

The New Victorian Child Safe Standards

A radical shift in your school's child protection



**An Important Briefing Paper for Governors, Principals, Executives
& Business Managers of Non-Government Schools**

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Executive Summary

- ❏ The new Victorian Child Safe Standards (the Child Safe Standards) became law on 1 January 2016. They represent a radical shift in how schools, and other organisations providing services for children, are required to manage their child protection obligations.
- ❏ From 1 January 2016 organisations that provide services for children, and are currently funded or regulated by the Victorian Government (Category 1 organisations), are required to work towards compliance with the Child Safe Standards.
- ❏ Category 1 organisations include schools (both government and non-government), early childhood providers, kindergartens and after hours care services, school exchange organisations, hospitals, community health services, disability service providers and local councils.
- ❏ From 1 August 2016, compliance with the Child Safe Standards will become a registration requirement for all non-government schools in Victoria. The Education Minister has issued Ministerial Order 870 that prescribes exactly what schools must do in order to comply.
- ❏ From 1 January 2017, the Child Safe Standards shall apply to organisations in Victoria providing services to children with limited or no funding or regulatory arrangements in place with the Victorian Government (Category 2 organisations).
- ❏ Category 2 organisations include charities and not-for-profit organisations, coaching and tuition services, transport providers, counselling services, sports and recreation clubs, children’s entertainment and party services, gyms and play facilities, overnight camps, babysitting services and youth services such as Scouts and Girl Guides.
- ❏ The purpose of the Child Safe Standards is to improve the way that organisations, which provide services to children, prevent and respond to child abuse. The focus of the Standards is to help organisations to drive cultural change so that protecting children from abuse is embedded in everyday thinking and practice.
- ❏ There are 7 Standards and 3 Principles that make up the Child Safe Standards. To provide guidance as to what the Victorian Government expects organisations to do to comply with the Child Safe Standards, it has published a 31-page document titled “*An overview of the Victorian child safe standards*”.

Reading the Ministerial Order with the Child Safe Standards and the guidance note, at a minimum, non-government schools in Victoria will need to take the following actions to ensure compliance by 1 August 2016, if they have not already done so:

- ❏ Develop and effectively **implement specific strategies** to embed a culture of child safety;
- ❏ **Allocate roles and responsibilities** to achieve these strategies;
- ❏ **Inform the school community** about the strategies, roles and responsibilities;
- ❏ **Publish a Child Safety Policy** setting guiding principles for child safety on their public website;
- ❏ Develop and effectively implement a **Child Safety Code of Conduct**;
- ❏ Implement specific **human resources practices** including those relating to recruitment, pre-employment background checks, documentation of job descriptions and performance review procedures;
- ❏ Establish comprehensive systems for delivering **child protection training** on an ongoing basis;
- ❏ Ensure that staff, volunteers, families and children know how to **report abuse allegations** and feel comfortable doing so within a supportive environment;
- ❏ Ensure detailed procedures **for responding to allegations of suspected child abuse** are in place;
- ❏ Implement specific **risk management practices and controls** with respect to child abuse;
- ❏ Ensure specific strategies are implemented to promote **child empowerment and participation**, including providing age appropriate education about child abuse awareness and prevention; and
- ❏ Take into account the **diverse needs and characteristics of children** including age, social and cultural background, abilities and other attributes or vulnerabilities in the context of child protection.

These changes require detailed planning and allocation of appropriate resources within a school to ensure compliance by 1 August 2016.

Background: The Betrayal of Trust Inquiry

In order to appreciate the radical nature of the changes introduced by the Child Safe Standards, it is necessary to have a basic understanding of how they came about.

In April 2012, the Victorian Government initiated a landmark inquiry into the handling of child abuse allegations within religious and other non-government organisations. This became known as the Betrayal of Trust Inquiry. The Inquiry's final report (Report) was tabled on 13 November 2013 and contained 15 recommendations, including the introduction of the Child Safe Standards.

The Betrayal of Trust Inquiry's findings and recommendations fall into three broad categories for improvement:

- ✔ Prevention;
- ✔ Response; and
- ✔ Access to justice.

The Victorian Government has interpreted the recommendations as requiring three stages of legislative and regulatory reform, being:

Stage One: Criminal law reform;

Stage Two: The creation of child safe organisations; and

Stage Three: Civil law reform.

Stage One: Criminal Law Reform

The first priority for the Victorian Government was to ensure the immediate safety of children. To achieve this objective, three new criminal offences relating to child protection were created. These are offences relating to:

- ✔ Grooming – a law prohibiting communications with a child, or a child's parents/carers, with the intent of committing child sexual abuse (section 49B Crimes Act 1958 (Vic)).
- ✔ Failure to protect – an offence for persons in authority who fail to protect a child from sexual abuse when they know that someone associated with their organisation poses a substantial risk of sexually abusing children (section 49C Crimes Act 1958 (Vic)).
- ✔ Failure to disclose – an offence for persons over 18 who fail to inform the Police if they know or believe that a child has been sexually abused (section 327 Crimes Act 1958 (Vic)).

Stage Two: Creating Child Safe Organisations

The Victorian Government is now implementing the second stage of recommendations: the creation of child safe organisations. The Child Safe Standards are the centerpiece of this reform.

The Child Safe Standards require the strengthening of how organisations approach the prevention of, and response to, child abuse and require organisations that provide services for children to engage in cultural change so that protecting children from abuse is embedded in the everyday thinking and practices of leaders, staff and volunteers. This represents a shift in government and community attitudes towards child protection requirements from being 'just a compliance issue' to now being a cultural issue that requires organisations (including schools) to adopt an entirely different approach.

As a part of this second stage of reform, the Victorian Government has also accepted the Report's recommendation to create a new 'reportable conduct' scheme for organisations with a high level of responsibility for children (i.e. providers of education and health services to children), requiring them to centrally report all allegations of child abuse involving their staff to the Commission for Children and Young People. This scheme is likely to be similar to the 'Reportable Conduct Scheme' currently operating in other states including NSW. The Victorian Government has tentatively predicted that the new scheme will be launched in June 2016.

Stage Three: Civil Law Reform

Stage three of the Victorian Government's implementation of the Report's recommendations focuses on civil law reform including access to justice and redress. An example of such reform is the recent action to remove the statute of limitations for civil actions founded upon child abuse in Victoria.

Victoria's New Child Protection Framework

The legal and regulatory framework for child protection in Victoria is made up of a complex web of laws, regulations and guidance notes.

The new **Child Safe Standards** work from the “top-down” providing an overarching set of standards that must be implemented by all organisations providing services to children. The purpose of the Child Safe Standards is to drive cultural change within an organisation so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

Through **Ministerial Order 870** non-government schools in Victoria are required by law to implement the Standards by 1 August 2016. From this date, compliance with the Child Safe Standards will also become part of a school’s registration requirements.

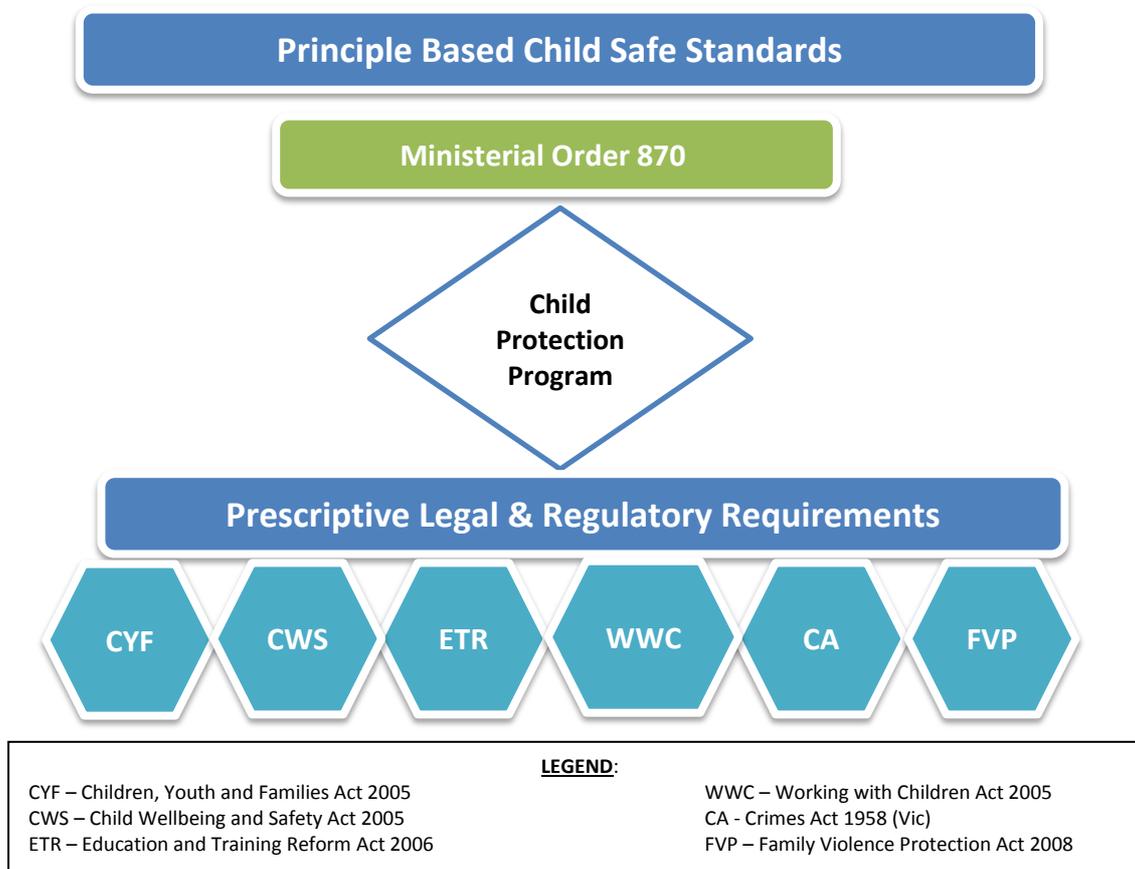
Working from the “bottom-up” there are also **six pieces of legislation** which each set out legal and regulatory obligations designed in one way or another to protect children from abuse. The Child Safe Standards are designed to complement, not replace, these existing laws.

Figure 1 provides an overview of the new Victorian Child Protection Framework.

From a practical perspective this new framework will require each Victorian non-government school to establish a **Child Protection Program** which sets out in detail the internal policies, procedures and workplace systems it has adopted not only to ensure compliance with its legal and regulatory obligations, but also to drive cultural change as required by the new Standards.

Figure 1

Victoria's New Child Protection Framework Overview



The Victorian Child Safe Standards

There are seven (7) Child Safe Standards:

Standard 1: Strategies to embed an organisational culture of child safety, including through effective leadership arrangements.

Standard 2: A child safe policy or statement of commitment to child safety.

Standard 3: A code of conduct that establishes clear expectations for appropriate behaviour with children.

Standard 4: Screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel.

Standard 5: Processes for responding to and reporting suspected child abuse.

Standard 6: Strategies to identify and reduce or remove risks of child abuse.

Standard 7: Strategies to promote the participation and empowerment of children.

The Child Safe Standards are designed to improve the way all organisations that provide services to children, including schools, prevent and respond to child abuse. The Standards are “principle based” laws which means that, whilst they have the force of law, how the Standards are applied in practice is open to interpretation and will depend largely on the size, nature and complexity of the organisation that is seeking to comply with the Standards.

In addition, the Department for Health and Human Services (DHHS) states that in complying with the Child Safe Standards, organisations must include the following three principles as part of each standard:

1. promoting the cultural safety of Aboriginal and Torres Strait Islander children;
2. promoting the cultural safety of children from culturally and/or linguistically diverse backgrounds; and
3. promoting the safety of children with a disability.

Ministerial Order 870

To provide a higher level of guidance for schools the Victorian Education Minister issued Ministerial Order 870 on 7 January 2016. All Victorian non-government schools must comply with the Ministerial Order from 1 August 2016, as a requirement of registration.

The Ministerial Order prescribes exactly what schools must do to meet the Child Safe Standards. An overview of these obligations is set out in the next section of this briefing paper.

Prescriptive Legal & Regulatory Requirements

There are six separate pieces of legislation that work together to make up the legal and regulatory framework for child protection in Victoria.

They are in summary:

The *Children, Youth and Families Act 2005 (Vic)* which has many functions including:

- establishing the “child’s best interests” principle;
- regulation of community services and care providers;
- the management of child protection responses;
- referring children in need to therapeutic treatment if exhibiting sexually inappropriate behaviour; and
- promoting stability in care arrangements.

The *Children, Youth and Families Act* is important for schools because it establishes obligations with respect to mandatory reporting.

The *Child Wellbeing and Safety Act 2005 (Vic)* is a companion piece of legislation to the *Children Youth and Families Act*.

Its primary function is to provide for the establishment of various government bodies that oversee the Victorian child and family services system. The *Child Wellbeing and Safety Act* is important for schools for two reasons:

- it provides the statutory definition of 'child abuse'; and
- it is the Act through which the Victorian Child Safe Standards are created.

The *Education and Training Reform Act 2006 (Vic)*, from a child safety perspective, has two key functions. These are to:

- require schools to notify the Victorian Institute of Teaching (VIT) when a school has taken disciplinary action against a teacher; and
- make compliance with the Victorian Child Safe Standards a requirement for registration of all Victorian schools.

The *Working with Children Act 2005 (Vic)* establishes a framework to screen the criminal records and professional conduct of people who intend to work with, or care for, children.

People who are assessed as posing an unjustifiable risk to the safety of children will fail the working with children check and be prohibited from working with children. The Act imposes penalties for schools and individuals that do not comply with the Act.

The *Crimes Act 1958 (Vic)* sets out a number of child protection related offences including those relating to indecent acts and child sexual abuse. Of key relevance to the Victorian child protection framework are the three new offences relating to grooming, a failure to protect a child from abuse, and a failure to disclose reasonable beliefs of sexual abuse.

Finally, the *Family Violence Protection Act 2008 (Vic)* is designed to maximise safety for children and adults who have experienced family violence and forms a key part of the overall legal and regulatory framework for child protection in Victoria. Critically, the Act provides an extensive definition of "family violence" that includes behaviour that causes a child to hear, witness, or be exposed to the effects of such behaviour.

It is important that all school leaders understand the significance of each of these laws as they impact directly on the policies, procedures and workplace systems that a school must implement to ensure compliance with the new Victorian Child Protection Framework.

A Child Protection Program

As noted previously, from a practical perspective, the new Victorian Child Protection Framework will require each Victorian non-government school to establish a **Child Protection Program** which sets out in detail the internal policies, procedures and workplace systems it has adopted not only to ensure compliance with its legal and regulatory obligations, but also to drive cultural change as required by the Child Safe Standards.

This represents a radical shift in the approach to child protection in Victoria, shifting the focus from a series of obligations and tasks mandated by law, for example mandatory reporting and working with children checks, to an all-encompassing culturally driven approach designed to ensure that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

Minimum Child Safe Standards for Non-Government Schools

Whilst all organisations that provide services to children are encouraged to work towards compliance with the Child Safe Standards, Ministerial Order 870 prescribes that non-government schools must implement certain policies, procedures and workplace systems as part of their registration requirements.

The actions that non-government schools must take in accordance with the Ministerial Order are as follows:

Standard 1: Strategies to embed an organisational culture of child safety

Standard 1 in the Ministerial Order requires a school's governing authority to implement strategies to embed a culture of child safety.

The rationale is that the prevention of child abuse, and effective response to child abuse incidents, requires a culture within which all staff and volunteers recognise the importance of keeping children safe and where the protection of children from abuse is embedded in everyday thinking and practice.

To comply with this Standard, a school needs to:

- ✔ document strategies to embed a culture of child safety at the school;
- ✔ allocate individuals' roles and responsibilities for achieving these strategies;
- ✔ inform the school community about the strategies and the allocated roles and responsibilities;
- ✔ implement the strategies and inform the school community about the implementation;
- ✔ periodically review the effectiveness of the strategies and continually improve them.

Standard 2: A child safety policy or statement of commitment to child safety

Standard 2 requires a school's governing authority to ensure that the school has a child safety policy, or statement of commitment to child safety, that details the values and principles that guide the school in developing policies and procedures to create and maintain a child safe school environment.

The rationale is that a child safety policy will influence organisational culture by providing an overarching set of principles that will guide the development of other organisational policies and procedures that aim to protect children from abuse.

To comply with this Standard, a school needs to develop, communicate and implement a child safety policy or statement of commitment that:

- ✔ clearly articulates the values and principles that guide it in developing a child safe school environment;
- ✔ sets out the actions the school proposes to take to:
 - demonstrate its commitment to child safety matters;
 - monitor its adherence to its child safety policy;
 - support, encourage and enable school staff, parents and children to understand, identify, discuss and report child safety matters; and
 - support or assist children who disclose child abuse, or are otherwise linked to child abuse.
- ✔ is made publicly available.

Standard 3: A child safety code of conduct

Standard 3 requires a school's governing authority to develop, endorse and make publicly available a child safety code of conduct. The rationale is that codes of conduct establish clear behavioural expectations and boundaries for personnel interacting with children.

The Standard also requires that the Code is consistent with the strategies, policies and procedures implemented in compliance with the other six Standards – again requiring schools to create a child protection program that is holistic and integrated, rather than creating a suite of standalone policies for each standard or legal requirement.

To comply with this Standard, a school needs to develop, and implement a code of conduct that:

- ✔ has the objective of promoting child safety in the school environment;
- ✔ sets standards about the ways in which adults are expected to behave with children connected with the school;
- ✔ takes into account the interests of school staff and other industry or professional codes that regulate certain staff; and
- ✔ takes into account the needs of all children including those from culturally and linguistically diverse backgrounds and children with disabilities.

Standard 4: School staff selection, supervision and management practices for a child-safe environment

Standard 4 requires a school's governing authority to implement certain human resources practices to create and maintain a child safe environment. These requirements are more comprehensive than schools' current legal obligations regarding staff selection and screening.

The rationale is that schools can over-rely on working with children checks at the expense of other essential recruitment processes such as reference checks, as well as ongoing support, supervision and training, which are all critical to managing and reducing the risk of child abuse.

To comply with this Standard, a school needs to implement human resources practices that ensure:

- ✔ each job that involves child connected work has a clear statement of the job occupant's duties, responsibilities, essential qualifications, experience (if any) and attributes;
- ✔ job applicants are informed of the school's child safe practices;
- ✔ comprehensive pre-employment screening procedures are undertaken for potential staff and volunteers that go beyond working with children check clearances;
- ✔ specific procedures are implemented relating to child protection induction for staff and volunteers;
- ✔ staff are trained with respect to the school's policies, codes, practices and procedures governing child safety; and
- ✔ ongoing procedures are in place to assess a person's performance in a job and their ongoing suitability for the role, including in relation to child safety..

Standard 5: Procedures for responding to and reporting allegations of suspected child abuse

Standard 5 builds on a school's current legislative obligations to create and implement procedures for responding to and reporting child protection incidents. The rationale is that the policies, procedures and workplace systems for reporting and responding to suspected child abuse must be clear and comprehensive to encourage staff, volunteers, families and children to report any suspected child abuse through appropriate internal channels.

To comply with this Standard, a school needs to create a set of clear procedures for responding to and reporting allegations of suspected child abuse that:

- ✔ are sensitive to the diverse characteristics of the school community;
- ✔ comply with the Standards, the Ministerial Order and other legal obligations;
- ✔ cover all forms of child abuse as defined in the Education and Training Reform Act 2006;
- ✔ apply to all allegations or disclosures of child abuse made by or in relation to a child, staff, visitors or others connected to the school;

- ✔ identify people within the school who are responsible for promptly managing the school's response to an allegation or disclosure of child abuse, responding appropriately, and monitoring the school's overall compliance with reporting procedures (Child Safety Officers/Champions);
- ✔ includes a statement that fulfilling the roles and responsibilities contained in the procedures does not displace or discharge any other legal obligations that arise if a person reasonably believes that a child is at risk of child abuse;
- ✔ clearly describe the actions the school will take to respond to an allegation of child abuse;
- ✔ do not prohibit or discourage school staff from reporting an allegation of abuse to a person external to the school;
- ✔ do not state or imply that it is the victim's responsibility to report allegations to the police or other authorities;
- ✔ do not require staff to make a judgment about the truth of the allegation of child abuse;
- ✔ do not prohibit staff from making records in relation to an allegation or disclosure of child abuse; and
- ✔ are widely available so that all children, school staff and the school community are aware of the actions the school will take in response to an allegation of child abuse.

Standard 6: Strategies to identify and reduce or remove risks of child abuse

Standard 6 requires schools to take a risk management approach to child protection at their school. The rationale is that organisations that have an active approach to their duty of care in protecting children tend to have a risk management approach and a commitment to continuous improvement. Additionally, implementation of a risk management approach is part of a school's recognition of their legal responsibility to ensure the safety of children.

To comply with this Standard, a school needs to develop and implement risk management strategies regarding child safety within the school that:

- ✔ identify and mitigate the risk(s) of child abuse in each school environment;
- ✔ take into account the nature of each school environment;
- ✔ take into account the activities expected to be conducted within each school environment (including the provision of services by contractors or outside organisations);
- ✔ take into account the characteristics and needs of all children expected to be present in that environment;
- ✔ include extensive record keeping procedures to record identified risks and specify the action(s) the school will take to reduce or remove the risks (risk controls);
- ✔ include the governing authority monitoring and evaluating the effectiveness and implementation of risk controls; and
- ✔ include the provision of guidance and training to the school's governing authority and staff, at least annually, detailing individual and collective obligations and responsibilities for managing the risk of child abuse, child abuse risks in the school environment, and the school's current child safety standards.

Standard 7: Strategies to promote child empowerment and participation

Standard 7 requires a school to have simple and accessible processes that help children understand what to do if they want to report abuse. The rationale is that children often do not report abuse because they feel uncomfortable or they do not know how to raise their concerns or allegations of abuse.

To comply with this Standard, a school needs to:

- ✔ develop strategies to deliver age appropriate education about standards of behaviour for students, healthy and respectful relationships (including sexuality), resilience, and child abuse awareness and prevention;
- ✔ promote the child safety standards required by the Ministerial Order in ways that are readily accessible, easy to understand and user-friendly to children;
- ✔ recognise that children from culturally diverse backgrounds may require specific care and support regarding child safety issues, and implement strategies to achieve this; and
- ✔ recognise that children who have any kind of disability may require specific care and support regarding child safety issues, and implement strategies to achieve this.

Next Steps for Schools

Both the DHHS and the Victorian Registration and Qualifications Authority (VRQA) have released self-auditing tools for Victorian schools to assess their preparedness to comply with the Standards. The VRQA's *Child Safe Standards Readiness Tool* provides a list of the Ministerial Order's requirements and guidance on rating a school's current level of readiness for each Standard. The DHHS has a similar self-audit tool at the end of their publication "*An Overview of the Victorian Child Safe Standards*". It is recommended that schools engage in a self-auditing process as early as possible.

While most schools will have policies and procedures in place that relate to child protection, specific compliance with the Standards, the Principles, the Ministerial Order and regulatory guidance, is likely to require a complete overhaul of a school's policies and procedures as well as its workplace systems.

How CompliSpace Can Help

At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to non-government schools in every State and Territory in Australia. Our team of lawyers and industry experts actively monitor changes to relevant laws and registration standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

The combination of the Child Safe Standards and the Ministerial Order introduces revolutionary changes to child protection obligations for non-government schools in Victoria.

In response to these changes, CompliSpace has developed a detailed Child Protection Program that systematically addresses each of the Child Safe Standards as well as related child protection legislation. The Program is designed to be tailored to the particular circumstances of each school and includes a detailed on-line child protection training course.

CompliSpace works with schools to tailor compliance and risk management systems such as the Child Protection Program to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

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