



Supporting Information

Supplementary tables

This supporting information is part of the submitted manuscript and has been peer reviewed. It is posted as supplied by the authors.

Supporting information to: Mathews B, Sanci LA. Doctors' criminal law duty to report consensual sexual activity between adolescents: legal and clinical issues. *Med J Aust* 2021: 215; doi: 10.5694/mja2.51163.

Table 1 Exemptions in criminal law duties to report child sexual offences

Jurisdiction	Criminal law duty to report sexual offences	Application of duty to report	Specific general exemption for health practitioners	Exemption from duty if person requests no disclosure	Exemption from duty if confidential communication to health practitioner	Exemption from duty if other reasonable excuse*
Victoria	<i>Crimes Act 1958</i> , s 327 (commenced 27 Oct 2014)	An adult who has a reasonable belief a sexual offence has been committed against a child under 16 by a person over 18: s 327(2)	No	Yes (if victim is aged 16 or over): s 327(5)	Yes, but only for the victim, not for the offender (see Box 3 in main text of this article): s 327(7)(c) (express exemption for a “confidential communication”, with other statutory provisions)	Yes: s 327(2), (3)
New South Wales	<i>Crimes Act 1900</i> , s 316A (commenced 31 Aug 2018)	An adult who knows, believes, or reasonably ought to know a child abuse offence has been committed: s 316A(1)	Yes: s 316A(6), (7); and Crimes Regulation 2020, r 4(b) (medical practitioners), r 4(c) (psychologists), r 4(d) (nurses)	Yes (if victim is aged 18 or over): s 316A(2)(f)	Yes, through specific general exemption in ss 316A(6)-(7), with Crimes Regulation, r 4(b)-(d)	Yes: s 316A(2), (3)
Australian Capital Territory	<i>Crimes Act 1900</i> , s 66AA (commenced Sept 2019)	An adult who believes a sexual offence has been committed against a child: s 66A(1)	No	Yes (if victim is aged 18 or over): s 66AA(2)(a)(ii)	Yes, arguably, by implication: s 66AA(2)(e) states the duty does not apply “if giving the information ... would disclose information in relation to which privilege may be claimed under a law in force in the Territory”	Yes: s 66AA(2)(g)
Tasmania	<i>Criminal Code 1924</i> , s 105A (commenced 2 Oct 2019)	An adult who believes a sexual offence has been committed against a child: s 105A(2)	No	Yes (if victim is aged 18 or over): s 105A(3)(b)	Yes, arguably, by implication: s 105A(4)(b) includes as a “reasonable excuse” for non-disclosure a situation where “reporting the information would disclose information in respect of which there is a lawful claim or right of privilege”	Yes: s 105A(2), (4)
Queensland	<i>Criminal Code 1899</i> , s 229BC (Act passed 14 Sept 2020; not yet commenced)	An adult gains information that causes them to believe, on reasonable grounds, or ought reasonably to cause them to believe, that a child sexual offence has been committed by an adult: s 229BC(1)	No	Yes (if victim is aged 18 or over): s 229BC(4)(c)	No expression exclusion, and no comparable exclusion by implication	Yes: s 229BC(4)

* What constitutes a “reasonable excuse” is unclear — see discussion in main text of this article.

Table 2 Exemptions for confidential communications to health professionals

Jurisdiction	Legislation	Excludes duty if confidential communication to health practitioner	Practitioners covered
Victoria	<i>Crimes Act 1958</i>	Yes: s 327(7)(c) express exemption for a “confidential communication”, together with: ▪ definition of “confidential communication” in <i>Evidence (Miscellaneous Provisions) Act 1958</i>, s 32B; and ▪ definition of “registered medical practitioner” in <i>Evidence (Miscellaneous Provisions) Act 1958</i>, s 32B; and ▪ definition of “a person registered to practise in the medical profession” in <i>Health Practitioner Regulation National Law (Victoria) Act 2009</i>, s 4; and <i>Health Practitioner Regulation National Law Act 2009</i> (Qld), Schedule s 5	A registered medical practitioner or counsellor, which extends to registered practitioners including those in the medical, nursing, pharmacy and psychology professions
New South Wales	<i>Crimes Act 1900</i>	Yes, through specific general exemption in ss 316A(6), (7), together with Crimes Regulation, r 4(b)-(d)	Medical practitioners, psychologists and nurses
Australian Capital Territory	<i>Crimes Act 1900</i>	Yes, arguably, by implication: ▪ s 66AA(2)(e) states the duty does not apply “if giving the information to a police officer would disclose information in relation to which privilege may be claimed under a law in force in the Territory”; ▪ <i>Evidence Act 2011</i>, Div 3.10.1A deals with claims of privilege applying to health professionals under the concept of “professional confidential relationship privilege”; ▪ s 126A defines a “protected confidence” as “a communication made by a person in confidence to someone else [the confidant] ... (a) in the course of a relationship in which the confidant was acting in a professional capacity; and (b) when the confidant was under an express or implied obligation not to disclose its contents, whether or not the obligation arises under law or can be inferred from the nature of the relationship between the person and the confidant.”; ▪ s 126B empowers the court to exclude evidence in any proceeding where it would disclose a protected confidence.	A “confidant” in a relationship where the confidant was acting in a professional capacity, where the confidant was under an express or implied obligation not to disclose the communication. A “confidant” would include a medical practitioner.
Tasmania	<i>Criminal Code 1924</i>	Yes, arguably, by implication: ▪ s 105A(4)(b) includes as a “reasonable excuse” for non-disclosure a situation where “reporting the information would disclose information in respect of which there is a lawful claim or right of privilege”; ▪ <i>Evidence Act 2001</i> (Tas), Pt 10 Div 1A deals with claims of privilege applying to health professionals under the concept of “professional confidential relationship privilege”; ▪ ss 126A and 126B are substantively identical to the ACT ss 126A and 126B.	A “confidant” in a relationship where the confidant was acting in a professional capacity, where the confidant was under an express or implied obligation not to disclose the communication. A “confidant” would include a medical practitioner.
Queensland	<i>Criminal Code 1899</i>	Section 229BC (not yet commenced) does not contain either an express exemption, or an exemption by implication	Not applicable