

Obligations to Report Suspected Child Sexual Abuse Policy

Contents

1. Purpose.....	1
2. Application of this Policy	1
3. Definitions.....	2
4. ‘Failure to Disclose’ Offence.....	3
5. Exemptions to ‘Failure to Disclose’ Offence.....	3
6. Implementation of the ‘Failure to Disclose’ Offence	4
7. ‘Failure to Protect’ Offence	4
8. Implementation of ‘Failure to Protect’ Offence.....	5
9. Responsibilities	5
10. Related Legislation	5
11. Version History	5

1. Purpose

1.1. MSA is committed to providing employees, contractors and visitors with a healthy and safe environment. This includes minors who may use MSA services and/or facilities. The purpose of this policy is to ensure all MSA workplace participants are aware of their obligations under the [Crimes Amendment \(Protection of Children\) bill 2014 \(VIC\)](#).

2. Application of this Policy

2.1. This policy applies to the following persons, collectively referred to in this policy as ‘workplace participants’:

- a) all prospective and current full-time, part-time and casual employees of MSA;
- b) all volunteers engaged by MSA;
- c) all agents and contractors engaged from time to time by MSA; and
- d) all office bearers and members of MSA bodies

2.2. This policy is not restricted to the workplace or work hours. The obligations in this policy are also applicable to any work related events or functions. A “work related event or function” means any event or function that is connected to MSA. These may include, for example, on-campus MSA events, conferences, work lunches, Christmas parties. All workplace participants are expected to comply with this policy at work related events or functions.

3. Definitions

- 3.1. *Reasonable Belief* is defined as what a reasonable person in the same position would have formed the belief on 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
- 3.2. *Reasonable Excuse* is defined as where a person:
- has a fear for safety; or
 - believes the information has already been disclosed
- 3.3. *Fear for Safety* is defined as where a person has a subjectively reasonable belief for their own or someone else’s safety (such as a child or another family member) if they disclose the information. It must be reasonable from the perspective of that person in those particular circumstances. This recognises that the person in question is best placed to judge whether their safety is in danger.
- 3.4. *Perceived interest* includes reputation, legal liability or financial status.
- 3.5. *Belief the information has already been disclosed* is defined as a belief on reasonable grounds that the information has already been disclosed to police and they have no further information to add. For example this would include if the person reported their beliefs to DHS, as DHS is mandated to report all allegations of sexual abuse to police.
- 3.6. *Privileged information* is defined as where normal privilege would apply, including:
- client legal privilege
 - journalist privilege
 - religious confessions
- 3.7. *Public Domain* is defined as areas of public knowledge, for example television or radio reports.
- 3.8. *Relevant Child* is defined as a child (whether identifiable or not) under the age of 16 years who is, or may come, under the care, supervision or authority of a relevant organisation.
- 3.9. *Relevant Organisation* is defined
- (a) an organisation that exercises care, supervision or authority over children, whether as part of its primary functions or otherwise, and includes but is not limited to
 - i. a church; and
 - ii. a religious body; and
 - iii. a school; and
 - iv. an education and care service within the meaning of the Education and Care Services National Law (Victoria); and

- v. a children's service within the meaning of the Children's Services Act 1996; and
 - vi. an out of home care service within the meaning of the Children, Youth and Families Act 2005; and
 - vii. a hospital; and
 - viii. a government department; and
 - ix. a government agency; and
 - x. a municipal council; and
 - xi. a public sector body; and
 - xii. a sporting group; and
 - xiii. a youth organisation; and
 - xiv. a charity or benevolent organisation; or
- (b) an organisation that, in accordance with an agreement or arrangement with an organisation referred to in paragraph (a), is required or permitted to engage in activities associated with the care, supervision or authority over children exercised by the organisation referred to in paragraph (a);

4. 'Failure to Disclose' Offence

- 4.1. 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
- 4.2. Any adult who forms a 'reasonable belief' that a sexual offence has been committed by an adult against a child under the age of 16 has an obligation to report that information to police. Failure to disclose information to police is a criminal offence under [the Crimes Amendment \(Protection of Children\) bill 2014 \(VIC\)](#).
- 4.3. 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 (see 3.1 for more information).

5. Exemptions to 'Failure to Disclose' Offence

- 5.1. There are a number of exemptions to the "Failure to Disclose" Offence.
- 5.2. A person will not be guilty of the offence if they have a reasonable excuse for not disclosing the information (see 3.2 for definition of reasonable excuse). It is not a reasonable excuse if a person is only concerned with the perceived interests of the perpetrator or any organisation. (See 3.4 for definition of perceived interest)
- 5.3. If a victim aged **over** 16 requests confidentiality. A person will still be required to disclose suspected sexual abuse 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 of those facts.

- 5.4. If a person was under 18 when they formed a reasonable belief, they will not be obliged to make a disclosure when they turn 18. This protects children from the burden of knowing that they will have to make a disclosure to police when they turn 18
- 5.5. People will not be required to disclose information where that information is obtained from privileged information (see 3.6 for more definition)
- 5.6. A person does not have to disclose to police if they get the information through the public domain, or form the belief solely from information in the public domain (see 3.7 for definition) such as television or radio reports
- 5.7. A police officer acting in the course of their duty in respect of a victim of child sexual abuse is also exempt.

6. Implementation of the 'Failure to Disclose' Offence

- 6.1. A person who knows of child sexual abuse having occurred in the past will not have to report to police unless the victim is still a child when the offence comes into effect.
- 6.2. The 'Failure to Disclose' offence will take effect from 27th October 2014
- 6.3. The maximum penalty for this offence is three years imprisonment.

7. 'Failure to Protect' Offence

- 7.1. A new criminal offence will be created in Victoria for failing to protect a relevant child under the age of 18 (or 16 if the victim requests confidentiality, see clause 5.3) from criminal sexual abuse.
- 7.2. The offence will apply where there is a substantial risk that a relevant child under the care, supervision or authority of a relevant organisation will become a victim of a sexual offence by an adult associated with that relevant organisation. The person in a position of authority will be guilty if they knew of the risk of abuse and had the authority to reduce or remove the risk, but negligently failed to do so.
- 7.3. As soon as a person in authority becomes aware of a risk of child sexual abuse, they will be under a duty to take steps to remove or reduce that risk.
- 7.4. An individual who falls short of the standard of care that a reasonable person would exercise in the same circumstance would be found guilty of a criminal offence. For example, a person in authority who knows that someone poses a risk to children and moves them from one location in an organisation to another location where they still have contact with children would be committing an offence. It will not apply where a person takes reasonable steps to protect a child from the risk of abuse, for example, where the allegation is reported and the person removed from any child-related role pending an investigation.

8. Implementation of 'Failure to Protect' Offence

- 8.1. The 'Failure to Protect' offence will take effect from 1st July 2015 if not sooner. MSA expects this policy to be followed regardless of the implementation date of the new legislation.
- 8.2. The maximum penalty for this offence once it takes effect will be five years imprisonment

9. Responsibilities

- 9.1. It is the responsibility of all workplace participants to disclose any reasonable belief of child sexual abuse to police.
- 9.2. If a workplace participant has a reasonable belief of sexual abuse occurring at MSA, they must report this to police.
- 9.3. If a workplace participant has a reasonable belief of child sexual abuse and is not in a position of authority to protect a relevant child from this abuse, they must report their belief to the relevant person of authority.
- 9.4. If a workplace participant has a reasonable belief of child sexual abuse and is in a position of authority to protect a relevant child from this abuse, they must do so accordingly. This includes reporting any information to police and removing any person suspected of child sexual abuse from positions that include contact with children.

10. Related Legislation

[Crimes Amendment \(Protection of Children\) Bill 2014 \(VIC\)](#)
[Crimes Act 1958 \(VIC\)](#)

11. Version History

Current Version: 1

Author: Jennifer Gibson
MSC Approval: 16/2014; 17/12/2014
Review Date: December 2016