

## Reportable Conduct and Organisational Duty of Care

This factsheet provides an overview of two new child safety reforms that will commence in Victoria on 1 July 2017.

### REPORTABLE CONDUCT SCHEME

#### What is the Reportable Conduct Scheme?

The Reportable Conduct Scheme commences in Victoria on 1 July 2017. It was introduced to enable an independent body, the Commission for Children and Young People (CCYP), to have oversight over an organisation's systems and processes to prevent and respond to allegations of child abuse.

#### Who does the Scheme apply to?

The Scheme is being introduced in three phases. From 1 July 2017, the Scheme applies to:

- government and non-government schools;
- **registered or accredited senior secondary education and training organisations;**
- **approved providers of courses to students from overseas;**
- overseas student exchange organisations; and
- Victorian Government Departments.

This will include TAFEs, training providers and organisations registered with the Adult Community and Further Education Board that provide senior secondary education or courses to students overseas.

From 1 January 2018, the Scheme applies to:

- Residential facilities of boarding schools.
- Overnight camps for children.
- Other disability service providers that provide services for children, including those registered with the National Disability Insurance Scheme.

From 1 January 2019, the Scheme applies to:

- Approved education and care services (e.g. kindergartens, after hours care services).
- Childrens services (e.g. occasional care providers).
- Statutory bodies that have responsibility for children, such as public museums and galleries.

#### What does the Scheme require TAFEs / training providers to do?

The Scheme requires TAFEs / training providers who provide senior secondary education and training, or courses to students from overseas, to have systems in place to:

- reduce the risk that reportable conduct of being committed by a worker or volunteer;
- enable any person to notify the head of the TAFE / training provider (i.e. the CEO, or Executive Officer) of a 'reportable allegation'; and
- investigate and respond to a 'reportable allegation' against a worker or volunteer.

Importantly, the Scheme will require the head of your TAFE / training provider to:

- notify the CCYP of 'reportable allegations' within 3 business days after becoming aware of them;
- give the CCYP further, detailed information about the allegation within 30 days; and
- after the investigation has concluded, give the CCYP information regarding the investigation outcomes, including the investigation findings.

#### What should TAFEs / training providers do to implement the Scheme?

TAFEs / training providers should:

- ensure they have systems in place to respond to (and investigate) reportable allegations made against workers and volunteers;
- communicate with their staff to ensure staff know that any reportable allegations should be raised with head of the TAFE / training provider, for reporting to the CCYP; and
- develop processes to enable the head of the TAFE / training provider to report allegations to the CCYP.

*Please note: School Principals retain their responsibility to manage the conduct of employees in schools. If an allegation arises against a Department of Education and Training employee, contractor, volunteer, allied health staff member or school council employee, this should be notified to the School Principal.*

### What is a 'reportable allegation'?

There is an allegation of 'reportable conduct' where a person has a reasonable belief that there has been:

- a sexual offence, sexual misconduct or physical violence committed against, with or in the presence of a child under 18;
- behaviour causing significant emotional or psychological harm to a child under 18; or
- significant neglect of a child under 18,

or misconduct involving any of the above, whether or not the person the allegation relates to provides services to children, and even if the allegation arises outside the person's employment. Only conduct by an adult against a child under 18 is reportable under the Scheme (child to child conduct is not reportable).

### Further resources

More information can be found at the [CCYP's website](https://ccyp.vic.gov.au/reportable-conduct-scheme/) (https://ccyp.vic.gov.au/reportable-conduct-scheme/) and in the [Department's PROTECT resource](#).

### ORGANISATIONAL DUTY OF CARE

The new Organisational Duty of Care will apply to any organisation that exercises care, supervision or authority over children from 1 July 2017. It does not alter or change existing duties, but ensures that there is a clear legal duty placed on organisations to take reasonable precautions to minimise the risk of child abuse.

There are no criminal offences attached to the new duty, rather the duty will impact organisations through legal claims of liability due to negligence.

### What is a "reasonable precaution"?

What is meant by 'reasonable precautions' will depend on the organisation and is not defined in legislation. However, this requirement is expected to require little or no change to usual practice for organisations who already have a duty of care to their students, so long as the organisations are compliant with the Child Safe Standards.

Examples of how the Child Safe Standards would assist with meeting the reasonable precautions test are:

- employment screening and referencing checking (Child Safe Standard 4)
- supervision and training (Child Safe Standard 3, 4 and 5)
- implementing systems to provide early warning of possible offences (Child Safe Standard 1)

- random and unannounced inspections to deter misconduct (Supervisory requirements/ risk mitigation are part of Child Safe Standard 6)
- encouraging children and adults to notify authorities or parents about any signs of aberrant or unusual behaviour (Child Safe Standard 5 and 7).

### What types of abuse are organisations required to prevent under the new duty?

Under the new duty, organisations exercising care, supervision or authority over children must take reasonable precautions to prevent sexual abuse and/or physical abuse of a child.

*Sexual abuse* - examples include sexual penetration, sexual touching, or taking part in a sexual act.

*Physical abuse* - examples include the infliction of physical violence, beating, burning, torture, cruelty, and assault with objects.

The courts will determine the meaning of physical abuse, given each incident of abuse will have its individual circumstances.

### For whose conduct will organisations be liable?

The duty will relate to child abuse committed by an individual associated with the organisation.

Individuals associated with the organisation can include, but is **not limited** to:

- employees
- volunteers
- office holders
- contractors
- ministers of religion
- religious leaders
- foster or kinship carers.

Organisations cannot avoid their duty by delegating their care, supervision or authority of children to other organisations. For example, if a TAFE / training provider sends students under 18 to a privately run camp and a member of the camp's staff abuses a student, the TAFE / training provider is required to prove that it took reasonable precautions to prevent that abuse.

### Further resources

More information can be found at the [Department of Justice and Regulation's website](#) (http://www.justice.vic.gov.au) and in the [Department's PROTECT resource](#).