

## Fact Sheet

# Statutes Amendment (Child Sexual Abuse)

## Act 2021

This fact sheet sets out the legal obligations that result from the *Statutes Amendment (Child Sexual Abuse) Act 2021*, which is based on recommendations made the Royal Commission into Institutional Response to Child Sexual Abuse. It applies to all employees, contractors, consultants, volunteers and students on placement in SA Health facilities.

### Summary

The *Statutes Amendment (Child Sexual Abuse) Act 2021* commenced on 1 June 2022 and amended the *Criminal Law Consolidation Act 1935* to introduce criminal offences for:

- failure to report suspected child sexual abuse (maximum penalty three years imprisonment)
- failure to protect children from sexual abuse (maximum penalty 15 years imprisonment)

### Failure to report suspected child sexual abuse

Section 64A of the amended Act imposes a legal obligation on all SA Health members of staff to report to South Australia Police (SAPOL) if they know or suspect that another SA Health employee is, has, or is likely to sexually abuse a child (defined as a person under 18 years of age).

In order to make a report to SAPOL, staff must attend and report to their local police station and arrange to give a formal statement, and then keep a record of the resulting police report number. If an incident requires immediate police attendance, staff must contact 131 444 or, in the case of an emergency or life-threatening situations, 000.

If SA Health staff fail to report to SAPOL in the above circumstances, it may result in them being guilty of a criminal offence with a maximum penalty of three years imprisonment.

In addition, the amended Act also creates a criminal offence if SA Health staff do not make a report to SAPOL in circumstances in which it would be reasonable to expect that they *should* have suspected that another SA Health member of staff is, has, or is likely to sexually abuse a child.

Again, failure to report child sexual abuse in the above circumstances may result in SA Health staff being guilty of a criminal offence with a maximum penalty of three years imprisonment.

Given the low threshold of criminal responsibility in situations where a member of staff *should* have suspected child sexual abuse (i.e. this is a much lower threshold than actually having knowledge or actually having a suspicion), it is recommended that staff report relevant concerns regarding child sexual abuse to SAPOL if they are in any doubt as to whether their suspicion is reasonably grounded.

If staff report suspected child sexual abuse to SAPOL they are still required to make a Child Abuse Report Line (CARL) notification to the Department for Child Protection, as per the *Children and Young People (Safety) Act 2017*. Fulfilling one of these requirements does not negate the need to fulfill the other.

Staff who report suspected child sexual abuse to SAPOL under the *Criminal Law Consolidation Act 1935* are afforded the same confidentiality as when a CARL notification is made.



It is a defence to the charge of failure to report sexual abuse if a member of staff has a reasonable excuse, or if they believe on reasonable grounds that:

- the matter has already been reported to SAPOL, or
- a mandatory Child Abuse Report Line (CARL) notification has been made under the *Children and Young People's (Safety) Act 2017*

Staff who report such a matter to SAPOL in good faith:

- incurs no civil or criminal liability for making the report, and
- cannot be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct, for making the report

## Failure to protect children from sexual abuse

Section 65 of the amended Act also imposes a legal obligation on all SA Health staff to take action to protect children if they are aware that there is a substantial risk that another SA Health member of staff will engage in the sexual abuse of children.

Failure to protect children from sexual abuse in the above circumstances may result in SA Health staff being guilty of a criminal offence with a maximum penalty of 15 years imprisonment.

The Royal Commission into Institutional Response to Child Sexual Abuse, in its [Criminal Justice Report Parts III – VI](#) (p 227), gives examples of where the failure to protect offence may occur:

- where a person in authority who knows that an adult associated with the organisation poses a substantial risk to children, and moves that adult from one location in an organisation to another location where they still have contact with children, is likely to be committing the offence
- where a person in authority employs someone in a role that involves contact with children, when the person in authority knows the employee left their last job because of allegations of sexually inappropriate behaviour involving children

## Relevant sections of the legislation

Under section 64A(1) of the *Criminal Law Consolidation Act 1935*:

*“A prescribed person is guilty of an offence if the person knows, suspects or should have suspected that another person (the abuser)—*

*(a) has previously engaged in the sexual abuse of a child while an employee of the institution or, if the prescribed person provides out of home care, while also providing out of home care, and—*

*(i) the child is still under the age of 18 years; or*

*(ii) the abuser is still an employee of the institution or another institution or still provides out of home care; or*

*(iii) the sexual abuse occurred during the preceding 10 year period; or*

*(b) is an employee of the institution or, if the prescribed person provides out of home care, is providing out of home care, and is engaging, or is likely to engage, in the sexual abuse of a child,*

*and the prescribed person refuses or fails to report that to the police.”*

In the above section, “prescribed person” means an adult who:

*“(a) is an employee of an institution, including a person who—*

*(i) is a self-employed person who constitutes, or who carries out work for, an institution; or*

- (ii) carries out work for an institution under a contract for services; or
  - (iii) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
  - (iv) undertakes practical training with an institution as part of an educational or vocational course; or
  - (v) carries out work as a volunteer for an institution; or
  - (vi) is of a class prescribed by the regulations; or
- (b) provides out of home care”

Section 65(1) of the *Criminal Law Consolidation Act 1935*:

“A prescribed person is guilty of an offence if—

(a) the prescribed person knows that there is a substantial risk that another person (the abuser) who is also an employee of the institution or, if the prescribed person provides out of home care, who is also a provider of out of home care, will engage in the sexual abuse of a child—

(i) who is under 17 years of age; or

(ii) in relation to whom the abuser is in a position of authority; and

(b) the prescribed person has the power or responsibility to reduce or remove that risk but negligently fails to do so.”

In the above section, a person is in a “position of authority” in relation to a child (person under the age of 18 years) if:

“the person is a health professional or social worker providing professional services to the child”

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## For more information

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