

CHILD SAFETY REFORM FOR VICTORIA: ORGANISATIONAL DUTY OF CARE

From 1 July 2017, there will be a new 'organisational duty of care to prevent child abuse' in Victoria.

This duty of care will create a presumption of liability, such that certain organisations, including the Department and schools, will need to prove that they took "**reasonable precautions**" to prevent child abuse if they are defending a legal claim.

This duty will apply to **any organisation** that exercises care, supervision or authority over children.

This reform is part of a suite of child safety reforms, such as the Child Safe Standards and the Reportable Conduct Scheme, which implement key recommendations from the Victorian Government's 2013 Betrayal of Trust Inquiry. The Royal Commission into Institutional Responses to Child Sexual Abuse has also supported an Organisational Duty of Care.

What's changing for schools?

The new duty should represent no significant change in day-to-day practice for schools in managing their duty of care obligations, so long as the school is compliant with the Child Safe Standards and is taking reasonable steps to minimise the risk of child abuse. The Department has developed a number of resources to support schools to meet these Standards, which can be found on the [PROTECT portal](#).

The new duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

What is a reasonable precaution?

What is meant by 'reasonable precautions' will depend on the organisation and is not defined in legislation.

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)

Whose conduct will it apply to?

It relates to conduct by an individual, such as a teacher, associated with the organisation while the child is under the care, supervision or authority of the organisation. Individuals associated with the organisation is defined broadly to include, but is not limited to, employees, volunteers, contractors, office holders, and foster or kinship carers.

Can organisations delegate the duty?

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

Any criminal penalties?

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

Where can schools find additional information?

Guidance resources can be found below. Please contact Legal Division if you have specific queries about how the organisational duty of care will operate in practice.

- School Policy and Advisory Guide – Duty of Care
- School Policy and Advisory Guide – Child Safe Standards
- School Policy and Advisory Guide – Child Protection – Reporting Obligations
- PROTECT resources
- Department of Justice and Regulation's factsheet on Organisational Duty of Care