

Failure to report belief of child sexual abuse

Information sheet – September 2024

The information provided in this document is not legal advice and is designed to provide general information on the offence of *Failure to report belief of child sexual offence committed in relation to child*. This document includes information on legislative amendments that commenced on 23 September 2024. Should you require information about specific circumstances or factual scenario, legal advice should be sought.

Failure to report offence

In 2021, laws were strengthened to increase the protection of children from the risk of sexual abuse by the introduction of the offence of *Failure to report belief of child sexual offence committed in relation to child* (the failure to report offence).

This criminal offence applies if an adult fails to inform police, as soon as reasonably practicable, about information they have gained, which causes them to believe on reasonable grounds (or should cause them to believe), that a child sexual offence is being or has been committed against a child by another adult.

The offence is concerned with reporting a reasonable belief about the commission of a sexual offence by an adult, against a child under the age of 16, or a child under the age of 18 years who has an impairment of the mind.

The offence does not require an adult to report information about a sexual offence (or other sexual conduct) that is committed by a child in relation to another child.

The offence carries a maximum penalty of three years imprisonment.

An adult will be relieved of criminal liability, however, if they have a reasonable excuse for not reporting this information to police.

The law recognises and explicitly lists some circumstances which, if they exist in the case, will always excuse an adult from criminal liability if they fail to report the information to police.

The law does not limit or attempt to exhaustively identify the circumstances that provide an adult with a reasonable excuse for failing to report the information to police. Each scenario must be assessed on a case-by-case basis. Therefore, you may have a reasonable excuse although your circumstances are not explicitly recognised in the legislation.

The decision to charge and prosecute an adult for failing to report information to police is a matter for the Queensland Police Service, and in some cases, the Director of Public Prosecutions. In determining whether to prosecute an adult for this offence, police will consider whether the adult has an excuse or another defence available to them. If charged, a court will ultimately determine whether the adult has a reasonable excuse in the circumstances of the case.

In March 2024, the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* was passed by Queensland Parliament. This Act expanded the scope of the reasonable excuses that are explicitly listed in the legislation. The amendments:

- Introduce an excuse that may be relied upon by relevant professionals, acting in their professional capacity, who have a confidential professional relationship with a child. This excuse will only apply if certain other requirements are met, which are addressed further below.
- Alter an existing excuse that previously operated if an adult gained the information after the alleged victim became an adult, and if the adult reasonably believed the alleged victim did

not want the information to be disclosed to a police officer.

- The amendment allows this excuse to apply once the alleged victim turns 16 years of age (instead of when they turn 18 and become an adult), and if the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer.

These amendments to the explicitly listed reasonable excuses commenced on 23 September 2024.

More information about this offence and the legislative amendments can be found [here](#).

Frequently asked questions

What does this mean for service providers?

It is a criminal offence when any adult in Queensland, including a student who is 18 years or older, fails to report to the Queensland Police Service (police) a reasonable belief that a child sexual offence is being, or has been, committed against a child by another adult.

This means adults, including those acting in a professional capacity or a religious representative, must inform police if they reasonably believe (or should reasonably believe) that a child sexual offence is being or has been, committed against a child by another adult, **unless** they have a reasonable excuse.

It is important to note that in addition to the failure to report offence, mandatory reporting obligations also apply under other legislation, including:

- the [Child Protection Act 1999](#), chapter 2, part 1AA
- the [Education \(General Provisions\) Act 2006, chapter 12, part 10](#)
- the [Youth Justice Act 1992, part 8](#) or [9](#).

The interaction between the failure to report offence and these mandatory reporting schemes is addressed later in this document.

Reasonable belief

How is a 'reasonable belief' formed? Does this have to be informed by disclosure from the victim/survivor?

Whether a reasonable belief would be formed will always depend on the specific factual circumstances.

There is no requirement that the belief must be based on information directly from the victim-survivor of the child sexual offence.

Information to form a reasonable belief could potentially come from any source.

For example, you may observe [signs of sexual abuse](#) in relation to a child which causes you to form a reasonable belief that an offence has occurred. Alternatively, you may be an eyewitness to a child sexual offence.

Reasonable excuse

What is a 'reasonable excuse' and how does it work?

An adult has a reasonable excuse if:

- The adult believes on reasonable grounds that the information has already been disclosed to a police officer;
- The adult has already reported the information under any of the following provisions, or believes on reasonable grounds that another person has done or will do so:
 - the [Child Protection Act 1999](#), chapter 2, part 1AA;
 - the [Education \(General Provisions\) Act 2006, chapter 12, part 10](#);
 - the [Youth Justice Act 1992, part 8](#) or [9](#);
- The adult gains the information after the child turns 16 years (the alleged victim), and the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer;
- Both of the following apply:

- the adult reasonably believes disclosing the information to a police officer would endanger the safety of the adult or another person, other than the alleged offender, regardless of whether the belief arises because of the fact of the disclosure or the information disclosed;
- failure to disclose the information to a police officer is a reasonable response in the circumstances; or
- Both of the following apply:
 - the adult gains the information;
 - as a relevant professional while acting in the adult's professional capacity; and
 - in the course of a confidential professional relationship with the child in which there is an express or implied obligation of confidentiality between the adult and the child;
 - the adult reasonably believes there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.

To establish an excuse where a report has already been made, do I need to make inquiries to confirm this?

The specific excuse only requires a reasonable belief that the information has been or will be reported. It would therefore not be reasonable to expect onerous inquiries and checks to be made.

What happens if a lawyer advises me that I do not need to report under the offence?

If a person seeks legal advice about their obligations and acts in good faith not to report based on this advice, it would usually be considered a reasonable excuse.

Do I have a reasonable excuse if a child informs me about a child sexual offence committed against them in the past and

expresses that they don't want to report it to the police?

You will have a reasonable excuse if you gained the information after the child (the alleged victim) turned 16 years of age, and if you reasonably believe the child does not want the information reported to police.

Otherwise, you may have a reasonable excuse if:

- you reasonably believe that reporting the offence would endanger yourself or another person (other than the offender), and a failure to report the information is a reasonable response.
- you reasonably believe the offence has already been reported to police.
- you have already reported the information under the *Child Protection Act 1999*, the *Education (General Provisions) Act 2005* or the *Youth Justice Act 1992* – or if you reasonably believe that another person has or will do so.
- you are a relevant professional who gained the information in your professional capacity, in the course of a confidential professional relationship with the child **and** you reasonably believe there is no real risk of serious harm to the child or any other child in not reporting the information to police.

The reasonable excuses that are explicitly listed in the law are not exhaustive. Therefore, you may still have a reasonable excuse depending on the particular circumstances.

Is fear of domestic and family violence or violence towards my children a reasonable excuse? If so, does it cover physical and non-physical abuse and does it need to be from the alleged offender?

Where a person reasonably believes that their safety, or the safety of someone else (such as their children), would be endangered because of reporting, they have a reasonable excuse. This could be a fear of physical or emotional/psychological harm and harm from anyone, not just the alleged offender.

Is there a requirement to have evidence of safety concerns to establish a reasonable excuse for not reporting? For example, a

reasonable belief that myself or another person would be endangered because of reporting (for instance, evidence of a fear of domestic and family violence or other types of violence)?

Whether a matter is charged and subsequently prosecuted is a matter for the Queensland Police Service and Director of Public Prosecutions. Guidelines for determining whether a matter should be prosecuted are based on a two-tiered test relating to the public interest and sufficiency of evidence. Exercise of this discretion will include consideration of whether a defence or excuse may be available.

Therefore, if any evidence of safety concerns exist, these will be considered in determining whether a person has a reasonable excuse for not reporting as required. Such evidence may include third party evidence, such as evidence from domestic and family violence service providers where available, or it may include evidence from the adult themselves about their fear of domestic and family violence or other danger.

If a decision is made to charge and prosecute a matter, consideration of whether a reasonable excuse exists will be determined by a court.

Does the offence apply to me if I have a mandatory child safety obligation to report child sexual abuse?

The obligation to report applies to all adults unless they have a reasonable excuse.

It is a reasonable excuse to not report where the adult who received the information has already reported the information under obligations in the *Child Protection Act 1999*, the *Education (General Provisions) Act 2006*, or the *Youth Justice Act 1992*, or reasonably believes another person has or will do so.

There is no need to make duplicate reports and if you have reported the offence to child safety officers or the police under other obligations, or reasonably believe that someone else has or will do so, you have a reasonable excuse and do not need to report under the offence.

The new 'relevant professional' excuse

I know the child in my professional capacity – can I rely on the new reasonable excuse that is explicitly provided for relevant professionals?

The new reasonable excuse that is explicitly recognised by the law will only apply to you if four criteria are met:

1. you must be a relevant professional; **and**
2. you must have received the information, which causes you to believe that a child sexual offence has been (or is being) committed in your capacity as a relevant professional, **and**
3. you must have a confidential professional relationship with the child in which there is an express or implied obligation of confidentiality between you and the child; **and**
4. you must reasonably believe there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.

What is a 'relevant professional'?

A relevant professional is:

- A medical practitioner;
- A person registered under the Health Practitioner Regulation National Law to practise in psychology profession, other than as a student;
- A person registered under the Health Practitioner Regulation National Law to practise in the registered nurse's division of the nursing profession, other than as a student;
- A person registered under the Health Practitioner Regulation National Law to practice in the midwifery profession, other than as a student;
- A person who is a member of the Australian Association of Social Workers Ltd CAN 008 576 010;
- A counsellor; or
- A person who is a class of persons prescribed by regulation.

What is a ‘counsellor’?

A counsellor means a person who:

- Has undertaken training or study, or has experience, that is relevant to the process of counselling other persons; and
- In the course of the person’s paid or voluntary employment, other than as religious representative, counsels another person.

What does it mean to ‘counsel’ a person?

To *counsel* a person means:

- To listen to and give verbal or other support, help or encouragement to the person, whether one-on-one or in a group; or
- To advise, give therapy to or treat the person, whether one-on-one or in a group.

Religious representative

What is a ‘religious representative’?

The new reasonable excuse that applies to relevant professionals does not apply (meaning it is not available) to someone who undertakes counselling as a religious representative. A religious representative means a person who:

- Is a member of –
 - an organised religion; or
 - a religious group, even if the group is not part of, or does not consider itself to be a part of an organised religion; and
- Holds a position in the religion or group that allows the person to hold themselves out as a representative of the religion or group.

Confidentiality and the offence

What if the information is privileged? For example, communication between my lawyers and I – do my lawyers need to report under the offence?

The new offence is not intended to override privilege. This means that if the information is subject to legal professional privilege the lawyer

does not need to report it under the offence. However, whether a privilege, such as legal professional privilege applies, will need to be considered in light of all the surrounding facts and circumstances and the privilege will not necessarily apply simply to any communication between a person and their lawyer.

Does the sexual assault counselling privilege (SACP) cover all information provided in a counselling setting?

The SACP is an evidential privilege established under the *Evidence Act 1977* (Evidence Act). It operates to prevent production and other disclosure of ‘a protected counselling communication’ (as defined in the Evidence Act) in connection with certain legal proceedings.

Given that the SACP is limited to specific contexts and is not a common law protection (unlike other types of privileges), it may have a limited application in relation to information that triggers the failure to report offence.

However, there may be circumstances where a disclosure is made in the context of a counselling relationship and the counsellor may have a reasonable excuse for not reporting.

For example, if the victim of child sexual abuse is now over the age of 16 and informs a counsellor that they don’t want it reported; if the counsellor reasonably believes it has already been reported to police; or if the counsellor meets the legal requirements associated with the excuse that applies to “relevant professionals” (refer to page 4 of this document).

What happens if I am bound by an obligation of confidentiality – will I be liable for reporting information that I must otherwise keep confidential?

The obligation to report means that all adults have a responsibility to report information that they have gained leading to a reasonable belief a child sexual offence has or is occurring. This requirement to report arises even where there is an obligation of confidentiality unless there is a reasonable excuse.

The legislation expressly provides that where information is disclosed in good faith the adult

who reported the information is not liable civilly, criminally or under an administrative process for making the disclosure.

Making a report

How do you report a child sexual offence to police?

To report an offence, contact PoliceLink on 131 444.

If it's an emergency, call Triple Zero (000) and ask for police.

Find out more about reporting child sexual abuse and other forms of child abuse [here](#).

When do I need to report information to the police under the new offence?

The information must be reported to police as soon as 'reasonably practicable' after the belief has formed.

This means there is some flexibility to recognise that in some circumstances there may be difficulties with making a report immediately after gaining the information. For example, the person may not have access to any communications to make a report at the time the information is received.

What information needs to be reported to police?

The information to be reported is all the information that leads to the reasonable belief that a child sexual offence has or is occurring.

Is it the responsibility of an organisation to make a report on behalf of employees?

The obligation to report lies with all adults as individuals and it does not rest with organisations or corporations. However, there may be circumstances where an individual has a reasonable excuse for not reporting. For example,

if there is a clearly defined process or policy in the workplace that employees follow to inform management of disclosures about child sexual offending. If the employee has complied with that process, they **may** have a reasonable excuse for not personally reporting the information to police.

Do I need to inform the victim-survivor that a report has been made?

There is no requirement as part of the offence to advise the victim-survivor that a report is being or has been made. However, there may be other reasons and matters that are relevant to a decision about informing clients or patients about reports made about the information they have provided.

Once an offence is reported, is there a requirement to make a formal statement to police?

What happens with the information and next steps after a report is made will be determined by the Queensland Police Service. You may be contacted by police subject to the outcome of investigative processes.

Will all reports about child sexual abuse be investigated by police and will I be called to testify in any subsequent court proceedings if I make a report?

If a person is charged with an offence following the report, then there may be a requirement for the person who has relevant information to provide evidence in court. This will depend on the investigation and all of the evidence that is assembled as part of the case. If you are required to take any further action, such as provide evidence in subsequent proceedings, police will inform you of this.

Further information

More information about this offence can be found at www.qld.gov.au/NewSexualViolenceLaws2024