# Child Safety and Wellbeing Policy

**Department:** People and Culture

**Responsible Officer:** Director, People and Culture

**Accountable Director:** Director, People and Culture

**Effective date:** 13 June 2022

**Date of next review:** 1 July 2024

**Version:** 1.0

## Purpose and scope

The Victorian Government introduced the Child Safe Standards (the standards) under the *Child Wellbeing and Safety Act 2005* (Vic), which are compulsory minimum standards for organisations that provide services for children and young people (or are used by children and young people), to help protect them from harm.

The purpose of this policy is to ensure that all staff, consultants, contractors, students, or volunteers engaged by Victoria Legal Aid (VLA) are aware of VLA’s commitment, and their obligation, to comply with the Child Safe Standards in providing a child safe organisation.

Staff should read this policy together with the VLA Child Safety Code of Conduct.

1. Who this policy applies to?

This policy applies to all VLA staff (including students, volunteers and consultants, but excluding private lawyers we fund) engaged by VLA (see definition below).It also applies to a broad range of locations where direct or incidental interaction with children and young people may occur. For example:

* VLA premises
* child protection, family law and family violence systems
* youth justice systems
* family dispute resolution services
* school and educational settings through community legal education services
* adult corrections systems through their parents, carer or other means
* mental health, hospital, residential care systems
* courts and tribunals
* Justice Service Centres.

1. Child abuse may constitute staff misconduct

It is important that all staff are aware of their obligations. Suspected abuse of children or young people may constitute staff misconduct, even if occurring outside of work hours and not on VLA premises, if it occurs in the course of work and/or they are acting in a work capacity.

1. Interaction with VLA Practice Standards and the Australian Solicitor’s Conduct Rules

This Child Safety and Wellbeing Policy and Child Safety Code of Conduct applies to VLA staff. Legal staff at VLA are also bound by their professional practice obligations in [VLA’s Practice Standards](https://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/our-practice-standards) and the [Australian Solicitor’s Conduct Rules](https://www.lsbc.vic.gov.au/lawyers/practising-law/professional-obligations/rules-and-compliance). A lawyer has a duty of client confidentiality, and the lawyer-client relationship is protected by legal professional privilege which can only be waived by a child or young person.

If a child discloses information about child abuse to a VLA lawyer, the VLA lawyer may seek permission from the child to report the issue or allegation. If the child does not consent, proceeding to report the disclosure to relevant authorities is permitted under strict circumstances set out in the Australian Solicitor’s Conduct Rules, namely where the law permits or compels disclosure, (Clause 9.2.2), or for the purpose of preventing *imminent serious physical harm* to the client or to another person (clause 9.2.5)

Lawyers are not compelled to report protective concerns to Child Protection under Victorian law. However, the *Children Youth and Families Act* 2005 permits any person to report protective concerns and provides protection against any action for unprofessional conduct or breach of professional ethics if the report is made in good faith (see sections 183 and 189 of the [*Children Youth and Families Act* 2005](https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/130)).

Where a VLA staff member is unsure of their obligations around breaching confidentiality, they must consult with their manager and Internal Legal Services if they intend to report abuse under the Australian Solicitor’s Conduct Rules clauses 9.2.2 and 9.2.5 as this should be determined on a case by case basis.

## Definitions

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| Definition | Meaning |
| VLA Staff | Includes employees, consultants, volunteers, students and any individuals or groups undertaking activity for or on behalf of VLA excluding (for the avoidance of doubt) private legal practitioners undertaking legally aided and duty lawyer work. |
| Child | Means a child or young person under the age of 18 years. |
| Child Abuse | Includes:  (a) any act committed against a child involving -   1. a sexual offence; or 2. an offence under section 49M (1) of the *Crimes Act 1958*; and   (b) the infliction, on a child, of -   1. physical violence 2. serious emotional or psychological harm; and   (c) the serious neglect of a child. |
| Child Safe Standards | As made under section 17(1) of the *Child Wellbeing and Safety Act* 2005 (Vic) |

## Objectives

The objectives of this policy are:

1. to communicate VLA’s commitment to child safety, in a way that can be understood by all, including children and young people
2. to ensure VLA staff understand and comply with the standards in their work, and are aware of the Child Safety Code of Conduct
3. to explain key features of VLA’s approach to meeting the standards including the interaction with legal staff’s existing obligations pursuant to legal profession standards.

## Statement of Commitment

VLA is committed to the safety and wellbeing and rights of children and young people.

VLA:

* will uphold the rights of children and young people who have contact with the organisation so that they feel heard on matters that are important to them, and relevant to their safety so that they feel safe and protected
* has zero tolerance for child abuse and will take all allegations of suspected child abuse and child safety concerns very seriously, ensuring such conduct is dealt with in accordance with VLA policies, procedures, and the law
* is committed to preventing child abuse and identifying risk early, and removing and reducing these risks
* will actively work to listen to and empower children and young people who come into contact with the organisation
* has zero tolerance for racism and has a Cultural Diversity and Anti-Racism Plan in place to address racism and a complaints process to respond, including consequences
* will provide a culturally safe environment for Aboriginal and/or Torres Strait Islander children and young people and those from culturally and/or linguistically diverse backgrounds, by responding to their needs and consider their requests for what is required for them to feel they are in a safe environment
* will provide a safe environment for, and consider the needs of, children and young people with a disability, and consider their requests for what is required for them to feel they are in a safe environment
* will provide a safe environment for, and consider the needs, of children and young people who have suffered trauma, and consider their needs in providing that environment
* will provide a safe environment for, and consider the needs of, LGBTIQA+ and gender diverse children and young people
* will provide a safe environment for, and consider the needs of, children and young people experiencing compounding disadvantage due to intersectional characteristics, for example, where there are traumatic experiences, such as being remanded in custody or placed in out of home care
* has legal obligations to contact authorities when there are concerns about a child or young person’s safety, except where legal staff representing a child may have professional obligations around confidentiality and disclosures made in the course of their work.
* has robust human resources and recruitment practices for all staff and volunteers
* will provide training and education to staff and volunteers on the Child Safe Standards, to create a child safe organisation.

VLA requires all staff to uphold these commitments. VLA has specific policies, procedures, and training in place to achieve these commitments.

## VLA’s approach to child safety

This section provides an overview of the measures in place to support child safety across VLA.

1. Building a child safe culture

All staff have a responsibility to support VLA’s commitment and obligation to creating a child safe environment.

2. VLA Child Safety Code of Conduct

## All staff must make sure that they display appropriate standards of behaviour towards children and young people, ensuring their rights are respected, they feel safe and protected and their concerns are taken seriously.

## VLA’s Child Safety Code of Conduct outlines appropriate standards of behaviour by adults towards children and young people. It aims to protect children and young people and reduce opportunities for abuse or harm to occur. It also helps staff by providing them with guidance on how to best support children and young people and how to avoid or better manage difficult situations.

## 3. Training and Supervision

## VLA is committed to ensuring that staff have access to appropriate professional learning and training opportunities to develop and maintain an understanding of child safety and prevention of harm. To support staff, relevant training programs, including VLA’s induction program, will include appropriate content which outlines VLA’s expectations and commitment to child safety.

## In addition to position specific training requirements, training will be made available to staff who are likely to come into regular contact with children and young people. This training will include how to identify, and report suspected child abuse.

## 4. Recruitment

The recruitment and selection of staff aims to support VLA’s commitment to promoting an organisational culture of child safety. VLA has robust recruitment and selection processes. VLA carries out reference checks and police record checks to ensure that the right people are recruited.

For positions that involve contact with children and young people, recruitment is based on selection criteria which clearly demonstrate commitment to child safety to assist VLA in ensuring that the most appropriate staff are employed. Selection policies and guidelines, including pre-screening activities reflect a commitment to a child safe environment.

## 5. Criminal record and Working with Children Check policies

VLA’s [Criminal Record Check Guideline and Related Policy](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/employment/recruitment-and-selection/Pages/employment-disclosure-and-police-check-policy.aspx) details the requirement for all prospective/ new staff members to undertake a National Criminal History Record Check prior to commencement of employment at VLA.

Staff engaged in work which involves direct contact (not incidental or occasional direct contact) with children as defined in the *Worker Screening Act (Vic) 2020* (including students and volunteers), are required to hold a Working with Children Check (WWCC) and to provide evidence that the WWCC is valid at all times whilst employed by VLA. The obligations for people engaged in work directly with children around obtaining and maintaining a WWCC are set out in VLA’s [Working with Children Check Policy](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/working-with-clients/Pages/working-with-children-check-policy.aspx).

## Reporting a child safety concern or complaint

VLA works to ensure that:

(i) all children and young people know who to tell if they observe or are a victim of abuse, and

(ii) families, staff, students, and volunteers understand their obligations and know how to report suspected abuse.

VLA takes all allegations of child abuse seriously. It is committed to ensuring that such allegations are addressed in accordance with VLA processes for responding to and reporting suspected child abuse.

## 1. Staff reporting suspected child abuse

In response to the [Betrayal of Trust](https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/betrayal-of-trust-implementation) report the Victorian Government has strengthened laws to protect children from sexual abuse and exposure to sexual offenders. This is in recognition of the shared community responsibility to protect children from abuse and to provide a safe environment for children to develop, learn and play.

Section 327 of the *Crimes Act 1958* requires all adults to report to police any reasonable belief that a sexual offence has been committed by an adult against a child aged under 16, unless a reasonable excuse or exemption applies (see below).

Section 49O of the *Crimes Act 1958* requires people in positions of authority within VLA to protect a child under the age of 16 from criminal sexual abuse. They will commit an offence under this section if they know of the risk of abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

If a staff member has a reasonable belief that suspected child abuse has occurred, they should first report it to their manager or Internal Legal Services and to the Child Safety Officer (CSO). The action to be taken will need to be determined on a case by case basis.

**Child Safety Officer**

The CSO is the Director, People and Culture. The CSO can be contacted by email at childsafe@vla.vic.gov.au or by phone on 9269 0621.

If the child is in *imminent* harm, and the incident may be a criminal offence, it may also be reported to Child Protection, in the Department of Families, Fairness and Housing or to the police by calling 000.

The following suspected conduct may constitute a criminal offence:

1. any act committed against a child involving -
2. a sexual offence; or
3. an offence under section 49M (1) of the *Crimes Act 1958*; and
4. the infliction, on a child, of -
5. physical violence
6. serious emotional or psychological harm; and
7. the serious neglect of a child.

There are three exceptions to reporting any suspected abuse as follows:

1) where it is a known allegation (e.g., where a staff member is working on a child protection case)

2) where confidentiality and privilege apply (e.g., see the specific exception under s.327 (7) b of the *Crimes Act* (Vic))

3) where the allegation is unconnected to VLA or the staff member’s role (e.g., clients or people unrelated to VLA or where it occurs outside the course of a staff member’s work).

## 2. A child or young person making a complaint of suspected child abuse

Please refer to VLA’s [Complaints Policy](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.legalaid.vic.gov.au%2Fsites%2Fwww.legalaid.vic.gov.au%2Ffiles%2Fvla-complaint-policy-05-10-21.docx&wdOrigin=BROWSELINK) for further information on the process for reporting and responding to allegations of suspected child abuse.

For VLA to perform its functions under the standards, we may be required to collect personal information about VLA staff and disclose that information to a third party where required for a formal investigation. We will advise VLA staff that we are doing this unless this places the child or young person or staff member at risk.

Personal information which is collected and/or disclosed about an individual will be managed in accordance with the *Privacy and Data Protection Act 2014*, *Health Records Act 2001* and the *Child Wellbeing and Safety Act 2005*.

## Approval

This policy was approved by the Executive Management Group on 24 May 2022.

The contents of this document represent the current policy of VLA and reflect its current practices and experience.

This policy is subject to biennial review and will be altered (and the alterations communicated to users) as, and when, appropriate in order to ensure that it remains current.

Changes to this policy can be requested by a Directorate by presenting a suitable case to the Director, People and Culture.

## Contact

The following people may be contacted in relation to the matters arising under this policy:

* Child Safety Officer, Director, People and Culture 9269 0621 – childsafe@vla.vic.gov.au
* People and Culture Advisory team – [pcadvisoryservices@vla.vic.gov.au](mailto:pcadvisoryservices@vla.vic.gov.au)
* Commission for Children and Young People - <https://ccyp.vic.gov.au>

## Related documents

* VLA Child Safety Code of Conduct
* Code of Conduct for Victorian Public Sector Employees 2015
* *Public Administration Act 2004*(Vic)
* *Child Wellbeing and Safety Act 2005*(Vic)
* *Children Legislation Amendment (Reportable Conduct) Act* *2017*(Vic)
* Victoria Legal Aid Enterprise Agreement 2020 – 2024
* *Privacy and Data Protection Act 2014*(Vic)
* *Health Records Act 2001* **(**Vic)
* *Worker Screening Act 2020* (Vic)
* [VLA Complaints Procedure](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/working-with-clients/Pages/our-complaint-policy-and-procedure.aspx)
* [VLA Working with Children Check Policy](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/working-with-clients/Pages/working-with-children-check-policy.aspx)
* [VLA Recruitment and Selection Policy](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/employment/recruitment-and-selection/Pages/staff-resourcing-and-recruitment.aspx)
* VLA Child Safe Policy (above)
* [VLA Practice Standards](https://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/our-practice-standards#:~:text=Victoria%20Legal%20Aid%E2%80%99s%20%28VLA%27s%29%20practice%20standards%20apply%20to,efficient%20delivery%20of%20high%20quality%20legal%20aid%20services.)
* VLA Misconduct Policy
* [Criminal Record Check Guideline and Criminal Record Check Policy](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/employment/recruitment-and-selection/Pages/employment-disclosure-and-police-check-policy.aspx)

## Keywords

[Child Safe Standards](https://ccyp.vic.gov.au/child-safe-standards/)

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Child Safety Code of Conduct

*Child Wellbeing and Safety Act* *2005*(Vic)

## Version control

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