



Mandatory Reporting & Failure to Disclose Policy

Purpose:

To articulate Daylesford Dharma School's (DDS) commitment to and responsibility for protecting and upholding the safety and wellbeing of the children in our school. The role of staff and relevant community members in reporting cases of child abuse, suspected abuse and potential future abuse is made explicit in order to facilitate prompt management of the school's response to any allegation or disclosure of child abuse. As such, a child safe culture is promoted and embedded within the DDS community.

The policy creates clarity around the expectations and responsibilities of the Principal to ensure school compliance is met.

Additionally, this policy focussed on three criminal offences introduced under the Crimes Act 1958 (Vic):

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

Definitions:

Child Abuse in Victoria:

1. Child Abuse is defined in section 3 of the Child Wellbeing and Safety Act 2005 (Vic) as including
 - 1.1 any act committed against a child involving a sexual offence or a grooming offence under section 49M(1) of the Crimes Act 1958 (Vic)
 - 1.2 the infliction of physical violence or serious emotional or psychological harm; and
 - 1.3 the serious neglect of a child.
2. A child is defined by the Act as a person who is under the age of 18 years

Family Violence in Victoria:

1. The impact of family violence on a child is commonly referred to as a form of child abuse, although is not explicitly incorporated as part of the legislative definition of 'child abuse'. In Victoria section 5 of the

Family Violence Protection Act 2008 (Vic) defines “family violence” as behaviour by a person towards a family member that is:

- 1.1 physically or sexually abusive
 - 1.2 emotionally or psychologically abusive
 - 1.3 economically abusive
 - 1.4 threatening
 - 1.5 coercive; or
 - 1.6 in any other way controlling or dominating the family member and causes them to feel fear for their own, or other family members' safety or wellbeing.
2. Behaviour that causes a child to hear, witness, or be exposed to the effects of such behaviour also falls within the definition of ‘family violence’.

Care, Supervision or Authority:

1. Under section 37 of the Crimes Act the circumstances in which a person will have a child (aged under 18 years) under their care, supervision or authority include if the person is:
 - 1.1 the child’s parent or stepparent
 - 1.2 the child’s teacher
 - 1.3 the child’s employer
 - 1.4 the child’s youth worker
 - 1.5 the child’s sports coach
 - 1.6 the child’s counsellor
 - 1.7 the child’s health professional
 - 1.8 a person with parental responsibility for the child
 - 1.9 a religious or spiritual guide, or a leader or official (including a lay member) of church or religious body, however any such guide, leader, official, church or body is described who provides care, advice or instruction to the child or has authority over the child; or
 - 1.10 a police officer acting in the course of their duty in respect of the child.

Direct Contact Volunteers:

1. Direct Contact Volunteers are volunteers who are involved in providing support, guidance, and supervision directly to students and could potentially have direct contact with students during the normal course of providing the volunteer service.
2. The Working with Children Act 2005 (Vic) defines ‘direct contact’ as any contact between a person and a child (aged under 18 years) that involves:
 - 2.1 physical contact; or
 - 2.2 face to face contact; or
 - 2.3 contact by post or other written communication; or
 - 2.4 contact by telephone or other oral communication; or

- 2.5 contact by email or other electronic communication.
- 3. Direct Contact Volunteers may have:
 - 3.1 limited supervision by School staff in their role
 - 3.2 significant amounts of 1:1 time with students
 - 3.3 supervisory responsibility for one or more students, such as in a sports' coaching role or learning support role.

Indirect Contact Volunteers:

- 1. Indirect Contact Volunteers are those volunteers who are involved in providing support and services whilst not directly assisting a specific group of students.

Direct Contact Contractors:

- 1. Direct Contact Contractors are third party contractors who have direct contact with students during the normal course of their work or contractors who may be in a position to establish a relationship of trust. This also includes any contractors whom a school is legally required to screen.
- 2. The definition of 'direct contact' included under Direct Contact Volunteers applies to Direct Contact Contractors.

Sexual Offences:

- 1. A sexual offence occurs when a person involves a child in sexual activity, or deliberately puts the child in the presence of sexual behaviours that are exploitative or inappropriate to the child's age and development. Children may be bribed or threatened physically or psychologically to make them participate in the activity. Sexual offences are governed by the Crimes Act 1958 (Vic).
- 2. Sexual abuse can involve a wide range of sexual activity and may include fondling, masturbation, oral sex, penetration, voyeurism, and exhibitionism. It can also include exploitation through pornography or prostitution.
- 3. Student Sexual Offending and Student-to-Student-Sexual Offending
 - 3.1 Unwanted sexual behaviour towards a student by a child 10 years or over can constitute a sexual offence and is referred to as student sexual offending. All incidents, suspicions and disclosures of student sexual offending must be responded to in accordance with the School's Procedures for Responding to and Reporting Allegations of Child Abuse.
- 4. Encouragement to Engage in Sexual Activity
 - 4.1 It is a criminal offence for an adult to encourage a child to engage in, or to be involved in, sexual activity where the adult seeks or gets sexual arousal or sexual gratification from the encouragement or the sexual activity. There are two "encouragement" offences in the Crimes Act 1958 (Vic):

- 4.1.1 Section 49K: encouraging a child under the age of 16 years to engage in, or be involved in, sexual activity
- 4.2 A section 49K offence carries a maximum 10-year term of imprisonment.
- 4.3 The Crimes Act 1958 (Vic) defines 'encourage' to include suggest, request, urge and demand. Conduct which occurred outside Victoria or while the child was outside Victoria can still constitute an offence.
- 4.4 The encouragement offences cover conduct that is similar to grooming but are broader. Both the encouragement and grooming offences are 'preparatory' offences, but encouragement behaviour occurs at a later stage to grooming, or closer to the substantive sexual offence. The encouragement offence applies to sexual activity that would otherwise not be a criminal offence.
- 4.5 Note: Both offences of grooming and encouragement to engage in sexual activity are sexual offences reportable under every adult's Obligation to Report a Sexual Offence.

Grooming:

1. Grooming is defined by the Royal Commission into Institutional Responses to Child Sexual Abuse as behaviours that manipulate and control a child, their family and other support networks, or institutions with the intent of gaining access to the child, obtaining the child's compliance, maintaining the child's silence and avoiding discovery of the sexual abuse.
2. Grooming by an adult for sexual conduct with a child under the age of 16, or with a person under the care, supervision or authority of the adult, is a crime under section 49M of the Crimes Act 1958 (Vic).
3. Grooming does not necessarily involve any sexual activity or even discussion of sexual activity. Conduct which occurred outside Victoria or while the child was outside Victoria can still constitute an offence.
4. Certain behaviours or acts will not in isolation constitute grooming behaviour. However, where there is a repeating pattern of indicative behaviour, or several incidents of indicative behaviour, it may constitute grooming behaviour.
5. Online Grooming:
 - 5.1 The sexual offence of grooming under section 49M includes online grooming which occurs when an adult (18 years or over) uses electronic means to communicate with a child under the age of 16 in a predatory fashion to try and lower the child's inhibitions, or heighten their curiosity regarding sexual behaviour or activity, with the aim of eventually meeting them in person for the purposes of sexual activity. This can include communications through social media, online chat rooms, sexting or emails.

6. What is Not Grooming?

6.1 Not all physical contact between a student and a staff member or any person engaged by the School to provide services to children, including a Volunteer, will be inappropriate and/or an indicator of possible grooming behaviour.

6.2 The following contact with students is not grooming behaviour:

6.2.1 administration of first aid;

6.2.2 supporting students who have hurt themselves;

6.2.3 non-intrusive gestures to comfort a student who is experiencing grief, loss or distress, such as a hand on the upper arm or upper back; and

6.2.4 non-intrusive touching i.e. shaking a student's hand or a pat on the back to congratulate a student.

Physical Violence:

1. Physical violence occurs when a child (under 18 years of age) suffers or is likely to suffer significant harm from a non-accidental injury or injuries inflicted by another person.
2. Physical abuse does not mean reasonable discipline, though it may result from excessive or inappropriate discipline.

Serious Emotional or Psychological Harm:

1. Serious emotional or psychological abuse may occur when a child (under 18 years of age) is repeatedly rejected, isolated or frightened by threats or the witnessing of family violence. It also includes hostility, derogatory name-calling and put-downs, or persistent coldness from a person, to the extent where the behaviour of the child is disturbed or their emotional development is at serious risk of being impaired. Serious emotional or psychological harm could also result from conduct that exploits a child without necessarily being criminal, such as encouraging a child to engage in inappropriate or risky behaviours.
2. Psychological or emotional abuse may occur with or without other forms of abuse.

Serious Neglect:

1. Serious neglect is the continued failure to provide a child (under 18 years of age) with the basic necessities of life, such as food, clothing, shelter, hygiene, medical attention or adequate supervision, to the extent that the child's health, safety and/or development is, or is likely to be, jeopardised. Serious neglect can also occur if an adult fails to adequately ensure the safety of a child where the child is exposed to extremely dangerous or life-threatening situations.

Family Violence:

1. In Victoria "family violence" is a defined term under the Family Violence Protection Act 2008 (Vic.). It is a criminal offence.

2. Family violence is behaviour towards a family member that may include:
 - 2.5 physical violence or threats of violence
 - 2.6 verbal abuse, including threats
 - 2.7 emotional or psychological abuse
 - 2.8 sexual abuse; and
 - 2.9 financial and social abuse.
3. It is important to remember that “family violence” extends to behaviour that causes a child (under 18 years of age) to hear, witness, or be exposed to the effects of “family violence”. A child’s exposure to family violence constitutes child abuse.
4. As family violence can result in one or more forms of child abuse (being sexual offences, physical violence, serious emotional or psychological harm or serious neglect) the physical and behavioural indicators of these types of abuse may also be indicative of a family violence situation.

Mandatory Report:

1. A report made to Child Protection, by a person mandated under the Act, that is based on a reasonable belief that a child is in need of protection from abuse.

Mandatory reporter:

1. Person(s) required under the Children, Youth and Families Act 2005 (Vic.) to make a report to the Child Protection agency if they believe a child is in need of protection from physical injury or sexual abuse. Mandatory reporters are defined under CYF Act 2005 - Sect 182 to include registered school teachers, registered early childhood teachers, principals, board of governance members, school counselors and chaplains, people in religious ministry, registered medical practitioners, registered nurses and midwives, police officers, registered psychologists, youth justice officers, youth parole officers, child welfare workers, a person with a post-secondary qualification in the care, education or minding of children or a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field.
2. A mandatory reporter must make a report ‘as soon as is practicable’ after forming the belief and on each occasion that they form a belief in accordance with section 184 of the CYF Act.

Failure to Disclose Offence:

1. The failure to disclose offence requires any adult (subject to specific exemptions) who forms a reasonable belief that a sexual offence has

- been committed by another person of or over the age of 18 years against a child under 16, to report that information to police. Failure to disclose the information to police is a criminal offence.
2. Any staff member who forms a reasonable belief that a sexual offence has been committed in Victoria by another person of or over the age of 18 against a child under 16, must disclose that information to police.
 3. Failure to disclose the information to police is a criminal offence under section 327 of the *Crimes Act 1958 (Vic)* and applies to any person of or over the age of 18 years (whether in Victoria or elsewhere), not just professionals who work with children. The obligation is to disclose that information to the police as soon as it is practicable to do so, except in limited circumstances where the information has already been reported to the Department of Families Fairness and Housing (DFFH) Child Protection.
 4. More Failure to Disclose information:
<https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/failure-to-disclose-offence>

Failure to Protect Offence:

1. The failure by a person in authority to protect a child from a sexual offence is an offence under section 490 of the *Crimes Act 1958 (Vic)*. The offence applies to any person who by reason of their position occupied within the school, 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 school.
2. The failure to protect offence applies where there is a substantial risk that a child under the age of 16 under the care, supervision or authority of a school, will become a victim of a sexual offence committed by a person of or over the age of 18 associated with that school.

Substantial risk:

There are a number of factors that may assist in determining whether a risk is a substantial risk:

- the likelihood or probability that the child will become the victim of a sexual offence
- the nature of the relationship between a child and the adult who may pose a risk to the child
- the background of the adult who may pose a risk to the child, including any past or alleged misconduct

- any vulnerabilities particular to a child which may increase the likelihood that they may become the victim of a sexual offence
- any other relevant fact which may indicate a substantial risk of a sexual offence being committed against a child.

For more information about Substantial Risk: [Failure to protect: a new criminal offence to protect children from sexual abuse | Department of Justice and Community Safety Victoria](#)

3. Any person in a position of authority in the school will commit this offence if they know of a substantial risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so. Organisations other than schools are also covered by the offence.
4. More Failure to Protect information: [Failure to disclose offence | Department of Justice and Community Safety Victoria](#)

Reasonable Grounds:

1. A belief on 'reasonable grounds' is formed if a reasonable person in the same position would have formed the belief on the same grounds. For example, there may be reasonable grounds:
 - 2.1 A child states they have been physically or sexually abused,
 - 2.2 A child states that they know someone who has been physically or sexually abused (sometimes the child may be talking about themselves),
 - 2.3 Someone who knows the child states they have been physically or sexually abused,
 - 2.4 Professional observations of the child's behaviour or development leads the mandated professional to form a belief that a child has been abused or is likely to be abused
 - 2.5 Signs of sexual or physical abuse leads to a belief that the child has been abused

Reasonable Excuse:

You may have a 'reasonable excuse' for not reporting information about child sexual abuse to police if, for example:

1. You reasonably fear for your safety, or the safety of another person, (except the person you believe committed, or was involved in, the sexual offence).

2. Your failure to report is a reasonable response in the circumstances, or
3. You believe the information has already been reported to the police.
4. More Reasonable Excuse information: [Failure to disclose offence | Department of Justice and Community Safety Victoria](#)

Reportable Conduct:

The School is required to investigate and report to the Commission for Children and Young People (Commission), any and all allegations of staff reportable conduct or misconduct that may involve reportable conduct.

Reportable conduct is defined in the Act to include:

1. A sexual offence committed against, with or in the presence of a child;
2. Sexual misconduct committed against, with or in the presence of a child;
3. Physical violence committed against, with or in the presence of a child;
4. Any behaviour that causes significant emotional or psychological harm to a child; or
5. Significant neglect of a child.

“Sexual misconduct” includes:

1. Behaviour, physical contact or speech or other communication of a sexual nature, for example ‘sexting’;
2. Inappropriate touching or physical contact;
3. Grooming behaviour; and - Voyeurism.

“Sexual offence” for the purposes of the Reportable Conduct Scheme means a serious sexual offence as set out in clause 1 of Schedule 1 of the Sentencing Act 1991 (Vic), which includes rape, attempted rape, sexual assault, incest, indecent act with a child, persistent sexual abuse of a child, grooming and the production or possession of child pornography.

“Significant” means in relation to emotional or psychological harm or neglect, that the harm is more than trivial or insignificant, but need not be as high as serious and need not have a lasting permanent effect. The threshold for reporting allegations of reportable conduct is a ‘reasonable belief’, which is much lower than these other reporting obligations. The Commission states that reasonable belief is more than suspicion. There must be some objective basis for the belief, however, it is not the same as proof, and certainty is not required. Where a reasonable belief is formed the School must notify the Commission. It is the School’s policy that notification be made by The Principal or their delegates. Where there is an allegation of criminal conduct, including physical violence, significant emotional or psychological abuse, sexual offences and significant neglect must be reported to the Victorian Police as the first priority.

Policy Aims:

1. To ensure that staff, teachers, volunteers, and contractors are fully informed of their responsibilities and obligations in protecting the safety and wellbeing of children and young people and understand how to discharge them.
2. To ensure students are empowered through an understanding of how to engage in and enact respectful relationships.
3. To enable staff to identify the indicators of a child or young person who may be in need of protection.
4. To enable staff to make a report of a child or young person who may in need of protection.
5. To embed a child safe culture in the school community which permeates into the wider community through family inclusion.

Policy Principles:

Mandatory reporting arises from the requirements of the Children, Youth and Families Act 2005 (Vic.) and, the Victorian Child Safe Standards and Ministerial Order 1359 for the protection of children from harm due to physical injury, serious neglect, serious emotional or psychological harm, sexual abuse and/or the impacts of family violence. School personnel mandated under this Act who, in the course of carrying out their duties, forms a reasonable belief that a child is in need of protection from abuse, must report that belief and the grounds for it as soon as possible.

Concurrent duty of care:

Quite apart from mandatory reporting requirements, a teacher has a concurrent duty of care to protect a student from harm that is reasonably foreseeable. A breach of this duty of care may lead to legal action being taken against the individual teacher or teachers concerned.

A breach of this duty of care will be established if a teacher or Principal failed to make an immediate mandatory report after having acquired actual knowledge or formed a belief that there is a risk that a child is being abused or neglected including sexual abuse.

Related legislation:

Children, Youth and Families Act 2005 (Vic)
Child Wellbeing and Safety Act 2005 (Vic)
Crimes Act 1958 (Vic)
Education and Training Reform Act 2006
Victorian Child Safe Standards and Ministerial Order 1359
Family Violence Protection Act 2008 (Vic)
Victorian Institute of Teaching Act 2001

Child Safe Standards, available at: www.vrqa.vic.gov.au/childsafe

Responsibilities:

Under the provisions of the Children, Youth and Families Act (2005), all mandatory reporters whom, in the course of carrying out their duties, form a reasonable belief that a child is in need of protection from physical harm or sexual abuse, and that the child's parents are unwilling or unable to protect the child, must report that belief to the Department of Families, Fairness and Housing, Child Protection Division (DFFH Child FIRST) as soon as possible after forming the belief. In addition to the above requirement, it is expected that all staff follow the procedure below and alert the Principal or their delegate.

School staff have a duty of care to protect the safety, health and wellbeing of children in their care and if they have concerns about children in their care it is imperative to take immediate action. Teachers, principals, school councillors, people in religious ministry and nurses are mandated professionals and therefore any other school staff or volunteers must report any concerns to a mandated professional.

The School Board of Governance maintains the oversight and approval of the Child Safe Standards in the School and ensures that the School implements practices for a child safe environment in accordance with all legislation.

- The Child Safe Standards are directly oversighted by the Chairperson of the Board of Governance.
- The Child Safety & Wellbeing policy and procedures and the Mandatory Reporting and Failure to Disclose policy and procedures are approved by the School Board of Governance as operational expectations for its staff, teachers and Board members.
- The School Board ensures that the School makes all efforts to gather, verify and record all relevant information about persons who propose to engage in child-connected work at the School and that this information is stored securely.
- The School Board follows the procedures for responding to allegations of suspected child abuse and fulfilling its legal and moral obligations.
- All information and records relating to Mandatory Reports and/or Failures to Disclose are secured and retained by the Principal and the Chairperson of the Board of Governance on the secure School server.

Procedure for Responding to and Reporting Allegations of Child Abuse:

1. In the case of a child who is or may be in need of protection or therapeutic treatment, or where there are significant concerns about the wellbeing of a child, school staff must take action:
 - 1.1 Record your observations.

- 1.2 Notifying the Principal or their delegate of your concerns and the reasons for those concerns.
 - 1.3 Notify the Victorian Police 000 and/or
 - 1.4 Notify Child Protection 1800 075 599 (BH) or 13 12 78 (AH).
 - 1.5 Record as much detail as possible about the concern for the child's safety as a Child Safety Risk Report document.
 - 1.6 If the allegation relates to a staff member or adult within the school, the Principal or their delegate must also notify the Commission for Children and Young People 1300 782 978.
 - 1.7 The Principal or their delegate will record the allegation on the Child Safety Risk Register. The Principal will retain and store the mandatory report information and all documents relating to the allegation with the knowledge of the Chairperson of the Board of Governance.
 - 1.8 The Principal or their delegate will escalate the Child Safety Risk Report that details the mandatory report, to the Chairperson of the DDS Board of Governance. The Principal and the Chair of the DDS Board of Governance are responsible for ensuring the confidentiality and secure digital storage and handling of the information contained on the Child Safety Risk Register and all associated documents which are to be housed on the DDS secure server.
 - 1.9 The Principal or their delegate will communicate with the parents/caregivers in consultation with Child Protection / Victoria Police.
 - 1.10 The Principal or their delegate will convene the Child Safety Team to put a pastoral care management plan in place for the child and to ensure staff support for the duration of the reporting procedure.
 - 1.11 The procedure for reporting all allegations of child abuse or failure to disclose, will be documented with the oversight of the Principal and escalated to the Chair of the Board of Governance. All documentation, evidence and actions will be securely stored on the DDS secure server.
2. In the case where one mandated professional directs another mandated professional not to make a report, and the other professional continues to hold the belief that the child is in need of protection, then that professional is legally obliged to make a report.
 3. Where appropriate the Principal or their delegate will convene the Child Safety Team authorised to monitor, receive and act on all student welfare concerns.
 4. It is the responsibility of the Principal to ensure that all reports are acted on professionally, promptly and in accordance with the requirements of the Children, Youth and Families Act 2005 (Vic.) and to escalate all mandatory reporting matters to the Chairperson of the DDS Board of Governance.
 5. This includes ensuring that confidentiality is provided for reporters. The identity of a reporter must remain confidential, unless:
 - 5.1 The reporter chooses to tell the child or family of the report
 - 5.2 The reporter consents in writing to their identity as a reporter being disclosed

- 5.3 A court or tribunal decides that it needs this information in order to ensure the wellbeing or safety of the child
- 5.4 A court or tribunal decides that in the interests of justice the evidence needs to be given

Resources:

Four Critical Actions for Schools

A step-by-step guide to making a report to Child Protection or Child FIRST

<https://www.education.vic.gov.au/Documents/childhood/parents/health/mandreportsep10.pdf>

Advice from Independent Schools Victoria

http://is.vic.edu.au/compliance/students/child_protection_mand_rep.htm

Mandatory Reporting Phone numbers:

Victoria Police: 000

DFFH West Division Regional & Rural Intake - 1800 075 599

After hours Child Protection Emergency Service - 13 12 78

DFFH Ballarat: (03) 5333 6530

Review Date:

January 2024 or in response to legislative change and/or a ministerial order and/or in response to a mandatory report incident.