

## **From: Minute Protection of Children Legislation (Victoria Crimes Act 1958) VPC 0815**

### **Crimes Act 1958 Section 49B - Grooming for sexual conduct with child under the age of 16 years.**

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#### **Simple rule for action: Consult & Report**

If you have a **reasonable belief** that a sexual offence has been or is likely to be committed by an adult against a child, you must:

1. Consult with your immediate line manager/supervisor about your concerns, or if this supervisor/line manager is the subject of the concern, consult the next senior level of authority; and
  2. Report it to the police.
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#### **Key points of legislation**

The key provisions under the Act 1958 Section 49B, *Grooming for sexual conduct with child under the age of 16 years*, are:

- A person of or over the age of 18 years must not communicate, by words or conduct, with a child under the age of 16 years or a person under whose care, supervision or authority the child is, with the intention of facilitating the child's engagement in or involvement in a sexual offence.
  - Grooming occurs when communication or conduct is linked to the intention of involving a child under 16 years of age in a sexual offence with an adult
  - The offence includes any form of inappropriate communication between the adult and child, or their parent/carer, including communication that occurs in person, electronically, or by any other means.
  - The offence does not apply to communications between people who are both under the age of 18 years.
  - Maximum penalty is 10 years imprisonment
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#### **Children aged 16 or 17 years of age**

The offence applies to communication with children under the age of 16 years, but not communication with 16 and 17 year old children. This distinction between children aged below 16 and those aged 16 or 17 reflects the general age of consent (16 years) recognised by the criminal law in relation to sexual offences.

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#### **Parents/carers as victims of grooming**

The *Victim's Charter Act 2006 (Vic)* was amended to expressly provide that a child and a family member/carer of that child are victims of a grooming offence and are entitled to provide a victim impact statement to the court.

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# Crimes Act 1958 Section 49C - Failure by person in authority to protect child from sexual offence

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## Simple rule for action: Consult, Act and Report

If you have a **reasonable belief** that a sexual offence has been or is likely to be committed by an adult against a child, you must:

1. Consult with direct line manager/supervisor, DC, GM and/or TPSU;
  2. Take all reasonable steps to remove the alleged perpetrator and/or reduce risk to the child; and
  3. Report it to the police.
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## Key points of legislation

The provision under the Act 1958 Section 49C, *Failure by person in authority to protect child from sexual offence*, are:

- Any person who, by reason of their position of authority has the power or responsibility to reduce or remove a substantial risk that a child will become the victim of a sexual offence, and knows that there is a substantial risk that a person will commit a sexual offence against a child, must not negligently fail to reduce or remove that risk.
- This offence applies to people in positions of authority within organisations that exercise care, supervision or authority over children.
- Any person in authority who knows that someone poses a risk of committing a sexual offence against a child under the age of 16 years must report that information to police.
- The person in a position of authority will be guilty if they knew of the risk of sexual abuse and had the authority to reduce or remove the risk, but failed to do so.

The maximum penalty for failure to disclose to the police is 5 years imprisonment.

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# Crimes Act Section 327 - Failure to disclose sexual offence committed against child under the age of 16 years

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## Simple rule for action: Report

If you have a **reasonable belief** that a sexual offence has been or is likely to be committed by an adult against a child, you must:

- Report it to the police.

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## Key points of legislations

The key provisions under the Act Section 327, *Failure to disclose sexual offence committed against child under the age of 16 years*, are:

- Any person of or over the age of 18 years who has information that leads them to form a reasonable belief that a sexual offence (including grooming behavior) has been committed by an adult against a child under 16 must report that information to police.
  - Failure to report the information to police is a criminal offence.
  - The maximum penalty for failure to protect is 5 years imprisonment.
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## Offence of Grooming

New offence under the Act:

- Section 49B, *Grooming for sexual conduct with child under the age of 16 years*, grooming is a criminal sexual offence and, as such, must be reported to police as required under Section 327.
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## Person in authority with knowledge

New offence under the Act:

- Under Section 49C, any person with a position of authority who knows that there is a substantial risk that a person will commit a sexual offence against a child, must not negligently fail to reduce or remove that risk.
  - Where indicated this may involve a report to police as required under Section 327.
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## Exceptions

A person will not be guilty of the offence if he or she has a reasonable excuse for not disclosing the information.

A reasonable excuse includes:

- **Fear for safety**  
Where a person has a reasonable fear for their own safety or the safety of another person (such as a child or another family member).
- **Where the information has already been disclosed.**  
Where a person has already made a report under existing reporting requirements, such as mandatory reporting legislation (teachers, doctors), statutory regulations, or where a child protection agency has already passed on allegations to the police.

The legal obligation to report does not apply where **the abuse involves a person aged 16 or over** and this person requests that the offence not be reported.

If a person was under the age of 18 when they formed a reasonable belief, they will not be obliged to make a disclosure when they turn 18. This protects children from the burden of knowing that they will have to disclose to police when they turn 18.

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**What is not a reasonable excuse?**

A person does not have a reasonable excuse for failing to disclose sexual abuse if they are only concerned for the perceived interests of the perpetrator or any organisations. 'Perceived interests' includes reputation, legal liability or financial status.