



New offences for failing to report and protect children from child sex offences

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New offences for failing to report and protect children from child sex offences came into effect in Queensland on 5 July 2021. The creation of these new offences means that certain persons have important positive obligations to reduce or remove the risk of a child being sexually offended against, and to report child sexual offences to the police – even when there is only a ‘belief’ that an offence has been committed.

In September 2020, Parliament passed the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (**‘the Act’**) following recommendations made in the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Act inserted several new offences into the Criminal Code, including the following:

1. Failing to protect child from a child sexual offence under s 229BB (**‘Failure to Protect’**); and
2. Failing to report belief of child sexual offence committed in relation to child under s 229BC (**‘Failure to Report’**).

The offence of Failure to Protect (s 229BB)

The Failure to Protect offence makes it an offence for an accountable person who has the requisite knowledge to *‘wilfully or negligently fail to reduce the risk’* that another adult (the alleged offender) will commit a child sexual offence.

Definition of ‘accountable person’ - who does the offence apply to?

An 'accountable person' is broadly defined as an adult who is associated with an institution. An associate of an institution includes:

- owners;
- managers;
- employees;
- volunteers; and
- adults engaged in the delivery of a service to a child who is under the care, supervision or control of the institution.

An 'institution' is broadly defined as an entity that provides services to children or operates a facility for, or engages in activities with children under the entity's care, supervision or control.

When does the obligation to reduce or remove the risk arise?

The obligation to reduce or remove the risk of a child sexual offence arises when the following circumstances are met:

1. The person knows there is a significant risk that another adult (the alleged offender) will commit a child sexual offence in relation to a child;
2. The alleged offender is associated with an institution or is a regulated volunteer;
3. The child is under the care, supervision or control of an institution;
4. The child is either under 16 years or a person with an impairment of the mind; and
5. The person has the power or responsibility to reduce or remove the risk.

Therefore, the offence requires the accountable person to have knowledge of a '*significant risk*' of a child sexual offence. Knowledge of a significant risk involves a standard somewhere between a trivial risk and a risk likely to materialise.

The accountable person may form the requisite knowledge having regard to the circumstances of the case, including the following factors:

1. The likelihood that the child will become the victim of a sexual offence;
2. The nature of the relationship between the child and the alleged offender; and
3. The background of the alleged offender (including any previous allegations of similar misconduct).

When does an accountable person wilfully or negligently fail to reduce or remove a risk?

The offence requires the accountable person to have wilfully or negligently failed to reduce or remove the risk.

Therefore, the accountable person's failure to take appropriate action must either be wilful or alternatively, fall short of the standard of care that an ordinary, reasonable person in the situation of the accountable person would take.

What action should be taken to reduce or remove the risk?

The appropriate action that can be taken to reduce the risk that the alleged offender will commit a child sexual offence will depend on the circumstances but may include contacting the police and/or directing that the alleged offender to cease contact with the relevant child.

What is the penalty for Failure to Protect?

The Failure to Protect offence is a crime with a maximum penalty of five years imprisonment.

The offence of Failure to Report (s 229BC)

The Failure to Report offence makes it an offence for an adult to "*fail to disclose information to a police officer*" as soon as reasonably practicable after gaining information that would cause the adult to reasonably believe that a child sexual offence is or has been committed against a child (without reasonable excuse).

Who does the offence apply to?

In contrast to the Failure to Protect offence, the Failure to Report offence applies to all adults, irrespective of the person's employment.

When does the obligation to report a child sexual offence to police arise?

The obligation to report a child sexual offence arises when the following circumstances are met:

1. The adult gains information that causes the adult to believe on reasonable grounds, or ought reasonably to cause the adult to believe, that a child sexual offence is being or has been committed against a child by another adult; and
2. At the relevant time, the child is or was under 16 years or a person with an impairment of the mind.

Therefore, the offence requires the person to have a '*reasonable belief*' that a child sexual offence is or has been committed.

A reasonable belief is a belief that a reasonable person would form in the same position and with the same information. For example, an adult may form a reasonable belief if a child disclosed that they have been sexually abused or the child displays signs of sexual abuse.

Reporting of offences that occurred in the past

The obligation to report information about child sexual offences only applies to information gained on or after 5 July 2021 (when the offence came into effect). This means the person does not have to report information gained before 5 July.

However, the obligation still applies to any information gained after 5 July which relates to abuse that occurred before the commencement date.

What is a reasonable excuse for not reporting a child sexual offence to police?

A person is not guilty of the Failure to Report offence if they have a reasonable excuse for not reporting the child sexual offence to police. However, the onus of raising a reasonable excuse rests with the person. The provision contains a non-exhaustive list of reasonable excuses, some of which include:

1. the adult believes on reasonable grounds that the information has already been disclosed to a police officer; or
2. the adult has already reported the information under other provisions, or believes on reasonable grounds that another person has done or will do so; or
3. the adult gains the information after the child becomes an adult (the alleged victim), and the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer.

What is the penalty for Failure to Report?

The Failure to Report offence is a misdemeanour with a maximum penalty of three years imprisonment.

Religious confession is not a defence or reasonable excuse

In relation to both the new offences, it does not matter that the accountable person/adult gained the relevant knowledge/information during, or in connection with, a religious confession.

Get help from a criminal lawyer

If you're being investigated or have been charged, in relation to child sexual offences, including these two new offences, it is [crucial that you seek legal advice early](#).

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