The new offence applies to any adult who has sufficient information to form a reasonable belief that a sexual offence has been committed in Victoria against a child under 16 by an adult and who fails to report this information to Victoria police unless they have a reasonable excuse for not doing so.

A person will not commit the offence if a person has heard rumours or speculation about another person or has only a small piece of information that may be relevant and does not disclose that information to police. For the offence to be committed, there must be a failure to disclose as soon as practicable information of sufficient quality to lead a person to form a reasonable belief that a sexual offence against a child under 16 has been committed unless the person has a reasonable excuse as set out in the Crimes Act for not making the disclosure.

A disclosure made in good faith to police is not unprofessional or unethical conduct by the person making the disclosure.

Reasonable Excuse

A person may have a reasonable excuse if they fear for their safety or the safety of another person if the offender were to find out that the offence has been disclosed to the police.

It will also be a reasonable excuse not to report if the person believes on reasonable grounds that the police have already been informed of the sexual offence and that he or she has no **further** information to report.

Other Exemptions

The new law recognises and respects the rights of a victim who does not want to have information about the abuse disclosed. It is not an offence for failing to report if the victim is 16 or over and without any intellectual disability at the time that the information is received and requests that the information not be disclosed.

Information received during a religious confession by a priest according to the ritual of the Church does not have to be disclosed provided that the confession was not made for a criminal purpose.

The new offence will also not require a counsellor to disclose information to police obtained from a child when providing treatment or assistance to that child in relation to sexual abuse. Of course other obligations may immediately apply such as acting to protect the victim from further abuse.

Information obtained solely through the public domain or a belief which is formed solely from information in the public domain, does not have to be reported.

An adult who already possesses information about a sexual offence committed against a child who is still under the age of 16 years when the new offence commences, must unless one of the exemptions applies, disclose that information to the police as soon as it is practicable to do so.

Penalty

The offence will have a maximum penalty of 3 years imprisonment.

Commencement

The Commencement date for the offence is the date of proclamation or 1 July 2015.

With regard to receiving information about historical abuse, if the victim is already 16 when the new offence commences, the failure to report is not an offence. If the victim however is not already 16, the failure to report will be an offence unless there is a reasonable excuse or one of the exemptions applies.

The important consideration is the age of the victim at the time the new offence commences.

5. PRACTICAL TIPS

Always make a detailed contemporaneous file note of any discussion, report or information received in a pastoral setting that a sexual offence has been committed against a child, including the date and time the information was received, location and the name of the person who provided the information.

If in doubt, always seek to clarify with the victim whether they intend disclosing their abuse to the police or whether or not they request you to disclose the information to the police.

If you are unsure whether to report a matter to the police, either seek advice from the Vicar General or report your concerns to the police.

6. REPORTING TO POLICE

If you have any concerns that a criminal offence may have been committed, please encourage the victim to first report their allegations to police.

Victoria Police will explain the options that are available to victims and what each pathway may involve. Speaking to the police does not commit the person reporting abuse to a full judicial response.

Contact with Victoria Police can be made to the SANO Taskforce of (03) 9247 6666 or at sanotaskforce@police.vic.gov.au or, if urgent, by dialling 000.

The SANO Taskforce is based within Victoria Police's Crime Command and comprises specialist sexual assault detectives. The SANO Taskforce was established to investigate historic and new allegations emanating from the Victorian Parliamentary Inquiry into child sexual abuse involving religious and non-government organisations and to coordinate investigations emerging from the Royal Commission into institutional responses to child sexual abuse.

SANO investigators are trained experts in sexual assault matters who will maintain the confidentiality of anyone who makes a complaint or wishes to provide information regarding child sexual abuse.

If a person wishes to pursue their complaint through the Church, they can do so through either the *Melbourne Response*, if the complaint relates to abuse by a priest, religious or Church lay person under the control of the Archdiocese of Melbourne, or otherwise through *Towards Healing*.

Victims can contact the *Melbourne Response* on (03) 9225 7979 or *Towards Healing* on 1800 816 030.

Counselling is offered to victims through both the *Melbourne Response* and *Towards Healing* processes.

*Catholic Archdiocese of Melbourne
New Laws for the Protection of Children in Victoria*

7. ROYAL COMMISSION

The Catholic Church in Victoria is cooperating fully with the Royal Commission into Institutional Responses to Child Sexual Abuse through the Church's Truth Justice and Healing Council.

For more information on the Truth Justice and Healing Council go to: www.tjhcouncil.org.au

For more information on the Royal Commission and the services available through the Royal Commission go to: www.childabuseroyalcommission.gov.au