



FAILURE TO PROTECT POLICY

SOURCE OF OBLIGATION

Where a person in a position of authority at the College knows that a staff member, Volunteer, Third Party Contractor, or other person associated with the College poses a substantial risk of committing a sexual offence against a student or students, the person has a duty to take immediate action to ensure that the student or students are protected from that risk.

The College has a duty of care which requires the protection of all students from foreseeable risks while at school or engaging in College activities.

In addition, under section 490 of the Crimes Act 1958 (Vic) (Crimes Act) a person who:

- a) by reason of the position they occupy within or in relation to the College, has the power or responsibility **to reduce or remove a substantial risk** that a relevant child (under the age of 16 who is, or may come under the care, supervision or authority of the College) 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 College**; and
- b) **knows that there is a substantial risk** that the person will commit a sexual offence against a relevant child,

must not negligently fail to reduce or remove that risk.

WHO MUST ACT TO PROTECT?

The person responsible for taking steps to remove or reduce the risk to the student will depend upon the source of the risk. In a normal school context usually a member of the Executive Team would have the necessary degree of supervision, power and authority to remove or reduce the risk. On tours, excursions, or camps a teacher, Year Level Wellbeing Coach or a volunteer coach could have the requisite power and responsibility.

Examples of people in a position of authority include:

- The College Board
- The Executive Principal
- Members of the College Executive Team
- College Leaders (eg. Head of School, Student Wellbeing Specialist)



- Teachers
- Volunteers where they are in a position of supervision.

WHEN SHOULD ACTION BE TAKEN?

A person in a position of authority at the College is required to act if they know that there is a substantial risk that a student or students may become the victim of a sexual offence, and the risk is caused by a person associated with the College.

Knowledge is more than holding a tentative belief or mere suspicion.

If a person in authority has a suspicion or belief that students are at risk of harm they must take steps to follow up on that suspicion or belief by investigating further and should raise the issue with a College Student Wellbeing and Pastoral Care Specialist Deputy Head of School, Head of School or Head of Campus. The duty to act extends to situations where the students at risk or the person in authority is outside of Victoria.

WHAT IS A SUBSTANTIAL RISK?

A risk will be a substantial risk if a reasonable person would have judged the risk of a sexual offence being committed against the student as being substantial.

It is not necessary to prove that a sexual offence was committed in order for the substantial risk to exist - a person in a position of authority should not wait for a student to be harmed before acting.

A number of factors will contribute to determining if a risk is a substantial risk, including:

- the likelihood or probability that a 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.

What is a sexual offence?

Action must be taken where there is a substantial risk of sexual offences occurring, including:

- rape
- indecent assault
- sexual penetration
- grooming a child for sexual conduct
- encouraging a child to engage in, or be involved in, sexual activity
- an attempted sexual offence or an assault with intent to commit a sexual offence.



WHO IS “A PERSON ASSOCIATED WITH THE COLLEGE”?

A person associated with the College is an adult and can be a:

- Board member
- Executive Principal
- College Leader
- Teacher
- Employee
- Volunteer (including parent/carer volunteers)
- Third Party Contractor.

A person will not be considered to be associated with the College purely because they receive services from the College.

PROCEDURE TO REDUCE OR REMOVE A SUBSTANTIAL RISK

Where any person in a position of authority at the time, becomes aware of a risk of a sexual offence against a student or students under their care, they should immediately:

- take reasonable steps which would remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- report the matter to a College **Student Wellbeing and Pastoral Care Specialist**, Head of School or Head of Campus, as soon as practicable
- conduct an investigation unless this relates to a Mandatory Reporting situation
- make the appropriate report.

Appropriate action to be taken may include, for example:

- a current employee who is known to pose a risk to a student or students should be immediately removed from contact with students and reported to authorities and investigated
- a parent who is known to pose a risk of sexual abuse to children should not be allowed to attend overnight College camps as a parent helper.

Whenever there are concerns that a child is in immediate danger call the Police on 000.

RECORD KEEPING OBLIGATIONS

For the College’s record keeping obligations relating to child protection incidents, refer to **Child Protection Record Keeping**.

Updated in June 2020