

BETRAYAL OF TRUST: FACT SHEET

New criminal offence to protect children from sexual abuse

What is the offence?

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

The offence requires a person in a position of authority to reduce or remove the risk of sexual abuse of a child by an adult associated with their organisation.

A person in a position of authority in the organisation 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 failed to do so.

Who does the offence apply to?

The offence applies to a person in authority in any organisation that exercises care supervision or authority over children. This includes certain Department of Health & Human Services staff and those working or volunteering for other organisations, including organisations that are not funded by the department.

A person in authority is someone who, by reason of their position within an organisation, has the power or responsibility to reduce or remove a substantial risk of child sexual abuse.

Examples of people in authority may include residential house supervisors, chief executive officers, board, council or committee members, school principals, service managers and religious leaders. It may also apply to people with less formal involvement in an organisation. For example, a volunteer parent coach responsible for the supervision of a junior sports team may be a person in authority, even if their role is informal or limited.

Who is a 'person associated with' an organisation?

The offence requires a person in authority to act if they know that a *person associated with their organisation* poses a substantial risk of child sexual abuse. This definition does **not** include a person solely because they receive services from the organisation. Examples include:

- Registered adult sex offenders who are receiving services from the department are *not* considered to be associated with the organisation solely because they are a client of the department. This means that the offence does not apply to risks posed by these clients.
- A parent living in the community who is involved with child protection services or who has a child in out-of-home care, and who may pose a risk of sexual abuse to a child, would *not* be considered to be 'associated with' the department under the offence.

The offence relates to risk of sexual abuse by adults. Therefore, a child under the age of 18 who poses a risk of abusing other children would *not* be covered by this offence.

However, staff should continue to comply with departmental standards, screening requirements, program requirements and policies on preventing, reporting and responding to child abuse, for example:

- [Critical Client Incident Management Instruction](#); and

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- [Instruction on Responding to Allegations of Physical or Sexual Assault](#) (RAPSA).
- [Incident Reporting Instruction \(May 2013\) \(Health\)](#) (for non-VHIMS reporting organisations)
- [Victorian Health Incident Management Policy \(Health\)](#) (for VHIMS reporting organisations).

Sports and recreation organisations can also refer to the [Victorian Code of Conduct for Community Sport](#) and [VicSport 'Safeguarding Children'](#) websites for resources about creating child-safe organisations.

Why is this offence being introduced?

This offence will encourage organisations to actively manage the risks of sexual offences being committed against children in their care and further protect them from harm.

The Victorian Government is strengthening laws to protect our children from sexual abuse and exposure to sexual offenders in response to *Betrayal of Trust*, the report of the Inquiry into Child Abuse by Religious and other Non-Organisations. This is in recognition of the shared community responsibility to protect children from abuse and to provide a safe environment for children.

Examples of organisations in scope of the offence

The offence applies to people in authority within a *relevant organisation*. A relevant organisation is one that exercises care, supervision or authority over children, whether as part of its primary function or otherwise. This includes organisations that are not funded by the Victorian Government.

Some examples of the types of organisations that fall within scope of the offence include:

- Churches and religious bodies
- education and care services (such as childcare centres, family day care services, kindergartens and outside school hours care services)
- licensed children's services such as occasional care services
- schools and other educational institutions
- organisations that provide accommodation to children and young people, such as boarding schools and student hostels
- out-of-home care services
- community service organisations providing services for children
- hospitals and other health services
- government agencies or departments providing services for children
- municipal councils (for example those that deliver Maternal and Child Health services)
- sporting groups and youth organisations
- charities and benevolent organisations providing services for children.

Further information

Further information about the offence is available on the Department of Justice & Regulation website at: <http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/failure+to+protect+offence>. Alternatively you can contact childsafestandards@dhhs.vic.gov.au.