



## PROTECTING OUR STUDENTS

### Mandatory Reporting Procedures

All staff are mandated by CEM to complete an e-learning module on Mandatory Reporting in Term 1 of each academic year.

#### KEY STEPS IN MANDATORY REPORTING

##### **Reasonable Grounds**

You have reasonable grounds to report when:

- a child tells you that he/she has been physically, emotionally, psychologically, developmentally or sexually abused.
- a child states that they know someone who has been abused. (Sometimes the children are talking about themselves.)
- someone else, such as a relative, friend, acquaintance or sibling of the child, tells you that the child has been abused;
- your observations of the child's behaviour or knowledge of children generally leads you to believe that the child has been abused
- you observe physical signs or indicators of abuse eg. bruises, cuts, burns

You must let students know that you have legal responsibilities as a mandated reporter to talk with someone and find out what will happen next and that you will let them know what to expect.

#### **A: If a mandated staff member *Only Suspects* Child Abuse**

##### **Step 1:**

A mandated staff member who only **suspects** that a child is in need of protection from physical injury and/or sexual abuse, and should immediately inform a counsellor, Principal (or the relevant Deputy Principal in their absence), that he/she **suspects** that a child is in need of protection.

##### **Step 2:**

It is recommended that the mandated staff member notes his/her concerns on the Mandatory Reporting Form (See related documents: Appendix A)

##### **Step 3:**

Following a discussion with the counsellor and the Principal about his/her concerns and observations the mandated staff member may no longer suspect that a child is in need of protection.

However, if after discussions the mandated staff member believes that there are reasonable grounds to now believe there is child abuse occurring then mandatory reporting procedures are put in place (see *B Belief of Child Abuse has occurred - Step 1 -3*)

## **B: If a mandated staff member believes Child Abuse has occurred**

When any mandated staff member forms a belief on reasonable grounds that a child is in need of protection because of abuse, **it is a legal requirement** that he/she must make a report to the Department of Health & Human Services (DHHS) as soon as practicable. Contact numbers for the Geelong region are: DHHS Intake Unit: 1800 075 599, the Geelong Regional Office: (03) 52264540

A report should not be made without consulting with either a Deputy Principal or the Principal or their representatives eg the Director of Students. This contact should be carried out immediately and should not delay making the report.

When the mandated staff member informs the Deputy Principal or Principal that he/she wishes to make a report, other members of the Well-being Advisory Group will be consulted on the matter.

DHHS will not disclose the identity of the person making the report and information shared in good faith **cannot be penalised** by legal or professional consequences. Unless a court deems the identity of the notifier is evidence it will not be disclosed to any person other than the Well-being Advisory Group. At all times the mandated staff member will be supported by a member of the Well-being Advisory Group if requested and/or deemed necessary. If a mandated staff member is involved in a court proceeding as a direct result of following the mandatory reporting guidelines, they can expect advice and full support from the College and Catholic Education Melbourne.

### **Special Comments:**

Throughout the entire process of observation, discussion and reporting, the interests of the child and child's family should be protected from unnecessary disclosure of information concerning abuse.

### **Step 1:**

After consultation with the Deputy Principal and /or Principal or representative, a final decision will be reached by the mandated staff member as to whether there are reasonable grounds to make a report. The mandated staff member making the report will then be asked to give information via telephone to the DHS intake unit. The mandated staff will do this together with a College Counsellor or Deputy Principal/Principal.

### **Step 2:**

A signed Mandatory Reporting Form (See Appendix A) should be completed, dated and signed.

### **Information for Making a Report:**

You will be asked to give the following information to a member of the DHHS

- Your name and position if calling from the College.
- Name, age and address of student you suspect is being abused.
- The reason for suspecting that the behaviour or injury is a result of abuse.
- An assessment of the immediate danger to the student.
- A description of the injury or behaviour observed.
- The current whereabouts of the student.
- Best practice will be that the student is with you or being supervised and supported by a staff member.
- Any other information about the family.
- Any specific cultural details, e.g. English speaking, Disability, etc.

The written record of the notification should be fully documented detailing exactly what was observed or said, the date and time, signed and placed on the student's file. These records may be accessed by the courts, family services or the child or family if requested. It should also be documented on the College Master file with the name of the reporting staff member.

Following the making of a report to the DHHS, any investigation that takes place is the **full responsibility** of the DHHS Child protection workers have wide powers to investigate and obtain information. Interviews will normally take place in the home, however they may need to interview students at school.

### **Step 3:**

The Principal, or their representative, must

- facilitate interviews requested by the DHHS Protection workers.
- ensure privacy for the interview is arranged
- advise the student of their right to have and choose a supportive adult to be present at such an interview
- ensure there is someone acting as an independent support person for the student. An interview is not permitted without the presence of this person
- balance their obligation to protect the rights of the student with their obligations to assist child protection in exercising their duties
- observe confidentiality at all times

If parents/carers are not implicated in the allegation of abuse DHHS may invite parents/carers to be present.

## **POLICE INTERVIEW PROTOCOL**

Police have broad powers to investigate, question, search and detain. In rare, urgent circumstances the Police may request an interview at the school with a student from the College under the age of 18 without parental/guardian consent. This may be the result of a child being a victim, a witness or a suspect in an alleged crime.

In the case of the child being a suspected *victim or witness* and a request for an interview is made, the Principal, or their representative, must determine that there are reasonable grounds to exclude the parent/guardians. If an interview is to proceed, the Principal must:

- ensure privacy for the interview is arranged
- advise the student of their right to have and choose a supportive adult to be present at such an interview
- ensure there is someone acting as an independent support person for the student. An interview is not permitted without the presence of this person
- balance their obligation to protect the rights of the student with their obligations to assist child protection in exercising their duties
- observe confidentiality at all times

Should the student be a *suspect*, the student **must** be given the chance to talk to a parent/guardian or independent person in a place where they will not be overheard.

If a suspect is under 18 they may **not** be questioned without a parent/guardian being present. If a parent cannot be in attendance and it is urgent an independent person must be present.

## FAILURE TO PROTECT OFFENCE

A new criminal offence for failing to protect a child under the age of 16 from a risk of sexual abuse commenced on 1 July 2015.

The offence applies where there is a substantial risk that a child under the age of 16 under the care, supervision or authority of Sacred Heart College, will become a victim of a sexual offence committed by an adult associated with the College. A person in a position of authority in the College will commit the 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.

### 1. What is the offence of failing to protect a child from a sexual offence?

The new offence provides that a person who:

- a) by reason of the position he or she occupies within Sacred Heart College, has the power or responsibility to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person of or over the age of 18 years who is associated with the College; and
- b) knows that there is a substantial risk that the person will commit a sexual offence against a relevant child – must not negligently fail to reduce or remove that risk.

### 2. Who is a person in authority in Sacred Heart College?

A person in authority is someone who, by reason of their position within the College, has the power or responsibility to reduce or remove a substantial risk that a child under the age of 16 years, who is under their care, supervision or authority, may become the victim of sexual abuse committed by an adult associated with the College.

People in authority will usually have the ability to make management level decisions, such as assigning and directing work, ensuring compliance with the College's volunteer policy and other operational arrangements.

### 3. Who is a relevant child?

A person in authority will be guilty of an offence if he or she negligently fails to reduce or remove a substantial risk to a relevant child. A 'relevant' child is a child under the age of 16 who is, or may come, under the care, supervision or authority of Sacred Heart College.

The child does not need to be identified. This means that the risk is not that a particular child will become the victim of sexual abuse. Instead, the substantial risk could be posed to any child who is, or who may be in the future, under the care of the College.

### 4. Who is a 'person associated with' Sacred Heart College?

The offence requires a person in authority to act if they know that a *person associated with the College* poses a substantial risk to a relevant child. This may include a person who is an officer, office holder, employee, manager, owner, volunteer, contractor or agent of the College.

The offence relates to risk of sexual abuse by adults. Children under the age of 18 who pose a risk of sexually abusing other children are not covered by this offence.

### 5. What is a 'substantial risk'?

The offence requires a person in authority to reduce or remove a known 'substantial' risk that an adult associated with the College may commit a sexual offence against a relevant child. It does not make it a criminal offence to fail to address every possible risk that a sexual offence may be committed against a child.

## **6. When does a person 'know' there is a risk of child sexual abuse?**

This offence requires a person in authority to act if they *know* that there is a substantial risk that a child may become the victim of a sexual offence. A person is generally taken to have knowledge of a circumstance if he or she is aware that it exists or will exist in the ordinary course of events. This requires a higher level of awareness than merely holding a tentative belief or suspicion. However, it is expected that a person in authority will take steps to follow up on a suspicion or belief that children in the College were at risk of harm.

## **7. When does a person negligently fail to reduce or remove a substantial risk?**

Under the offence, a person is taken to have *negligently failed* to reduce or remove a substantial risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances. The offence does not require a person in authority to eliminate all possible risks of child sexual abuse.

## **8. Will this criminalise mistakes made by adults who are caring for or working to protect children?**

This law is aimed at protecting children and compelling those in authority to remove or reduce known substantial risks that children may become victims of sexual abuse.

As previously noted, the offence applies to a person in authority whose failure to protect a child from sexual abuse involves a great falling short of the standard of care that a reasonable person would exercise in the same circumstances.

The offence is unlikely to be committed where a person takes reasonable steps to protect a child from the risk of sexual abuse, for example, where an allegation is reported to appropriate authorities and the individual is removed from any role involving unsupervised contact with children pending an investigation.

## **9. What should a person in authority do to reduce or remove the risk of child sexual abuse posed by an adult associated with the College?**

A person in authority in the College must take reasonable steps to reduce or remove a known substantial risk that an adult associated with the College will commit a sexual offence against a child.

## **FAILURE TO DISCLOSE OFFENCE**

Reporting child sexual abuse is a community-wide responsibility. Accordingly, a new criminal offence has been created in Victoria that imposes a clear legal duty upon all adults to report information about child sexual abuse to police.

Any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 has an obligation to report that information to police. Failure to disclose the information to police is a criminal offence.

A 'reasonable belief' is not the same as having proof. 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 when:

- a child states that they have been sexually abused
- a child states that they know someone who has been sexually abused (sometimes the child may be talking about themselves)
- someone who knows a child states that the child has been sexually abused

- professional observations of the child's behaviour or development leads a mandated professional to form a belief that the child has been sexually abused
- signs of sexual abuse leads to a belief that the child has been sexually abused.

A person will not be guilty of the offence if he or she has a **reasonable excuse** for not disclosing the information. A reasonable excuse includes:

- fear for safety
- where the information has already been disclosed.

A person does not have a reasonable excuse for failing to disclose sexual abuse if they are only concerned for the perceived interests of the perpetrator or the College. 'Perceived interests' includes reputation, legal liability or financial status.

The new offence respects the position of a victim who does not want the offending disclosed and who is sufficiently mature to make that judgment. The obligation to report therefore does not apply where the information comes from a person aged 16 or over and this person requests that the offence not be reported. The law recognises that a child under 16 is not able to make this kind of decision and sometimes lacks the capacity to fully understand the effects of abuse.

A person will still be required to disclose information to police if:

- the victim who requested confidentiality has an intellectual disability, and
- the victim does not have the capacity to make an informed decision about a disclosure, and
- the person who received the information is aware or should be reasonably aware of those facts.

Your identity will remain confidential unless:

- you disclose it yourself or you consent in writing to your identity being disclosed
- a court or tribunal decides that it is necessary in the interests of justice for your identity to be disclosed.

The maximum penalty for failing to disclose is three years imprisonment.

## **GROOMING OFFENCE**

The *Crimes Amendment (Grooming) Act 2014*, commenced in Victoria on 9 April 2014, and introduced the offence of Grooming for sexual conduct with a child under the age of 16 years. This offence targets predatory conduct designed to facilitate later sexual activity with a child.

The *Victim's Charter Act 2006* was amended to expressly provide that a child and a family member of that child are victims of a grooming offence and are entitled to provide a victim impact statement to a court.

1. 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 involvement in sexual conduct, either with the groomer or another adult.
2. 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.
3. 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.

4. Grooming can be conducted in person or online, for example via interaction through social media, web forums and emails.

5. 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.

The maximum penalty is 10 years' imprisonment.