

BLP BRIEF

Mandatory Reporting: Summary for Schools

June 2018

By Tyson Brennan

Since 1994, Victoria has placed an obligation on teachers and principals to report suspected child abuse. 7 out of the 8 Australian states and territories have enacted mandatory reporting obligations on schools, but each differ in their scope and requirements.

What needs to be reported?

In Victoria, the relevant reporting obligations are contained within the *Children, Youth and Families Act 2005* (Vic).

A teacher or principal must make a report to DHHS Child Protection as soon as practicable if they form a belief on reasonable grounds that:

1. the child has suffered or is likely to suffer, significant harm as a result of **physical injury and/or sexual abuse** and the child's parents have not protected, or are unlikely to protect, the child from harm of that type, **AND**
2. the reasonable belief is formed in the course of practising their profession or carrying out the duties of their office, position or employment.

A 'child', for the purposes of the relevant reporting obligations, is a person 16 years or under.

What is 'reasonable grounds'?

The reporting obligations do not require a teacher or principal to conduct their own extensive investigations into whether child abuse or neglect has happened, or indeed its extent. Judgment about the existence or likelihood of the abuse or neglect should be informed by and made on the evidence available to them having regard to:

- Any disclosures by the child;
- Observations of the child's health and behaviour;
- Knowledge of the child's family and social situation;
- Awareness of the consequences of child abuse and neglect (the signs/symptoms to look for);
- Any other relevant knowledge.

It is also not up to the teacher/principal to decide whether reporting the suspected abuse or neglect would be in the child's best interests. The reporting obligations are mandatory and do not provide scope for the teacher or principal to decide whether to report or not.

Other matters to report

Interestingly, Victorian legislation does not impose a reporting obligation on teachers concerning psychological or emotional abuse, or neglect.

That being said, there are other applicable legal and policy considerations which extend the practical reporting obligations beyond the legislative requirements. Of particular note is that all staff within a school have a duty of care to maintain the safety of a child. Failure to act appropriately to protect a child in certain circumstances may expose the school or staff member to liability in negligence.

Therefore, Although it is not mandatory to do so, any person should make a report to DHHS Child Protection on the basis of their reasonable belief that a child is in need of protection on the following, other grounds:

- Abandonment
- Death or incapacity
- Emotional or psychological harm;
- Harm to physical or developmental health

Form of Report

Reports must be made to the Secretary of the Department of Human Services. Reports can be either written or verbal but must be accompanied by a statement of the reasonable grounds informing the suspicion and must be made as soon as practicable.

Legal protection for reporters

If a report is made in good faith, the reporter is immune from any legal liability or actions, even if the allegations are ultimately unfounded. The immunity will extend to a report regarding suspected psychological or emotional abuse, or neglect, despite that reporting obligation not being mandatory, provided the report is made in good faith.

Failing to report

Failure to observe the legislative or police requirements may expose the individual teacher and the school to legal liability. Statutory penalties (fines) may be imposed on the person who fails to report. Also, a school, including the principal and individual teacher, may be exposed to liability for damages in negligence should they fail to report an incident of suspected child abuse and that child ultimately suffers harm.

The Victorian *Crimes Act 1958* has also been amended to include the criminal offence of '*failing to disclose a sexual offence committed against a child under the age of 16 years*'. The new offence imposes a legal obligation upon all adults to report to Victoria Police where they form a reasonable belief that a sexual offence has been committed by an adult against a child under the age of 16. Failure to disclose the information to police is a criminal offence.

NOTE: This obligation applies to all adults, whether or not they are mandatory reporters under the Children, Youth and Families Act 2005

Your obligations as a Principal

All teachers need to be aware of their legislative and policy-based reporting obligations, and must comply with them.

Accordingly, it is incumbent upon you, as the school leader, to ensure your staff are appropriately trained and educated on the reporting obligations and the signs to look for.

You should also ensure that your school has a clear and up to date policy and procedure for mandatory reporting incidents.

Furthermore, changes to the *Crimes Act 1958* (Vic) now make it a criminal offence for persons in positions of authority (such as principals) for failing to take action to protect

children where they know that a person within or associated with their organisation poses a substantial risk of sexually abusing a child under the age of 16.

As soon as a person in authority becomes aware of a risk of child sexual abuse posed by someone associated with their organisation (e.g. an employee, contractor or volunteer) they will be under duty of care obligations to take steps to remove or reduce that risk. An individual who falls short of the standard of care can be found guilty of the offence and may be subjected to a period of imprisonment of up to 5 years.

How Brennan Law Partners can Assist

If you have any concerns about your policies or procedures please contact us to conduct a review for you. Mandatory reporting is a serious area and with new criminal provisions in place it is imperative you can discharge your duties.

If you have any questions regarding any information in this BLP Brief, we welcome you to contact us at any time.

This is meant as a guide only.



Tyson Brennan
Principal

tyson.brennan@brennanlawpartners.com.au
0434 942 550