



Obligation to Act to Protect Policy

Context

St Patrick's College is a Catholic day and boarding school for boys in the Edmund Rice tradition, established in 1893. St Patrick's College is committed to providing a caring, supportive, and safe environment where every student has a place, a voice and their story is known. Edmund Rice Education Australia is committed to providing safe and supportive environments where all children and young people entrusted to our care are affirmed in their dignity and worth as a person.

Background

Edmund Rice Education Australia (EREA), as St Patrick's College's governing authority, sets the policy framework for all EREA schools. These policies have been contextualised for St Patrick's College's particular school environment so that our policies reflect the needs of our students.

Source of Obligation

The College has a duty of care which requires the protection of all students from foreseeable risks while at school or engaging in College activities.

In addition, under section 490 of the Crimes Act 1958 (Vic) (Crimes Act) a person commits an offence if:

- a) by reason of the position they occupy within or in relation to the College, they have the power or responsibility **to reduce or remove a substantial risk** that a relevant child (under the age of 16 who is, or may come under the care, supervision or authority of the College) will become the victim of a sexual offence committed by a person of or over the age of 18 years who **is associated with the College**; and
- b) **they know that there is a substantial risk** that the person will commit a sexual offence against a relevant child; and
- c) **they negligently fail to reduce or remove that risk.**

Who must act to protect?

Whether a person has the power or responsibility to take steps to remove or reduce the risk to the student will depend on their role at the College and the source of the risk. In a normal College context usually the Principal and members of the Leadership Team would always have the necessary degree of supervision, power and authority to remove or reduce a risk posed by another adult working at the College.

However, on a day to day basis, and on tours, excursions, or camps, others at the College could have the requisite power and responsibility.

Examples of people who may have the power and responsibility, by reason of their position, to act could include:

- School Advisory Council members
- teachers
- Volunteers where they are in a position of supervision, such as volunteer coaches.



When should action be taken?

The Failure to Protect offence means that any staff member, Volunteer or Third Party Contractor who has the requisite power or responsibility must act when they:

- **know** that an adult associated with the College
- poses a **substantial risk** that a student or students may become the victim of a **sexual offence**.

Action must be taken as soon as the risk becomes known.

Knowledge is more than holding a tentative belief or mere suspicion.

If a staff member, Volunteer or Third Party Contractor has a suspicion or belief that students are at risk of harm they must take steps to follow up on that suspicion or belief by investigating further and should raise the issue with the Principal or Deputy, and a College Child Safe Officer. Where the concern relates to the Principal or Deputy, report to the EREA Regional Director via the EREA National Office at (03) 9426 3200.

The duty to act extends to situations where the students at risk or the person in authority is outside of Victoria.

What is a substantial risk?

A risk will be a substantial risk if a reasonable person would have judged the risk of a sexual offence being committed against the student as being substantial.

It is not necessary to prove that a sexual offence was committed in order for the substantial risk to exist. A person in a position of authority should not wait for a student to be harmed before acting.

A number of factors will contribute to determining if a risk is a substantial risk, including:

- the likelihood or probability that a child will become the victim of a sexual offence
- the nature of the relationship between a child and the adult who may pose a risk to the child
- the background of the adult who may pose a risk to the child, including any past or alleged misconduct
- any vulnerabilities particular to a child which may increase the likelihood that they may become the victim of a sexual offence
- any other relevant fact which may indicate a substantial risk of a sexual offence being committed against a child.

What is a sexual offence?

Action must be taken where there is a substantial risk of sexual offences occurring, including:

- rape
- indecent assault
- incest
- sexual penetration
- grooming a child, or person who has the care, supervision or authority of a child aged under 16 for sexual conduct with the child
- encouraging a child to engage in, or be involved in, sexual activity



- an attempted sexual offence or an assault with intent to commit a sexual offence.

Who is “a person associated with the College”?

A person associated with the College is an adult and can be a:

- School Advisory Council member
- Principal
- teacher
- boarding house supervisor
- employee
- Volunteer (including parent/carer volunteers)
- Third Party Contractor.

A person is not considered to be associated with the College purely because they receive services from the College. Therefore, students aged 18 or over, parents/carers and other family members of students who are not staff members, Volunteers or Third Party Contractors are not associated with the College for the purposes of the Failure to Protect offence.

Procedure to Reduce or Remove a Substantial Risk

Where any staff member, Volunteer or Contractor who has the requisite power or responsibility, becomes aware of a risk of a sexual offence against a student or students under their care, they should immediately:

- take reasonable steps which would remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- report the matter to the Principal or Deputy*, and a College Child Safe Officer, and the Principal, as soon as practicable
- conduct an investigation unless this relates to a Mandatory Reporting situation
- make the appropriate report.

**Where the concern relates to the Principal or Deputy, report to the EREA Regional Director via the EREA National Office at (03) 9426 3200.*

Appropriate action to be taken may include, for example:

- a current employee who is known to pose a risk to a student or students should be immediately removed from contact with students and reported to authorities and investigated
- a parent who is known to pose a risk of sexual abuse to children should not be allowed to attend overnight College camps as a parent helper.

Whenever there are concerns that a child is in immediate danger call the Police on 000.

Record Keeping Obligations

For the College's record keeping obligations relating to child protection incidents, refer to **Child Protection Record Keeping**.



Status of Policy

This policy has been developed by CompliSpace.

This policy was extracted from the CompliSpace portal on 7 July 2021.

This policy has been endorsed by the College Advisory Council on [date].

This policy is due to be updated in 12 months from the date endorsed by the College Advisory Council unless required earlier.