

Donnybrook Community Church

Quick Guide to “Failure to Disclose” & “Failure to Protect”

Purpose

This guide explains two Victorian criminal offences that aim to protect children from sexual abuse. **It is important for all church leaders, staff, and volunteers (i.e., any adult) to understand these obligations**, as they can apply to you in your role within the church and the wider community.

Failure to Disclose

What is it?

- A criminal offence under the *Crimes Amendment (Protection of Children) Act 2014* where any adult (18+) who has a reasonable belief that a sexual offence has been committed by an adult against a child under 16 *must* report that information to the police.

Key Points

- Applies to *every* adult in Victoria, including volunteers and staff in religious organisations.
- You must report to police when you form a *reasonable belief* of child sexual abuse, unless a reasonable excuse applies.
- Common “reasonable excuses” include:
 - If you believe the information has already been reported (either to Victoria Police or Child Protection) and you have no new information.
 - If you fear for your own or another person’s safety (other than the perpetrator) should you report, and your decision not to report is reasonable in the circumstances.
 - If the victim is aged 16 or over and requests confidentiality (and does not have an intellectual disability that prevents them from making an informed decision).
- This offence is *additional* to mandatory reporting requirements that certain professionals already have under child protection laws.

Practical Steps

1. If you suspect (or are told about) a sexual offence against a child, *immediately* consider reporting to both:
 - Your local police station (or call 000 if there is immediate danger).
 - Child Protection as necessary.
2. Consult relevant church policies to see who within your team should escalate or handle the report (for instance, a Safe Church Officer).

3. Keep records of the concern and actions taken.

For further detail: See the “Failure to Disclose Offence” fact sheet (Betrayal-of-trust-failure-to-disclose-offence_0.docx).

Failure to Protect

What is it?

- A criminal offence for a *person in authority* in a relevant organisation who fails to reduce or remove a *substantial risk* of a child (under 16) becoming a victim of sexual offence.
- Came into effect on 1 July 2015, also in response to the *Betrayal of Trust* Inquiry.

Who is a “Person in Authority”?

- Anyone whose role within the church (or other organisation) involves management or responsibility such that they can make decisions to *reduce or remove* the risk of child sexual abuse.
- Examples: Senior pastor, children’s ministry director, board member, volunteer coordinator, etc.

Key Points

- The risk must be *substantial* and *known* by the person in authority.
- A person in authority who knows (or should know) that an adult associated with the organisation poses a substantial risk must take *reasonable steps* to remove or reduce that risk.
 - “Associated with” means an officer, employee, volunteer, contractor, or agent of the organisation (not just recipients of the organisation’s services).
- Failure to act can result in criminal liability, with penalties of up to five years’ imprisonment.

Practical Steps

1. **Identify and Assess Risks:** Undertake child-safety risk assessments.
2. **Take Prompt Action:** Remove or reduce any identified risk (for example, stand down individuals under credible allegation or concern from child-related duties while further action is taken).
3. **Document the Process:** Ensure decisions and steps taken are recorded.
4. **Establish Clear Policies:** Have written procedures that specify how to respond to sexual abuse risks.

For further detail: See the “Failure to Protect” fact sheet (failure_to_protect_betrayal_of_trust_factsheet_2017.doc).

Additional Considerations for Churches

1. **Child-Safe Standards**

- Victoria requires organisations that work with children to meet *Child Safe Standards*, helping to ensure robust policies and a culture of child protection.
- Churches should have child safety policies, volunteer training, codes of conduct, and incident-reporting procedures.

2. **Mandatory Reporting**

- Certain professions (e.g. teachers, early childhood workers) carry a separate mandatory reporting duty under child protection laws. This is *in addition* to the Failure to Disclose and Failure to Protect offences.

3. **Reportable Conduct Scheme**

- Many Victorian organisations are also covered by a reportable conduct scheme, requiring them to notify the Commission for Children and Young People of certain allegations and findings.

4. **Record-Keeping**

- Maintain a secure record of concerns, steps taken, and outcomes for accountability and legal compliance.

5. **Seek Legal / Professional Advice**

- If unsure, consult legal counsel or child-protection professionals for guidance on compliance.

5. **Where to Get More Information**

- **Victoria Police:**
 - For emergencies or immediate danger, call **000**.
 - For non-urgent reports or advice, contact your local police station or Crime Stoppers at 1800 333 000.
- **Department of Justice and Community Safety (Vic.):**
 - Information on child safety, Failure to Disclose, and Failure to Protect offences.
- **Department of Health and Human Services (Vic.):**
 - Resources on child protection and reporting child abuse.
- **Commission for Children and Young People:**
 - Guidance on Child Safe Standards, the Reportable Conduct Scheme, and child safety resources.
- **Official Fact Sheets:**
 - *Failure to Disclose*: Betrayal-of-trust-failure-to-disclose-offence_0.docx
 - *Failure to Protect*: failure_to_protect_betrayal_of_trust_factsheet_2017.doc

Disclaimer

This quick guide is *not* legal advice. It is a reference summary for church team members. For detailed information, please review the complete legislation, official resources, and seek professional advice as needed.

Remember: Safeguarding children is a shared responsibility. If you have any doubts about a child's safety, please take immediate steps to report your concerns.