



PENLEIGH AND ESSENDON GRAMMAR SCHOOL

Policy for Protection of Children and Managing the Risk of Child Abuse

This policy addresses mandatory reporting of physical or sexual abuse and community responsibility to protect children from sexual abuse.

Penleigh and Essendon Grammar School is committed to supporting the wellbeing of its students and protecting them from abuse. All members of the school community share a responsibility to ensure the welfare of all students.

The foundations for the responses outlined below are threefold:

1. *Children, Youth and Families Act 2005 (Vic)* legislates for mandatory reporting by teachers and school counsellors among other professionals, of suspected cases of physical abuse, sexual abuse, or failure to protect a child from harm of that type.
2. Community obligations to disclose or protect a child from sexual abuse exist under the *Crimes Act 1958 (Vic)* together with the *Crimes Amendment (Protection of Children Act 2014 (Vic))*.

The following offences are identified by the *Crimes Amendment (Protection of Children) Act 2014 (Vic)*:

- failure to disclose a sexual offence,
- grooming for sexual conduct, and
- failure to protect a child from a sexual offence

and it is incumbent upon all adult members of the community to comply with the Act by reporting knowledge of any such activity to the police (with some exceptions as listed below). All adult members of the school community, including non-teaching members of staff, volunteers, parents and students 18 years and over have individual responsibilities in these matters.

3. Schools have obligations to report allegations of child abuse and misconduct involving children, against workers or volunteers, to the Commission for Children and Young People (CCYP). Alleged abuse and misconduct might include sexual misconduct or offences, grooming, sexting, inappropriate physical contact with a child or other conduct that crosses professional boundaries concerning children.

This policy should be read in conjunction with the Policy for a Child Safe School and the Code of Conduct for staff, volunteers and others interacting with students. These documents refer to the professional conduct of all school personnel; measures for the employment and supervision of school staff in all child-connected work together with procedures for responding to and reporting allegations of suspected child abuse; identifying and reducing or removing risks of child abuse; supporting staff, parents and students to understand, identify and report child safety matters related to the school environment; and fostering child empowerment and participation in

the promotion of child safety within the school environment with reference to *Ministerial Order No 870 - Child Safety Standards- Managing the risk of child abuse in school* and the reportable conduct scheme administered by the CCYP.

Our Privacy Policy sets out the manner in which we collect, use, disclose and manage personal information and should be consulted with reference to the requirements set out below.

Part A: Mandatory reporting by teachers and school counsellors

Registered teachers and school counsellors are among professionals legally required to notify the Department of Families, Fairness and Housing (DFFH) Child Protection if they form a belief, based on reasonable grounds, that a child is likely to suffer harm as a result of physical injury or sexual abuse, and if the child's parents or guardians have not protected or are unlikely to protect the child from harm of that type.

Mandated staff members must make a report to Child Protection as soon as practicable after forming a belief on reasonable grounds that a child is in need of protection and that a report should be made on any further occasion on which they become aware of any further reasonable grounds for the belief. The school assists its staff in meeting its obligations under the mandatory reporting of child abuse legislation, *Children, Youth and Families Act 2005 (Vic)*.

For the purpose of the relevant parts of the *Children, Youth and Families Act 2005 (Vic)*, a child is any person 17 years of age or younger.

Procedures

1. Formation of a belief by a professional mandated to report abuse.

A requirement of the *Children, Youth and Families Act 2005 (Vic)* is that when a registered teacher or other mandated professional forms a reasonable belief that a child is in need of protection from physical injury or sexual abuse, he/she must make a report to **Child Protection** as soon as practicable.

A reasonable belief that a child is in need of protection is likely formed in circumstances where:

- a child discloses that he or she has suffered or is suffering non-accidental physical injury or sexual abuse;
- a relative, friend or acquaintance states that a child has been sexually abused or non-accidentally injured; or
- professional observations of the child's physical condition or behaviours lead to a reasonable suspicion that the child has suffered or is suffering non-accidental physical injury or sexual abuse.

The concerns and observations regarding the suspected physical injury or sexual abuse of a child must be discussed with the Head of Section, Vice Principal and/or Principal.

Teachers must make every effort to contact the Head of Section, Vice Principal or Principal as soon as possible so there is no delay in contacting protective services.

If a mandated member of staff suspects that a child is in need of protection it is essential that they document all concerns and observations in a confidential file. Although this process of documentation may occur over a period of time, an attempt is to be made to lodge the report on the same day as the belief is formed.

Information about child abuse must remain confidential and the member of staff must not discuss this information with anyone other than the Head of Section, Vice Principal, Principal and Child Protection.

2. Reporting to relevant agencies

The two relevant agencies are **Child Protection** and **Child FIRST**. **Child Protection** is a Victorian Government agency, provided by the DFFH, that protects children at risk of significant harm.

If a mandated member of staff believes in good faith that a child is in need of protection, then they must make a report. The usual practice is that the Head of Section, Vice Principal or Principal will notify **Child Protection**. Notification will occur in consultation with the member of staff forming the opinion who retains the legal obligation to ensure that the report is made to Child Protection and that all grounds for their own belief are included in the report.

If the Head of Section, Vice Principal or Principal does not share the belief that a child is in need of protection and does not notify **Child Protection**, the member of staff who formed the belief is still obliged to report the belief that child abuse has occurred to Child Protection. It is the school's policy that in these circumstances the member of staff must inform the Principal that they have made a report.

Child FIRST is the Family Information Referral Support Team run by a registered community service in a local area that can receive confidential referrals about a child of concern. It may be accessed for concerns of an emotional, psychological or social nature. It does not have any statutory powers to protect a child but can refer matters to family services.

The Principal and members of staff can share information and make a referral to **Child FIRST** when they have significant concern for a child's wellbeing, but do not believe that the child needs protection.

The notifier does not have to be able to prove that the child has been abused before notifying protective services.

A notifier is both legally and professionally protected. That means they cannot be successfully sued or subjected to any legal liability, nor can they be disciplined for unprofessional conduct by their professional body or the school. Moreover, they are able to share information, without legal or professional consequences, with family services such as **Child FIRST** and **Child Protection** to help protect vulnerable children.

The mandatory reporter's identity is usually protected by the *Children, Youth and Families Act 2005 (Vic)*. Exceptions include when the notifier chooses to inform the child or the child's parents or guardians or when the court decides that it is satisfied that the interests of justice require that the evidence be given.

A teacher is not bound to notify a protective service under the mandatory reporting requirement of the *Children, Youth and Families Act 2005 (Vic)* if the reasonable belief that a child is in need of protection is formed in circumstances related to the teacher's

private life or when they are working in a capacity that is not directly related to teaching.

In addition, **Child FIRST** and **Child Protection** can consult Victorian teachers and principals when they are deciding how best to respond to a referral or a report they have received. The legislation allows the teacher to share relevant information with family services about a vulnerable child without needing to be concerned about legal or professional consequences, provided the teacher does so in good faith. However, any information provided should be directly related to the teacher's concerns about the child and not based on second-hand information.

Part B: Community obligations to disclose a sexual offence and protect children

Under the *Crimes Act 1958 (Vic)* and the *Crimes Amendment (Protection of Children) Act 2014 (Vic)* the following offences are identified:

- i. failure to disclose a sexual offence,
- ii. grooming for sexual conduct, and
- iii. failure to protect a child from sexual offence.

The school accepts its responsibility to assist members of the school community to fulfil their obligations related to this matter.

i. Disclosure of a sexual offence

Obligations exist for any adult, who forms a reasonable belief that a sexual offence has been committed in Victoria, by an adult against a child under the age of 16, to report the matter to the Victorian Police. Within the school community this obligation applies to all adults, including non-teaching members of staff, volunteers and students 18 years or over.

Disclosure of information to a second person on the understanding that they will undertake the required reporting does not fulfil an adult's legal obligation and the school will provide support for staff or students in undertaking their responsibility to comply with the requirement.

Under this legal obligation all adult members of the school community share a responsibility to ensure the welfare of all children at the school.

The Principal will:

- Ensure that all adults within the school community are aware of their obligations to report suspected sexual abuse of a child under 16 years to the police.
- Provide support for staff, volunteers and students to undertake their responsibility in this area.

All staff members will:

- Be aware of the contents of this policy, i.e. our response to mandatory reporting of physical or sexual abuse and community responsibility to protect children from sexual abuse.
- Report any reasonable belief of sexual abuse to the police to fulfil their obligation.

- Provide an educational environment that is supportive of all children's emotional and physical safety.

Parents/Caregivers/Volunteers/Students aged 18 and over will:

- Be aware of the contents of this policy i.e. our response to mandatory reporting of physical or sexual abuse and community responsibility to protect children from sexual abuse.
- Understand their obligations to report reasonable belief of sexual abuse to the police.

1. *Forming a belief that a sexual offence has been committed*

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 lead a mandated professional to form a belief that the child has been sexually abused; or
- signs of sexual abuse lead to a belief that the child has been sexually abused.

2. *Circumstances when a report is not required*

- All the information has already been reported to police or Child Protection authorities.
- The child disclosed the information in confidence in the course of a therapeutic relationship.
- A reasonable fear exists that the disclosure will place a person (other than the alleged perpetrator) at risk of harm.
- The victim is 16 years or older and does not have an intellectual disability that limits their capacity to make a decision and does not want the information reported to the police.
- The victim turned 16 years of age before 27 October 2014.

3. *Making a report*

In circumstances where a report has NOT already been made to Child Protection or Child FIRST under Mandatory Reporting requirements, a report should be made to the Victorian Police by dialling 000 (or otherwise to a member of the police force).

ii. Protection from grooming for sexual conduct of a child under the age of 16 years

The offence of grooming for sexual conduct targets predatory conduct undertaken to prepare a child for sexual activity at a later time. Grooming can be conducted in person or online, for example via social media, web forums

and emails. It may also consist of communication with another person having care, supervision or authority over the young person who is the intended victim of the sexual offence. Grooming does not necessarily involve any sexual activity or even discussion of sexual activity, but the offender has the intention of engaging in sexual activity at a later time. Under the *Crimes Act 1958 (Vic)* and the *Crimes Amendment (Protection of Children) Act 2014 (Vic)* it is not necessary for the grooming conduct to occur in Victoria, so long as the perpetrator intended that the sexual offence would occur in Victoria. (Refer to Appendix 1.)

The school is committed to protect its students from such activities. Any member of the school community aged 18 or over who becomes aware of grooming behaviour conducted by a person aged 18 or over should notify the Principal and /or the police immediately. The Principal will take action to protect the child including reduction or removal of the risk.

iii. Protection of a child from criminal sexual abuse

The offence of failure to protect a child from sexual abuse is limited to people in positions of authority within organisations that exercise care, supervision or authority over children. This offence occurs when a person in authority fails to protect a child under the age of 16 from criminal sexual abuse.

The school is committed to upholding its responsibility to reduce or remove any substantial risk that a child will become a victim of a sexual offence committed by an adult associated with the school.

To support the implementation of this procedure, 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. 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 Principal will act to reduce or remove the risk. The accused person will be removed from any child-related role pending an investigation.

PART C: Action in response to Victoria's reportable conduct scheme

The Principal will be informed of any allegation of child abuse or misconduct towards children against a worker, volunteer or student 18 years or over.

Upon receiving an allegation the Principal will:

- Take immediate action to protect children from further potential for abuse.
- Report the allegation to CCYP. In circumstances where an allegation of criminal conduct is made, the Victorian Police will be informed as the first priority.
- Conduct an investigation, subject to police clearance on criminal matters, advise the CCYP of who is undertaking the investigation and, within 30 days of the allegation, provide the CCYP with detailed information of the incident and any action taken by the school.
- Ensure records of the allegation and outcome are completed and retained by the school.
- At the conclusion of the investigation report the finding, with reasons for the outcome and any disciplinary action, to CCYP.

Appendix 1

Definition

- The **offence of grooming for sexual conduct with a child under the age of 16** is found in section 48M of the *Crimes Act 1958*. That section provides:
 - (1) A person (A) commits an offence if—
 - (a) A is 18 years of age or more; and
 - (b) A communicates, by words or conduct (whether or not a response is made to the communication), with—
 - (i) another person (B) who is a child under the age of 16 years; or
 - (ii) another person (C) under whose care, supervision or authority B is; and
 - (c) A intends that the communication facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more.
 - (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
 - (3) A does not intend to facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more if, were the conduct constituting the sexual offence to occur, A or the other person would satisfy an exception, or have a defence, to that sexual offence.
 - (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B or C was, or B and C were, in Victoria at the time at which that conduct occurred.
 - (5) It is immaterial that B or C was, or B and C were, outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time that conduct occurred.
 - (6) It is immaterial that A, B and C were all outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A intended that the sexual offence would occur in Victoria.
 - (7) In this section—

communication includes an electronic communication within the meaning of the *Electronic Transactions (Victoria) Act 2000*;

sexual offence means—

 - (a) an offence against a provision of Subdivision (8A), this Subdivision (other than section 49K (1) or this section), (8C), (8D), (8E), (8F) or (8FA); or
 - (b) an attempt to commit an offence covered by paragraph (a); or
 - (c) an assault with intent to commit an offence referred to in paragraph (a).

(VRQA Guidelines to the Minimum Standards and Requirements for School Registration – June 2020)

Appendix 2

Additional 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

Appendix 3

Related Policies

- Code of Conduct for staff, volunteers and others interacting with students
- Complaints and Appeals Policy for Students
- ICT Policy
- Mutual Respect Policy
- Privacy Policy
- Statement of Our Behaviour

*Updated: May 2021
To be reviewed: May 2023*