

BETRAYAL OF TRUST: FACTSHEET

The new 'failure to protect' offence

Failure to protect a child from abuse – organisations

A new criminal offence has been created in Victoria for failing to protect a child under the age of 16 from criminal sexual abuse. The offence will apply where there is a substantial risk that a child under the care, supervision or authority of an organisation will become a victim of a sexual offence by an adult associated with that organisation. The person in a position of authority will be guilty if they knew of the risk of abuse and had the authority to reduce or remove the risk, but negligently failed to do so.

1. What is the offence of failing to protect a child from sexual abuse?

If a person in authority knows that someone within their organisation poses a risk of committing a sexual offence against a child and they fail to remove that person who poses the risk, they will themselves be guilty of a criminal offence.

As soon as a person in authority becomes aware of a risk of child sexual abuse, they will be under a duty to take steps to remove or reduce that risk.

2. Will this criminalise mistakes made by organisations who are working to protect children?

An individual who falls short of the standard of care that a reasonable person would exercise in the circumstances will be found guilty of the offence.

For example, a person in authority who knows someone poses a risk to children and moves them from one location in an organisation to another location where they still have contact with children would be committing an offence.

It will not apply where a person takes reasonable steps to protect a child from the risk of abuse, for example, where the allegation is reported and the person removed from any child-related role pending an investigation.

3. Will the offence criminalise individuals who fail to protect a child from abuse, for example, a non-offending parent?

No. The failure to protect offence is limited to people in positions of authority within organisations that exercise care, supervision or authority over children. This includes churches, schools, child-care centres and residential care homes. It does not apply to parents or other individuals.

The separate offence, the new failure to disclose offence, will apply to any individual with information about the criminal abuse of a child who fails to report their knowledge to police.

4. What is the penalty for failing to protect a child?

The maximum penalty is five years' imprisonment.

5. When will the failure to protect offence take effect?

This offence will commence by 1 July 2015 but may come into effect sooner.