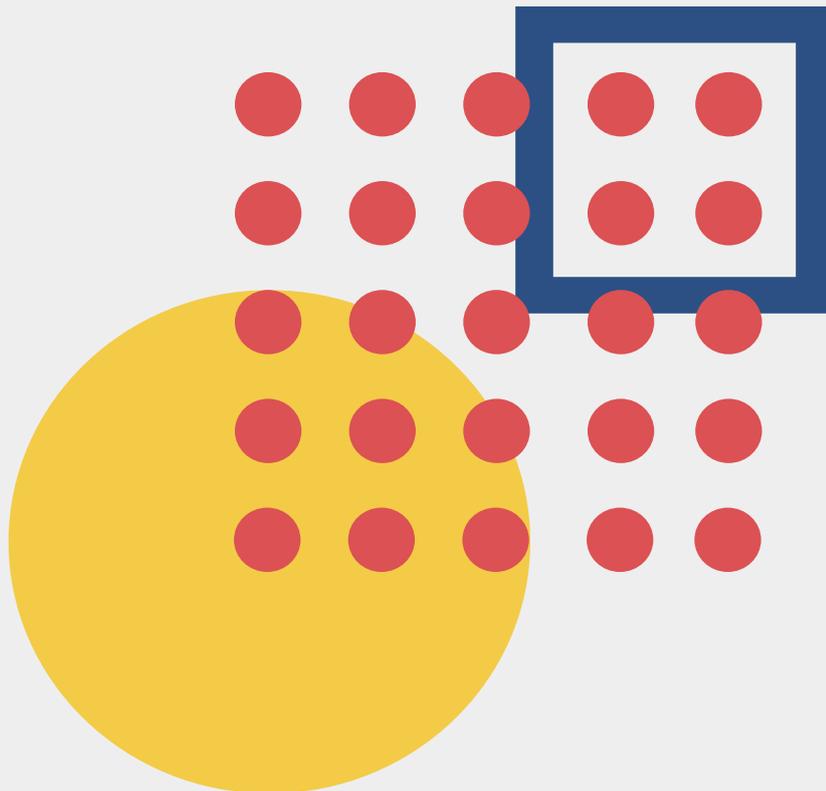




**Australian Government**  
**National Office for Child Safety**

# Complaint Handling Guide

Upholding the rights of children and young people



## Copyright Statement

---

Complaint Handling Guide: Upholding the rights of children and young people

© Commonwealth of Australia 2019

### Copyright Notice

With the exception of the Commonwealth Coat of Arms, this work is licensed under a Creative Commons Attribution 4.0 International licence (CC BY 4.0)



( <https://creativecommons.org/licenses/by/4.0/> ).

### Third party copyright

Wherever a third party holds copyright in this material, the copyright remains with that party. Their permission may be required to use the material. Please contact them directly.

### Attribution

This publication should be attributed as follows:

© Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Complaint Handling Guide: Upholding the rights of children and young people.*

### Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the following website:

<https://www.pmc.gov.au/government/commonwealth-coat-arms>

### Other uses

Enquiries regarding this document are welcome at:

[nationalofficeforchildsafety@pmc.gov.au](mailto:nationalofficeforchildsafety@pmc.gov.au)

# Foreword

In February 2019, the Council of Australian Governments endorsed the National Principles for Child Safe Organisations (the National Principles).

The National Principles give effect to the ten child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. They provide a nationally consistent approach to cultivating organisational cultures and practices that foster child safety and wellbeing. All governments are responsible for giving effect to the National Principles in their jurisdictions.

National Principle 6 states that organisations should have processes to respond to complaints and concerns that are child-focused and uphold the rights of children and young people. The Royal Commission highlighted the importance of institutions using a child rights framework to guide their work with children and young people.<sup>1</sup>

This Guide provides practical advice to organisations about how to develop, implement and maintain a complaint-handling system that prioritises child safety and promotes the rights of children and young people to have a voice in decisions that affect them.

The more that organisations seek to involve children and young people in decision making, the greater the likelihood they will speak up when something is wrong and participate meaningfully in a complaints process.

This Guide is designed for a wide audience—from small service providers working with children and young people (such as sport clubs) to large government agencies which come into contact with children and young people. It gives advice to organisations on handling a broad spectrum of complaints relating to child safety, from simple customer service issues which impact on children and young people to more complex complaints of abuse by staff, volunteers or other children and young people receiving services.

Every organisation working with children and young people—no matter their size—has the same obligations to respond effectively to complaints that affect children, whether initiated by a child or young person directly, or by an adult on their behalf.

I would like to thank the NSW Ombudsman's Office for developing this Guide for the National Office for Child Safety, informed by the advice of children's commissioners, advocates, guardians and ombudsman offices around the country.

I trust that this Guide will be a helpful resource for your organisation.

**KATHRYN MANDLA**

Head, National Office for Child Safety

---

<sup>1</sup>Recommendation 6.4 of the Royal Commission states; 'all institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act within the best interests of the child as a primary consideration.' The Royal Commission into Institutional Responses to Child Sexual Abuse, 'The Final Report – Final Report Recommendations.' Page 6.



# Acknowledgments

This Guide was researched and prepared by Julianna Demetrius, Acting Deputy Ombudsman, NSW Ombudsman's Office, who was assisted by Claire McMullen, Project Officer.

The National Office for Child Safety and the authors wish to acknowledge the valuable contributions made by the Australian Human Rights Commission, the National Children's Commissioner, e-Safety Commissioner, and children's commissioners, advocates, guardians and ombudsman offices in each state and territory, who have generously given advice and feedback to inform the development of this Guide.

We also wish to acknowledge the peer review role undertaken by Liana Buchanan, the Commissioner for Children and Young People, Victoria.



# What is in this Guide?

The Guide is made up of nine separate guidelines reflecting the key considerations for implementing an effective complaint management system which upholds the rights of children and young people. There is a range of practical tips throughout the Guide. Additional advice and tools can be found in the attached appendices.

## 1. Embedding Children’s Rights, Safety and Wellbeing into the Complaints Process ..... 1

- ▶ Creating a child-rights-focused complaints culture
- ▶ What is a complaint?
- ▶ Respecting the rights of children and young people, and encouraging them to speak up
- ▶ Making clear what people can complain about and how to complain
- ▶ Providing multiple ways to make a complaint
- ▶ Identifying and addressing barriers to participating in the complaints process
- ▶ Planning the involvement of children and young people in the complaints process
- ▶ Supporting children and young people and their parents/carers through the complaints process
- ▶ Embedding child safety and wellbeing in the complaints process
- ▶ Respecting diversity and cultural difference

## 2. Reporting Responsibilities .....30

- ▶ Being clear about what needs to be reported
- ▶ Identifying which external authorities should receive reports
- ▶ Working collaboratively with police and child protection authorities
- ▶ Reporting responsibilities under reportable conduct schemes
- ▶ Employment screening bodies
- ▶ Other reporting obligations

## 3. Sharing Information and Communicating with Stakeholders ..... 39

- ▶ Know the obligations
- ▶ Who are the possible recipients of information?

## 4. Confidentiality and Privacy .....47

- ▶ Maintaining confidentiality
- ▶ Personal information and privacy



<b>5. Managing Risks – Complaints and Incidents .....</b>	<b>53</b>
▶ What is risk management?	
▶ Identifying and preventing risks in child safe organisations	
▶ Conducting an initial risk assessment and response to a complaint	
▶ Ongoing risk management	
<b>6. Conducting Investigations Involving Children and Young People .....</b>	<b>58</b>
▶ Determining whether an investigation is needed	
▶ Key stages of a child-focused investigation process	
<b>7. Being Fair and Objective .....</b>	<b>68</b>
▶ Key components of a fair complaint-handling process	
▶ Recognising and managing conflicts of interest	
▶ Affording fairness to the subject of the complaint	
<b>8. Explaining Outcomes and Review Options .....</b>	<b>78</b>
▶ Providing reasons	
▶ Available outcomes	
▶ Managing expectations about likely outcomes	
▶ Explaining outcomes and decisions	
▶ Asking for a review	
<b>9. Record Keeping and Complaints Data .....</b>	<b>86</b>
▶ Establishing and maintaining an effective record-keeping system	
▶ Recording complaints data	
▶ The value of complaints data – continuous improvement	
▶ Complying with record-keeping obligations	
▶ Releasing records	

*This publication is intended to assist organisations in managing complaints related to or involving children. However it is intended as a Guide only and is not a substitute for staff receiving appropriate training in complaint handling or investigations. The contents of this Guide do not constitute legal advice and should not be relied upon as such.*

*Aboriginal and Torres Strait Islander people are advised that this Guide may contain images and voices of deceased people*



## Appendices:

- Appendix A:** Checklist for an effective complaint-handling system
- Appendix B:** Complaint-handling process: An overview
- Appendix C:** Answers to common questions from children and young people about the complaints process
- Appendix D:** Factors to consider when developing a plan for involving children and young people in a complaints process
- Appendix E:** Tips for responding to trauma during the complaints process
- Appendix F:** Practical tips for creating a safe organisation for children and young people from diverse backgrounds
- Appendix G:** Child safety reporting process within an organisation
- Appendix H:** Defining concerning behaviour, misconduct and criminal conduct in a Code of Conduct
- Appendix I:** Conducting an initial risk assessment – key actions and factors to consider when responding to a complaint or incident
- Appendix J:** Planning an investigation – factors to consider
- Appendix K:** Tips for interviewing children and young people
- Appendix L:** Checklist for responding to serious complaints involving the conduct of staff members and volunteers (including reportable allegations)
- Appendix M:** Complaint Record Form
- Appendix N:** Tips for recording key complaints data



# National Principles for Child Safe Organisations



**1** Child safety and wellbeing is embedded in organisational **leadership, governance** and **culture**.



**2** Children and young people are informed about their **rights, participate** in decisions affecting them and are taken seriously.



**3** Families and communities are **informed** and **involved** in promoting child safety and wellbeing.



**4** **Equity** is upheld and **diverse needs** respected in policy and practice.



**5** People working with children and young people are suitable and **supported** to reflect child safety and wellbeing values in practice.



**6** Processes to respond to **complaints** and **concerns** are child focused.



**7** **Staff** and **volunteers** are equipped with the knowledge, skills and awareness to keep children and young people safe through **ongoing education** and **training**.



**8** **Physical** and **online environments** promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.



**9** Implementation of the national child safe principles is **regularly reviewed** and **improved**.



**10** **Policies** and **procedures** document how the organisation is safe for children and young people.



Australian Government

For more information, please visit

<https://pmc.gov.au/child-safety>

<https://chilsafe.humanrights.gov.au/>

# Key terms used in this Guide

**Abuse:** this Guide uses a broader definition of 'abuse' of children and young people than may be adopted in child protection legislation. Abuse of children and young people takes many forms. All incidents of abuse are seen as damaging to children and young people.

**Allegation:** an assertion that something has happened—can range from relatively minor assertions (e.g. that a staff member was rude) to something more serious (e.g. that a child or young person is being abused by a staff member).

**Child sexual abuse:** any act which exposes a child or young person to, or involves a child or young person in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism and exposing the child or young person to or involving the child or young person in pornography. It includes grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child or young person, to lower the individual's inhibitions in preparation for sexual activity with them.<sup>2</sup>

**Complaint:** should be interpreted broadly and can include expressions of dissatisfaction about an organisation related to its services or dealings with an individual; allegations about the conduct of its staff, volunteers, other individuals engaged by the organisation or another child or young person at an organisation; or the handling of a prior concern.

**A child-initiated complaint:** a child or young person makes the complaint/brings the issue/concern/allegation to the attention of an organisation.

**An adult-initiated complaint:** a child or young person's parent, carer or guardian or other adult may make a complaint on behalf of, or that concerns, a child or young person.

**Complaint-handling system:** an organised way of responding to, recording, reporting and using complaints to improve services. It includes all policies, procedures, practices, staff, hardware and software used by an organisation in the management of complaints.

**Complaint-handling policy:** a statement of instruction that sets out how an organisation will respond to complaints.

**Concerning conduct:** behaviours, or patterns of behaviour, that are a risk to the safety of children and young people, including ambiguous behaviours that are potentially inappropriate for children and young people to be exposed to.

**Criminal conduct:** conduct that, if proven, would constitute a criminal offence.

**Cultural and linguistic diversity:** refers to the range of different cultural and language groups represented in the population who identify as having particular cultural or linguistic affiliations. The term acknowledges that diversity may arise from a range of circumstances including place of birth, ancestry or ethnic origin, religion, preferred language or language spoken at home.

---

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report, Volume 1: Our inquiry*.



**Cultural safety:** an environment where there is no assault, challenge or denial of [a person's] identity, of who they are and what they need—this refers specifically to Aboriginal and Torres Strait Islander peoples. This encompasses Aboriginal and Torres Strait Islander individuals' own assessment of their safety and capacity to engage meaningfully, on their own terms with a non-Indigenous person or institution. This requires action from the non-Indigenous person or institution to listen, enable and support these environments, with accountability to Aboriginal and Torres Strait Islander colleagues or service users.<sup>3</sup> While this term refers specifically to Aboriginal and Torres Strait Islander peoples, the Guide emphasises the importance of respecting diversity and cultural differences across the board.

**Disability:** the total or partial loss of the person's bodily or mental functions; total or partial loss of a part of the body; the presence in the body of organisms causing disease or illness; the presence in the body of organisms capable of causing disease or illness; the malfunction, malformation or disfigurement of a part of the person's body; a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.<sup>4</sup>

### **Employment screening/Working with Children**

**Check bodies:** state and territory legislation establish screening schemes and certain requirements for people engaging in child-related work. For information about worker screening in state or territory, see [Australian Institute of Family Studies, Pre-employment Screening: Working with Children Checks and Police Checks](#).

### **Individual engaged by an organisation:**

means a staff member, volunteer or contractor engaged to provide services to children and young people at an organisation.

**Interviewer:** the person conducting the interview of a child or young person or adult as part of an investigation into a complaint.

**LGBTQI:** refers to all people who are lesbian, gay, bisexual, transgender, queer or questioning, have an intersex variation, and other members of the communities that use different terms to describe their diverse sexuality and/or gender.

**Mandatory reporting:** where a legislative requirement is placed on an individual to report known and suspected cases of child abuse and neglect to a nominated government department or agency (typically the child protection authority).

**Misconduct:** behaviours that breach an organisation's code of conduct or legislation applying to an organisation and its employees.

**Organisation:** any entity that provides activities or services through which it has contact with children and young people.

**Organisational community:** other parties who are not directly involved in a complaint but have an interest or concern through their association with the organisation in which the complaint has arisen. This includes staff and volunteers, parents or carers of other children and young people receiving services from the organisation and, in the case of complaints involving historical allegations, former service receivers such as former students or children and young people in care.

<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report, Volume 1: Our inquiry*.

<sup>4</sup> See section 4 of the *Disability Discrimination Act 1992*.

<sup>5</sup> Australian Law Reform Commission, 'Procedural Fairness: the duty and its content', *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (ALR Report 129)*, <https://www.alrc.gov.au/publications/procedural-fairness-duty-and-its-content>



**Procedural fairness:** means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made in relation to a complaint.<sup>5</sup>

**Reasonable adjustment:** steps taken to ensure people with disability can make complaints and take part in the complaints process on an equal basis with others. Failure to make reasonable adjustments for the person with disability may amount to unlawful discrimination.<sup>6</sup>

**Reportable allegation:** an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct (see below).

**Reportable conduct:** is defined slightly differently under each of the three reportable conduct schemes in operation (NSW, VIC and ACT). It generally includes sexual offences or sexual misconduct, assault, ill-treatment or neglect of a child or young person or any behaviour that causes psychological or emotional harm to a child or young person or any offences relating to a failure to report or failure to reduce or remove a risk of child abuse.

**Reportable incident:** serious incidents or allegations which result in harm to a child or young person who is a National Disability Insurance Scheme (NDIS) participant and occur in connection with NDIS supports and services provided to children and young people.<sup>7</sup>

**Subject of a complaint:** the person whose alleged conduct is the focus of a complaint, allegation or incident.

---

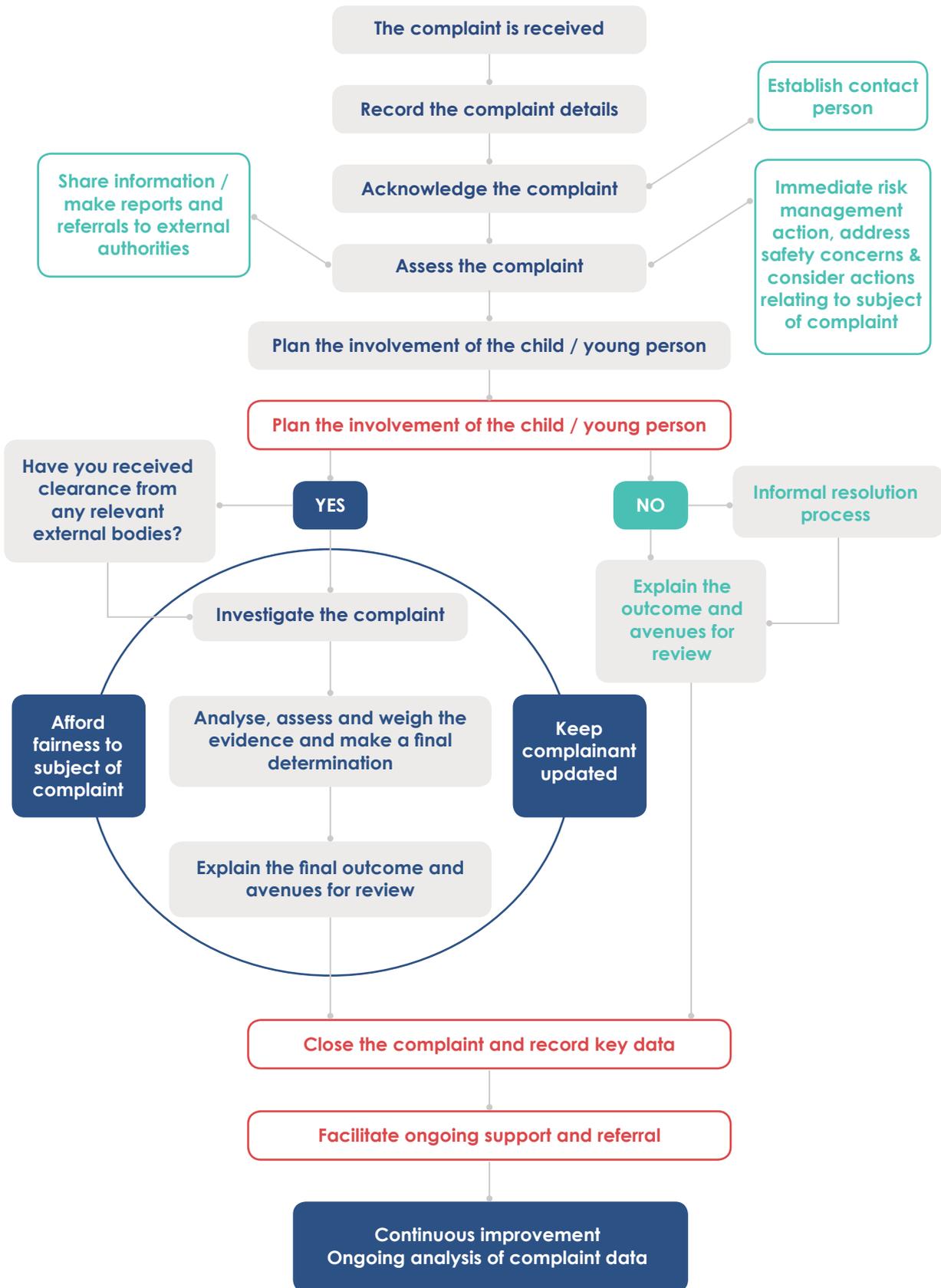
<sup>6</sup> Disability Discrimination Act 1992 ss. 4-6.

<sup>7</sup> National Disability Insurance Scheme Act 2013 s 73Z(4) and National Disability Insurance Scheme (Incident Management and Reportable Incident Rules 2017).



# Complaint Handling:

Upholding the rights of children and young people (an overview)



# Guideline

# 1

## EMBEDDING CHILDREN'S RIGHTS, SAFETY AND WELLBEING INTO THE COMPLAINTS PROCESS

### AT A GLANCE

- ▶ Organisational culture prioritises children and young people's rights, safety and wellbeing.
- ▶ Organisations make a clear commitment that no one will be penalised or suffer adverse consequences for making a complaint.
- ▶ Children and young people have the right to know their rights. Staff know these rights, teach children and young people about them and empower them to speak up.
- ▶ Children and young people know who to talk to if they are worried or feeling unsafe.
- ▶ A culturally safe environment is provided for Aboriginal and Torres Strait Islander children and young people and their families.
- ▶ Diversity and cultural difference is respected by meeting the needs of children and young people from CALD backgrounds, those with disability and LGBTQI children and young people.
- ▶ Staff and volunteers have a good knowledge of the different ways children and young people express concerns or distress and disclose harm.
- ▶ Complaint-handling processes are linked to an organisation's Code of Conduct, and staff and volunteers feel supported to draw attention to breaches.
- ▶ Input is sought from children and young people on the design, implementation and ongoing improvement of the complaint-handling system.
- ▶ Barriers for all children and young people to complain are removed and reasonable adjustments are made to meet their needs.
- ▶ Information about the complaints process, including how to make a complaint and what to expect, is readily available in accessible, age-appropriate formats.
- ▶ Complaint-handling system is understood by children and young people, families, staff and volunteers.
- ▶ Complaints processes and responses are trauma informed.
- ▶ Various ways for children and young people to make complaints are made available based on their feedback about how they prefer to communicate.
- ▶ It is assumed all children and young people are capable of being involved in the complaints process.
- ▶ Children and young people are asked about the type of supports they need to participate in the complaints process. A plan for involving them is developed.
- ▶ Honesty and openness about the things that children and young people have a control over or a say in, and those where they do not.
- ▶ Timely feedback is provided to children and young people, families, staff and volunteers who raise concerns or complaints.



# Creating a child-rights-focused complaints culture

Building an organisational culture based on what is in the best interests of the child or young person—by valuing and listening to children and young people, and respecting their rights—was central to the Royal Commission’s work on making organisations and the broader community safer for children and young people.<sup>8</sup>

A child-rights approach ‘recognises, respects and protects the human rights of children and young people in the development and implementation of laws, policies, practices and other decisions affecting them’. These rights are set out in the Convention on the Rights of the Child, to which Australia is a signatory.<sup>9</sup> The core tenets of child rights are contained in Articles 2, 3, 6 and 12.

A child-rights-focused complaint-handling system can’t exist on its own. It must form part of an organisation’s broader child safe governance mechanisms and be supported by a positive complaints culture and effective overall complaint-handling system.<sup>10</sup>

Achieving a positive complaints culture requires an organisation’s leaders to actively promote that complaints are a valuable source of information which can help improve their service provision. Leaders also need to stress that this can help to make their organisation as safe and welcoming as it can be for children and young people, and their parents/carers.

A complaints culture focused on child rights also requires organisations to demonstrate a practical commitment to children and young people exercising their right to speak up in a variety of situations. Organisations must also ensure that children and young people not only are safe but also feel safe.

Children and young people are more likely to speak up about concerns if they know that their views are valued, and welcomed by, an organisation.<sup>11</sup>

---

<sup>8</sup> Recommendation 6.4 states that institutions that work with children and young people ‘should uphold the rights of the child as the primary consideration.’ The Royal Commission into Institutional Responses to Child Sexual Abuse, ‘The Final Report – Final Report Recommendations.’ Page 6

<sup>9</sup> <https://www.humanrights.gov.au/national-principles-child-safe-organisations>.

<sup>10</sup> Commissioner for Children and Young People, Victoria, – A Guide for Creating a Child Safe Organisation, ‘Child safety through respect for diversity and cultural difference, [www.cyp.vic.gov.au](http://www.cyp.vic.gov.au)

<sup>11</sup> Commissioner for Children and Young People, Victoria, Fact sheet: Empowerment and Participation of Children, [www.cyp.vic.gov.au](http://www.cyp.vic.gov.au).



A child-rights-focused complaints culture needs to be fostered among staff and volunteers at each level of the organisation. It needs to be reflected in the design and implementation of the overall complaint-handling system and embedded in policies, procedures, processes, communication strategies and training.

Every organisation is different, varying in size, complexity and the type of services it provides to children and young people. Depending on the jurisdiction in which an organisation is located, it may also have to meet different mandatory reporting, regulatory and oversight requirements. This should all be reflected in its complaint-handling system.

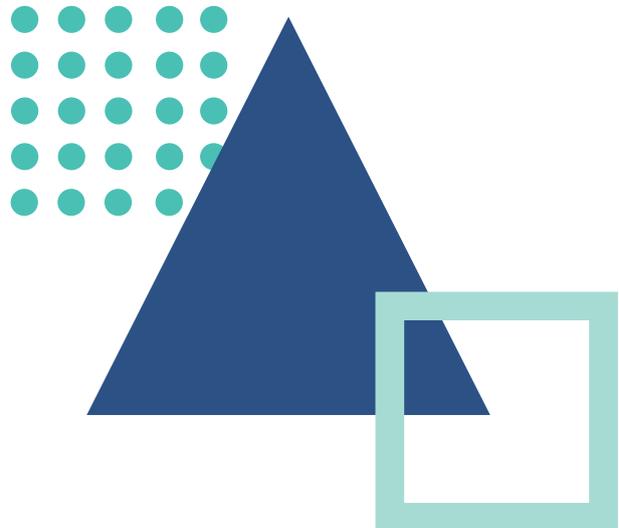
Because of this diversity there is no one-size-fits-all approach to developing a complaint-handling system. Organisations need to tailor a system to be appropriate for its environment. Regardless of how large or small the organisation is, the complaint-handling system should seek to achieve the following:

1. The rights, safety and wellbeing of children and young people are promoted.
2. Complaint-handling system is accessible and responsive to the needs of all children and young people and their parents/ carers.
3. Complaints are dealt with promptly, thoroughly and fairly.



## Remember!

**If your organisation is receiving few or no complaints, this is not necessarily a sign of success. It may be a sign that your organisation is failing to engage effectively with its service users, including failing to provide opportunities for children and young people, and others connected to the organisation, to raise concerns.**



For more information about complaint-handling systems see **Appendix A: Checklist for an effective complaint-handling system;** and **Appendix B: Complaint-handling process: An overview.**

# What is a complaint?

The term '**complaint**' should be interpreted broadly. It can include expressions of dissatisfaction about an organisation related to one or more of the following:

- ▶ its services or dealings with individuals
- ▶ allegations about the conduct of its staff, volunteers or other individuals engaged by the organisation
- ▶ another child or young person at the organisation, or the handling of a prior concern.

There are several ways that complaints can arise within organisations that have contact with children and young people. A complaint will either be initiated by a child or young person directly, or initiated by an adult on their behalf and with or without their knowledge.

A child-focused approach should be applied regardless of how a complaint involving a child or young person arises. This approach should consider their age, intellectual development and maturity. We discuss issues relating to capacity on page 10.

## Examples of a child-initiated complaint that might affect your organisation

- ▶ A child or young person expresses dissatisfaction in relation to your services or dealings with them, including any gaps in service provision.
- ▶ A child or young person discloses or complains they have been mistreated or abused in any way by an individual engaged by your organisation (including your staff or volunteers) or another child or young person at your organisation. This may constitute concerning conduct, misconduct or criminal conduct.
- ▶ A child or young person raises concerns about the treatment or alleged abuse of another child or young person by an individual engaged by your organisation. This may constitute concerning conduct, misconduct or criminal conduct.

## Examples of an adult-initiated complaint that might affect your organisation

- ▶ A parent, carer or guardian may raise concerns about an aspect of your services to, or dealings with, their child, including any gaps in service provision.
- ▶ A parent, carer or guardian may raise suspicions, concerns or alleged breaches of an organisation's code of conduct. This may include allegations of inappropriate behaviour towards their child by an individual engaged by your organisation or by another child or young person at your organisation. This may constitute concerning conduct, misconduct or criminal conduct.
- ▶ A parent, carer or guardian may raise concerns about an incident (including actions, omissions, events or circumstances) connected with services provided to, or interactions with, their child. This incident harmed, or could have harmed, their child or another child or young person at your organisation.

- ▶ A staff member or volunteer may report concerns or allegations about the conduct of an individual engaged by your organisation, or in relation to an issue affecting a child or young person at your organisation.
- ▶ A statutory body such as a child protection authority or the police may notify you of conduct involving an individual engaged by your organisation relating to a child or young person at your organisation.
- ▶ An individual from another service provider who may provide services to, or interact with, a child or young person at your organisation may raise a concern or allegation about the conduct of an individual engaged by your organisation or an issue affecting a child or young person at your organisation.

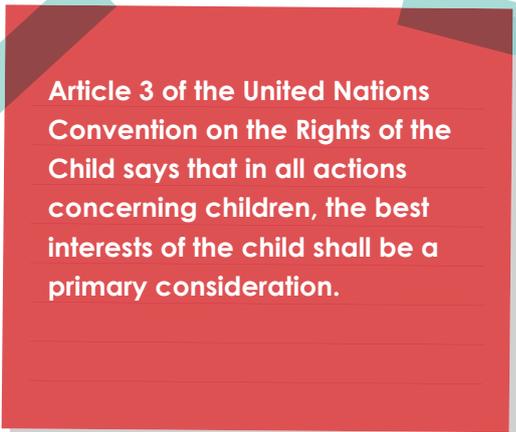
In relation to all adult-initiated complaints, it is important to identify with the complainant, whether or not the child or young person is aware that the concerns have been raised on their behalf, and the nature of any discussions the complainant has already had about the complaint with the child or young person. This issue is discussed further in the section on Planning the involvement of children and young people in the complaints process (p16).

Some complaints are straightforward and can be resolved quickly. Others may require a formal investigation, e.g. allegations of abuse. How a complaint arises (as well as its details) will often inform how an organisation initially responds, including how it first seeks to involve the child or young person.



# Respecting the rights of children and young people, and encouraging them to speak up

Organisations need to create a culture where all children and young people are encouraged, and feel empowered, to speak up.



Article 3 of the United Nations Convention on the Rights of the Child says that in all actions concerning children, the best interests of the child shall be a primary consideration.

Children's and young people's participation needs to be meaningful, not merely tokenistic. Children and young people can provide a unique perspective on how they think an organisation is functioning. They can also often identify problems before adults think of them—complaints processes are no different. Organisations need to involve children and young people in responses to individual complaints and in the overall design of a complaints system. This will facilitate ongoing service improvement and provide a safer environment.

## Underlying assumptions and principles for participation

A child safe organisation has the trust of children and young people. In order to build trust, organisations should ensure that children and young people, as far as possible, have a sound understanding of their rights. This includes the right to voice their views and opinions about decisions that affect them.<sup>12</sup>

When an organisation's complaint-handling process respects the voice and views of children and young people in a tangible way, it also benefits the organisation's broader culture.

Organisations also need to demonstrate that the views of children and young people are valued, by actively seeking their involvement in a range of decision-making processes.

The participation of children and young people in any decision-making process is underpinned by a number of assumptions:<sup>13</sup>

All children and young people:

- ▶ have the **right to participate** in a wide range of decisions affecting their lives. This includes the right to have their opinions taken into account.
- ▶ Have the **capacity to participate** and contribute to decisions affecting their lives.
- ▶ have the right to **choose whether to participate or not** and should not be overly influenced by adults.
- ▶ should have an **equal opportunity** to participate.
- ▶ have a **critical and unique perspective** on their own lives.

<sup>12</sup> This is consistent with Article 12 of the *United Nations Convention on the Rights of the Child*.

<sup>13</sup> Adapted from the NSW Advocate for Children and Young People's report on *Engaging children and young people in your organisation, 2018*.



**Tip!**

**Do not discount or give less weight to a child or young person's views just because they differ or conflict with the views of an adult.**

The following principles should guide the participation of children and young people in any decision-making processes. Participation should:<sup>14</sup>

- ▶ bring them **no harm**
- ▶ be **voluntary and informed** having regard to their age, maturity and capacities
- ▶ be **responsive** to their individual needs
- ▶ be **respectful** of culture and diversity
- ▶ be **meaningful**
- ▶ take into account any **ethical considerations** at the outset and as the process unfolds
- ▶ address **power imbalances**
- ▶ include **continuous reflection**.

## Encouraging participation in your organisation

When asked to identify the elements of effective participation as part of research commissioned by the Royal Commission, the children and young people who participated identified the following:

- ▶ They are regularly asked about their fears and concerns
- ▶ Both formal and informal mechanisms are used to allow them to talk about their safety needs
- ▶ Adults work with them to identify solutions as well as problems
- ▶ Adults inform them of how they have used their ideas and wishes in responding to safety concerns.<sup>15</sup>
- ▶ Part of supporting the participation of children and young people in your organisation involves building the capacity of the adults who work with them to develop new skills and ways of working to help overcome any barriers to their participation.
- ▶ A good starting point is challenging the beliefs that adults often hold about children's and young people's ability to participate.

<sup>14</sup> Adapted from the NSW Advocate for Children and Young People's report on *Engaging children and young people in your organisation, 2018*.

<sup>15</sup> Moore, T., McArthur, M., Noble-Carr, D., & Harcourt, D., 2015, Taking us seriously: children and young people talk about safety and institutional responses to their safety concerns, Institute of Child Protection Studies, Australian Catholic University, Melbourne. Royal Commission into Institutional Responses to Child Sexual Abuse, p 49.

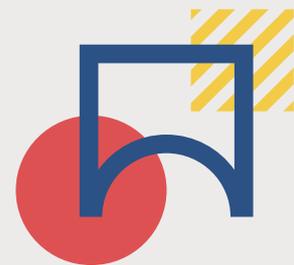
**Children and young people are more likely to speak up about concerns if they know that their views are valued and welcomed by your organisation.**





## Tips for encouraging participation<sup>16</sup>

- ❑ Create an environment of trust and inclusion that enables children and young people to ask questions and speak up if they feel unsafe.
- ❑ Do not assume that children and young people have limited abilities. Instead, think about what support your organisation can give them, or how you can do things differently, to enable them to participate to the best of their ability.
- ❑ Choose senior staff to act as champions for participation. If busy senior staff take the time to listen and collaborate with children and young people, it shows other staff that the participation of children and young people is important.
- ❑ Make sure that a suitable amount of time is made available to staff and volunteers who will be involved in supporting children's and young people's participation. This lets them know that their work in this area is valued.
- ❑ Ask children and young people to:
  - » give feedback on how to improve services
  - » help to organise projects and events
  - » become members of your board or advisory committees
  - » produce information and resources or train other children and young people.
- ❑ Use age-appropriate platforms to regularly seek the views of children and young people about how you work with them (including what they like and dislike) and involve them in the design and implementation of your complaints system.
- ❑ Engage children and young people in developing child-friendly versions of codes of conduct. This will promote an understanding and dialogue around the type of staff behaviour that is or is not acceptable, and what good and bad service looks like.
- ❑ Engage children and young people in developing a *Charter of Commitment to Children and Young People* (Example: <http://childsafefhumanrights.gov.au/tools-resources/practical-tools>).
- ❑ Do not sit back and wait for a concern to be raised. Be proactive about checking in with children and young people in order to create opportunities for them to express their views. Build their feedback into your safety planning.



<sup>16</sup> Adapted from the following resources: Royal Commission into Institutional Responses to Child Sexual Abuse, 'Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts', March 2016; Commissioner for Children and Young People, Victoria, Fact sheet: 'Empowerment and Participation of children', [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au);

## Assessing capacity

**Article 12 of the United Nations Convention on the Rights of the Child says that parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**

Article 12 is a conduit for all other rights. Key considerations during a complaints process include what type of information to provide a child or young person, when and how. These should be based on an assessment of their 'capacity'.

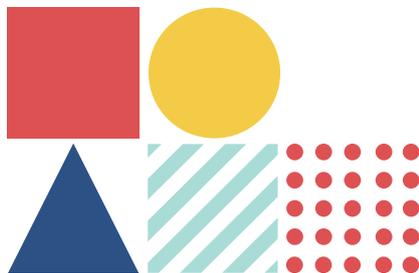
The United Nations Convention on the Rights of the Child refers to the concept of the 'evolving capacities' of the child. This principle recognises that as children and young people acquire enhanced competencies there is less need for protection and a greater capacity to take responsibility for decisions affecting their lives. The Convention recognises that children and young people in different environments and cultures have diverse life experiences and

will acquire competencies at different ages.<sup>17</sup> When assessing capacity, organisations consider the principle stated in various jurisdictions' child protection legislation, that:

**“Wherever a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and wellbeing, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.”<sup>18</sup>**

In relation to a complaints process, one important factor is how the complaint arose, e.g. whether the child or young person or an adult initiated the complaint.

Another relevant factor is how involved the child or young person wants to be in the complaints process, and the extent to which they want their parent/carer/guardian to be part of decisions. This may guide an organisation's response without limiting the rights of the child or young person to information or access to support. For example, organisations may need to assess how much information a child or young person should be provided about particular aspects of a complaint or the process, and/or whether they should participate in an interview.



<sup>17</sup> Article 5: States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

<sup>18</sup> See section 9(2)(a) of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*.

These types of questions apply irrespective of whether or not the child or young person or adult initiates the complaint. They will usually be determined in conjunction with the child's or young person's parents, carer or guardian. However, there may be situations where a child or young person states a clear objection to their parent, carer or guardian being involved in the process or aspects of the process. Assessing capacity in this context is more complex, particularly if the complaint relates to issues of safety and the child or young person is under 14 years. While it is often the case that a child's or young person's best interests will be protected by their parents, carers or guardians, this cannot be assumed.

There are no precise rules or answers as to how organisations should decide issues relating to capacity. In all situations, the question of parental involvement and/or the level of involvement of the child or young person needs to be decided carefully, and on a case-by-case basis.

Another relevant consideration when assessing capacity and parental involvement is the relationship the child or young person has with their parent, carer or guardian and

any expressed views about whether the child or young person might be implicated in any way in the complaint. This is important if, say, a parent, carer or guardian minimises or does not act on information previously provided to them by the child or young person.

Relevant factors in assessing capacity include, but are not limited to:

- ▶ the age of the child or young person
- ▶ their maturity
- ▶ their physical and emotional development
- ▶ changes in their health or medical treatment
- ▶ their background and life experience
- ▶ their ability to understand what would be involved and the consequences of an organisation not taking action.

In assessing capacity, an organisation also needs to consider the issue of complexity in the context of the complaint. A child's or young person's capacity to understand a straightforward issue or process is not necessarily going to mean that they will have the capacity to understand a more complex process, concepts or consequences.



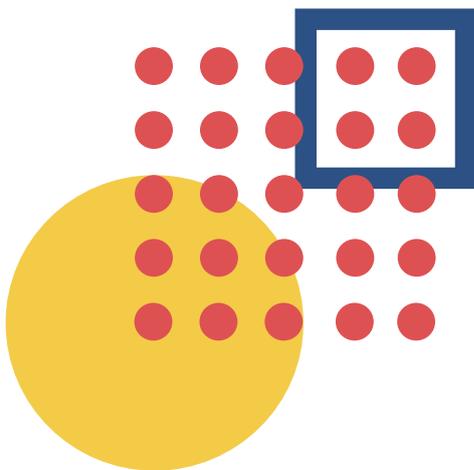
# Making clear what people can complain about and how to complain

Children and young people and their parents, staff and volunteers need to know what they can complain about and how to make a complaint.

Information about the complaints process needs to be visible and accessible to all, e.g. displaying key messages in locations that children and young people frequently access in an organisation, and via online or social media platforms.

Look for opportunities to make the complaints process known at key points in the service relationship, e.g.:

- ▶ When children and young people or their families first start receiving services. This is often a good time to ask about the best way to communicate with the child or young person.
- ▶ When communicating changes to staff or management, or services being provided.
- ▶ When conducting a regular review of a child or young person's care or learning plan.



## Tips!



**Prepare clear and simple messages about making a complaint and the process.**



**Make information about complaints available in a variety of formats (e.g. posters, artwork, photos of positive complaint images, videos and newsletters) and invite parents and carers to raise concerns as part of general communications and updates.**



**Include information in the 'contact us' or 'feedback form' page on your organisation's website and your organisation's email signature.**



**Do not just rely on written or online information; verbal communication is also important. During informal discussions with children and young people, check in with them regularly about whether or not they have any concerns.**

# Providing multiple ways to make a complaint

Children and young people and their parents, staff and volunteers need to know who to go to in an organisation to make a complaint. They also need to be given help to access an independent advocate or support person when required.<sup>19</sup>

It is essential that organisations consult children and young people about the methods they are most likely to use to raise concerns. An organisation should establish multiple avenues for them to choose from.

Children and young people will often raise concerns with the person they trust most in the organisation. This is often the person they have the most frequent contact with, even if there is a dedicated safety contact officer. All frontline staff should therefore see themselves as conduits for complaints and be equipped to handle them.

Organisations should have ongoing conversations with children and young people about how to make sure the complaints system remains user-friendly. This includes keeping pace with changes in technology and how children and young people are using it.



## Tips!



**The only way to know what someone needs is to ask! Make it part of your usual practice to ask children and young people what communication methods and approaches work best for them.**



**Consider establishing a Child Safety Contact Person who can act as a central point for children and young people to raise concerns and communicate with them throughout the complaints process.**

## Information communication technologies (ICT)

Information communication technologies (such as internet-based calls, messaging, laptop, email, internet, social networking) can be very effective ways to engage harder-to-reach children and young people.

ICT communication methods provide children and young people with the advantage of anonymity. This is something they may want when they are first reaching out or testing the waters about a concern.

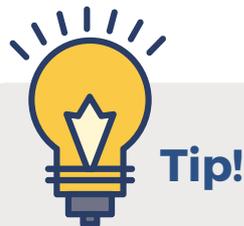
Many children and young people who, for whatever reason, may feel socially excluded or excluded from their families (e.g. LGBTQI children and young people) often use the internet to find safety, express and explore their identity and create friendships.<sup>20</sup>

<sup>19</sup> National Principle 6, National Principles for Child Safe Organisations, An initiative of the Council of Australian Governments, Australian Human Rights Commission 2018, at <https://childsafesafe.humanrights.gov.au/national-principles/download-national-principles>.

<sup>20</sup> See 'Reaching the hard-to-reach: how information communication technologies can reach young people at greater risk of mental health difficulties', Justine Stephens-Reichter, Atari Metcalf, Michelle Blanchard, Cheryl Mangan, and Jane Burns, CREATIVITY IT, The Royal Australian and New Zealand College of Psychiatrists, 2011.



Technology can help overcome some of the barriers that socially excluded children and young people may otherwise experience. This is why it is critical for organisations to promote the use of technology as a conduit for hearing about how children and young people are feeling.



**Consider establishing a toll-free dedicated phone or text line, which is only accessed by designated staff. This way, children and young people can communicate with your organisation, connect with support services and raise concerns confidentially.**

## Identifying and addressing barriers to participating in the complaints process

National Principle 6 of the National Principles for Child Safe Organisations emphasises that effective complaint management processes should be ‘accessible, responsive to and understood by children and young people, families, staff and volunteers’.<sup>21</sup>

It should be easy for any child or young person to make a complaint, irrespective of their age, gender, abilities or social, economic or cultural background. Some children and young people who may feel more left out, or face greater barriers in having a say, might be reluctant to make a complaint, or need more help to complain.

An organisation’s complaint-handling system needs to be flexible and responsive to the particular needs of children and young people from a diverse range of backgrounds and to other factors that could make them

harder to reach or more vulnerable, such as:

- ▶ Aboriginal and Torres Strait Islander children and young people
- ▶ children and young people with disability
- ▶ children and young people from diverse cultural backgrounds and faiths
- ▶ children and young people who have experienced trauma, e.g. children and young people in out-of-home care
- ▶ children and young people in detention
- ▶ lesbian, gay, bisexual, transgender and intersex children and young people
- ▶ children and young people living in rural and remote locations.

The same need for flexibility and responsiveness applies to dealing with the parents and carers of children and young people from these groups.

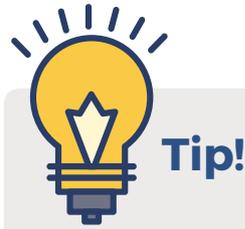
<sup>21</sup> National Principle 6, National Principles for Child Safe Organisations, An initiative of the Council of Australian Governments, Australian Human Rights Commission 2018.

Staff and volunteers in an organisation should be aware of the additional barriers that may exist for some children and young people in making a complaint or participating in a complaints process. There may be barriers associated with:

- ▶ a history of abuse and trauma
- ▶ the impact and legacies of past government policies and interventions, especially for Aboriginal and Torres Strait Islander children and young people
- ▶ language
- ▶ a cognitive impairment or other communication difficulties
- ▶ cultural factors linked to issues such as fear of authority and experience of retribution in a person's country of origin
- ▶ differing cultural and social norms linked to faith settings
- ▶ the fear that children and young people may have if they complain when they are living with, and/or often dependent on, those they wish to complain about, say, children and young people in detention and out-of-home care
- ▶ the need for organisations to be responsive to issues of diversity and cultural safety beyond the complaints process is discussed at the end of this guideline.

## Identifying communication support needs in your organisation

Sometimes you will be aware from the outset that a child or young person has communication support needs. You may have been advised directly by the child or young person, or by a family member, carer or friend. At other times, it may not be known or immediately clear that a person has a disability or condition, such as anxiety or trauma, which could affect their expressive and receptive communication.



**Ideally, communication support needs should be identified and documented as soon as a child or young person and/or their family starts receiving services from your organisation.**

**Expressive communication** refers to a person's ability to express information in speech, writing, sign language or gesture.

**Receptive communication** refers to a person's ability to receive, process and interpret verbal or written information.

Children and young people may not tell you about their communication needs as they might be embarrassed or worried they will not be taken seriously. In private sessions the Royal Commission heard from survivors with disability about why they did not disclose abuse: 'almost one-third did not disclose due to shame and embarrassment, and a similar proportion also feared retribution from the institution'.<sup>22</sup>

The following examples of questions are likely to be more respectful and provide more useful information than asking a child or young person questions such as 'Do you have an intellectual disability?' or 'Tell me how your ADHD affects you?'

### Examples of respectful questions:

- ▶ I talked to your dad. He told me that you get tired if you have to talk and listen a lot. What can I do so you do not get too tired?
- ▶ Tell me about anything I can do so we can talk to each other.
- ▶ I can ask someone to come here to support you. Who would you like to be here?

<sup>22</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 'A brief guide to the Final Report: Disability', [https://www.childabuseroyalcommission.gov.au/sites/default/files/a\\_brief\\_guide\\_to\\_the\\_final\\_report\\_-\\_disability.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/a_brief_guide_to_the_final_report_-_disability.pdf)

## Making reasonable adjustments to your complaints process

You should make reasonable adjustments to your complaints processes at all key stages to ensure that any barriers to full participation are removed.<sup>23</sup>

*The Australian and New Zealand Standard for complaint management requires that 'no complainant is disadvantaged' in accessing a complaints system.<sup>24</sup>*

It's okay if you do not initially have a detailed understanding of the child's or young person's disability. What you need is an understanding

of the characteristics of their communication and how you can optimise the potential for them to give a full and accurate account of something that happened or something they are concerned about.

Once you understand what a child or young person requires, you can make adjustments to minimise any potential barriers to effective communication between you and the child or young person. We discuss this issue further in the context of interviewing children and young people with disability.

## Planning the involvement of children and young people in the complaints process

The trigger for considering the involvement of a child or young person in a complaints process should be whether they are affected by the complaint. This question of involvement should not be based solely on whether or not the child or young person initiated the complaint, although this is an important factor in assessing how to first engage with them.



A complaints process can be a stressful and anxious time for the child or young person and their parents or carers, regardless of how well an organisation seeks to support them through the process. So it is critical that, from the outset:

- ▶ any questions the child or young person asks are answered
- ▶ they are given clear advice about what will happen next and going forward
- ▶ they are given information about how they will be supported.



**See Appendix C: Answers to common questions from children and young people about the complaints process.**

<sup>23</sup> Australian Human Rights Commission (AHRC), *Equal Before the Law: Towards Disability Justice Strategies*, February 2014, p. 10. Australian and New Zealand Standard, *Guidelines for complaint management in organizations (AS/NZS 10002:2014)*; International

<sup>24</sup> Organisation for Standardisation, *Guidelines for complaints handling in organisations* (ISO 10002:2018), <https://www.iso.org/standard/71580.html>

Regardless of the nature of a complaint, and any specific requirements around the timing<sup>25</sup> of when a child or young person is involved, it is good practice to develop a simple plan for involving them throughout the complaints process, and seeking the views of their parents/carers, including about their own involvement.

A negative or unhelpful interaction early on—or indeed at any stage—can lead to the child or young person disengaging from the complaints process. It may also discourage them from raising concerns in future. This is why planning initial and ongoing conversations with the child or young person after first receiving a complaint is important. Be prepared!

A plan for involving a child or young person in a complaints process should also include how to deal with any ethical issues that may arise. This should avoid causing the child or young person further harm as a result of their participation in the process.

This plan should be flexible enough to deal with anything unexpected that may come up, e.g. finding out that information they consider to be private might need to be shared. This could distress some children and young people or make them fear for their safety. It is important to plan for this type of response and be ready to reassure them about why and how information is shared and protected (see **Guideline 4**).

Taking children and young people seriously in a complaints process involves demonstrating

that their feelings and concerns have been taken into account, and communicating what action may be taken in response.

Children and young people have said that 'the information they were given was often restricted to the risk or danger, but they weren't being told what was being done to protect them'.<sup>26</sup>



## Tips!



**Be honest about what you can and cannot do. If a serious allegation has been made, you need to be upfront about what your responsibilities are to report abuse. Be sure to emphasise how the child or young person will be protected in the process.**



**Children and young people should be consulted before important decisions are made and told about how information they have provided will be used. Explain the boundaries of confidentiality to avoid breaches of trust.**



**In seeking to keep the child or young person involved, you also need to be mindful of not providing too much information or too many updates too regularly. This can be traumatic.**



**See Appendix D: Factors to consider when developing a plan for involving children and young people in a complaints process.**

<sup>25</sup> We discuss the issue of the timing of conversations with children and young people in the context of criminal allegations having been made in Guideline 2 and 6.

<sup>26</sup> Tim Moore, University of South Australia, March 21, 'It's real to them, so adults should listen': what children want you to know to help them feel safe,' The Sector.

# Supporting children and young people and their parents/carers through the complaints process

Effectively involving children and young people in the complaints process often requires engaging their parents or carers, as they have the primary responsibility for raising their child or young person and know who their child's or young person's primary protective networks include.<sup>28</sup>

Children and young people may also benefit from seeing that the people who are important to them are involved in the complaints process<sup>29</sup> and are able to check that the organisation is doing the right thing.

The issue being complained about can sometimes lead to an organisation's relationship with a parent or carer (and/or their child) being damaged or breaking down altogether, even before the investigation has completed. Because this relationship is usually an ongoing one, efforts need to be made early on to preserve or restore it. Organisations should not wait for the complaints process to be finalised to do this. Mending any damage and protecting the relationship with children or young people and their families must be a priority.

Organisations often make the mistake of taking no remedial action or steps to support the child or young person and their family until the investigation outcome is known. But there is a difference between getting to the bottom of whether or not certain conduct took place and whether there are things the organisation can do immediately to assist the child or young person and their family.



## Case example:

The parent of a child or young person with disability complained about the use of physical restraint and exclusion of their child or young person from the classroom in response to their behaviour. The allegation is serious and needs to be investigated and notified to relevant bodies. However, there are immediate actions organisations can take, e.g. talk with the parents about the current behaviour support plan for their child or young person and determine what else could be done to better support their child or young person while the investigation unfolds.

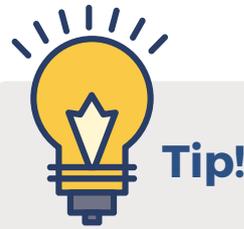
<sup>28</sup> See National Principle 3, National Principles for Child Safe Organisations, An initiative of the Council of Australian Governments, Australian Human Rights Commission 2018, at <https://childsafesafe.humanrights.gov.au/national-principles/download-national-principles>.

<sup>29</sup> NSW Office of the Children's Guardian, Principles for Child safe Organisations, September 2017, [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

<sup>30</sup> NSW Office of the Children's Guardian, Principles for Child safe Organisations, September 2017, [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

Relationships between organisations and complainants often break down when information about progress is not regularly provided. Although organisations may be limited in what they can say at various stages of the process, the investigation plan should build in regular check-ins with the child's or young person's parent or carers to provide information and updated timeframes.

It's also useful to see how parents or carers are coping emotionally and whether or not they may need supports that they had previously indicated were not necessary, or help in securing supports for their child.



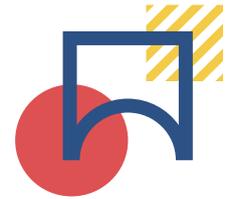
**Make a 'warm referral', that is, instead of just passing on a service's contact details, call the service for them and help them get an appointment. This is particularly important when the child's or young person's parent or carer is likely to have difficulty navigating the service system.**

## Embedding child safety and wellbeing in the complaints process

Prioritising child safety is critical to a child-focused complaints process. This means that organisations must identify any risks to children and young people arising from a complaint and act quickly to manage them.

Depending on the nature and seriousness of the complaint, the organisation may need to work closely with other bodies such as Child Protection authorities, Police, Health, oversight bodies and regulators throughout the complaints process (see **Guideline 2**). Throughout the complaints process the following aspects need to be taken into consideration to help ensure child safety and wellbeing are embedded into the process:

- ▶ respecting the child or young person's views
- ▶ adopting a trauma-informed approach
- ▶ ensuring staff and volunteers are confident in managing disclosures
- ▶ responding appropriately to complaints involving children and young people with harmful sexual behaviours.



### Respecting the views of children and young people

While organisations are expected to take a range of protective and risk management actions in response to particular complaints, they should also ask the involved child or young person what would make them feel safe. They should document this in a plan for involving the child or young person in the complaints process.

Organisations need to be mindful that the views of adults about safety may be different from the views of children and young people. In consulting children and young people about what makes them feel safe. Do not assume that what makes one child or young person feel safe will be the same for another.



**Tip!**

**Even if what makes a particular child or young person feel safe or comforted might seem unusual, you need to be open to trying different strategies. Feeling safe is as important to a child or young person as being safe.<sup>31</sup>**

It is important to keep in mind that certain children and young people are dependent on adults outside their family, particularly where they have a direct role in their care and supervision, e.g. those in residential care and detention. This dependency can create additional fears or barriers for children and young people in raising concerns. It is critical that staff look for opportunities to engage with children and young people living in these settings to help encourage them to speak up if they feel unsafe or uncomfortable.



I was afraid that nobody was going to believe me; that I was just going to be seen as a foster kid trying to cause trouble; that I wasn't going to get to stay where I was living, because it was going to get back to the person that I was making allegations against; and that it was going to become very dangerous for me to stay living there, and I loved where I was living. So I was afraid that I was going to end up being homeless and not have anybody to care about me.<sup>31</sup>



<sup>31</sup> T. Moore, et al, Taking Us Seriously: children and young people talk about safety and institutional response to their safety concerns, Institute of Child Protection Studies, Australian Catholic University, Melbourne 2015.

<sup>32</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 4, Identifying and disclosing child sexual abuse – evidence to the Royal Commission from a care leaver, p.83.



## A trauma-informed approach

Trauma-informed approaches involve being sensitive to the child or young person's particular needs, preferences, safety and vulnerabilities, and recognising that their lived experience may make them susceptible to certain triggers that may lead to 're-traumatisation' and 're-victimisation'.<sup>33</sup>

For complaints that raise child safety and wellbeing issues, it is critical for organisations to adopt a trauma-informed approach at each key stage of the complaints process. Staff looking for signs of trauma is an important way to identify whether certain children and young people may have something they wish to open up about but have been afraid to do so. Staff should be trained in recognising the signs of trauma and using trauma-informed practices.



### Signs of trauma in children and young people include:

- ▶ increased tension, irritability, reactivity and inability to relax
- ▶ reduced eye contact
- ▶ sleep disturbances, nightmares
- ▶ aggressive behaviour
- ▶ mood and personality changes and changes in quality of important relationships
- ▶ loss of self-esteem and self-confidence
- ▶ self-harming behaviours
- ▶ alcohol or drug abuse
- ▶ increased self-focus and withdrawal
- ▶ sexually exploitative or aggressive interactions with younger children and young people
- ▶ risk-taking behaviours.<sup>34</sup>

<sup>33</sup> Adapted from the Official Visitors Information Pack, Children and Young people Commissioner, ACT Human Rights Human Commission, 2018.

<sup>34</sup> Government of Western Australia, Department of Communities, '[Child development and trauma guide](#)'.

## Key trauma-informed care principles

There are several key principles which underpin the delivery of trauma-informed care to children and young people that can be readily applied to the complaints process. These include:

- ▶ ensuring physical and emotional safety
- ▶ being trustworthy and transparent
- ▶ allowing both voice and choice in decision making
- ▶ facilitating collaboration and mutuality – a meaningful sharing of power
- ▶ empowerment – recognising and building on an individual’s strengths.

When complaints involve the behaviour of other children or young people—particularly behaviour that is sexually or physically harmful—a trauma-informed response involves mitigating the risk of harm to other children and young people while supporting the child or young person who has instigated the harmful behaviour. See page 24 for further discussion of this issue.<sup>35</sup>



### Tip!

**In seeking to keep children and young people up to date, it is important to recognise that a trauma-informed approach involves giving them the space and time to ‘move into the light’, and spend some time away from the complaints process.**



**See Appendix E: Tips for responding to trauma during the complaints process.**

## Building confidence in staff and volunteers to manage disclosures

Children and young people may disclose that they feel unsafe or have been harmed at any time. It may be while the harm is ongoing, immediately after something has occurred or days, weeks, months or even years later.

*The Royal Commission reported that during private sessions they heard about children and young people’s experiences of disclosure – ‘Many survivors said that speaking up about what happened to them was a gradual process that often involved a number of smaller disclosures rather than a one-off event’.*<sup>36</sup>

Children and young people will normally choose to make a disclosure to an adult that they trust. If a person feels supported and believed when they first disclose, they are more likely to disclose again during a formal investigation.<sup>37</sup>

As children and young people are more likely to open up to staff and volunteers they know well, it is critical that all staff understand how to manage disclosures, not only those involved in handling complaints.

<sup>35</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 10: Children with Harmful Sexual Behaviours, <https://www.childabuseroyalcommission.gov.au/support-and-treatment>; Volume 6: Making Institutions Child Safe, <https://www.childabuseroyalcommission.gov.au/making-institutions-child-safe>

<sup>36</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, ‘A brief guide to the Final Report: Children and Young People’, [https://www.childabuseroyalcommission.gov.au/sites/default/files/a\\_brief\\_guide\\_to\\_the\\_final\\_report\\_-\\_children\\_and\\_young\\_people.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/a_brief_guide_to_the_final_report_-_children_and_young_people.pdf)

<sup>37</sup> Child Family Community Australia, *Practitioner Resource: Responding to children and young people’s disclosures of abuse*, Australian Institute of Family Studies, March 2015.

It is important to distinguish between managing a disclosure of abuse from a child or young person and conducting an investigative interview. It is ok for staff or volunteers to talk with a child or young person when they are disclosing a concern. In fact, this is encouraged.

### How this might affect your organisation

Remember that the child or young person has approached you, so your job is to listen to them and let them tell you their story

in their own words. If what they are telling you involves an allegation of concerning conduct or abuse, more detailed questioning should occur later, as part of an investigative interview.

Receiving disclosures can be difficult for your staff and volunteers, practically and emotionally. It is important that they understand their role and are also well supported. They should be confident in responding to disclosures of harm.



## 5 tips for responding to a disclosure from a child or young person:

### Listen

- Listen calmly, patiently and supportively. Let the child or young person use their own words. If a child or young person has decided to talk to you, it is a sign that they trust you. You are helping them by listening respectfully to what they have to say.

### Reassure

- Let the child or young person know they are doing the right thing by speaking up, that you believe them and you are taking what they say seriously. Address any concerns about their safety, especially if they are worried about the consequences of disclosing. Tell them that what happened to them is not their fault.

### Ask

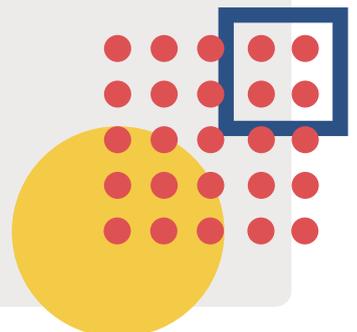
- Ask the child or young person what they need from you or your organisation so they can feel safe and involved in the process.

### Inform

- Ask the child or young person what they need from you or your organisation so they can feel safe and involved in the process.

### Respect

- Manage the child or young person's expectations by explaining to them what the next steps will be. Be clear that you may need to tell other people certain things about their experience to be able to keep them and other children and young people safe, but otherwise you will keep what they have told you private. Ask them what they need from you or your organisation so that they can feel safe and involved in the process.





### Tip!

If a child or young person makes a disclosure that is clear enough for you to have a general understanding of what has happened, and who you need to report to, do not keep questioning them. Quizzing a child or young person for details or asking them to repeat their story can create the impression that you doubt what they have said, and it could have unintended consequences if any criminal or child protection action is subsequently taken.

At the first opportunity, write down what the child or young person told you, using their own words as best as you can recall.<sup>38</sup>



### Remember!

Remember that if a child or young person makes a disclosure to you, it is not your job to investigate or treat it like an interview. A balance needs to be struck between encouraging the child or young person to open up and avoiding compromising a subsequent investigation. You should listen to what they have to say and not close down their disclosure. If you shut things down too quickly, the child or young person may think that you do not believe them or are disinterested.

As children and young people are more likely to open up to staff and volunteers they know well, it is critical that all personnel have an understanding of how to manage disclosures, not only those involved in handling complaints.

## Responding appropriately to children and young people with harmful sexual behaviours

Staff and volunteers should be trained to recognise when a complaint involves problematic or harmful sexualised behaviour instigated by a child or young person towards another.

Organisations should ensure that staff are aware that problematic or sexually harmful behaviour may also occur in an online environment, e.g. sexually-based cyber bullying, sexting and non-consensual distribution of child abuse material.

Organisations need to be mindful that the views of adults about safety may be different

from the views of children and young people. In consulting children and young people about what makes them feel safe. Do not assume that what makes one child or young person feel safe will be the same for another.

Organisations should ensure that staff are aware that problematic or sexually harmful behaviour may also occur in an online environment, e.g. sexually-based cyber bullying, sexting and non-consensual distribution of child abuse material.

<sup>38</sup> Adapted from the CFA Practitioner Resource and the draft WA Child Focused Complaint Handling resource.

Managing complaints of this type should address:

- ▶ how to mitigate the risk of harm to other children and young people, without isolating and stigmatising the child or young person who has exhibited the sexually harmful behaviour as 'dangerous'<sup>39</sup>
- ▶ how to support the child or young person who has displayed sexually harmful behaviour by referring them to the appropriate therapeutic services
- ▶ how to maintain confidentiality and privacy (as appropriately as possible when balanced against other risks, such as the risk of harm to other children and young people).

## Responding to Complaints – Royal Commission Consultation Paper

*“In schools, principals have a significant role in managing risks when allegations of sexual abuse by one child against another are made. Balancing the need to minimise the risk of harm to other children with the need to maintain confidentiality and respect the privacy and reputation of the child who has sexually harmed can be challenging. The need to provide support and assistance for the victim, the child who has sexually harmed and other children at the school also has to be considered. Communication with staff needs to be carefully managed, including considering who needs to know what. Managing possible resistance from staff about the placement of a child who has sexually harmed in the school also needs to be managed. Training for principals should prepare them for managing these difficult situations. Principals also need to know who to contact for advice and assistance.”<sup>40</sup>*

Organisations should work with parents/ carers, and seek advice from local health professionals, family support services and child protection authorities in planning their response to problematic sexually harmful behaviour displayed by children and young people within their organisation.



### Note!

**The NSW Department of Family and Community Services has developed the ‘See, Understand and Respond to Child Sexual Abuse – a practical kit’ and related training course. While the kit is designed for frontline child protection staff, it is publicly available and includes:**

- ▶ **advice about helping to identify factors that increase the risk of a child displaying harmful sexual behaviours**
- ▶ **information to assess risk when working with children and young people who instigate harmful sexual behaviours towards other children and young people**
- ▶ **practical resources to use when working with children and young people with harmful sexual behaviours.**

<sup>39</sup> NSW Family and Community Services, Working with Children who display sexually harmful behaviour, Issued by FACS for use by Child Protection Practitioners, November 2016. [https://www.facs.nsw.gov.au/\\_data/assets/pdf\\_file/0018/415440/6.-FACS-The-Kit-Working-with-children-who-display-sexually-harmful-behaviour.pdf](https://www.facs.nsw.gov.au/_data/assets/pdf_file/0018/415440/6.-FACS-The-Kit-Working-with-children-who-display-sexually-harmful-behaviour.pdf)

<sup>40</sup>Royal Commission into Institutional Responses to Child Sexual Abuse, Best practice principles in responding to complaints of child sexual abuse in institutional contexts: Consultation Paper, p.51.

# Respecting diversity and cultural difference

A complaint-handling system on its own cannot be inclusive and responsive to the diverse range of needs of children and young people and their families in its community unless it forms part of a broader culture within the organisation that promotes and respects diversity and cultural difference. Inclusive environments are beneficial to all.

Children and young people need to feel that their sense of self and their identity is valued by the people around them and is reflected in the organisation's environment.

Creating a culturally safe organisation and one that respects diversity requires a willingness to learn, understand and respond to a diversity of cultures.

Outlined below are some issues relevant to engaging children and young people from diverse backgrounds.



**See Appendix F: Practical tips to create a safe organisation for children and young people from diverse backgrounds.**



## Cultural safety of Aboriginal and Torres Strait Islander children and young people

Cultural safety is about how Aboriginal and Torres Strait Islander children and young people and their family or kin perceive and experience an organisation. Being connected to culture is a protective factor for Aboriginal and Torres Strait Islander children and young people. If they do not feel 'culturally safe' the risk of abuse can be heightened because it is less likely that they will speak up. This is why Aboriginal and Torres Strait Islander children and young people need to define what types of things make them feel comfortable and safe.

Making a complaints system culturally safe requires more than simply raising cultural awareness among staff. An organisation needs to eliminate barriers or biases (conscious and unconscious) that Aboriginal and Torres Strait Islander people may face in accessing and participating in the complaints system.

The barriers to Aboriginal and Torres Strait Islander people making complaints are well documented and include:

- ▶ a fear of violence, intimidation or ostracism by other community members or service providers
- ▶ mistrust of authorities and 'the system' due to past (and current) negative experiences
- ▶ a fear of bringing shame on the extended family and community
- ▶ geographic isolation and lack of infrastructure or support services.



It's okay to not know about Aboriginal culture, it's not okay to not ask.

**Ashley, a young Aboriginal person in conversation with Jodie Griffiths-Cook, Public Advocate and Children and Young People Commissioner, ACT Human Rights Commission**

## Cultural safety of children and young people from culturally and/or linguistically diverse backgrounds<sup>41</sup>

People from culturally and linguistically diverse (CALD) backgrounds may also face a range of issues that make them a vulnerable social group.

Australia is a culturally diverse nation made up of people from a variety of countries with different faiths, beliefs and experiences. This includes refugees, asylum seekers and others who may have experienced trauma, violence and harm, and who may have lost the support of their immediate or extended family.

Being child-focused requires organisations to reach out to families and communities to create a circle of support around children and young people. It also requires understanding different parenting approaches across culturally diverse groups. There is no single right way to respond to diversity but several actions can help to show respect and provide a safe and welcoming environment.

<sup>41</sup> Adapted from Commissioner for Children and Young People, Victoria – A Guide for Creating a Child Safe Organisation, 'Child safety through respect for diversity and cultural difference, [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au).

## Children and young people with disability

Article 7 of the United Nations Convention on the Rights of Persons with Disabilities says that parties should take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.<sup>42</sup>

A child safe organisation recognises that every child and young person is different and that their experience of disability and how they might perceive situations and interact with others may also be different.<sup>43</sup>

There are many reasons why children and young people with disability are at a higher risk of harm and abuse, and are less likely or able to speak up about it than children and young people generally. These include:

- ▶ difficulties with speech, communication or literacy
- ▶ low levels of expectation about their capacity to identify and report concerns
- ▶ reliance on caregivers for personal care requirements
- ▶ limited provision of developmentally appropriate sexual and relationship information
- ▶ social isolation.

## Safety of same-sex-attracted, intersex, non-binary and gender-diverse children and young people

For same-sex-attracted, intersex, non-binary and gender-diverse children and young people to feel safe and be safe, an organisation needs to:

- ▶ openly welcome them
- ▶ demonstrate that their views are valued
- ▶ be clear that discrimination on the basis of a person's sexual orientation, intersex status and gender identity won't be tolerated.

Some children and young people live in rainbow families and have same-sex attracted, intersex, non-binary or gender-diverse parents or carers. It is equally important that organisations build a culture that is inclusive and respectful of the different ways that families are formed, to support these children and young people to feel included and understood.<sup>44</sup>

<sup>42</sup> Article 7 of the United Nations Convention on the Rights of Persons with Disability, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

<sup>43</sup> Commissioner for Children and Young People, Victoria – A Guide for Creating a Child Safe Organisation, 'Child safety through respect for diversity and cultural difference, [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

<sup>44</sup> Adapted from Commissioner for Children and Young People, Victoria – A Guide for Creating a Child Safe Organisation, 'Child safety through respect for diversity and cultural difference, [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

## For further information see:

- ▶ Australian Human Rights Commission, [Child Safety and Wellbeing Policy Template](#); Coming in 2019 are e-learning modules, including one on National Principle 6: <http://childsafef.humanrights.gov.au/learning-hub/e-learning-modules>.
- ▶ Commissioner for Children and Young People, Western Australia, [Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people](#), 2013; Involving Children and Young People: Participation Guidelines (01 October 2009); Harmful Sexual Behaviours Resources, <https://www.cryp.wa.gov.au>.
- ▶ NSW Advocate for Children and Young People: [Engaging children and young people in your organisation; Report on consultations with socially excluded children and young people](#); and [Understanding and supporting children and young people's participation report](#).
- ▶ NSW Ombudsman, Complaint-handling process for agencies; Effective complaint handling guidelines; Fact sheet, Tips for accessibility.
- ▶ Commissioner for Children and Young People, Tasmania, Involving children in decision making; Your quick practice guide, June 2015.
- ▶ Commissioner for Children and Young People, Victoria, Tip Sheets: Cultural safety for Aboriginal and Torres Strait Islander children; Safety of children with a disability; Safety of children from culturally and linguistically diverse backgrounds.
- ▶ Ombudsman Western Australia, Guidelines on Complaint Handling, <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Binder-Complaint-Handling.pdf>.
- ▶ Queensland Family and Child Commission, <https://www.qfcc.qld.gov.au/kids/guide-child-protection-kids/complaints-reviews>.



# Guideline 2

## REPORTING RESPONSIBILITIES

### AT A GLANCE

- ▶ Complaint-handling policy clearly outlines roles and responsibilities of staff (including senior management, supervisors, staff and volunteers) in meeting their obligations to protect the safety of children and young people in the organisation. Staff are aware and receive training on their responsibilities.
- ▶ Staff are aware of processes for escalating concerns when they do not think they have been handled appropriately within the organisation.
- ▶ Information arising from complaints is shared in accordance with the law to promote the safety and wellbeing of children and young people.
- ▶ Legislative obligations to report to child protection authorities and police, and to notify that reportable allegations or incidents are met.
- ▶ Organisations cooperate with external authorities, regulators, reportable conduct scheme operators and Working With Children Check screening bodies when necessary.
- ▶ After a report is made, risk is reassessed and all necessary steps taken to protect child safety and wellbeing.
- ▶ Children and young people are kept informed of the actions you take to ensure their safety, including any reports made to external bodies.
- ▶ The contact details for relevant authorities, such as police, child protection services, children's and young people's guardians and commissioners, are in a prominent place so they're easy to find.



# Being clear about what needs to be reported

A complaint-handling policy must address the process for reporting disclosures, complaints and concerns within an organisation, and to relevant external authorities. This includes the need to cooperate with law enforcement, child protection and other bodies once reports have been made.<sup>45</sup>

Not all complaints will require a report to an external authority. An organisation's **external reporting obligations** will depend on the nature and circumstances of the complaint, and the jurisdiction/s in which it operates. The complaints that are most likely to require external reporting are matters that involve allegations or suspicion of child abuse, other child protection concerns, or other criminal conduct.

Organisations can also contact the e-Safety Commissioner about online child sexual abuse material and image-based abuse for advice. To ensure that all relevant internal and external reporting obligations are met, it is important for organisations to have a clear process for the initial assessment of complaints, and pathways for staff and volunteers to follow according to the **seriousness** and **urgency** of the complaint.

An initial assessment of the complaint will enable staff and volunteers to identify and respond to potential risks to the child or young person, and ensure appropriate reporting lines are followed in accordance with the organisation's complaint-handling policy.



**See Appendix G: Child safety reporting process within your organisation.**



## Note!

**Following the Royal Commission's examination of reporting obligations in the context of institutional child sexual abuse,<sup>46</sup> some states and territories have introduced new criminal offences for failing to report, and failing to reduce the risk of, child abuse. Make sure that staff are aware of the reporting offences operating in your jurisdiction and how they apply to them.**

A complaint-handling policy should describe the types of complaints or concerning behaviour that require reporting internally and externally, and the process for making reports. This should include clear direction that all alleged or suspected breaches of the code of conduct must be reported internally to a designated staff member in a position of authority. An organisation's Code of Conduct should give clear guidance to staff and volunteers on expected behavioural standards and responsibilities.



**See Appendix H: Defining concerning behaviour, misconduct and criminal conduct in a Code of Conduct.**

<sup>45</sup> See National Principle 6, National Principles for Child Safe Organisations, An initiative of the Council of Australian Governments, Australian Human Rights Commission 2018, at <https://childdsafe.humanrights.gov.au/national-principles/download-national-principles>.

<sup>46</sup> See Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report. Recommendations 32, 33, 35 and 36.

# Identifying which external authorities should receive reports

If a complaint involves concerning conduct, misconduct and/or criminal conduct, an organisation may be required to report it to one or more external authorities.

In deciding whether a matter needs to be reported, and to which authorities, consider if:

- ▶ there is alleged or suspected criminal conduct that should be reported to police, including whether the law requires reporting the suspected offence to police
- ▶ a mandatory report to the statutory child protection authority is required
- ▶ there are any reportable conduct notification obligations
- ▶ there is an obligation to report to the Working With Children Check screening body
- ▶ there is an obligation to report to any other authority, including regulatory and contracting bodies.

Sometimes the same matter needs to be reported to multiple different external authorities, either at the same time, or as the matter progresses. An organisation's policies and procedures should include clear information for staff on:

- ▶ legislative reporting responsibilities and the associated timeframes and order in which reports should generally be made
- ▶ best practice in reporting to and working with external authorities, including when working with multiple authorities at the same time.



## How you might handle complaints that involve historical allegations or concerns

**You may receive historical complaints that relate to something that happened a long time ago. All complaints—no matter how old—should be assessed and responded to, especially if they relate to an allegation of child abuse.**

**The nature of the required response will depend on the details of the matter and the statutory requirements that your organisation is subject to. For instance, a complaint might raise concerns about the actions of someone who no longer works for your organisation. This may still require reporting to police if it involves possible criminal conduct, and reporting to the child protection authority if there is a possibility that the individual may have contact with other children and young people. A complaint that relates to concerns about a current staff member when they were working somewhere else a long time ago might require risk management action, reports to police and/or the relevant child protection authority, as well as notification under a reportable conduct scheme.**

## Reporting to police

Any complaint which involves an allegation of criminal conduct or creates a suspicion of criminal conduct, should be reported to the police.

Each organisation has its own procedures for who should make reports to police. However, the urgency of the situation will often determine who makes the report. It is important that reports to police are made without delay, as police are best able to investigate when the events and evidence are fresh. If a staff member or volunteer reports to police, they should inform their manager/supervisor as soon as possible.

In many jurisdictions, there are legal obligations to report certain offences to police. Individuals can be found guilty of a criminal offence if they fail to make a report to authorities. While it is important that staff and volunteers are aware of their legal obligations, an organisation's policies and procedures should require that all alleged or suspected criminal conduct be reported to police, whether or not there is a legal requirement to do so.

It is essential to receive clearance from the police before starting to investigate the complaint. Stay in regular contact with police to seek advice about risk management and track progress. If the complaint is about a staff member it may be appropriate to increase supervision of the staff member, give them extra training, suspend them from duty or transfer them to an area that does not involve contact with children and young people. An organisation can continue to provide support to the child or young person and their parent/carer.

## Reporting to child protection authorities

All states and territories have mandatory reporting laws that require certain groups of people to report children or young people who may be at risk of harm to child protection authorities. It is important that staff and volunteers understand that, in all jurisdictions, the duty to report applies to a suspicion or belief that abuse or neglect is likely to occur in the future, as well as abuse or neglect that may have already happened.

There are differences between jurisdictions in terms of who is mandated to make a report, the type of abuse and neglect that must be reported, the threshold required to activate a reporting obligation and whether penalties apply for failing to make a report.<sup>47</sup>

**All jurisdictions provide protections to reporters, including protection of the reporter's identity from being revealed and protection from liability in any civil, criminal or administrative proceeding (as long as the report is made in good faith).**

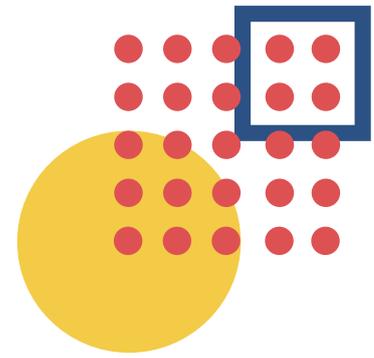
An organisation's policies and procedures should clearly set out the statutory obligations and who within the organisation is responsible for assessing risks to children and young people and reporting to statutory child protection bodies. The procedures should also be clear about the process for mandatory reporting generally and when the alleged conduct involves a staff member, volunteer or another child or young person in the organisation. In these circumstances, it is usually the CEO or another senior staff member who would make the report.

---

<sup>47</sup> Royal Commission into Institutional Child Sexual Abuse, Final Report, Volume 7: *Improving institutional responding and reporting*, December 2017.

The policy should also make clear what the reporting process is if it is suspected a child or young person is at risk of harm within their home or another setting.

Even if a report has been made to the child protection authority and it has been allocated for assessment, an organisation should continue to provide appropriate support and assistance to the child or young person and their family. If there is confusion about whether or not to continue to provide a particular service, consult with the allocated caseworker. Even when the conduct does not require the making of a mandatory child protection report, if it is considered that the child or young person or their family would benefit



from a referral to a support and/or counselling service, staff and volunteers should discuss this with them and help them by making the referral. The statutory child protection authority or a local health or a family support service can help to identify the most appropriate services.



## Working collaboratively with police and child protection authorities

Once an organisation has made a report to police or the child protection authority, it should not take any steps to investigate the allegation without consulting them. If there is a criminal and/or concurrent child protection investigation considered or underway, there is a risk that investigatory steps taken by the organisation could prejudice or impede future criminal or child protection action.

The organisation may need to obtain further information at the outset to decide if a complaint involves conduct that needs a report to police or the child protection authority. If there is any confusion over whether actions might prejudice a subsequent process, consult with the relevant authority before proceeding.

If an organisation thinks urgent action is needed to ensure the safety of children or young person, consult police and/or the relevant child protection authority. An organisation should have processes for escalating matters internally and with the relevant external authority in situations where it believes that urgent risk management action is required.

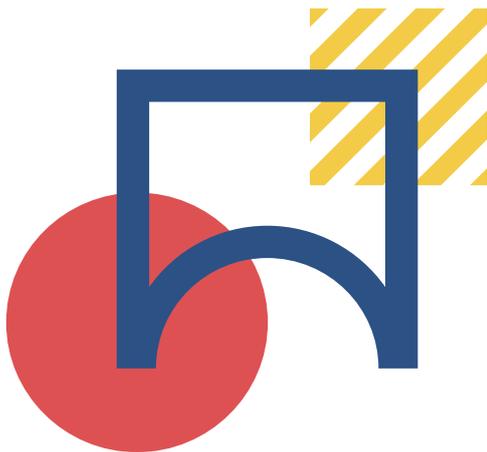


# Reporting responsibilities under reportable conduct schemes

Reportable conduct schemes provide independent oversight of the handling of allegations of child abuse and neglect by people engaged by organisations which provide services to children and young people. Organisations can include schools, early childhood services, out-of-home care providers, faith bodies and juvenile detention facilities.

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that all Australian jurisdictions establish nationally consistent legislative schemes which require heads of institutions to notify an oversight body of any reportable allegation.<sup>48</sup>

NSW has operated a reportable conduct scheme since May 1999, and Victoria and the ACT since 1 July 2017. Other states and territories are currently considering implementing reportable conduct schemes.<sup>49</sup>



**Tip!**

**Your obligations under a reportable conduct scheme may include allegations involving your staff that arise outside work—an allegation that a staff member abused their own child or young person in the home may also be reportable.**

All reportable conduct scheme operators produce helpful fact sheets on reporting and other obligations under the scheme. These are available on their websites.

As well as reportable conduct schemes, if your organisation is a registered National Disability Insurance Scheme (NDIS) provider, you may need to report complaints or other incidents to the NDIS Quality and Safeguards Commission.<sup>50</sup> Registered providers must notify the Commission of certain incidents and allegations affecting NDIS participants. This includes the death or serious injury of a participant, abuse or neglect of a participant and unauthorised use of a restrictive practice.

<sup>48</sup> Royal Commission into Institutional Child Sexual Abuse, Final Report, Volume 7: *Improving institutional responding and reporting*, December 2017, Recommendations 7.9-7.12.

<sup>49</sup> As at the time of writing, that is, April 2019.

<sup>50</sup> *National Disability Insurance Scheme Act 2013 and National Disability Insurance Scheme (Incident Management and Reportable Incident Rules 2017)*.

## How this might affect your organisation

If a scheme **operates in your jurisdiction**, your policies and procedures should clearly reflect the types of allegations that require notification and investigation, and the related processes, as required by the relevant legislation.

All staff need to be able to **recognise reportable conduct** and understand the process for reporting and investigating such conduct within your organisation. It is important that staff understand that reportable conduct schemes are allegation-based and require the heads of organisations to notify matters as soon as they become aware of them. Your jurisdiction's scheme will require a notification to be made within a certain period after your head of organisation becomes aware of the allegation.

**Reports to screening bodies** are generally only required when certain allegations of misconduct have been investigated and proven. Your policies and procedures should include clear guidance about what to do in circumstances where a staff member resigns before an investigation has been finalised, including information about any statutory obligation on your organisation (e.g. under a reportable conduct scheme) to complete the investigation. This should also include guidance on what information you can share with other organisations, particularly if you have concerns about a staff member seeking child-related employment with another organisation (**see Guideline 4**).

## Employment screening bodies

All Australian jurisdictions have a scheme for conducting background checks for people seeking to engage in child-related work. In some jurisdictions, employment screening schemes also extend to people who work with other vulnerable people, and a nationally consistent screening program for registered NDIS providers is being rolled out progressively from July 2019.

Most jurisdictions require organisations to notify the screening body of certain disciplinary or misconduct matters involving staff and volunteers. If staff and volunteers are covered by a background check scheme, the organisation should ensure that its policies and procedures include clear information about the type of information that needs to be reported to the screening body, and who within the organisation is responsible for making a report.

## Other reporting obligations

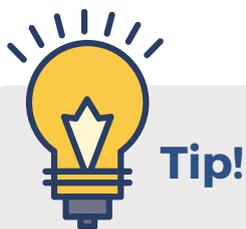
An organisation may have other reporting obligations that are specific to it or its sector. If staff and volunteers within your organisation) are covered by a registration, licensing and/or accreditation scheme, you may be required to report certain complaints or findings to these bodies. This includes, but is not limited to, requirements for:

- ▶ health practitioners under the Health Practitioner National Law
- ▶ teachers and schools under relevant state and territory laws
- ▶ early childhood practitioners under the Children (Education and Care Service) National Law
- ▶ foster carers, residential care workers and out-of-home care providers under the relevant accreditation scheme.



If the organisation is contracted or funded by a government agency to provide services, it may also have obligations under the related contractual or funding arrangements to report certain matters to the funding or commissioning body.

An organisation should review any relevant legislation, standards and agreements that apply to it, and ensure that any relevant reporting requirements are detailed in its policies and procedures. This includes at what stage of the complaints process they should be made.



**Managing obligations to report to multiple external authorities can be complex and time consuming. The best way to ensure that all obligations are met without unnecessary duplication of effort and resources is to have policies, procedures and training that clearly outline the role and scope of all relevant external authorities and the reporting obligations to each. Establishing a good working relationship with authorities that you engage with frequently can help to ensure information gets shared effectively and efficiently, and allow you to seek advice or escalate matters when required.**

## For further information see:

- ▶ ACT Ombudsman, [Reportable Conduct Resource Kit](#)
- ▶ NSW Ombudsman training, Responding to child protection allegations against employees, Workbook 2018.
- ▶ NSW Ombudsman Fact sheet: [Notifying and identifying reportable conduct](#)
- ▶ Australian Institute of Family Studies, [Reporting child abuse and neglect](#), CFA Resource Sheet, October 2018; [Mandatory reporting of child abuse and neglect](#), CFA Resource Sheet, September 2017.
- ▶ Commissioner for Children and Young People, Victoria, [Child Safe Standard 5: Processes for responding to and reporting suspected child abuse](#)
- ▶ Department of Health and Human Services, Victoria, Resources for Child Safe Organisations, [Resource 5: What to do when an allegation of child abuse is made \(word\)](#)
- ▶ NDIS Quality and Safeguards Commission, [Effective Complaint Handling Guidelines for Providers](#) – developed by the NSW Ombudsman's office.
- ▶ Ombudsman Western Australia, [Guidelines on Complaint Handling](#).
- ▶ Royal Commission into Institutional Child Sexual Abuse, *Final Report*, Volume 7: *Improving institutional responding and reporting*, December 2017.

# Guideline 3

## SHARING INFORMATION & COMMUNICATING WITH STAKEHOLDERS

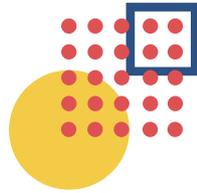
### AT A GLANCE

- ▶ An organisation's complaint-handling policy:
  - » documents the importance of sharing information to promote the safety, welfare and wellbeing of children and young people, and keeping relevant parties appropriately informed throughout the complaints process
  - » specifies the legislative responsibilities for information sharing and related privacy laws
  - » identifies the role in the organisation with the relevant authority to make decisions and provide advice on information sharing
  - » requires that all decisions to share information are clearly recorded, including the legal basis relied on.
- ▶ Staff and volunteers know what information they can share, with whom and when, and how it should be communicated to protect the safety and wellbeing of children and young people in accordance with privacy and confidentiality obligations.
- ▶ The organisation knows the type of information it can share with children and young people, their parents and carers, and other parties who may not be directly involved in a complaint but who have a legitimate reason for receiving certain information, and the relevant factors that should be considered.
- ▶ Children and young people are told about what information must be reported, how the organisation will protect their privacy and confidentiality, and what will happen next.

# Know the obligations

Your organisation's complaint-handling policy should make it clear how important the sharing of information is to promote the safety, welfare and wellbeing of children and young people, and keeping relevant parties appropriately informed throughout the complaints process.

Equally as important is documenting your organisation's privacy and confidentiality obligations when determining whether information should be shared, and with whom, in a particular instance. All jurisdictions must comply with the Privacy Act 1988 (Cth) and relevant state and territory privacy legislation.



Your complaint-handling policy should specify:

- ▶ the legislative responsibilities relating to information sharing and related privacy laws
- ▶ the person who has the relevant authority to make decisions and provide advice on information sharing
- ▶ a requirement that all decisions to share information are clearly recorded, including the legal basis relied on to share (or not share) the information, and that proper consideration has been given to relevant practical issues such as not compromising any investigative or judicial process
- ▶ the importance of making clear to all parties to a complaint that certain information gathered via the complaints process may need to be shared and why.



**This guideline should be read in conjunction with Guideline 4 – Confidentiality and Privacy.**





## Who are the possible recipients of information?

In addition to sharing information with statutory authorities exercising particular functions (see **Guideline 2**), in the context of responding to complaints, there are three other important groups of recipients of information. These are:



**other organisations providing services to children and young people** (e.g. a concurrent or the current employer of the subject of the complaint)



the **alleged victim** and their parents or carers



**other parties** who may not be directly involved in the complaint but who have a legitimate reason for receiving certain information.

### Sharing information to promote the safety, welfare and wellbeing of children and young people

When deciding whether and what type of information to share, and with whom, an organisation needs to be aware of the relevant legislation in its jurisdiction which gives it the authority to do so. This relates to information arising from and relating to complaints, as well as more general information.

While all states and territories authorise – to some degree – the sharing of information relating to child safety and wellbeing, the legislative powers and restrictions are not uniform. Most information-sharing schemes are facilitated by state and territory child protection legislation (see relevant legislation listed on the following page).



## Relevant legislation relating to information sharing for each jurisdiction includes:

- ❑ **ACT:** The Children and Young People Act 2002 (ACT) Chapter 25.
- ❑ **NSW:** Children and Young Persons (Care and Protection Act) 1998 (NSW) Chapter 16A.
- ❑ **NT:** Care and Protection of Children Act 2007 (NT) Part 5.1A.
- ❑ **SA:** Children and Young People (Safety) Act 2017 (SA) Section 152; Information Sharing Guidelines (ISG) for promoting the safety and wellbeing of children, young people and their families (2008).<sup>51</sup>
- ❑ **TAS:** Children, Young Persons and their Families Act 1997 (TAS) and the Personal Information Protection Act 2004 (TAS).<sup>52</sup>
- ❑ **VIC:** Children Legislation Amendment (Information Sharing) Act 2018 (VIC) and Child and Wellbeing Safety (Information Sharing) Regulations 2018; Family Violence Protection Amendment (Information Sharing) Act 2017 (VIC).
- ❑ **QLD:** Child Protection Act 1999 (Qld) Chapter 5A.<sup>53</sup>
- ❑ **WA:** Children and Community Services Act 2004 (WA), Division 6.<sup>54</sup>

The Royal Commission found that even where information sharing is legally permitted or required, people may be reluctant to share. Concerns about privacy, confidentiality and defamation—and confusion about the application of complex and inconsistent laws—can create anxiety and inhibit information sharing. Further barriers can be put up by a silo-ed institutional culture, poor leadership and weak or unclear governance arrangements. A lack of information sharing can undermine the safety of children and young people.<sup>55</sup>

The Royal Commission recommended nationally consistent legislation for a range of prescribed bodies to share information relating

to the safety and wellbeing of children and young people. This was to be modelled on the NSW information-sharing scheme under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998.<sup>56</sup>

In recent years, many other jurisdictions have also implemented reforms to reduce legislative barriers to sharing relevant information. Further reforms are anticipated in light of the Royal Commission's recommendations.

All governments are currently working together to improve how they share information to keep children and young people safe and well.<sup>57</sup>

<sup>51</sup> Government of South Australia, Department of Child Protection, 'Information Sharing Guidelines', <https://www.childprotection.sa.gov.au/child-protection-initiatives/information-sharing-guidelines>

<sup>52</sup> For more information, see: Tasmanian Government, Department of Health and Human Services, [Child Safety Information Sheets and Resources](#) and [Disability, Child, Youth and Family Services, Information Sharing for providers of family and disability support](#)

<sup>53</sup> See, in particular, Part 4 of the *Child Protection Act 1999 (QLD)*. For more information, see: Queensland Government, Department of Child Safety, Youth and Women, '[Information Sharing Guidelines](#)' (October 2018).

<sup>54</sup> For more information, see: Government of Western Australia, Department of Child Protection and Family Support, '[Fact Sheet: New laws supporting information sharing – s.28B of the Children and Community Services Act 2004](#)'

<sup>55</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report: Volume 8, Recordkeeping and information sharing](#), p.13.

<sup>56</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report: Volume 8, Recordkeeping and information sharing](#).

<sup>57</sup> As at April 2019, see Australian Government, Annual Progress Report 2018, p.22..



## Tip!

**Organisations should also be mindful that new information or risks could emerge at any time during the investigation of a complaint. Early reporting does not remove the ongoing obligation for organisations to share information with external authorities, such as police, child protection and other prescribed bodies, if additional risks are identified.**

## Sharing information under reportable conduct schemes with the alleged victim, their parents or carers

A parent or carer has a legitimate interest in being told of the process that is being followed to investigate an allegation that their child was a victim of abuse or maltreatment. Information can often be provided to the parent, carer or child without the need to consider legal impediments to disclosure.

However, legal impediments—real or feared—may discourage the sharing of information.

The three reportable conduct schemes currently operating (in NSW, Victoria and the ACT) have specific legislative provisions to remove legal barriers to the oversight body (or a designated agency under the scheme) providing information about a reportable conduct investigation to an alleged victim, their parents or carers.

Depending upon the circumstances, it may be appropriate to release information to one involved party but not another, e.g. it may be appropriate to disclose information to a child's

or young person's parents, but not to the child or young person (see factors to consider in **Guideline 1**).

While specific provisions in reportable conduct legislation authorise the oversight body or agency head to disclose information, it does not require them to do so.

The specific provisions describe the type of information that the oversight body or the head of a designated agency may disclose. Ultimately, whether disclosure is appropriate in the circumstances is a matter of discretion. If a disclosure is made in accordance with the relevant information sharing provisions under the reportable conduct scheme in your jurisdiction, then it will not breach any law that would otherwise prevent or restrict the disclosure of the type of information which can be disclosed as outlined on the next page, nor will this type of disclosure incur liability for defamation or other civil liability such as liability for breach of confidence.

<sup>57</sup> As at April 2019, see Australian Government, Annual Progress Report 2018, p.22.

<sup>58</sup> *Ombudsman Act 1974* (NSW) s 25GA.

<sup>59</sup> *Child Wellbeing and Safety Act 2005* (VIC) s 16ZB.

<sup>60</sup> *Ombudsman Act 1989* (ACT) s 17L and 17O.

<sup>61</sup> If the child is in 'out-of-home care', any 'authorised carer' of the child.

<sup>62</sup> The 'head of an agency' is the chief executive officer or other principal officer. This would include the release of information by another officer at the direction of and with the specific knowledge of the head of agency

**Outlined below are the factors to consider in deciding whether to release information under the specific provisions.**

**What information can be disclosed?**

- ▶ information about the progress of an investigation
- ▶ the findings of the investigation
- ▶ any action taken in response to those findings (e.g. management or disciplinary action, or changes to processes or systems).

The underlying assumption is that disclosure of information to involved parties may be appropriate. The relevant provisions for each scheme recognise that involved parties in an investigation may have a direct personal interest in being kept informed. It will, however, be inappropriate to release information in particular circumstances.<sup>63</sup>

**When the release of information will be inappropriate**

Information about a complaint or reportable conduct allegation should not be released to an involved party if doing so might:

- ▶ prejudice a criminal, child protection, reportable conduct or other formal investigative process
- ▶ prejudice the prevention, detection or effective response to actual or possible criminal conduct, child abuse or other reportable conduct
- ▶ endanger the safety of the alleged victim or any other person, including the subject of the allegation
- ▶ prejudice a coronial inquest or inquiry
- ▶ prejudice any proceedings in the

Children's Court

- ▶ contravene any legal professional privilege or otherwise compromise any current or future legal proceedings
- ▶ enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- ▶ not otherwise be in the public interest.

**Giving information to a parent or carer**  
 The parent or carer of a child has a direct interest in being told that their child is an alleged victim of reportable conduct and of the nature of the reportable allegation. The parent or carer will also expect to be kept informed of the progress and findings of any investigation, and any action that might be taken after the investigation. Special issues may arise that require an adjustment to normal disclosure practice, e.g. if the child or young person is in out-of-home care, and the allegation involves their carer or their partner or another household member. Information about a reportable allegation should not be given to the parent of a child or young person in out-of-home care except with the consent of the child protection authority.

**Giving information to a child or young person**

A parent or carer should generally be consulted before information is given directly to a child or young person who is an alleged victim of reportable conduct (in accordance with the relevant provisions). As noted in **Guideline 1**, a tailored approach to consulting the parent

<sup>63</sup> See section 9(2)(a) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).



or carer may be necessary depending upon things like the child's age, their relationship with the parent or carer, any views the child has expressed about releasing information to other involved parties, and whether the parent or carer is implicated in the alleged reportable conduct.

In addition to Article 12 of the Convention on the Rights of the Child, the policies or practices adopted by organisations should take account of the principle stated in child protection legislation in certain jurisdictions that:

***'wherever a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and wellbeing, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances'.***

However, the expressed views of a parent or carer may not align with this principle.

It is ultimately for the head of the agency to decide on the course to be adopted, bearing in mind that the relevant provisions for each scheme do not formally require disclosure but give legal protection if disclosure is made. These are matters that can appropriately be addressed in your organisation's complaint-handling policy.

## Sharing information with your organisation's community

An allegation that a child or young person has been a victim of abuse or maltreatment will be of concern to many people in an organisation's community. This community includes staff, volunteers and parents or carers of other children and young people receiving services from your organisation. For historical allegations, it also includes former service receivers such as former students or children and young people in care.

These people will be interested in getting further information about the allegation, how it is being handled and whether there are broader implications for the safety of their child or young person and other children and young people receiving services from the organisation.

While these people are not directly involved in the complaint, they have a legitimate interest or concern through their association with the organisation.

### Reasons for sharing information

Legal constraints on sharing information should be understood in a wider context that includes the reasons why an organisation communicates with its community about a serious allegation. The wider context is relevant in deciding the type of information that can or should be communicated, and how this can be done safely.

## Sharing information about an allegation with the organisation's community:

- ❑ may assist to identify, warn and protect other alleged or potential victims
- ❑ can be a trigger to obtain additional information about an allegation
- ❑ can prompt parents and carers to raise relevant concerns with their children and young people
- ❑ can encourage parents, carers, staff and volunteers to be alert to and report any concerning behaviour
- ❑ can provide information to the organisation's community about available support services
- ❑ may stop the spread of inaccurate and unreliable information
- ❑ may enable police and child protection authorities to advise parents, carers, staff and volunteers about the risks of contaminating evidence or compromising investigative or judicial proceedings
- ❑ can reassure the organisation's community that it is responding adequately.

## Practical considerations

Complaints may raise serious child protection concerns and may also require a criminal response. It is likely that the child protection authority and/or the police will have been informed.

Before disclosing information about an allegation to an organisation's community, the organisation should consult and collaborate with police and/or child protection authorities (or another investigative authority if one is involved). As noted in **Guideline 2**, this will avoid compromising any criminal or child protection investigation.

This could also be an opportunity to discuss whether the particular information should be disclosed by police/child protection (where state or territory legislation allows it) as they often have specific exclusions from certain legal constraints on the disclosure of personal information. This can minimise the risk of legal proceedings being threatened to restrain information from being communicated to an organisation's community. A disclosure by a law enforcement and/or child protection authority can also reassure the community that appropriate investigative and enforcement action is being taken. For further information about key legal principles and privacy considerations when sharing information see **Guideline 4**.

## For further information see:

- ▶ Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, [Volume 8: Recordkeeping and information sharing](#).
- ▶ NSW Ombudsman Child Protection Fact Sheets 14 and 15: [Providing advice about reportable conduct investigations with children, parents and carers; Sharing information about reportable conduct allegations with non-involved parties](#).

# Guideline 4

## CONFIDENTIALITY & PRIVACY

### AT A GLANCE

- ▶ Children and young people have the same right to privacy, anonymity and confidentiality as adults (subject to reporting obligations).
- ▶ Organisations maintain up-to-date knowledge of, and comply with, their legislative obligations to maintain confidentiality and protect personal information and privacy.
- ▶ Children and young people may waive their right to privacy and confidentiality if they decide to involve somebody else in the complaints process, e.g. to access support.
- ▶ Have an ongoing conversation with children and young people, their parents/carers, about what information must be shared or disclosed (to the police, say) and what information must be kept confidential.
- ▶ Treat a child's or young person's personal information arising from a complaint and any records made about their complaint in accordance with the law.
- ▶ Risk management strategies tell staff what to do if information leaks or rumours circulate in relation to a complaint—e.g. on social media—to protect the safety and wellbeing of the child or young person, the complainant or subject of the complaint. See e-Safety Commissioner advice: <https://www.esafety.gov.au/>.

# Maintaining confidentiality

Confidentiality is essential to a fair and effective complaints process. People can understandably have concerns about confidentiality and privacy when they want to make a complaint. These concerns can be one of the potential barriers to children and young people coming forward.

As discussed in **Guideline 1**, organisations need to provide realistic advice to children and young people and others, about the types of circumstances in which information may be shared and with whom.

Information obtained as part of a complaints process should be kept confidential. It should only be disclosed if required by law or where it is otherwise appropriate in the circumstances for it to be shared, such as those outlined in **Guideline 3** to promote the safety and wellbeing of children and young people.

Whether information needs to be kept confidential will depend on the circumstances and the nature of the complaint. One example is if the complaint concerns the conduct of a staff member, then confidentiality—at least in the initial stages of an investigation into the alleged conduct—can help protect crucial evidence. However, if the complaint involves conduct that is serious and/or potentially criminal, it is important to remember that any legal obligations to report relevant information to bodies such as the police or child protection services cannot be overridden by any promises or commitments to keep certain information confidential. The principles of procedural fairness recognise

**Generally speaking, confidentiality may be necessary or appropriate in relation to the following:**

- ▶ the fact that a complaint or disclosure has been made
- ▶ the nature of the allegations
- ▶ the identity of the complainant
- ▶ the identity of any person who is the subject of investigation
- ▶ the identity of witnesses
- ▶ any evidence gathered by the investigator.

The principles of procedural fairness recognise that protection of identity and confidentiality can be important elements of effective complaint handling. However, this must be balanced with the obligation to act fairly to a person whose interests may be adversely affected by a decision associated with resolving or investigating a complaint. This can mean in certain circumstances the obligation to be fair to the subject of the complaint may completely or partially override confidentiality.

The person managing the complaint or investigation should seek to balance fairness and confidentiality requirements and, as far as possible, safeguard the interests of all parties. An organisation can encourage children and young people and others to speak up by ensuring that its complaint-handling process respects the confidentiality of those making the complaint, those who are the subject of the complaint and any witnesses. The organisation should protect the identity of parties directly involved in a complaint as much as it can.



## Tip

**Explain the limits of confidentiality to parties to a complaint as part of general information about the complaints process.**

# Personal information and privacy

Personal information that identifies a child or young person or another individual associated with a complaint should only be disclosed by the organisation as permitted under the relevant privacy laws (or secrecy provisions which may be relevant to particular organisations and matters) – discussed further below.

However, privacy laws should not be viewed as barriers to sharing information. Along with child protection information-sharing provisions, privacy laws enable the responsible exchange of information between relevant parties to promote child safety, while also upholding the rights of people who are the subject of a complaint.

Privacy legislation is primarily concerned with the protection of personal information, which is defined as: 'information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable'.<sup>64</sup>



## Note!

**Examples of personal information include an individual's name, signature, address, telephone number, date of birth, school, medical records, financial details and commentary or opinion about a person.**<sup>65</sup>

The Australian Privacy Principles outline how to handle, use and manage personal information. For a summary, see the Office of the Australian Information Commissioner, [APP quick reference tool](#). An organisation should also consider the privacy laws operating in its jurisdiction.

If personal information is not necessary to resolve or investigate a complaint, then a person should not be required to provide it, and should be allowed to remain anonymous. For instance, if the complaint concerns a general issue about how an organisation conducts its business or delivers its services, the complainant's personal information is less likely to be relevant or necessary.

In other circumstances, an organisation may be unable to act on a complaint without disclosing personal information, e.g. when the complaint concerns the alleged conduct of an individual. As discussed in **Guideline 4**, sometimes either an organisation or a child protection or law enforcement authority may need to release information to conduct a proper investigation when serious allegations of abuse are made.

<sup>64</sup> Office of the Australian Information Commissioner, 'Privacy Act', <https://www.oaic.gov.au/privacy-law/privacy-act/>

<sup>65</sup> Office of the Australian Information Commissioner,

<sup>66</sup> Privacy Act 1988 Schedule 1.

**Personal information that identifies a child or young person or another individual associated with a complaint should only be disclosed by the organisation as permitted under the relevant privacy laws.**



**Sample statement for a complaint-handling policy:**

Complaints will be dealt with in a confidential manner that is respectful to both complainant and respondent. Reasonable steps will be taken to protect personal information from loss, unauthorised access, use, disclosure or any other misuse during the complaint-handling process. However, the organisation cannot give an assurance of absolute confidentiality, given statutory obligations and principles of natural justice.<sup>67</sup>

## Key legal principles and considerations

Relevant legal principles from privacy and defamation law, and legal doctrines of duty of care and procedural fairness, need to be considered when sharing information. Other legal considerations may also be relevant, such as statutory obligations and secrecy provisions that apply to particular organisations.

How legal principles apply to the sharing of information depends on individual circumstances.

- ▶ **Which organisation is disclosing information?** Is it the police, child protection authority, another investigation agency, or the organisation in which the allegation has arisen?
- ▶ **What information is being shared?** Is it general in nature or could it identify a person as an alleged offender, victim or informant?

- ▶ **To whom is the information being given?** Is it to only one or two people or to a larger group or community?
- ▶ **How is the information being conveyed?** Is it orally at a meeting, in a letter to one or more people or in a public statement?
- ▶ **Why is the information being shared?** Is it in response to a specific question, as general advice to an organisation's community or to elicit further information for a law enforcement investigation?

Privacy and defamation laws apply only to the disclosure or publication of information that reasonably identifies a person. The identification of a person may be direct or explicit, particularly if there is a need to provide specific and identifying information to selected people (such as staff members or parents). Identification of an individual may also arise by inference from information or advice that is framed in general terms. This general advice may reasonably identify a person because of facts known to other people or that are in the public domain.

As noted, consultation and collaboration with police, the child protection authority and/or other investigative agencies will minimise this risk of compromising an investigative or judicial process.

To minimise the risk of legal complications, the content of any disclosure should be measured, impartial and limited to the information necessary to fulfil the purpose of the disclosure. It is equally important to consider the interests of all parties, including the privacy, health and wellbeing of an alleged victim and their family, as well as the privacy, reputation and career of the subject of the complaint.

<sup>68</sup> For more information on secrecy provisions, see e.g. Australian Law Reform Commission, 'For Your Information: Australian Privacy Law and Practice' (ALRC Report 108), <https://www.alrc.gov.au/publications/15.%20Federal%20Information%20Laws/secrecy-provisions>.

<sup>67</sup> Sample statement, Office of the Information Commissioner Queensland, [Privacy in complaints management – anonymity and confidentiality](#)

It will be easier for an organisation to balance these considerations if it adopts guiding principles or policies before an issue arises. This could include a policy that lets staff and volunteers know that the organisation may have to share information with its community about how it handles allegations for child protection and investigative purposes. Also, state, territory and Commonwealth privacy laws require agencies to have a personal information management plan in place.

This guideline does not provide legal advice. To obtain a more detailed understanding of the legal principles, see as an example, the NSW Ombudsman's fact sheet – [Sharing information about reportable conduct allegations with non-involved parties](#) and check the websites of the information and privacy offices in the organisation's jurisdiction.

## For further information see:

- ▶ Office of the Australian Information Commissioner: <https://www.oaic.gov.au/>.
- ▶ Australian Law Reform Commission, 'Privacy Regulation in Australia: State and territory regulation of privacy', <https://www.alrc.gov.au/publications/2.%20Privacy%20Regulation%20in%20Australia/state-and-territory-regulation-privacy>.



# Guideline

# 5

## MANAGING RISKS – COMPLAINTS AND INCIDENTS

### AT A GLANCE

- ▶ Organisation has a clear understanding of the potential risks to children and young people, identifies and assesses risks with specific services and activities they deliver, and develops a plan to prevent risks from occurring.
- ▶ Risk management plan or strategy is tailored to suit the organisation's operating context and accounts for possible risks in both physical and online environments.
- ▶ Risk management plan includes staff responsibilities and priorities in identifying, mitigating and responding to risks that may arise in relation to complaints.
- ▶ Organisation listens to what children and young people have to say about what makes them feel safe and unsafe in the organisation, what they like and do not like, and how things could be better. This should inform the development of a risk management plan.
- ▶ Staff and volunteers identify risks posed to children and young people and understand they need to act immediately to address them.
- ▶ Organisation monitors and reassesses risks to children and young people (including their ongoing support needs) and all other identified risks throughout the investigation and complaint-resolution process.
- ▶ Organisation is aware of the type of risk management action that may need to be taken when a complaint involves a staff member, volunteer or another child or young person at the organisation, e.g. a staff member may need closer supervision, or to be removed from having any direct contact with children and young people, or to be stood down from their role.
- ▶ Parties to a complaint—including the affected child or young person—know what action has been taken in relation to the subject of the complaint to manage risks during the investigation of the complaint.

## What is risk management?

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.<sup>69</sup> Recognising and acknowledging the risks in child-related employment situations is the first step towards effective risk management.

Organisations should have a risk management strategy that sets out a process for managers and other staff and volunteers to proactively identify and respond to the range of risks that can arise across different settings within an organisation. A component of the strategy should specifically focus on the type of risks which can arise once a complaint has been

made or an incident has occurred, particularly where maltreatment and abuse is alleged. Children and young people should be engaged in the development of the risk management strategy and in its ongoing review and refinement.

Listening to what children and young people have to say about what they like and do not like about an organisation, how things could be better, and what makes them feel safe and unsafe in the organisation, will be critical to shaping risk management strategy. Effective risk management is an ongoing process of proactive identification, learning, monitoring and reviewing.

## Identifying and preventing risks in child safe organisations

Organisations must operate on the assumption that everybody who works with children and young people can pose some level of risk to them. A good risk management plan or strategy is practical and sensible. It is not overly complicated. Instead, it is easy for staff and volunteers at all levels to understand. It is also critical that the leadership of the organisation creates a culture where risk identification and management are seen as everyday businesses, and not as an add-ons or solely the responsibility of managers.

### A child-focused risk management plan

involves having a clear understanding of:

- ▶ the potential risks to children and young people
- ▶ identifying and assessing the risks associated with the specific services and activities it delivers
- ▶ developing a plan to ideally prevent risks, or addressing them effectively when they happen.

Organisations do not carry the same risks; nor do all staff and volunteers associated with an organisation. Similarly, all children and young people do not have the same vulnerability. Any risk management plan or strategy should be tailored to suit the organisation's operating context and cover possible risks in both physical and online environments.



<sup>69</sup> NSW Ombudsman, Child Protection Fact Sheet 9: [Risk management following an allegation against an employee](#), May 2017.



## Note!

**Risk management is about knowing what can go wrong and making plans to avoid it or respond appropriately if it happens.**



## When developing a child-focused risk management plan, consider the following:

- The risk associated with the specific services and activities the organisation provides:<sup>70</sup>
  - » are there any particular circumstances that expose children and young people to risk?
  - » are there places where the interactions between adults and children and young people are obscured from sight?
  - » are there circumstances where a staff member or volunteer could be left alone with a child or young person?
  - » is there a low level of parental involvement?
- The risk associated with specific roles—e.g. a role may involve bodily contact with a child or young person—or roles with particular authority over children and young people.
- The heightened vulnerability of certain children and young people receiving services from the organisation—e.g. children or young people with disability, Aboriginal and Torres Strait Islander children and young people or those from a CALD background, children and young people in out-of-home care and/or detention.
- The actions or safeguards needed to minimise the opportunity for children and young people to be harmed, in physical and online environments, including harm which could be caused by their peers.
- Regulatory or other legislative requirements applicable to the organisation.



## Note!

**Your organisation’s complaint-handling policy should either be linked to or embed a risk management plan associated with the handling of complaints and incidents, e.g. a child or young person hurting themselves or some type of safety hazard was identified. The issue of risk management in the context of handling complaints and incidents, should be covered in ongoing training and regular briefing sessions with staff and volunteers.<sup>71</sup>**

<sup>70</sup> Excerpted from the Office of the NSW Children’s Guardian website, [Identifying Your Risks](#)

<sup>71</sup> See AHRC, Getting started on your child safe journey: Introductory self-assessment tool, Principle 8: Physical and online environments promote safety and wellbeing while minimising opportunity for children and young people to be harmed.

# Conducting an initial risk assessment and response to a complaint in your organisation

The assessment and management of risk immediately after a complaint or incident is critical to your organisation's initial and early response. The risks identified and the associated actions will depend largely on the nature and seriousness of the allegation or complaint.

The head of your organisation or another senior individual is usually responsible for assessing the risk that a staff member or a volunteer poses to a child or young person once a complaint is made. This person is also responsible for assessing risks during and at the end of an investigation so that a final decision can be made on what action, if any, needs to be taken to address the risk.

Your risk management strategy—as it relates to complaints/incidents—should include information about what might happen to a

staff member, volunteer or another child or young person at your organisation:

- ▶ immediately after an allegation is made against them
- ▶ during the investigation
- ▶ at the end of the investigation.

You need to include a statement in the strategy that a decision to take action on the basis of a risk assessment should not influence the findings of the matter. Until the investigation is complete and a finding is made, any action—such as moving a staff member to alternative duties—is not to be seen as an indication that the alleged conduct by the staff member occurred. It is important to document the reasons why decisions are made to take or not take any action as a result of a risk assessment.



**See Appendix I: Conducting an initial risk assessment – key actions and factors to consider when responding to a complaint or incident.**

# Ongoing risk management

Identifying and reducing risks to children and young people in an organisation is an ongoing process. When gathering information about an allegation raised in a complaint, it is important to manage any new risks or issues that emerge.

This is relevant if police or the child protection authority advise you that they will not be investigating the complaint, or have ceased their inquiries. However, it is essential to still take the necessary steps to complete your own investigation and continue to protect the child or young person.

You should monitor and review your risk management plan during and at the end of any investigation into a complaint in order to reduce risk. You should also be willing to incorporate lessons learned from when things worked well or did not.

At the end of the investigation, an organisation should make a finding about the allegation and a decision on what action, if any, is required in relation to the staff member/volunteer, the children and young people involved and any other parties.

Your organisation should review how the conduct or incident arose in order to identify whether any systemic issues may have contributed to it occurring, e.g. analysing an incident of a staff member visiting a child or young person outside work hours may reveal that the institution has not educated new staff on the code of conduct and expected behaviour.<sup>72</sup>

Such a review might require you to look at environmental factors and work practices that result in situations of unsupervised access to children and young people by staff members. This information will give you an opportunity to put in place measures to minimise any further risk of harm to children and young people in your care. Such measures may include:

- ▶ training for staff members
- ▶ changing work practices in certain situations
- ▶ changing the physical environment
- ▶ reviewing the child safe policy and related procedure.

## For further information see:

- ▶ NSW Office of the Children's Guardian, 'Child Safe Risk Management Template', <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/child-safe-elearning/elearning-resources>.
- ▶ Australian Risk Management Standard, AS ISO 31000:2018, 'Risk Management – Guidelines'.
- ▶ Commissioner for Children and Young People, Victoria, Standard 6: [risk management and mitigation](#); Complying with the Standards, '[What are the steps to becoming Child Safe Standards compliant?](#)'
- ▶ National Children's Commissioner and eSafety Commissioner, Checklist for Online Safety, <https://childsafesafe.humanrights.gov.au/tools-resources/practical-tools>.

<sup>72</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 6, Making Institutions child safe, 'Appendix A: Practical guidance for implementing the Child Safe Standards', Standard 8, p.431.



# Guideline 6

## CONDUCTING INVESTIGATIONS INVOLVING CHILDREN AND YOUNG PEOPLE

### AT A GLANCE

- ▶ Complaints affecting children and young people are properly investigated and their rights are safeguarded throughout the investigation process.
- ▶ Specific plan is developed for involving a child or young person in the investigation, and adjusted as necessary throughout the investigation. Plan makes clear how child safety and wellbeing will be prioritised.
- ▶ Where possible, one person should be identified to be responsible for liaising with the child or young person throughout the entire process. This person may or may not be the investigator but it should be someone appropriate and trusted by the child or young person.
- ▶ Regardless of whether or not an external investigator is appointed, the organisation still needs to be involved in key aspects of the investigation process, such as making final determinations, risk management, communicating with stakeholders and supporting the child or young person.
- ▶ Always consider obtaining a version of events from the affected child or young person. Also consider whether there is the potential for an interview to have any adverse impact. The child's or young person's parents, carer or guardian should be consulted unless there are good reasons not to do so.
- ▶ Conduct a pre-interview assessment to gather information about the child's or young person's support needs.
- ▶ Prepare a plan for interviewing the child or young person and identify their support needs, including any support with communication.
- ▶ Build and maintain rapport with children and young people during the interview; encourage them to provide an explanation of what happened in their words.
- ▶ Investigations into complaints involving children and young people need to be planned, fair, proportionate and thorough, with findings supported by the available evidence.
- ▶ Decide what actions should be taken following the investigation.

# Determining whether an investigation is needed

An investigation is a logical process of inquiry conducted in response to a complaint. Not all complaints involving children and young people will require an investigation. An organisation should aim to resolve complaints with as little formality and delay as possible. Many complaints can be appropriately dealt with through early resolution without the need for a formal evidence-based investigation.

A complaint might be suitable for informal resolution if:

- ▶ the complaint—based on the available information—seems to have arisen from a misunderstanding or miscommunication
- ▶ the complaint relates to an issue with or a gap in service provision that can be easily resolved without the need for any investigation
- ▶ the complainant is willing to sit down and discuss the matter informally.

However, if a complaint relates to a matter that raises concerns about the safety and wellbeing of children and young people or any allegations of misconduct or other concerning conduct about staff or volunteers, it is likely that an investigation will be required. In general, the nature and extent of an investigation should be proportionate to the seriousness of the complaint, e.g. the potential risk of harm and the consequences for the subject of the complaint.



## Note!

**We have seen evidence that some institutions have dismissed, minimised or ignored complaints. The mishandling of complaints has meant that, on occasion, allegations of child sexual abuse were not properly investigated and children and young people were not adequately protected.**

Irrespective of whether a complaint is handled informally or by way of investigation, it is important that, wherever possible, the affected child or young person or the complainant believes they have had the opportunity to be heard, their concerns investigated and been addressed.



## Note!

**Upholding child rights and safety in a complaint investigation process, is not at odds with upholding the rights of the subject of the complaint. Avoid using 'being fair' to a staff member or volunteer as an excuse to not properly investigate a child or young person's complaint.**

<sup>73</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 7, Improving institutional responding and reporting, p.244.

A complaints policy should make clear that as part of assessing any complaint, a key consideration is whether or not a formal investigation will be required. In this regard, organisations should provide clear guidance on what type of conduct or incidents are reportable under legislative schemes (e.g. reportable conduct schemes) which may be operating in its jurisdiction, and obligations to investigate. See **Guideline 2**.

## Key stages of a child-focused investigation process

The key stages of a child-focused investigation process are:

- ▶ the initial response
- ▶ investigation planning
- ▶ evidence gathering
- ▶ assessing the evidence
- ▶ finalising the investigation
- ▶ making and communicating findings
- ▶ taking action.

For an investigation to be child-focused, it needs to be fair, equitable and objective for all parties concerned, not only the child or young person at its centre. Failing to provide a fair process for the subject of a complaint undermines the integrity and validity of the whole investigation. This could prevent protective action being taken as a result. See **Guideline 7** for further details about fairness. It is always sensible to seek advice, and assistance if necessary, when conducting investigations into complaints or incidents that are serious and/or complex. Conducting investigations is not an everyday occurrence for most people working in organisations delivering services to children and young people.



### Note!

**Ask for help. Getting the right assistance early on, and knowing what the risks and pitfalls can be, can help prevent an investigation being compromised and children and young people ultimately not being protected.**

Even if an organisation decides that it will not conduct the investigation, senior staff still need to know what a good investigation looks like, and be informed sufficiently about an investigation process to make decisions about whether or not to accept the investigation findings, and the appropriate action in response.

Most importantly, the organisation needs to carefully consider the potential for further trauma being caused to a child or young person at the centre of the complaint, if the investigation process is not well planned and executed.

## Initial and early response

All staff and volunteers should be familiar with processes for escalating complaints and incidents internally, including who they can contact if a matter arises outside of normal business hours or if a manager is not available. As part of the initial response to a complaint or incident involving a child or young person that has been referred for investigation, give consideration to:

- ▶ whether all child safety concerns and other risks have been identified and immediately addressed.
- ▶ whether the matter requires external reporting to authorities and, if so, whether all appropriate processes have been followed.
- ▶ whether there is evidence that needs to be immediately secured (e.g. CCTV footage, emails, downloads) or protected to preserve a subsequent criminal, child protection and/or the organisation's investigation from being compromised.
- ▶ if the matter requires reporting to police and/or child protection authorities, whether the relevant authorities have given the organisation sufficient advice about what it should or should not do in response to the complaint, and whether it has received clearance from them to proceed with an internal investigation.

Specific advice on reporting responsibilities and managing risks is covered in **Guidelines 2 and 5**.



 **If a complaint contains potentially criminal conduct and has been reported to police, an organisation must not start their own investigation until police have advised the organisation can proceed.**

 **If an organisation has started an investigation and then learns that police are investigating the same conduct (or if potentially criminal conduct is identified during the course of the investigation) the organisation should contact police immediately and discuss whether and how best to proceed to ensure any concurrent investigation does not compromise the police investigation.**



## Investigation planning

All good investigations start with a planning phase. Effective planning is pivotal to the overall success of the investigation.

Planning should be designed around the investigation purpose, scope, priorities, lines of inquiry, key evidence to gather and/or secure, identifying and managing risks, and key actions and personnel (including if an organisation uses an external investigator) to undertake the investigation. This should all be clearly documented in an investigation plan.

It is critical that an investigation plan details how the child or young person will be involved and supported throughout the investigation process; including how they will be supported at key stages, such as during an interview and when receiving information about the progress and outcome of the investigation. The involvement of children and young people in the complaints process is discussed in detail in **Guideline 1**.

An investigation plan should be systematic but sufficiently fluid so that it can be adjusted throughout the course of the investigation. It is risky to stick to a rigid path which fails to consider the evidence as it progresses.



**See Appendix J: Planning an investigation – factors to consider.**

## Evidence gathering

If a decision is made to conduct a formal evidence-based<sup>74</sup> investigation, the investigator must prove or disprove, if possible, any matters of fact raised by a complaint. The sources of evidence will depend on the details of the matter, but may include:

- ▶ oral evidence (recollections)
- ▶ documentary evidence (records)
- ▶ electronic evidence (images and communications)
- ▶ expert evidence (technical advice)
- ▶ site inspection (to identify, say, where an incident occurred).<sup>75</sup>

Investigators should take all necessary steps to protect the available evidence, including by managing the risk of evidence being contaminated, or of collusion between witnesses. If there are multiple witnesses in a matter, efforts should be made to interview them within as short a timeframe as possible.

Ensure that all information collected in relation to the investigation is managed securely, with access only by approved persons in an organisation.

Record all relevant details about interviews. This should include the location of the interview, who was present and the start and finish times of the interview. Where possible, records should be verbatim, verified, signed and dated by all involved.

There is an important difference between any staff member or volunteer managing a disclosure of abuse from a child or young person and the need to ensure that only

<sup>74</sup> An evidence-based investigation usually involves gathering and assessing a range of documentation/records etc and/or interviewing witnesses, before weighing the evidence gathered and making formal findings of fact; whereas an outcome-focussed investigation is directed towards achieving the end result that the individual is seeking, and does not require a systemic process of evidence gathering to achieve a fair and effective result.

<sup>75</sup> Ombudsman Western Australia, *Guidelines on Conducting Investigations*, 2009.

designated staff are involved in conducting investigative interviews.

It's ok for any staff member or volunteer to talk with a child or young person when they are disclosing a concern, in fact, this should be encouraged! The staff member should remember that the child or young person has approached them, so it is their job to listen, and let them tell their story in their own words. If what the child or young person tells them involves an allegation of concerning conduct or abuse, more specialist, detailed questioning should occur later, as part of an investigative interview.

Your starting point should always be that every child or young person is capable of giving evidence and should be given the opportunity to provide their version of events.

While utilising people with formal training and experience in conducting child interviews can be an advantage, with proper consideration and planning, designated staff within your own organisation are often well-placed to conduct interviews with children and young people, especially if the child or young person already has an established rapport with the interviewer.

The main ingredients of a successful interview are:

- ▶ identifying any specific needs of the child or young person before the interview, including any communication support needs, and making the necessary adjustments
- ▶ good preparation and planning
- ▶ effective rapport building and
- ▶ ensuring that the process is clear and well structured, so that all available information is elicited and evidence is not contaminated.

Even if police or the child protection authority have conducted an interview as part of a related investigation, don't automatically assume that it won't be necessary to interview the child or young person again. An interview can send an important message to a child or young person that your organisation wants to hear from them directly, and do what they can to help make them feel safe. However, you should also consider whether or not conducting an interview could have an adverse impact on the child or young person.



**See Appendix K: Tips for interviewing children and young people.**

Depending on the nature of an investigation, it can take some time to gather all of the relevant evidence. An organisation should stay in regular contact with any children and young people involved in the matter (and, where appropriate, their family) throughout the course of the investigation, even if it cannot provide any significant or substantive information.





**Where possible, you should identify one person who will be responsible for liaising with a child or young person throughout the entire process. This person may or may not be the investigator but it should be someone appropriate that the child or young person also trusts.**

**A child's or young person's support needs, and their readiness and willingness to access available supports, may change over time. Even if someone has turned down an offer of support previously, you should let them know that support is always available to them if they change their mind.**

## Assessing the evidence

Investigators and decision-makers are not bound by the standards of proof that apply in court proceedings. Their primary obligation is to comply with any requirements prescribed by relevant legislation, codes of conduct or other rules, and with procedural fairness requirements.

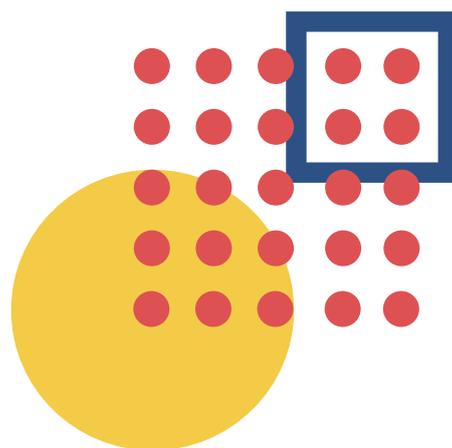
In making findings of fact, it is not necessary for investigators and decision-makers to prove the conduct based on the criminal standard (i.e. beyond reasonable doubt). However, a proven finding must be based on material that logically tends to show that all the facts necessary to establish the incident are made out to the reasonable satisfaction of the decision-maker. The decision-maker should

base their decision on clear and cogent evidence, and not guesswork, suspicion or rumour. The more serious the wrongdoing, the more care the decision-maker must exercise when deciding whether they are satisfied that the conduct is proven.

The standard of proof must be applied separately to each fact that must be established to reach a finding or make a decision.

When assessing the evidence, a decision-maker must evaluate the strength or weight of the evidence. This should include consideration of how reliable the evidence is:

- ▶ Is there another piece of evidence that either supports or contradicts the evidence?
- ▶ How plausible is the evidence in all of the circumstances?
- ▶ What is the source of the evidence, and is it objective?
- ▶ Has the person/people who are the subject of the investigation been provided an opportunity to comment on the evidence?<sup>76</sup>



<sup>76</sup> Commission for Children and Young People Victoria, *Investigating a Reportable Conduct Allegation*, June 2018.

## Finalising an investigation

When an investigation has been completed, it must be clearly documented in an investigation report. The report should allow any reader to understand how the investigation has been conducted and see that the investigation has made fair findings based on the evidence obtained.<sup>77</sup>

Generally speaking, the investigation report should set out:

- ▶ the parameters of the investigation
- ▶ any decisions made, both during and at the conclusion of the investigation, including the rationale, the position and name of the person making the decision and the date the decision was made
- ▶ the evidence obtained and an analysis of that evidence (including any evidence provided by, or supportive of a contrary view argued by, the subject of the complaint)
- ▶ the investigator's assessment of the evidence, including the weight given to each piece of evidence and why
- ▶ the investigator's recommendations, if any
- ▶ all of the investigation documentation should be filed and readily located within an organisation's document management system (refer to **Guideline 9**)
- ▶ the outcome of the final risk assessment, and whether any ongoing risk management is required in relation to the staff member, volunteer or another child or young person who allegedly caused the harm.



<sup>77</sup> Ombudsman Western Australia, *Guidelines on Conducting Investigations*, 2009.

## Making and communicating findings

In making findings, the decision-maker should have regard to whether there are specific types of findings that must be made depending on the circumstances of the investigation, e.g. if an organisation is covered by a reportable conduct scheme and the complaint falls within that scheme, it should use the findings that are available under the scheme in its jurisdiction.

Any findings must be clearly documented. This should include an explanation of why the findings were reached, including the reasons why any recommendations by the investigator were rejected.

While the person handling the complaint/ decision-maker is not required to notify the subject of the complaint of their provisional findings resulting from the investigation, it can enhance the fairness of the process if they are alerted to any perceived deficiency or inconsistency in their submission where this is appropriate and does not create any risk to the safety of a child or other person. See **Guideline 7** regarding fairness obligations more generally.

The decision-maker should communicate the outcome of the investigation to all relevant parties, taking into account relevant privacy and confidentiality considerations (see **Guidelines 3 and 4**).

Particular consideration should be given to how information will be communicated to children and young people. This includes

whether the child or young person is likely to need support in understanding the information; how to best communicate (e.g. in person or in writing); and whether they may need support or assistance either from the organisation, or through referrals to other services, or from a family member or friend.

A child or young person may have made a disclosure that has not been substantiated by the investigation. An important issue for children and young people when they disclose serious concerns—particularly abuse—is that they are believed.

In a situation where there was insufficient evidence to prove an allegation, in conveying the outcome to the child or young person, the organisation should avoid using language like 'the allegation was not 'proven' or 'substantiated', as this could cause them to think that the organisation does not believe them. A better approach is for an organisation to give the child or young person, where appropriate, a description of the type of things it did to investigate the allegation, the available evidence, and how this informed the outcome reached, including any action taken or proposed. The organisation should also let them know what steps have been taken to keep them safe.

## Taking action

After reaching its findings, a decision needs to be made by the organisation about what action should be taken as a result of the investigation. Even if an investigation does not result in any adverse findings against a person, it may still be necessary to take a range of steps to finalise the complaints process, including reporting to external bodies; taking disciplinary action in relation to a staff member or volunteer, providing them with training or support; and making changes to policies, procedures, or practice if the investigation has highlighted areas for improvement.

If any of the actions that an organisation is considering are likely to directly impact on a child or young person, they should be given every possible opportunity to participate in the decision-making process.

Where relevant, the organisation should always have a clear discussion with a child or

young person about 'what is next' once an investigation process is finished. The end of the investigation may not mean the end of the support and assistance that a child or young person needs.

Children and young people should be given the opportunity to provide feedback about how the investigation was carried out and its outcome. This feedback should be considered both in terms of the handling of their complaint but also the organisation's investigation processes more generally.



**See Appendix L: Checklist for responding to serious complaints involving the conduct of staff members and volunteers (including 'reportable allegations').**

## For further information see:

- ▶ Commissioner for Children and Young People, Victoria, 'Guidance for organisations: Investigating a reportable conduct allegation,' 2018.
- ▶ NDIS Quality and Safeguards Commission (and NSW Ombudsman developed), Reportable Incidents Guidance, <https://www.ndiscommission.gov.au/document/596>.
- ▶ The Advocate's Gateway, Council of the Inns of the Court, 'Planning to question a child or young person', Toolkit 6, 15 December 2015, <https://www.theadvocatesgateway.org/images/toolkits/6-planning-to-question-a-child-or-young-person-141215.pdf>.
- ▶ M. Mattison, Using communication aids in the criminal justice system, Toolkit 14, 27 February 2015, The Advocate's Gateway, Council of the Inns of Court, (The Advocate's Gateway, 2015) and Scope Australia, [www.scopeaust.org.au/communication-aids/](http://www.scopeaust.org.au/communication-aids/).

# Guideline

# 7

## BEING FAIR AND OBJECTIVE

### AT A GLANCE

- ▶ A fair process for all parties to a complaint also means a safe process for the affected child or young person.
- ▶ Listen to what children and young people say without judgement and take their views seriously.
- ▶ Never dismiss or give less value to children's or young people's views simply because they are not adults.
- ▶ Do not prioritise an adult's opinion over that of a child or young person where they may differ.
- ▶ Staff (particularly those involved in handling complaints) are aware of the common misconceptions about the reliability of children and young people as complainants.
- ▶ Identify and manage conflicts of interest to ensure a fair process and outcome for the affected child or young person, complainant and the subject of the complaint.
- ▶ Staff are aware of the potential for bias—e.g. where a child or young person makes a complaint about a valued staff member or volunteer—and know how to avoid it.
- ▶ The complaint investigation process is fair to the affected child or young person, other complainants and the subject of the complaint.
- ▶ Investigations are conducted with integrity and the process withstands external scrutiny.

# Key components of a fair complaint-handling process

## In order to create a fair complaint-handling process your organisation should:

- ▶ **Listen** to all children and young people, and others who raise concerns, and treat them with courtesy and respect. People often care as much about how their complaint is dealt with as they do about the issues that prompted the complaint and the final outcome.<sup>78</sup> Listen to what a child or young person says without judgment and take these views seriously. The child or young person might have a very different view to you or what you expect.

Children and young people are more likely to report abuse or concerns if they feel that their views will be heard and valued by your organisation.

- ▶ **Receive complaints with an open mind** and do not pre-judge the complaint outcome, the complainant or the subject of the complaint. Handle all complaints on their merits.

Ensure that staff understand the importance of not discounting the views of a child or young person when they receive different or contradictory information from an adult.<sup>79</sup>

- ▶ **Record all complaints** (allegations and incidents) and related information gathered during the complaint-investigation process, so that decisions are supported by evidence and your organisation is accountable for its decisions. Also, securely store all records.
- ▶ **Be aware of the potential for bias** and educate staff on how to avoid it. Avoid making assumptions about the veracity of a complaint simply because a child or young person may not want to participate in a complaints process. You should also ensure

that staff do not dismiss or minimise a child's or young person's complaint where it concerns a trusted, valued staff member or volunteer of the organisation, or a person in a position of authority or with certain status.

- ▶ **Manage any conflicts of interest** that arise during the investigation or response to a complaint. One example is to check that the appointed complaints handler, investigator or decision-maker does not have a close connection to the subject of the complaint or the involved child or young person or their family.
- ▶ **Be fair to subjects of complaints** and comply with legal requirements (e.g. procedural fairness obligations). Ensure the subject of the complaint is given sufficient opportunity to present their position and comment on proposed adverse findings, and is given reasons for the outcome decisions of the complaint. If another child or young person is the subject of the complaint, ensure they are not isolated or stigmatised in any way, and where appropriate, are supported to address behavioural or other issues, including referrals to treatment.
- ▶ **Take appropriate action** if a complaint is upheld and results in outcomes being implemented that are fair, reasonable and appropriate.
- ▶ **Explain decisions** to people with a relevant interest in the complaint.
- ▶ **Make information available** to the complainant and subject of the complaint about the review process available, if a person is not satisfied.

<sup>78</sup> NSW Ombudsman, Effective Complaint Handling Guide, p V.

<sup>79</sup> Commissioner for Children and Young People, Victoria, Fact sheet: 'Empowerment and Participation of children', [www.cryp.vic.gov.au](http://www.cryp.vic.gov.au)

## Avoiding misconceptions and assumptions

As well as not making assumptions about a child's or young person's ability to participate in a complaints process, it is important for organisations to be mindful of some of the misconceptions about the reliability and motivations of children and young people when they complain.

Labels like 'liar' and 'attention seeker' are commonly used to silence and discredit children and young people. In the context of abuse, broad ranging research consistently shows that children and young people are much more likely to minimise and deny what happened to them rather than exaggerate or make up allegations.

Organisations also need to be careful not to assume that what a child or young person is telling them is untrue, particularly if it involves an allegation of abuse by a trusted staff member or volunteer. It can be easier to believe a child or young person has lied than that the suspected offender has committed an act, especially if the organisation is responsible for their safety.

As outlined in **Guideline 1**, it is important that when talking to a child or young person about a complaint, they not only are believed but know they are believed.

## Be impartial and unbiased

Those involved in the complaint-handling process should be impartial and without actual or apprehended bias.

The types of things that might cause a fair-minded person to suspect bias include: a person's conduct, their associations, comments they have made, a conflict of interest, e.g. a relationship with the subject of the complaint or the complainant.

**Actual bias** is when it is established or clearly apparent that a person involved in the complaints process is biased.

**Apprehended bias** is when a fair-minded observer reasonably suspects that a person involved in the complaints process is biased. Actual or apprehended bias can undermine the integrity and legal validity of the decision-making process and outcome associated with the investigation of a complaint.

As part of assessing the complaint, organisations should clarify bias and conflict of interest concerns. Once the parties to a complaint are made aware of a potential issue, they can either indicate they have no objection and allow the complaints process to proceed, or make an objection. However, even if an objection is raised, the fair-minded person tests still applies.

Given the significant consequences which can flow from serious allegations such as abuse, the need for objectivity and impartiality throughout the complaints process is of paramount importance.



### Remember!

**A fair process for all parties to a complaint also means a safe process for children and young people.**

# Recognising and managing conflicts of interest

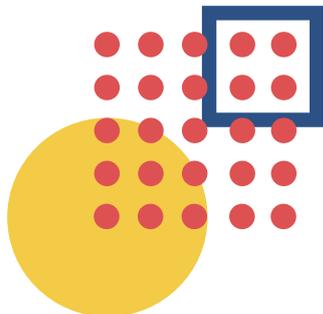
Staff handling or investigating a complaint should be objective and impartial. One factor that can affect a complaint handler or investigator's neutrality is a conflict of interest between their official role and other personal or professional views or responsibilities.

Personal views or private interests can influence and compromise a person's capacity to perform their official duties impartially. One example is bias or conflicts of interest arising where a person investigating a complaint or incident has worked with a staff member (the subject of the complaint) for some time and may have formed a view as to the integrity of that person.



**Tip!**

**Organisations should regularly ask staff to declare any potential conflicts of interest. This should not be a one-off exercise when they join the organisation.**



## Case example:

A young person alleged that he was hit across the face by a youth worker called Mike after he made a remark about his girlfriend. The young person told the CEO, who immediately allocated the complaint to one of her two supervisors, Tom, to handle. When the young person found out that Tom was handling the complaint, he decided not to continue, because he knew that Tom was friends with Mike and they played in the same football team together. The CEO did not realise this at the time but nor had she asked her staff to declare any potential conflicts of interest at the start of the year. She reallocated the complaint to her other supervisor, but Mike lost faith in the process by that stage, and did not proceed with his complaint.

## Identifying conflicts of interest

There are three different types of conflict of interest:<sup>80</sup>

- ▶ **Actual conflict of interest**—this is where a conflict actually exists.
- ▶ **Potential conflict of interest**—this is where a conflict of interests could happen in the future, and steps should be taken to stop that from happening.
- ▶ **Perceived conflict of interest**—this is where a reasonable person might think that another person involved in the handling of a complaint could be influenced by a personal interest, regardless of whether the investigator is actually being influenced or not.



### Note!

Sometimes a conflict of interest is impossible to avoid. In such circumstances it is important to:

- ▶ **be transparent – acknowledge that the conflict exists**
- ▶ **take steps to manage the conflict and minimise the impact (as far as practicable).**

---

<sup>80</sup> Commission for Children and Young People, Victoria, Guidance for Organisations, 'Investigating a Reportable Conduct Allegation,' June 2018.

**Key considerations:**

- ▶ How serious is the complaint and does it directly impact on the rights or interests of a child or young person, the subject of the complaint, service receivers or the general public?
- ▶ Does the complaint handler/ investigator have a current or previous personal, professional or financial relationship with an interested party, and if so, how significant is or was the relationship (e.g. is the relationship one of simple acquaintance, previous work experience, close friendship, business partnership)?
- ▶ Does the complaint handler/ investigator hold any personal or professional biases/ prejudices that may lead to the conclusion that they are not an appropriate person to handle the complaint?
- ▶ How serious is the alleged conduct? The more serious the allegation, the more important it is that there is no actual or reasonably perceived conflict of interests.
- ▶ Would the complaint handler/ investigator or anyone associated with them benefit from or be damaged by the investigation finding?
- ▶ What are the views of the child or young person or their family, and the person the subject of the complaint? Do they object to the proposed investigator?
- ▶ Is the complaint handler/investigator aware of the potential for conflict? Did they volunteer information or acknowledge the conflict? Do they believe that they can remain impartial?
- ▶ Is the allegation about the head of organisation or a person holding a senior role or a person whose role involves dealing with complaints, such as the Head of HR? If so, what steps need to be taken to address this?
- ▶ What does the organisation's code of conduct require in relation to conflict of interests?

**What can happen if a conflict of interest is not dealt with?**

Conflicts of interest can have damaging and long-term effects for all concerned in a complaint, e.g.:

- ▶ A person alleged to have abused or harmed a child or young person may go unreported, not be investigated, and they could remain in a role working with children and young people and go on to harm others
- ▶ The child or young person, or their family, or the subject of the complaint, may be less likely to participate in the complaints process or be satisfied with the outcome, and may seek other forms of redress, e.g. through legal action
- ▶ The reputation of the subject of the complaint may be unfairly damaged if it is seen, or is reasonably perceived, that a favourable finding was unsound because it was affected by bias/conflict of interests
- ▶ The reputation of the organisation may suffer, leading to a loss of faith or trust by parents and/or the wider community.



## What to do when a conflict of interest is identified

An organisation's complaint-handling policy should address the likelihood of conflicts of interest occurring and outline the alternative arrangements that can be made within its organisational setting.

Ideally, if a compliant handler, investigator or decision-maker in relation to a complaint has a conflict of interest (actual, potential or reasonably perceived), that person should not be appointed or should not remain involved in the investigation or handling of a complaint. In some organisational settings (e.g. larger organisations) this might be resolved by appointing a different complaints handler, investigator or decision-maker. However, it may not be possible or even necessary in every case to have a complaint handler or an investigator who is totally independent or has no prior connection with the person under investigation. An example of this is in

small organisations where staff numbers are limited. The relationship between supervisor and colleague may not in itself give rise to an unmanageable conflict of interest.

Conflicts of interest should be reported to the head of the organisation except where this individual is the source of the conflict of interest. If this is the case, an organisation should contact the Chairperson of the organisation's board or an independent body, such as an Ombudsman's office, children's commission or a regulator for advice.

Records must be kept in relation to any conflicts of interest that have been declared by staff and volunteers in a central location. In addition, the complaint documentation should also include any action taken by the organisation to manage a conflict of interest identified with respect to the investigation of a particular complaint.

## Affording fairness to the subject of the complaint

Organisations should afford fairness to all parties involved in a complaint, including any person whose interests may be adversely affected by any decisions or findings. The complaint-handling policy should specify the standard of behaviour expected of all complaint handlers/investigators in the organisation, and set out the steps for complying with legal requirements (e.g. under industrial agreements or employment law or in relation to affording procedural fairness).<sup>81</sup>



---

<sup>81</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 'Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts', March 2016.



## Follow these steps to ensure a fair process for the subject of the complaint:<sup>82</sup>

- ▶ Consider how confidentiality can be maintained while still being as fair as possible to the subject of the complaint.
- ▶ Select a person to handle the complaint who does not have any real or perceived conflicts of interest, and avoid any reasonable apprehension of bias.
- ▶ Identify the training, policies, procedures and any other relevant systems made available to the subject of the complaint that are relevant to the conduct being alleged.
- ▶ Inform the subject of the complaint of the issue to be investigated, and the allegation(s) made, at the appropriate stage of the complaints process. Be mindful not to reveal too much information if it could potentially prejudice the subsequent inquiries made or put at risk the safety of a child or young person or any other individual. If the allegation is serious then this should be done in writing. There is generally no obligation to notify a person of an adverse allegation when a complaint is first received. A reasonable opportunity to comment on the allegation or potential finding can be given at a later stage.
- ▶ Inform the subject of the complaint how the complaint will be investigated; who will be conducting the investigation; how long it is expected to take; and how the investigation will be reported.
- ▶ Ensure that the investigation of the complaint is conducted in a fair and unbiased manner.
- ▶ At an appropriate stage in the investigation, give the subject of the complaint adequate details of any allegation to enable them to respond in a constructive manner, drawing their attention to issues that are likely to be critical to the outcome. It is generally sufficient to give the subject of the complaint a summary of the information that may be relied on in reaching a decision. Sometimes it might be necessary to allow a person to inspect a document or view CCTV footage.
- ▶ While the complaint handler, investigator or the decision-maker, is not required to notify the subject of the complaint of their provisional findings resulting from the investigation of the complaint, it can make the process fairer if the subject of the complaint is alerted to any perceived deficiency or inconsistency in their submission/ evidence.
- ▶ Inform the subject of the complaint of any potential action that may result from the investigation of the complaint (e.g. restrictions on their duties, closer supervision, suspension, dismissal).
- ▶ Allow the subject of the complaint to respond to the complaint allegations within a reasonable timeframe and the preliminary action that might be taken in response if the allegations are proven. The time frame | depends on the circumstances, the volume and complexity of the relevant material the subject of the complaint may need to review and respond to.

<sup>82</sup> Adapted from, *National Disability Insurance Scheme (Procedural Fairness) Guidelines 2018*



### Tip!

**Wherever possible, allow the subject of the complaint to choose how they respond, e.g. an interview or a meeting. They may wish to bring along a support person/advocate or make a written submission. You should also ensure that any communication support needs are addressed such as providing an interpreter or communication assistant if the person has a cognitive impairment or some other communication difficulty.**

- ▶ Inform the subject of the complaint of the decision made following the investigation. This advice is best done in writing, particularly if the complaint raises serious issues, to ensure clarity and certainty and to enable the subject of the complaint to decide whether they want to seek a review of the decision.
- ▶ If management or disciplinary action is taken in response to the complaint, the nature of the action taken should also be clearly recorded (e.g. an adverse finding recorded on their personnel file). If the subject of the complaint has a right to challenge or review the action, then the process for doing so should be outlined.

## For further information see:

- ▶ National Disability Insurance Scheme (Procedural Fairness) Guidelines 2018
- ▶ Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 6, Making Institutions child safe, 'Appendix A: Practical guidance for implementing the Child Safe Standards'; Final Report: Volume 7 Improving institutional responding and reporting, December 2017.
- ▶ Commissioner for Children and Young People, Victoria, [Information sheet 13: Workers and Volunteers and the Reportable Conduct Scheme](#)
- ▶ Ombudsman Western Australia, Guidelines: [Procedural fairness \(natural justice\)](#)
- ▶ ACT Ombudsman, Practice Guide No 4, [Planning and Conducting an Investigation](#)



# Guideline 8

## EXPLAINING OUTCOMES AND REVIEW OPTIONS

### AT A GLANCE

- ▶ Organisation knows what type of outcomes are available for different complaints, such as providing an explanation, improving policies and systems, child protection, management and disciplinary or criminal action.
- ▶ Apologise whenever possible when mistakes are made.
- ▶ Children and young people and complainants know what the potential outcomes are for certain types of complaints and are told the final outcome and the reasons for it.
- ▶ Children and young people and complainants know what action was taken to deal with the complaint.
- ▶ Finding out about the outcome of a complaint may be traumatic for the child or young person involved and may make them feel unsafe, irrespective of the outcome. Consider the most appropriate way to communicate information to the relevant child or young person, and the support they might require.
- ▶ Ensure that children and young people in care or detention understand why the outcome resulting from a complaint has led to a change that needs to be made to their everyday life or where they live, e.g. having to change care placements due to safety risks.
- ▶ Explain to children and young people how they can seek a review of the outcome if they are unhappy with the complaints process or the result. Let them know the contact details for external complaint-handling review bodies if they continue to have concerns.
- ▶ Ensure subjects of the complaint receive reasons for decisions that affect them, and advice about avenues for review of decisions.

## Providing reasons

A basic principle of good complaint handling involves organisations providing reasons for how they reached decisions in relation to the investigation or resolution of a complaint. Like anybody else, children and young people are more likely to be satisfied with the outcome of a complaint, and have confidence in an organisation's complaint-handling system, if they understand why particular decisions were made or actions taken.

## Available outcomes

While each complaint is different, organisations should try to make decisions and deliver outcomes that are consistent. This means treating similar issues in a similar way but does not mean treating people or complaints the same where the circumstances of the complaint warrant a different outcome. The focus needs to be on achieving an outcome that is in the best interests of the child or young person and fair to all parties. Outcomes of complaints often involves one or more of the following:<sup>83</sup>

- ▶ **Acknowledgement:** of how a situation, service or conduct has affected the child or young person (e.g. any harm or trauma suffered, embarrassment, hurt, pain, damage or financial loss, or inconvenience) and what they are entitled to expect in the future in terms of quality service.
- ▶ **Apology:** maybe all or part of what is sought by some children and young people and their families.
- ▶ **Explanation:** of what happened or information that may be needed to address the child's or young person's concerns or complaint. It can also be helpful to explain that their complaint provides a record that can be used down the track if other similar complaints are made about the same individual/issue.
- ▶ **Action:** steps taken or agreements on actions that will be taken by an organisation to address the child's or young person's concern/s.
- ▶ **Improved policies or processes:** change practices, policies or procedures to prevent similar problems reoccurring.
- ▶ **Management action:** providing the subject of the complaint with advice, training mentoring or closer supervision.
- ▶ **Child protection action:** an organisation may need to make a mandatory child protection report, notify an oversight body if the conduct/incident is reportable, or report an outcome to a working with children and young people check operator or regulator.
- ▶ **Disciplinary action:** against the subject of the complaint, such as suspension and/or dismissal.
- ▶ **Criminal action:** if the complaint alleges criminal conduct, a referral to police should be made which may result in a charge being laid and a subsequent conviction.
- ▶ **Financial redress:** such as reassessing entitlements to support, waiving of a debt or fee, providing an allowance, refund, an ex gratia payment or facilitating a compensation claim.
- ▶ **Provision of counselling and/or other support** to the child or young person and, where appropriate, other children and young people affected.

<sup>83</sup> Adapted from DSC Fact sheet: Dealing with Complaints about your Service.

Irrespective of whether or not a complaint has been proved, it may still be appropriate for the organisation to take some kind of improvement action, e.g.:

- ▶ improve training and staff capability
- ▶ re-issue the code of conduct to all staff
- ▶ review communication methods used with children and young people
- ▶ analyse feedback and complaint data and identify trends for performance/ service improvement.



## Spotlight on apologies

*'Many survivors of child sexual abuse in an institutional context told us how important it is to them, and their sense of achieving justice, that the institution makes a genuine apology that acknowledges the abuse and its impacts. Some told us that a genuine apology contributed to their healing process. Some felt that apologies were more valuable than monetary compensation'*

**Royal Commission into Institutional Responses to Child Sexual Abuse.**

When things go wrong, many children and young people want no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and apology. The power of a prompt and sincere apology for any misunderstanding, mistake or wrongdoing should not be underestimated. It often will avoid the escalation of a dispute

(and the cost, time and resources that can be involved) and help to restore or maintain good relationships.

The most appropriate form and method of communication of an apology will depend on the circumstances of the particular case, the harm suffered and what is hoped to be achieved by giving the apology, e.g. acknowledgement of the wrong done, reconciliation or an assurance that a problem has been addressed or will not recur.



### Remember!

**An apology does not constitute an admission of liability and will not be relevant to a court's determination of fault or liability in connection with civil liability of any kind.<sup>84</sup>**

<sup>84</sup> For more information on Apologies, see NSW Ombudsman, Apologies, Public Sector Agencies Fact Sheet 1; Frontline complaint handling training 2017, <https://www.ombo.nsw.gov.au/training-workshops-and-events/our-workshops/complaint-handling-training>.

## Managing expectations about likely outcomes

The child or young person's views should inform an organisation's decision-making about what outcomes are reasonable and appropriate. Explaining the possible outcomes to the child or young person at the outset is an intrinsic part of upholding their right to have a say in decisions and processes that affect them. Being clear about what is or is not possible or likely, also helps children and young people to have an informed view about what to expect.

It is also critical to explain to children and young people why they may not be able to receive fulsome details relating to particular issues, e.g. to uphold the subject of the complaint's right to privacy, or it may still be under police investigation.

It is common for a child or young person to tell staff they do not know or are not sure what they want to happen when they complain. If they have experienced poor service or unfair

treatment, they might just ask the organisation to 'fix it' or request something 'to change.'

The organisation should take on board, at an early stage of the process, what the child or young person wants from the complaint. For some children and young people, they may not yet know what they want from making the complaint. The organisation should explain the types of outcomes that may result being mindful of setting realistic expectations.

When handling complaints that involve allegations of abuse, it is critical that the complainant's expectations are carefully managed, not only to avoid dissatisfaction with the outcome and/or the organisation's handling of the complaint, but also because creating unrealistic expectations can result in further trauma to the child or young person or their family or carers.

## Explaining outcomes and decisions

Generally, an organisation should provide the child or young person and their parent/carer with a reasonably detailed explanation about:

- ▶ what action was taken to investigate the complaint
- ▶ the reason for an outcome, decision or finding, including the main evidence that was obtained or unable to be obtained
- ▶ action taken, or that will be taken, to address the complaint, including by whom and when.



## The complainant

When children and young people speak up and make a complaint, it is critical to tell them—using appropriate language and communication methods—what has or will happen as a result. This is a key component of a child-focused complaints process.

*A great frustration for children and young people is not knowing whether something happened in response to their complaint or whether anything will change for them.<sup>85</sup>*

As detailed in **Guideline 1**, an organisation must have regard to a child's or young person's age, maturity, developmental needs and any other vulnerability factors, as well as the preferences expressed by the child or young person, when deciding how best to communicate with them about the complaints process, and the level of detail provided.

If a child or young person has a cognitive impairment, an organisation needs to consider their capacity to understand certain information. It may need to identify the relevant guardian or nominee authorised to receive information on their behalf. **Guideline 9** discusses the importance of keeping clear records about who has the authority to make decisions or receive information on the child or young person's behalf, especially if the child or young person has a cognitive disability.

Finding out about the outcome of a complaint may be traumatic for the child or young person involved and may often make them feel unsafe, irrespective of the outcome, e.g. if strong action is taken in response to a complaint of abuse, such as criminal action and a conviction, they could be fearful that the individual involved may seek to punish them in some way, conversely, if criminal action does not lead to a conviction, then they may also feel unsafe.

Even when conveying the outcome of a complaint that an adult may not regard as serious, a child or young person may still be fearful or concerned about how they will be treated in response by an organisation, the subject of the complaint or potentially other children and young people. This is particularly the case for children and young people living in out-of-home care or detention facilities.

It is also critical that children and young people in care or detention understand why the outcome resulting from a complaint has led to a change that needs to be made to their everyday life or where they live, e.g. having to change care placements or rooms due to safety risks. They need to know they will be consulted about types of changes that directly affect them.

Organisations should tell children and young people about the range of protective actions resulting from a complaint, and consulted on how best to convey this information to them. They should emphasise that they can contact



### Tip!

**Even where a child or young person may ask to be told in person the outcome of a complaint or review options, it is good practice to also record the outcome of the conversation in writing to them (and/or their parent/carer) in an appropriately sensitive manner, so the record is there for the future.**

<sup>85</sup> Feedback from CREATE – ACT Children and Young People Commissioner, 18/02/19.

an individual in the organisation or relevant external complaint-handling bodies (e.g. children's commissions, Ombudsman offices, etc.) if they continue to have concerns. Following the resolution of the complaints process, seek the views of the involved child or young person (and/or the person who complained on their behalf) about the complaints process, and facilitate access to support services if needed.

## The subject of the complaint

As discussed in **Guideline 7**, complaints processes need to be fair to the subject of the complaint, including providing them with opportunities to comment on facts, and preliminary conclusions or outcomes. If an organisation makes adverse findings about the subject of allegation, the organisation must also have regard to this individual's privacy rights when determining what information about the outcome/decision is shared with the complainant.<sup>86</sup>

When explaining the outcome of more serious complaints which have resulted in disciplinary action, it should be made clear to the subject of the complaint why their conduct was in breach of the organisation's code of conduct, and why it has attracted disciplinary action. The organisation's disciplinary processes and code of conduct should be referenced in the complaint-handling policy and be regularly communicated to all staff, volunteers, parents/carers and children and young people (see **Guideline 1**).

It is also important when explaining outcomes to a subject of the complaint, that they are advised that the organisation may need to notify other bodies of the outcome as part of fulfilling their legislative obligations (e.g. notifying Working With Children Check



## Remember!

**While your organisation's complaint-handling process has ended, it does not mean that it is over for the child or young person.**

operators, oversight bodies administering reportable conduct/incident schemes, and regulatory bodies).

As noted previously, there is a range of outcomes which can result from a complaint that are not disciplinary in nature. These outcomes include those providing professional development, training or counselling/mentoring for the subject of the complaint, as well as others resulting in changes to systems and practice. It is essential that the subject of the complaint has a good understanding of these broader complaint outcomes to encourage them to learn from the complaint and contribute to ongoing service improvement.



<sup>86</sup> NSW Ombudsman, Model Complaint Handling Policy, <https://www.ombo.nsw.gov.au/complaints/Complaint-handling-resources>

### Where a child or young person is the subject of the complaint

Where another child or young person is the subject of the complaint, communicating the outcome needs to be carefully managed, and they need to know that they will be appropriately supported by your organisation, and others in their circle of support, even where serious action is required to manage their conduct.

This support should not just be provided at the time of communicating the outcome to the child or young person. This should be

done in accordance with the support plan (see p.18) identified at the outset of the complaint<sup>87</sup> but future supports should be built in. A plan should provide them with the necessary supports and services to address any problematic behaviours that have the potential to cause them further harm, as well as harm to other children and young people. One example is if the complaint relates to a child or young person exhibiting sexually harmful behaviour. Then it is critical for the organisation to work with parents /carers and other service providers and authorities to coordinate the necessary therapeutic response. See **Guideline 1.**<sup>88</sup>

## Asking for a review

If a complainant or the subject of the complaint is not happy with the outcome or handling of the complaint, it is good practice for organisations to provide the option of an internal review of a decision or the outcome. Both complainants and the subjects of the complaint should also be made aware of their options for seeking an external review and/or making a complaint with an independent body.

Children and young people (or other complainants who may have difficulty in documenting a request) should not be made to request a review in writing, as verbal advice should be considered sufficient.

A complaint-handling policy should include the review options available for both parties, how to request a review, and explain what happens when a request for review has been made.



---

<sup>87</sup> If the subject of complaint is another child or young person, you should also develop a plan for involving them in the complaints process at the outset, as you would if a child or young person is the complainant, and this should include identifying the person they would like to support them when receiving information and making decisions.

<sup>88</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report

## Internal review

An internal review should be conducted by a senior member of staff who was not involved in the original handling of the complaint.

The review should consider:

- ▶ the process adopted in the original complaint and whether it was fair and adequate to address all issues raised
- ▶ the basis for the decision/outcome, including the available evidence to support it, and whether the decision/outcome was properly explained to the complainant (including a child or young person if they're directly involved), or to the subject of the complaint.

The reviewer may:

- ▶ uphold the original decision
- ▶ change the decision
- ▶ refer the matter back for further investigation of issues raised or for alternative dispute resolution options to be explored.

## External review

There are also various avenues for children and young people/other complainants and subjects of the complaint to seek an external review of the decision or outcome. For instance, staff who believe they have been unfairly, unjustly or unreasonably dismissed from their job may wish to take industrial or other employment action in an industrial relations or civil and administrative tribunal or via Fair Work Australia.

The external review options available will depend on the type of complaint and decision and outcome. External oversight bodies such as children's commissions, ombudsman offices and the NDIS Quality and Safeguards Commission have a role in relation to reviewing particular complaints and/or

oversighting the handling of allegations of reportable conduct/incidents.

The subject of a complaint should be provided with advice about their complaint, review and appeal options relating to disciplinary actions, e.g. appealing decisions that relate to their employment status.

If the complainant is a child or young person, the organisation needs to ensure that they understand a different outcome may result from a review option being exercised. The organisation should continue to provide support to the child or young person if they exercise the review option.

## For further information see:

- ▶ Commissioner for Children & Young People, Western Australia, '[Child Safe Organisations WA – Guidelines](#)', 12 May 2016.
- ▶ Department of Health and Human Services, Victoria, [Human resources practices for child safe organisations](#)
- ▶ SOCAP, [Complaint outcomes and record keeping](#)

# Guideline 9

## RECORD KEEPING & COMPLAINTS DATA

### AT A GLANCE

- ▶ Full and accurate records about complaints involving children and young people is a fundamental rights issue.
- ▶ Good complaint record keeping helps with continual service improvement and provides greater accountability and transparency around decision making.
- ▶ Effective record-keeping practices are used to receive, record, manage and investigate complaints, and key requirements and related processes are clearly outlined in the complaint-handling policy.
- ▶ The organisation complies with any legislative or other record-keeping requirements in the jurisdiction.
- ▶ Records relevant to child safety and wellbeing are only disposed of in accordance with law or policy.
- ▶ Children and young people and their families are told about what records are kept by the organisation, for how long, and how they can access them now or in the future.
- ▶ Individuals' rights to access, amend or annotate records about themselves are recognised to the fullest extent.
- ▶ Information about all complaints, including breaches of relevant policies/codes of conduct is recorded and analysed to check that:
  - » processes are being followed
  - » timeframes are being met
  - » complaint trends/patters and risks relating to certain individuals are identified
  - » systemic problems are detected and mitigated by the organisation.

# Establishing and maintaining an effective record-keeping system

A good record keeping-system is central to transparency and accountability, and to the overall integrity of an organisation. It is critical that organisations are familiar, and keep up to date, with their record-keeping obligations (under legislation, standards, or contractual/funding agreements).

Organisations should have a clear system, referenced in their complaint-handling policy, for systematically recording and documenting all complaints and related outcomes.



**See Appendix M: Complaint Record Form.**



**Note!**

**The Royal Commission into Institutional Child Sexual Abuse found that poor record keeping was a key concern for adult survivors of child sexual abuse.**

**Key requirements:**

- Complaint records should be maintained in an indexed, logical and secure manner.
- All complaint records should be dated and signed where appropriate. Where relevant, it should be clear who created the record and approved the recommended action.
- It should be clear who is responsible for maintaining the record-keeping system, and for authorising the release or sharing of certain records.
- Staff should be trained to understand and use the record keeping system, and supervision and support provided.
- The record-keeping system should be regularly reviewed by the designated individual to ensure it is effective, up-to-date, and compliant with current record-keeping obligations.
- Children and young people and their families need to be informed about the type of records made about their complaint, what will be kept and for how long, and how they can access records now or in the future.



## Recording complaints data

Organisations should outline in their complaint-handling policy the type of information that will be documented at critical stages of the complaints process. In this way, an organisation's record-keeping system should reflect good complaint-handling practices. If records are made continuously throughout the process, they can also act as a prompt to take the next step in the process. It is difficult for an external body to assess the standard

of complaint investigations undertaken by an organisation if insufficient details were recorded.



**See Appendix N: Tips for recording key complaint data.**

## The value of complaints data – continuous improvement

Organisations should establish a secure database for collecting, monitoring and assessing the significant data and intelligence that can be derived from complaints. By collecting this data and analysing it regularly, organisations can identify trends and systemic issues, detect patterns of behaviour and gain insights into the particular demographics of the people making complaints.

Complaint data is also valuable and objective information source to inform organisational decision making.

An organisation should continue to monitor its complaint-handling system to provide quality assurance and promote continuous improvement.

Monitoring might include the use of audits, surveys and online tools to understand how effectively, and consistently, complaints processes are being used and meeting the needs of service users. See the [NSW Ombudsman Complaint Handling Policy Template](#).

The learnings from complaints and related service improvements should be published on the organisation's website, and reported via other communication methods to children and young people using its service and their parents/carers.

An essential component of good governance involves boards or agency executives having direct line of sight over complaints made about the organisation's services and conduct of its staff.



**Note!**

**Boards and executive teams should ensure that without breaching privacy or jeopardising ongoing complaints, that complaints and related trends and data is a standing agenda item at regular meetings.**

# Complying with record-keeping obligations

Organisations may have legal, contractual or other obligations to keep or maintain records in a particular way and for a specified period of time. An organisation should ensure that any specified obligations are referenced in the record-keeping section of its complaint-handling policy.

Organisations should ensure that records are secure, kept in a manner that protects them from environmental damage, and that digital records are safely preserved, e.g. through secure back-up servers, the 'cloud', etc.



## Note!

**Each jurisdiction generally has a Records Act which provides information about the storage of records.**

Organisations must establish a system for keeping records about the handling of allegations against staff members. Records relating to any allegations should be maintained on a file, and kept in accordance with any specific requirements.

A complaint-handling policy should specify which staff (or which roles in the organisation) are permitted to access records relating to complaints. There should also be guidance about when access needs to be restricted on the complaint database or system relating to specific complaints and/or for certain types of

complaints. Adopting document markers such as 'highly confidential' and limiting distribution to staff in certain roles, is one way to preserve the integrity of the complaint-handling process and the privacy of the people involved.

It is critical that all staff and volunteers are made aware of record-keeping obligations, and any specific requirement such as reportable conduct schemes require organisations to have systems in place for preventing, detecting and responding to reportable conduct. Organisations may also have specific requirements in relation to Working With Children Check legislation.

### Example:

**In NSW, in the case of a notification to the Children's Guardian by a reporting body under cl.24 of the Child Protection (Working with Children) Regulation 2013, those agencies or their successor must keep records of allegations, investigations and findings concerning the subject of any such notification for not less than 30 years, unless the records are given to the Children's Guardian, such as when an agency ceases trading.**

### Example:

**In accordance with the NDIS (Incident Management and Reportable Incident) Rules 2018, registered NDIS providers must keep records of all reportable incidents that occur or are alleged to have occurred for a period of seven years from the date of notifying the NDIS Quality and Safeguards Commission.**

## Releasing records

In relation to their complaint, children and young people and their families need to know what records are kept by an organisation, for how long, and how they can access them now or in the future.

The Royal Commission heard from survivors of child sexual abuse of the considerable difficulty and distress experienced while trying to access records about themselves, and recommended that:

***‘Individuals’ existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent... individuals whose childhoods are documented in an organisation’s records should have a right to access records made about them. Full access should be given unless it is contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.***

**Royal Commission into Institutional Responses to Child Sexual Abuse.**

Organisations need to:

- ▶ understand their obligations under federal and state or territory freedom of information/public access to information and privacy laws and
- ▶ assist children and young people to exercise their rights to request and access records containing their personal information.



### Note!

**If the complainant and or affected child or young person has capacity issues, consideration needs to be given to the most appropriate way to release records and information and who else may be authorised to receive it on their behalf (e.g. a guardian or nominee).**

At the national level, the Freedom of Information Act 1982 applies to Australian Government ministers and most government agencies. Each state and territory has differing legislation in relation to accessing information, and organisations need to be familiar with how it applies to their entity type (i.e. government/non-government).<sup>89</sup>

Freedom of information and public access laws generally favour the release of a record where it allows a person access to his or her own personal information,<sup>90</sup> and usually promote a presumption in favour of releasing a record unless there is an overriding public interest against the disclosure.<sup>91</sup>

When determining what information to release relating to a complaint record, organisations should be mindful of privacy and confidentiality obligations concerning the release of personal information about other individuals, such as a subject of the complaint.

<sup>89</sup> Office of the Australian Information Commissioner guidance on FOI in state and territory legislation, <https://www.oaic.gov.au/freedom-of-information/other-foi-jurisdictions>

<sup>90</sup> See, for e.g., Freedom of Information Act 1982 s 11B; Freedom of Information Act 1992 (WA) s 21.

<sup>91</sup> See, for e.g., Government Information (Public Access) Act 2009 s 5.

## For further information see:

- ▶ Royal Commission into Institutional Responses to Child Sexual Abuse, Final report, Volume 8, Recordkeeping and information sharing, <https://www.childabuseroyalcommission.gov.au/recordkeeping-and-information-sharing>
- ▶ SOCAP Guidelines on Record Keeping, <http://socap.org.au/complaint-outcomes-and-record-keeping/>
- ▶ Fair Work Australia
- ▶ NSW Ombudsman Fact Sheet: [Keeping Records](#)
- ▶ NSW Ombudsman, [Complaint Management Framework](#), June 2015 and [Complaint Handling Model Policy](#).

# Appendix A

## Checklist for an effective complaint-handling system:<sup>1</sup>

### Strong leadership and governance

#### Does your organisation:

- prioritise child safety and wellbeing?
- have an easy to understand complaint-handling system that children and young people, staff, volunteers and families can use?
- have a clear and publicly available code of conduct and/or guarantee of service?
- provide staff and volunteers with relevant information, training, mentoring and/or supervision to give them an understanding of what conduct must be reported and to whom, and what their responsibilities are under the complaints system?<sup>2</sup>
- have an open culture that supports people to speak up about concerns?

### Fair and respectful treatment

#### Does your organisation:

- have strategies in place to ensure that people who make complaints are treated respectfully, courteously and sensitively?
- uphold equity and diversity in handling complaints?
- have a commitment to providing a fair and reasonable process for the complainant and the subject of complaint?

### Accessibility

#### Does your organisation:

- make it easy to complain?
- enable people who engage with your organisation know what they can complain about, who they can speak to within the organisation and what they can expect in response from the organisation?
- make information about how to complain easy to find and available to children and young people, staff, volunteers and the community in different age and culturally appropriate formats (plain English, audio, different languages, etc)?
- make information publicly available via physical and online formats?

### Flexibility

#### Does your organisation:

- make adjustments to complaint-handling process to suit the communication and support needs of children and young people and their parents or carers who take up concerns on their behalf?
- offer multiple ways to complain, including ones specifically informed by, and targeted to, the needs and wishes of children and young people?

<sup>1</sup> Adapted from the 'Whole-of-Government Commitments to Effective Complaint Handling' and NSW Ombudsman Frontline Complaint Handling Training resources.

<sup>2</sup> Adapted from Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 6: Appendix A: Practical guidance for implementing the Child Safe Standards.



### Good communication

#### Does your organisation:

- keep people directly informed about the status of the complaint, and update other stakeholders when required?
- support people to make a complaint if they need it, such as engaging an interpreter, advocate or support person?

provide ongoing feedback so people who complain and service users know what's working and what has changed as a result of complaints?

### Taking ownership

#### Does your organisation:

- ensure its complaint-handling system is understood by those responsible for its administration?
- clearly articulate the policies and procedures and clearly outline the roles, responsibilities and commitments of volunteers, staff, managers and the executive in relation to complaint handling?
- have staff that are trained and equipped with relevant skills to deal effectively with complaints, including those from children and young people?

### Timeliness

#### Does your organisation:

- deal with complaints as soon as possible?
- ensure complainants and other relevant stakeholders are aware of your organisation's timeframes for finalising their complaint?

### Transparency

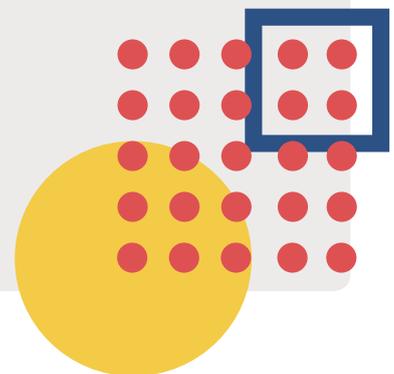
#### Does your organisation:

- have systems to document all complaints?
- have clear guidelines about this system documented in a clear, accessible complaint-handling policy?
- have a policy that covers what constitutes a complaint; roles and responsibilities; approaches to dealing with different types of complaints; obligations to act, report and record; timeframes; and advice on communication, referral and support for staff, volunteers, children and young people and their families?<sup>3</sup>
- securely store complaint records?

### Continuous improvement

#### Does your organisation:

- collect, analyse and review complaints data and general feedback, identify trends and systemic issues, detect behaviour patterns, and gain insights into the demographics of the people making complaints?
- use data collected about complaints to improve services and enhance child safety?



<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 6: Appendix A: Practical guidance for implementing the Child Safe Standards.

# Appendix B

## Complaint-handling process: An overview

### The complaints process – an overview

Organisations must have a robust complaint-handling process in place to receive, record, manage, resolve and report on complaints. This appendix outlines the complaints process.<sup>1</sup>

1

#### Receiving the complaint

Complaints may be received in various ways, including in person, by phone, via an online complaint form, by email or by social media. Your organisation should provide multiple avenues for children and young people to make complaints. Unless the complaint is resolved at first point of contact, details of the complaint should be recorded along with other relevant information.

2

#### Record the complaint and relevant information

You should record the key complaint details, such as details about the complainant, any additional communication or support required; details about the subject of the complaint, the complaint issues, how the complaint was resolved/investigated; risks managed and the complaint outcome. See **Guideline 9** and **Appendix G: Complaint Record Form**.

3

#### Acknowledge the complaint

- Complaints should be acknowledged at the time of receipt or as soon as possible afterwards. Children and young people are often wary about making a complaint, and want to be assured they are being listened to straight away.<sup>2</sup>
- Acknowledge the complaint by using the preferred communication method nominated.
- Identify a contact point for the child or young person and their parent or carer.
- Provide the child or young person with information about the complaint-handling process, the likely next steps and expected timeframe.

4

#### Assess the complaint and address immediate risks

- The initial assessment of a complaint should involve the following questions being asked:
- Does the complaint raise any immediate risks to the safety or wellbeing of a child or young person or other person?
- What other issues does the complaint raise?
- What steps need to be taken to address and manage risks throughout the complaints process?
- Does the child or young person affected by the complaint (or other children involved or impacted) require any additional supports during the complaints process?

<sup>1</sup> For more information see the NSW Ombudsman complaint handling resources: <https://www.ombo.nsw.gov.au/complaints/Complaint-handling-resources>

<sup>2</sup> Commissioner for Children and Young People, Western Australia, Are you listening? *Guidelines for making complaints systems accessible and responsive to children and young people*, 2013.

- What evidence needs to be immediately secured/protected/kept confidential?
- How serious, complicated or otherwise urgent are the issues raised in the complaint (from both the perspective of the complainant, involved child or young person and the organisation)?
- Are the issue/s raised within your organisation's control?
- Are the outcomes sought by the complainant viable?
- If more than one issue is raised, will they need to be separately addressed?
- What other authorities or agencies (e.g., police, health services) need to know about the issues raised by the complaint or be involved in the response?
- What type of information should the complainant be provided following your assessment?
- Is further information needed from the complainant in order to properly assess and resolve the complaint?<sup>3</sup>

If the complaint is not about something your organisation can respond to, you should ensure that the complainant is told this and (wherever possible) referred to a person or organisation that can help as quickly as possible.

## 5

### Planning the involvement of the child or young person

Once the issues raised by the complaint have been assessed, you should develop a plan for involving the affected child or young person and their parent or carer at key stages of the complaint, including when and how information will be communicated to them throughout the process and how they will be supported.

You should record your rationale for all decisions in this area. It is critical that rapport is established with the child or young person early on by those involved in the complaints process. For example, with the contact person and the person undertaking an interview with the child or young person. It should also cover how the child's parents or carer will be involved in the process.

## 6

### Resolving complaints

After assessing the complaint, plan the actions required to manage and resolve it. Wherever possible, your organisation should try to resolve complaints promptly with a complainant and—particularly where the matter is minor—as soon as possible after the complaint is made. However, where the complaint relates to a serious allegation or incident, this may not be appropriate. It is critical that you keep the complainant adequately informed about what is happening with their complaint and clarify timeframes where there are delays.

<sup>3</sup> For further information about handling complaints that require reporting to external agencies, see Guideline 2.

The more promptly a complaint is resolved, the more likely that the complainant will be satisfied and have a better regard for the organisation. Dissatisfaction tends to increase with time, especially if progress and/or reasons for delay are not communicated. During the initial assessment (noted above), you may have identified some issues that can be responded to more quickly than others. Staff should be required to keep records of any reasons for delays in responding to complaints, and any communication with the person making the complaint.

#### To resolve the complaint:

- work with the person making the complaint to see how the issues can be appropriately addressed
- make inquiries with the person or organisational team/unit the subject of the complaint, and/or
- conduct an investigation into the issues raised in the complaint, in cooperation with police/child protection authorities where relevant.

The nature and scope of any action taken will depend on a number of factors including:

- the circumstances of each case
- any statutory requirements
- the issue(s) complained about
- the parties involved
- the likely outcome.

More serious complaints will require an evidence-based rather than an outcome-focused approach. See Guideline 6.

## 7 Conducting an investigation

The following steps are generally undertaken as part of an investigation:

- Action the relevant issues identified through the assessment process, starting with any immediate safety risks posed to a child, young person or class of children, and undertaking any risk management associated with the subject of complaint.
- Select the appropriate investigative approach by looking at any statutory requirements, consulting relevant external bodies (e.g. police and child protection agencies) and considering the nature of the issue or allegations raised and the likely outcome of the investigation.
- Develop an investigation plan, ensuring that, where appropriate, relevant authorities are consulted and involved in its design and implementation to ensure an organisation's actions do not compromise a police or child protection investigation.

- ❑ Obtain and protect evidence, including identifying relevant witnesses and putting the allegations to the subject of complaint at the appropriate point in time—affording them fairness.
- ❑ Analyse, assess and weight all of the evidence gathered.
- ❑ Make findings about the allegations, and explain them to the subject of complaint and the complainant.
- ❑ For more information, see **Guideline 6**.

## 8

### Provide regular updates throughout the complaints process

Let the complainant and—depending on the complainant's needs, also their family, guardian and/or support person—know what is happening with their complaint, when they can expect to hear from you and who to contact for more information or if they have questions about the process.

The frequency of updates and the nature and quantity of information provided to the complainant should be determined in accordance with their specific needs and wishes, and privacy and confidentiality obligations. For more information on providing an update see **Guidelines 1 & 3**.

## 9

### Provide the final outcome

Report final findings to the complainant, the subject of complaint and other stakeholders, considering privacy, confidentiality and procedural fairness obligations.

Explain to the complainant and the subject of complaint—using the most appropriate communication channel and putting in place any necessary supports—the key steps taken to investigate the complaint, the outcome (including the reasons for your decision), and available avenues for review and/or appeal if they are dissatisfied with the outcome and/or the complaints process. For more information on providing a final outcome see **Guideline 8**.

## 10

### Close the complaint and record the outcome

Close the complaint and keep comprehensive records about:

- ▶ how the complaint was managed
- ▶ the outcome
- ▶ any recommendations and/or outstanding actions and how they have been addressed.

It is also a good idea to make a record of any systemic issues identified. Invite people to provide feedback at the conclusion of the complaints process.

## 11

### Facilitating ongoing support for those involved in the complaint

As part of your process for finalising complaints, you should consider whether the person who made the complaint or a child or young person involved in the complaint (or their parents/carers) is likely to need or want ongoing support. This might include support you can provide within your organisation, as well as referrals that you can facilitate to other organisations where required (for example, referrals for counselling).

## 12

### Continuous improvement

In addition to making adjustments to any systems or practice weaknesses identified by a specific complaint or general feedback, organisations should have a system for collecting, maintaining and reviewing complaints data to identify any broader trends with the aim of improving service delivery/performance. Look for opportunities to communicate with people who have made complaints, and with stakeholders broadly, about any changes or improvements brought about through the handling of complaints, or review of complaint data. This helps people to see the tangible benefits from making complaints, and may help people to feel more comfortable about raising other concerns in the future.

# Appendix C

## Answers to common questions from children and young people about the complaints process

### What can I complain about?

If there is anything that makes you feel unsafe, unhappy or worried about something, you can tell us! We will listen and try to help.

#### **It could be about:**

- ▶ a service you're getting or something you missed out on
- ▶ how you've been treated by someone, e.g. a worker or another child or young person
- ▶ something that's changed that has made you feel unhappy or unsafe
- ▶ something to do with our environment or facilities
- ▶ us not doing anything about something that happened to you or you being unhappy with what we did to try to fix it.

### Who can I speak to if I feel unsafe or concerned about something?

You can talk to anybody who works here that you feel comfortable with. We also have a Child Safety Contact Person who you can text or talk to in person, over the phone or online. It's their job to listen to you and help you make a complaint if you want to.

### Can somebody help me make a complaint?

Yes. If you would like a parent, carer, friend or someone you trust to help you make a complaint you can bring them with you when you complain. You can also use an interpreter if you need to or if your parent or friend needs one. If you don't want to talk to us about something that has happened, you can ask the person you trust to tell us and you can speak with us when you want to.

### Will I be in trouble for speaking up?

No. Your safety and how you feel is important to us. By speaking up, you are helping us to do a better job and take better care of you and other children and young people.

### What will [the organisation] do with information I tell them?

If you tell us that you have been treated badly or you are feeling unsafe or worried about something, we will listen, write down what you tell us, and try to fix it. After we talk to you, we may need to find out more about what happened. We will tell you how long this will take and what will happen next.

### Will you keep what I have told you a secret?

We will keep information about you private. Private means we will keep your details safe. Sometimes we may need to share certain information with another organisations, such as the police, to protect you and other children and young people.





### How will I know you're dealing with my complaint?

We will ask if you would like us to give you updates about what is happening as we look into what you have told us and get further information.

You can tell us how you would like us to let you know how things are going with your complaint, e.g. in person, over the phone, by email or text message.

If you are worried about anything, we will try to fix it and get back to you quickly. We will let you know when we have finished looking into your complaint and explain what we're going to do. We will make sure that we involve the person you want to be with you when we give you information (e.g. parent or friend).



### What if I don't want to be involved in the investigation?

We will only contact you if you want us to. If you don't want updates that's okay. If you would like us to give information to a family member, carer or support person instead, that's also okay. If you change your mind and later want to speak with us, you can contact our complaint contact person or anybody else you trust in the organisation.



### What if I'm still not happy?

If you are not happy with how we handled your complaint or the result, we can help you to contact another organisation to look at it [you should explain other external complaint handling and review bodies like the relevant Ombudsman or Children's Commission]. They will decide whether we have made the right decision.



These questions and response have been adapted from the Commissioner for Children and Young People, Western Australia resource, ['Tips for children and young people on how to make a complaint'](#)

# Appendix D

## Factors to consider when developing a plan for involving children and young people in a complaints process

- ▶ Try to find out as much as you can about the child's or young person's specific needs and background before you first meet with them.
- ▶ If you are aware that the child or young person has a disability or any communication support or other specific needs, ensure that these are catered for.
- ▶ Be mindful of any issues that relate to the child's or young person's cultural background or issues relating to their sexual orientation, intersex status or gender.
- ▶ Allow adequate time for all discussions.
- ▶ Make sure the venue is appropriate.
- ▶ Explain how they can participate, what is likely to be involved and what might be required of them.
- ▶ Ask them about how they would like to be kept informed and check in regularly in case things change.
- ▶ Ask them who they would like to support them throughout the complaints process and if they have any specific needs to help them feel safe and comfortable.
- ▶ Think about the likely questions they will have about the complaints process and have your answers ready.
- ▶ Explain the type of information you may need from them clearly and simply and why it's important. Be clear if the discussion will be confidential or if certain information will need to be shared.
- ▶ Be clear, honest and realistic about the boundaries of a discussion and what can change. It is critical that you are genuine in your approach to children and young people and follow through on what you say you will do. Credibility needs to be earned and can be easily lost.
- ▶ Listen to what you are being told. Children and young people may have a very different view to you or what you expect, so acknowledge, value and take what they say seriously.
- ▶ Ensure you have procedures in place to provide support to any child to prevent or reduce any anxiety or distress.
- ▶ Provide feedback to children and young people about how their views have informed decisions along the way.
- ▶ At the end of the process, seek their views about their experience of the complaints process. Let them know what changes have been made as a result.



# Appendix E

## Tips for responding to trauma during the complaints process<sup>1</sup>



### Tips!

-  Reassure the child or young person they did the right thing in reporting the matter.
-  Ask what you can do to make your conversation more comfortable.
-  Let them know that they can take a break whenever they like.
-  Be aware of 'stressors' or 'triggers' for the child or young person.
-  Offer referrals to medical treatment, psychological support and other therapeutic services, and help them to secure support. If the child or young person does not want the referral, ensure you re-offer down the track in case they change their mind.
-  Arrange for the child or young person to be supported by a trusted adult, independent support person and/or advocate.
-  Keep the child or young person informed in a manner that is sensitive to them and suits their needs and preferred communication methods.<sup>2</sup>
-  Consider whether other children affected by the complaint might need support, e.g. a witness to an incident or someone the child has told what happened.
-  Consider whether it is necessary to provide the child or young person with information about protective behaviours and age-appropriate information about sexual health and safety.



<sup>1</sup> Adapted from the *Official Visitors Information Pack*, Children and Young people Commissioner, ACT Human Rights Human Commission, 2018.

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Consultation Paper – Best practice principles in responding to complaints of child sexual abuse in institutional contexts, pp.26-27.

# Appendix F

## Practical tips for creating a safe organisation for children and young people from diverse backgrounds

### Providing a culturally safe organisation for Aboriginal and Torres Strait Islander children and young people

-  Develop and implement a Reconciliation Action Plan (RAP). It should include practical actions for ensuring that the voices of Aboriginal and Torres Strait Islander children and young people are present in your organisation's planning, policies and activities (including your complaint-handling policy).
-  Actively seek to target the recruitment of Aboriginal and Torres Strait Islander people.
-  Your organisation's physical environment, resources and activities should show respect for Aboriginal and Torres Strait Islander culture by creating dedicated Aboriginal and Torres Strait Islander cultural spaces, and celebrating events to highlight Aboriginal culture and history. For example, National Sorry Day and NAIDOC Week.<sup>1</sup> Display symbols acknowledging the Traditional Owners of the land where the organisation is physically located and the Aboriginal and Torres Strait Islander flags.
-  Find out about Aboriginal and Torres Strait Islander traditional owner groups in your local area, and seek their involvement in the delivery of regular staff training, hosting talks, and educational activities with all children and young people at the organisation to increase their opportunities to learn about, and participate in, Aboriginal and Torres Strait Islander culture.<sup>2</sup>

 Embed community consultation processes with Aboriginal and Torres Strait Islander community groups, leaders and service providers into your program of ongoing service improvement. Examples include attending community events to raise awareness of your organisation's services, seeking advice from community leaders on how to make your service more responsive to their needs and identifying which community members might be interested in playing a support role during the complaints process when needed.

 Remember that in some Aboriginal and Torres Strait Islander communities, people may be fearful that others in the community might hear about their complaint, particularly if a staff member involved in the complaint is from the same community. Don't automatically assume that an Aboriginal and Torres Strait Islander person will necessarily want someone from their own community to handle their complaint. Always ask what their preference is.

### Providing a safe organisation for children and young people from culturally and linguistically diverse (CALD) backgrounds:

 Ensure your organisation's child safe policy (and other policies) recognise the types of issues children and young people from CALD backgrounds may face and your commitment to supporting them to exercise their right to participate, and to feeling and being safe.

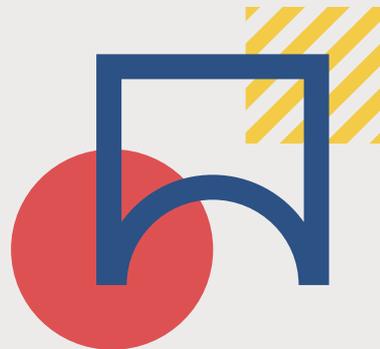
<sup>1</sup> National Aborigines and Islanders Day Observance Committee.

<sup>2</sup> ACT Human Rights Commission, Info Sheet 2017/3, 'The importance of cultural identity for Aboriginal young people in care'.

- 💡 Publish a Statement of Commitment to Diversity through your organisation's various messaging platforms, and make clear that discrimination is against the law and won't be tolerated by your organisation.
- 💡 Be respectful, inclusive and welcoming of families from a range of backgrounds by, for example, hosting welcome events which celebrate diversity and significant cultural/religious festivals, inviting them to be involved in activities at your organisation, acting as support people in complaint processes, and training your staff and volunteers about understanding different cultures and needs.
- 💡 Ensure your organisation's physical environment contains positive images of a range of cultures, e.g. in its publications, decor, symbols, and artwork to nurture a sense of inclusivity and identity.
- 💡 Aim to recruit staff and volunteers that are from different ethnic backgrounds, which reflect the diversity in the community, and consider developing specific diversity employment targets.
- 💡 Encourage and support staff to be respectful and flexible in their attitudes towards people from cultures other than their own, including having regular discussions with staff about how to recognise unconscious cultural biases.<sup>3</sup>
- 💡 Provide children and young people and their parents/carers with easy access to interpreters, where required, especially during a complaints process. Be sure to use a professional language interpreter. While friends and family can act as supports, it is problematic to use them as interpreters.

### Providing a safe organisation for children and young people with disability

- 💡 Make sure that your child safe policy (and related policies) recognise the types of issues children with disability may face, and publish your commitment to supporting them to exercise their rights to participate, and to feeling safe and being safe.  
Publish information about how to raise concerns or make a complaint using a variety of mediums not dependent on literacy, such as videos and pictorials.
- 💡 Provide staff and volunteers with clear guidance on effectively communicating with children and young people with cognitive impairment or other communication support needs. Also, be vigilant about looking for indicators of abuse and warning signs.
- 💡 Seek direct input from children and young people with disability about the design and delivery of your services and the best processes to adopt to encourage them to speak up about concerns.
- 💡 Create opportunities to build the confidence and self-esteem of children and young people with disability to encourage them to speak up generally and about things that don't feel right.



<sup>3</sup> Commission for Children and Young People, Victoria, *Guidance for Organisations: Investigating a Reportable Conduct Allegation*, June 2018.

 Teach children and young people with disability about their bodies and protective behaviours.

 Ensuring that your staff code of conduct and related training gives clear guidance on issues such as boundaries for staff and volunteers when interacting with children and young people with disability, including providing personal care.

**Providing a safe organisation for same-sex attracted, intersex, non-binary and gender diverse children and young people**

 Include specific commentary in your organisation's child safe policy (and related policies), which highlights your organisation's values, i.e. that it welcomes all children, young people and families, irrespective of sexual orientation, gender identity or sex/intersex status, and is clear that any discriminatory behaviour is unacceptable, including overt or subtle forms of discrimination such as reinforcing negative stereotypes.

Make sure that your staff and volunteers have the required skills and knowledge to sensitively handle information a child or young person chooses to share about their sexual orientation, intersex status or gender identity.

 'Coming out' is an integral aspect of incorporating sexuality or gender into a social or personal life. This often involves overcoming a fear of how other people, especially family, may react to this information. Be mindful of this in seeking to involve an LGBTQI young person's family in a complaint process, as they may be fearful that any disclosure of abuse may also lead to disclosure of other details about them or conversely to assumptions being made about their sexual identity.

 Ensure that your consultations with same-sex attracted, intersex, non-binary and gender diverse children and young people generally, and in relation to a complaints process, focus on particular things that make them feel safe and unsafe, to ensure their perspective is included in your overall approach to building a child safe organisational culture.



# Appendix G

## Flowchart – Child safety reporting process within an organisation

**REMEMBER! Always call 000 if a child is in immediate danger**

**WHO MIGHT REPORT A MATTER?**



PARENT OR CARER



CHILD OR YOUNG PERSON



STAFF MEMBER OR VOLUNTEER



OTHER PERSON  
(e.g. witness to an incident)



ANOTHER SERVICE PROVIDER

**WHAT TO REPORT?**



**Any child safety concerns, including:**

- ▶ disclosure of abuse or harm
- ▶ allegation, suspicion or observation
- ▶ breach of a Code of Conduct
- ▶ safety issues relating to the physical environment.

**HOW?**



FACE-TO-FACE VERBAL REPORT



EMAIL



TELEPHONE CALL



LETTER



MEETING

**WHO TO?**



CHILD SAFETY CONTACT OFFICER



MANAGER



SUPERVISOR

**WHAT HAPPENS NEXT?**



**The Child Safety Contact Officer, manager or supervisor will:**

- ▶ offer support to the child, the parents/carer and the person who reports
- ▶ initiate internal risk management processes to ensure the safety of the child, clarify the nature of the complaint and commence disciplinary process (if required)
- ▶ decide, in accordance with legal requirements and duty of care, whether the matter should/must be reported to the Police or Child Protection authority and make report as soon as possible if required
- ▶ wait for clearance from authorities before starting the investigation
- ▶ report to regulators, oversight bodies if allegation is reportable, and working with children check operators where appropriate.

This flowchart is adapted from the Commissioner for Children and Young People, Victoria, Flowchart: Child Safety Reporting Process, [Flowchart: Child Safety Reporting Process](#).



# Appendix H

## Defining concerning behaviour, misconduct and criminal conduct in a Code of Conduct

A Code of Conduct provides guidance for staff and volunteers on expected behavioural standards and responsibilities.<sup>1</sup>

Your organisation's Code of Conduct should include definitions of abuse and clear information about the kinds of behaviours that are not acceptable, ranging from behaviour that may be a breach of the code, to behaviour that may amount to a criminal offence. Avoid using general terms such as 'appropriate' and 'inappropriate' to describe behaviour. The Code should include specific examples relevant to the type of work that your staff and volunteers perform.

### Concerning behaviours that may be specified in an organisation's Code of Conduct includes, but is not limited to:

- ▶ disciplining or correcting a child or young person in an unreasonable manner
- ▶ making excessive and/or degrading demands of a child or young person
- ▶ taking photos of a child or young person who is in the care of the organisation outside of official duties
- ▶ creating situations to be alone with a child or young person
- ▶ repeatedly visiting a child/young person and/or their family at their home for no professional reason
- ▶ providing gifts or favours to a child/young person or their family
- ▶ wearing inappropriate clothing around children or young people (for example, clothing with sexually explicit images or messages or clothes that expose or accentuate the genitals or breasts).<sup>2</sup>

### Misconduct that may be specified in a Code of Conduct includes, but is not limited to:

- ▶ using sexual language or gestures
- ▶ making written or verbal sexual advances
- ▶ sharing sexual photos or videos or other photos of the child or young person
- ▶ sharing details of one's own sexual experiences with a child or young person
- ▶ taking a child or young person to one's house to be alone with them
- ▶ sharing phone numbers with a child or young person except as allowed by the organisation's policies and procedures
- ▶ engaging with a child or young person via social media except as provided by the organisation's policies and procedures
- ▶ asking children or young people to keep a relationship secret
- ▶ showering or dressing or undressing with the door open (for example, on excursions and in residential situations)
- ▶ not respecting the privacy of children/young people when they are using the bathroom or changing (for example, on excursions and in residential situations).<sup>3</sup>

<sup>1</sup> See Principle 1, National Principles for Child Safe Organisations, National Office of Child Safety, an initiative of the Council of Australian Governments, March 2019.

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 6, Making institutions child safe; and Volume 7, Improving institutional responding and reporting, <https://www.childabuseroyalcommission.gov.au/child-safe-institutions>.

<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 6, Making institutions child safe; and Volume 7, Improving institutional responding and reporting.



**Examples of conduct, which if proven, would be criminal should also be specified in the Code of Conduct, and includes, but is not limited to:**

- ▶ intentionally or recklessly applying physical force against a child or young person
- ▶ obscene exposure
- ▶ having, attempting to have or facilitating any kind of sexual contact with a child or young person
- ▶ possessing, creating or exposing children to pornography
- ▶ giving goods, money, attention or affection in exchange for sexual activities or images
- ▶ sexting
- ▶ grooming offences (as defined by law in most jurisdictions)<sup>4</sup>
- ▶ trafficking, possession, supply, or use of a prohibited drug
- ▶ manufacture or cultivation of a prohibited drug.

**For further information about developing a Code of Conduct, see:**

- » Australian Human Rights Commission, Example Child Safe Code of Conduct, <https://childsafef.humanrights.gov.au/tools-resources/practical-tools>
- » NSW Office of the Children's Guardian, 'Codes of Conduct', <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/become-a-child-safe-organisation/codes-of-conduct>



<sup>4</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 6, Making institutions child safe; and Volume 7, Improving institutional responding and reporting.

# Appendix I

## Conducting an initial risk assessment – key actions and factors to consider when responding to a complaint or incident

- ❑ Is immediate medical assistance required for any person?
- ❑ Is there a risk to the immediate safety of the child or young person affected by the complaint/incident, or any other children or young people, and take necessary action to address the risks posed?
- ❑ Does the complaint or incident raise any allegation of criminal conduct?
- ❑ Have you considered the safety of the person who made the complaint (other than a child or young person), provided appropriate advice, and made relevant referrals to police and/or other emergency services?
- ❑ Do the issues raised by the complaint/incident, warrant a mandatory report or referral being immediately made to an external authority, in accordance with legislative obligations (e.g. police or child protection authorities)?<sup>1</sup>
- ❑ Are the issues raised by the complaint/incident of a type requiring early notification to a regulatory body?
- ❑ What actions should be taken in relation to the staff member or volunteer the subject of complaint?
  - » Should they remain in their current position, be moved to another area, or be suspended?
  - » If the staff member remains in the workplace, a decision should be made about the duties that they will undertake and who will monitor and assess the risks associated with them
- » In this regard, relevant factors will include the vulnerability of the children and young people they would be in contact with at work, e.g. the age of the children, their communication skills, or disability.
- ❑ Does the child or young person involved in the complaint (allegation or incident) require a referral to a support service or counselling?
- ❑ What type of support and information should the subject of complaint be given to ensure the complaints process is fair?
- ❑ What action should be taken if the complaint/incident involves a peer of the child or young person affected by the complaint?
  - » Where possible, the child or young person's daily circumstances should remain unchanged; however, it is critical that steps are taken to manage any ongoing risk without alienating and stigmatising the child or young person who is alleged to have caused the harm.
- ❑ Are the issues raised by the complaint/incident of a type requiring notification to an external oversight body administering a reportable conduct scheme and/or the NDIS Quality and Safeguards Commission for disability services, that is, a 'reportable allegation' or 'reportable incident'?

<sup>1</sup> As noted in Guideline 2, many jurisdictions have introduced and strengthened failure to report and failure to protect offences.



- Have you maintained confidentiality throughout the investigation (subject to exceptions outlined in Guideline 3), and explained to the child/young person and their family reasons why certain information may need to be shared, e.g. to protect safety and/or comply with reporting obligations? There should be a process in place to deal with any breaches of confidentiality.
- Have you addressed any actual or potential conflicts of interest?
- Have you made sure that any physical/ electronic evidence is immediately secured, and future evidence (e.g. from witnesses) is not compromised?
- Do others outside of the parties to the complaint/incident need to be informed?
  - » Staff need to be aware of the need to carefully manage communications with people who are not directly involved in the complaint to ensure that the privacy and confidentiality rights of those directly involved are respected (see **Guideline 4**).
- Do you have a plan for keeping relevant stakeholders informed, in so far as possible, throughout the complaints process?
  - » Some complaints will take time to investigate and resolve. It is important for the organisation to keep relevant stakeholders informed to avoid damage to the ongoing relationship between the organisation and the affected child/ young person and their family.
- Are there any potential reputational risks arising from the complaint? How can these be effectively managed in a way that promotes and protects children's rights?
  - » Child safety and wellbeing is your priority. Potential reputational risks to your organisation may also be considered in the context of, for example, informing strategies for communicating with your broader organisation's community after a complaint is made that raises child safety concerns.
- What other steps should be taken to prevent any further harm or risk?

# Appendix J

## Planning an investigation – factors to consider

As part of the planning process you should establish:

- ❑ If you have a statutory obligation to investigate the complaint and, if so, whether there are any related requirements in conducting the investigation.
- ❑ Whether the investigation should be a formal evidence-based investigation, or an outcome-focused investigation, taking into account what is in the best interests of any children or young people involved, as well as any others who may be impacted by the process or its outcomes.
- ❑ Which of your organisation's policies, procedures and practices are relevant to the complaint, and assess the person's conduct against these? Also be alert to any gaps or weaknesses in your organisation's policy or practice framework that should be remedied as a result of the investigation.
- ❑ What the relevant lines of inquiry will be, including whether there are witnesses (including children and young people) who will need to be interviewed?
- ❑ In what sequence investigation tasks should be carried out? For example, the subject of complaint is generally interviewed last, so that all relevant issues identified can be put to them.
- ❑ Whether the investigation should be undertaken internally or externally. It may be appropriate for an investigation to be conducted externally if, for example, you do not have sufficient resources within your organisation, the allegations are serious and involve senior staff, or the matters to be investigated require someone with legal and/or sufficient technical expertise that is not available within your organisation.
- ❑ Who the relevant decision-maker will be in relation to the investigation? Your organisation's complaint-handling policy should detail the relevant decision-maker for particular types of investigations.
- ❑ Who should be appointed to investigate the complaint, bearing in mind the advice provided in **Guideline 7** about avoiding any actual or perceived conflicts of interest, as well as ensuring the person has the requisite skills, experience, and capacity?
- ❑ The investigator does not necessarily have to be the person who conducts the interview with the child or young person.

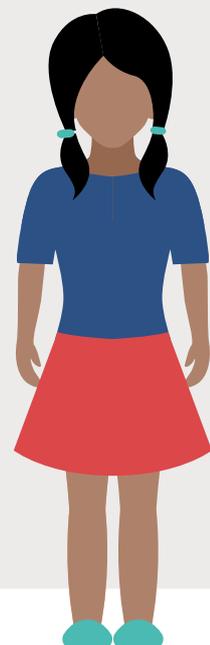
# Appendix K

## Tips for interviewing children and young people

### 1

#### Basic Principles

- ❑ Your starting point should be that every child or young person is competent to give evidence.
- ❑ Every child and young person is different and how their account unfolds in an interview will be different.
- ❑ Take a child-centred and trauma-informed approach. Seek to understand and meet the individual needs of the child or young person to maximise their ability to participate and make choices.
- ❑ Respect the rights of the child or young person being interviewed. Each has a right to:
  - » his or her own opinions, views, and ideas which may differ from yours
  - » a fair hearing
  - » refuse to participate
  - » choose what information to disclose, when, and in what detail
  - » refuse a request for information
  - » object to or to counter information or evidence, arguments or proposals
  - » have feelings and express them if they choose to do so
  - » make mistakes or get things wrong
  - » be themselves.<sup>1</sup>

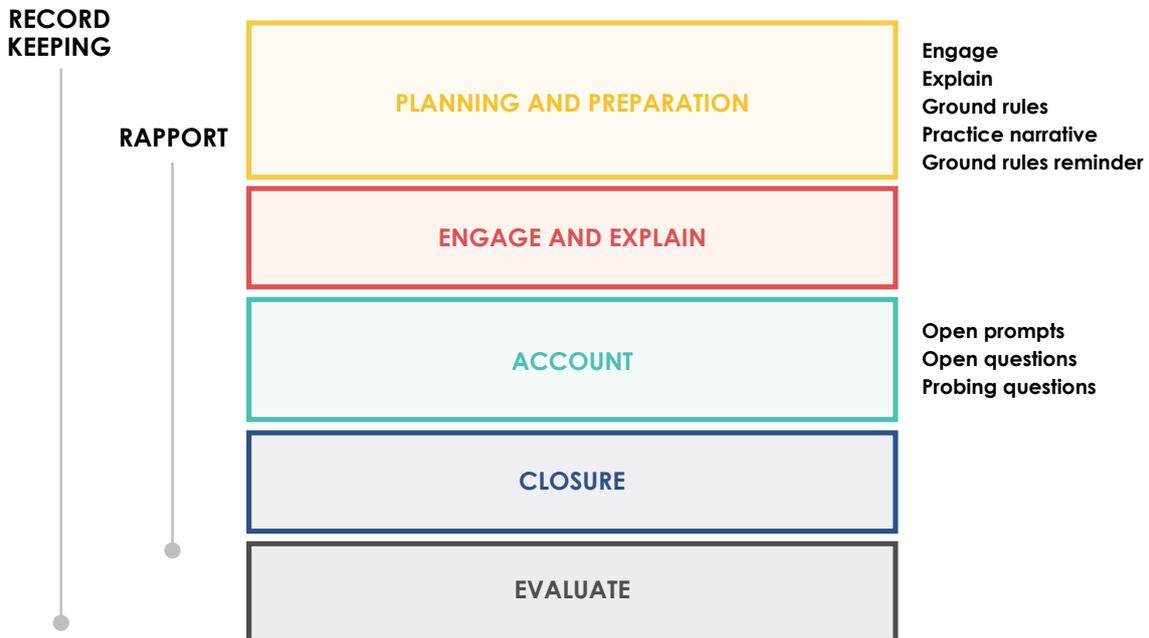


<sup>1</sup> Eric Shepherd and Andy Griffiths, *Investigative Interviewing the Conversation Management Approach* (2nd edn, OUP 2013) 15.

## 2

## Essential Planning

## The PEACE Interview model:



- Determine whether an interview is required:
  - » Consider whether there is the potential for an interview with a child or young person to have any adverse impact.
  - » Always consider obtaining a version of events from the affected child or young person. Do not automatically assume that it will not be necessary to interview a child or young person again.
    - ▶ The child's or young person's parents, carer or guardian should be consulted unless there are good reasons not to do so (see **Guideline 1**).
  - » It may not be necessary to conduct a formal interview with a child or young person if a child has already been interviewed by police, or the child protection authority, as part of a related investigation.
    - ▶ You may be able to obtain a copy of the interview transcript or recording instead of reinterviewing the child or young person.
  - » If a child is not interviewed, the organisation still needs to consider what other communication with the child or young person will be necessary.
    - ▶ For example, you may need to let them know that you will rely on an earlier record of interview with police, so that they know that their version of events is being taken into account.

- Keep written records of:
  - » the interview planning process
  - » pre-interview contact with the interviewee
  - » any decision not to interview a child or young person, including your rationale for making the decision
  - » the interview (preferably an audio-visual recording and always with consent)
  - » a chronological summary (running sheet) of the actions taken to plan, prepare for and conduct the interview.
  
- Gather critical information about the allegation to be investigated, such as:
  - » the type of incident or conduct that is alleged to have occurred
  - » approximately when it occurred
  - » the location where it occurred
  - » how and to whom, the incident was first reported
  - » whether it appears that a criminal offence may have been committed—if yes, or you are unsure, contact the police or your relevant child protection authority prior to commencing an interview.
  
- Before you meet the child or young person, talk to the people who know them best such as:
  - » family
  - » support worker/advocate
  - » health workers/medical practitioners (with consent)
  - » guardian.
  
- Find out about the child or young person's preferred communication methods:
  - » Obtain first-hand information from the child or young person where possible about their communication needs and abilities.
  - » Ask the child or young person if they would like a support person to be present during the interview and, if so, who they would like it to be.
  - » Make sure that the proposed support person does not have a potential conflict of interest. Always explain the role (and limits) of the support person to both the support person and the child or young person.
  - » Remember, the role of a support person is to provide emotional support to the interviewee. They should not control the process; provide answers on behalf of the interviewee; or influence the interviewee's responses in any way.
  - » Consider whether the child's age and level of development means that they have any particular support needs.
  - » Always use the child's preferred communication methods!

- Find out about the child or young person's communication support needs and what adjustments might be needed:
  - » Consider their age, gender, language preferences, cultural and religious background.
    - ▶ Cultural norms may mean that an interviewee may be more comfortable speaking to a person of the same gender or cultural background. While this might not always be possible, a support person chosen by the witness who attends the interview may help to make them more at ease.
    - ▶ Eye contact, volume, tone and body language may all be influenced by a person's cultural background and care should be taken not to misinterpret such behaviours.<sup>2</sup>
  - » Current emotional state and the best way to make them feel comfortable and relaxed during the interview.
  - » Consider the child's trauma history, and any implications this may have for communication during the interview.
  - » Identify any 'red flag' topics and/or behaviour to avoid.
  - » What are the child's or young person's interests, likes and dislikes?
  - » Preferred way for you to introduce yourself (e.g. an easy English letter).
  - » Preferred times of day/days of week to schedule the interview.
- Get the interview off to the right start by making sure that when you first meet the child or young person being interviewed you:
  - » have all necessary supports in place – interpreter/support person/communication assistant and/or communication aids
  - » build rapport – take the time to communicate about their interests and to encourage the person to be relaxed
  - » check with them that the personal information you have gathered is correct
  - » explain your role and what the interview involves
  - » explain the interview ground rules:
    - ▶ You don't have to do the interview if you don't want to.
    - ▶ You can stop/have a break or rest any time.
    - ▶ If you don't know the answer say so/indicate that you don't know.
  - » use ground rules cards if helpful
  - » practice the ground rules if you are unsure whether they have been understood
  - » conduct a 'practice narrative' with the interviewee about a neutral topic
    - ▶ Encourage children and young people to provide an explanation of what happened in their own words. Using a 'narrative interview approach'<sup>3</sup> is more likely to elicit accurate and reliable information.

<sup>2</sup> Supreme Court of Queensland, Equal Treatment Benchbook, Second Edition, Supreme Court Library of Queensland, 2016, p.55.

- ▶ Encourage children and young people to provide an explanation of what happened in their own words. Using a 'narrative interview approach'<sup>3</sup> is more likely to elicit accurate and reliable information.
  - ▶ There is a strong evidence base for undertaking a 'practice narrative'<sup>4</sup> with a child or young person about a neutral or fun event, to help prepare for the interview and build rapport.<sup>5</sup> You can use the practice narrative to establish the 'ground rules' for communication before you ask the child or young person about the matter that is being investigated ask them questions about their weekend or what they like doing.
    - » explain and ask for consent to record the interview if possible and appropriate.
- Choose the right location for the interview:
- » Choose an interview location that is neutral, private, convenient and accessible for the interviewee and their support person, and any other people who needs to attend.
  - » It is important for the child or young person to feel safe when being interviewed.
  - » The proposed location should be discussed with the interviewee and, where needed, an appropriate support person.
  - » Enables use of a communication support tool: Children may want to hold onto a comfort object (e.g. toy) or even a pet when they are participating in an interview. Organisations should be open to a range of requests from children and young people and make reasonable adjustments to their interview process.

### 3 The interview

- Be sure to maintain/re-establish rapport:
- » It is important to build and maintain rapport with children when conducting investigative interviews. Evidence shows that where rapport is absent, the accuracy and amount of information provided by an interviewee decreases.
  - » Remind the interviewee of the ground rules.
  - » Ask again for consent to the interview and to record the interview.
  - » Have all adjustments in place.
  - » Follow the basic principles of good questioning.

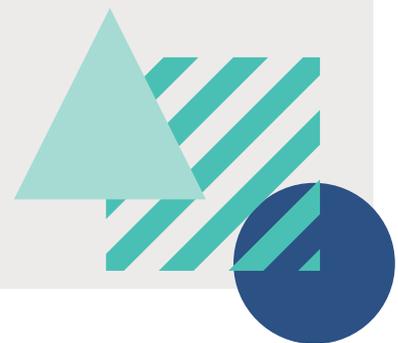
<sup>3</sup> A 'narrative interview approach' means encouraging the interviewee to tell you in their own words what happened in relation to the issue/events being investigated.

<sup>4</sup> Also known as a 'practice interview' or 'practice recall', often undertaken in relation to something unconnected with the focus of the investigative interview to help prepare for the interview and build rapport.

<sup>5</sup> R. Marchant and P. Cooper, *ABE interviews: the importance of recording what happens off camera*, Family Law, 2016, p.971.

- Free narrative and the basic principles of good questioning:
  - » **Encourage the interviewee to give their evidence in a 'free narrative'** – that is, without interruption and with prompts to continue and expand.
  - » **Adopt an open and accepting manner to all evidence** – avoid facial expressions and comments which may suggest disbelief, disapproval or approval of particular evidence.
  - » **Listen to the child or young person** – adopt an open, relaxed posture, use prompts and open questions which reflect back on what the interviewee has said, be flexible and respond to the evidence provided rather than sticking to an interview plan.
  - » **Pause frequently** and allow for silence.
  - » **Be open about misunderstandings and mistakes** – do not pretend to understand if you don't!
  - » **Use simple, short questions** that are (as far as possible) non-leading and open-ended questions. This style of questioning does not come naturally to most people, and takes considerable practice and skill.
  - » **Avoid leading or suggestive questions** or comments.
  - » **Inconsistencies do not equal lies.** Ask about inconsistencies only if they are relevant and only after open questioning has ended.
  - » **Look out for signs of tiredness or distraction** – allow for breaks and make clear how the interviewee can ask for a break.
  
- Constructing your questions
  - » Use open-ended questions and prompts
    - ✓ *Tell me more about that*
    - ✓ *What happened next?*
  - » Questions should be short and simple
    - ✓ *What did you say?*
    - ✗ *So, you were outside and you told me before that you were scared, what did you say then?*
  - » Avoid complicated words and phrases
    - ✗ *I asked you earlier about your bedroom, and before I ask you about the kitchen, did you say that you had a kettle in your bedroom?*
  - » Questions should use names in preference to pronouns
    - ✓ *What did Jim tell you?*
    - ✗ *What he did tell you?*

- » Questions should use everyday language
    - ✓ *Was the shop in a busy area?*
    - ✗ *Rather than: Was the shop in a vibrant area?*
  - » Questions should use the interviewee's vocabulary
    - ✓ *What else happened on church day? (If the interviewee refers to Sunday as 'church day')*
    - ✗ *'What else happened on Sunday?'*
  - » Avoid leading questions
    - ✗ *The shop must have been busy at that time, mustn't it?*
    - ✓ *Tell me more about what you saw at the shop?*
    - ✗ *You were very angry, weren't you?*
    - ✓ *How were you feeling?*
  - » Avoid non-literal language
    - ✗ *Did you keep an eye out for him?*
    - ✓ *Did you watch for him?*
  - » Forced choice and multiple-choice questions should be used with caution
    - ✗ *Was there anyone in the street or was no one there or don't you know?*
    - ✓ *What did you see in the street?*
  - » Avoid using the present tense when asking about past events
    - ✗ *So, you are on the train and he comes up to you...Then what...?*
    - ✓ *What happened on the train? Then what happened?*
- End the interview on a positive note and return to neutral topics of conversation:
- » Regardless of the outcome of the interview, every effort should be made to ensure that the child or young person is not distressed at the end of an interview, and leaves with a positive mindset.
  - » During or immediately after the interview, make a note of the demeanour, attitude and behaviour of the child or young person, or anything else that might be relevant. Take care when interpreting someone else's demeanour, as this is heavily influenced by culture and background.
- Keep your interview records safe and secure.



# Appendix L

## Checklist for responding to serious complaints involving the conduct of staff members and volunteers (including ‘reportable allegations’)

STAGE 1				
NOTIFY				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>If the allegation is possibly criminal in nature, have police been notified?</b>	<p>You must notify the police immediately if you believe that a child has been abused or that criminal behaviour has occurred and/or if there is an immediate risk of danger to someone.</p> <p>Failing to notify police that an adult may have committed a sexual offence against a child may constitute a criminal offence in your jurisdiction.</p>			
<b>If the allegation raises child protection concerns, has the statutory child protection authority been notified?</b>	<p>If a matter reaches the mandatory reporting threshold in your jurisdiction, you must notify the relevant child protection authority. Failing to notify the child protection authority may constitute a criminal offence in some jurisdictions.</p>			
<b>Have you notified the relevant oversight body of any reportable allegation(s) or convictions within the statutory timeframe operating in your jurisdiction?</b>	<p>If there is a reportable conduct/incident scheme operating in your jurisdiction, and the matter meets the requirements for notification, notify the oversight body within the statutory timeframe required.</p>			
<b>Have you notified the relevant regulatory body? (e.g. health, education, out-of-home care, early education provider, eSafety Commissioner)</b>	<p>If your industry regulator requires particular types of allegations to be reported at certain points in time, comply with any reporting obligations.</p> <p>You might also consider making a report to a social media service, if a person has violated terms of use.</p>			
<b>If police were notified, do you have clearance to begin an internal investigation?</b>	<p>Before you engage in fact-finding activities, discuss with police whether and how best to proceed to ensure any concurrent investigation does not compromise the police investigation.</p>			
<b>If the Child Protection authority was notified, do you have clearance to begin an internal investigation?</b>	<p>Before you engage in fact-finding activities, discuss with the child protection authority whether and how best to proceed to ensure any concurrent investigation does not compromise their investigation.</p>			



STAGE 2				
INVESTIGATE				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Have you appointed an independent investigator, whether internal or external?</b>	Ensure that your appointed investigator has a Working With Children Check clearance and is appropriately qualified to conduct an investigation.			
<b>Have you provided the investigator with clear terms of reference for their investigation?</b>	The investigator works within the 'terms of reference' for the investigation, which is usually a formal document specifying the allegations and matters to be investigated. The terms of reference should make clear whether the investigator is expected to make findings and recommendations following the investigation.			
<b>Has an Investigation Plan been completed?</b>	An investigation plan is a record of what the organisation is seeking to determine, how it is to be done, why it is being done; what information and evidence needs to be gathered, who will do what and when it needs to be done.			
<b>Have you determined the communication and support needs of the alleged victim, witnesses, and subject of complaint?</b>	Consider what supports and adjustments may be required to help a person to give their best evidence – e.g. communication aids, a support person, interpreter, witness intermediary.			
<b>Has the investigator taken all necessary steps to protect, gather and securely store evidence?</b>	All physical and electronic evidence must be collected and securely stored; interviews should be conducted with all relevant witnesses; and site inspections carried out where applicable. Experts should be consulted where necessary.			
<b>Have you considered when the best time will be to provide the subject of complaint with details of the allegation(s)?</b>	The investigator may wish to wait until they have gathered all evidence before informing the subject of the allegations. Risk management considerations might necessitate the provision of high-level advice.			
<b>Have you considered what information to disclose about an investigation to parties who are not directly involved but have a relevant interest? (e.g. other parents or staff)</b>	Comply with relevant privacy and confidentiality obligations, and operational considerations.			
<b>Has the investigator revisited the investigation plan to confirm that all relevant lines of inquiry have been addressed?</b>	An investigator should review the investigation plan to check that all new evidence has been considered and all lines of inquiry explored.			

STAGE 3				
REPORT				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Has the investigator provided the decision maker with their investigation report?</b>	At the conclusion of an organisation's investigation, the decision maker should assess the evidence regarding the allegation(s) and any conclusions or recommendations made by the investigator, and make a finding in relation to each allegation.			
<b>Has the decision maker based their findings (in relation to each allegation) on the required standard of proof?</b>	The standard of proof must be applied separately to each key fact that must be established to reach a finding or make a decision.			
<b>If the decision maker decides, for sound reasons, not to accept the investigator's findings and/or recommendations, has this been clearly documented?</b>	An investigation plan is a record of what the organisation is seeking to determine; how it is to be done; why it is being done; what information and evidence needs to be gathered; who will do what; and when it needs to be done.			
<b>Have you determined the communication and support needs of the alleged victim, witnesses, and subject of complaint?</b>	Ideally, the decision maker should not be the investigator and hold a sufficiently senior role within an organisation to make critical determinations of this type. The decision maker should not depart from the investigator's findings and/or recommendations unless they can demonstrate good reason for doing so.			
<b>Has the decision maker made a final risk assessment?</b>	The findings for each allegation should inform an organisation's final risk assessment and any action taken to mitigate ongoing risks, including reporting any findings of workplace misconduct to relevant regulatory bodies operating in your jurisdiction (e.g. Working With Children Check functions).			

STAGE 4				
TAKING ACTION				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Was appropriate action taken at the conclusion of the investigation in relation to the employee (e.g. disciplinary or other action)?</b>	A decision needs to be made about what action should be taken as a result of the investigation, including possible disciplinary action in relation to the subject employee. Termination of employment or formal warnings need to be supported by a robust investigation and sufficient evidence. Decisions also need to be made in relation to any necessary strategies to minimise future risk of similar conduct occurring by the employee (or others), and changes to policy, practices and staff training.			
<b>Did you appropriately inform the alleged victim, their parents/carers of the outcome of the investigation?</b>	The alleged victim, their parents or carers, and/or their nominated support person have the right to know the outcome of a complaint investigation. Organisations should have regard to the subject of allegation's right to privacy and obligations of confidentiality when determining what information to provide about the outcome.			
<b>Did you send a letter setting out the final outcome of your investigation to the subject of complaint?</b>	Send a letter to the employee the subject of complaint stating the outcome of the investigation, reasons for a decision and the actions that will be taken. If the findings are sustained, provide information about internal and external review and appeal mechanisms. The letter could include an offer to discuss the matter.			

STAGE 5				
NOTIFY RELEVANT EXTERNAL AGENCIES OF YOUR FINDINGS				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Notify any relevant external authorities (e.g. police, child protection, oversight bodies, regulators and WWCC operators) of relevant findings.</b>	Depending on the findings, and the requirements in your jurisdiction, consider whether you need to notify the findings and/or provide a final investigation report to the external authorities.			

STAGE 6				
FINALISING THE INVESTIGATION				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Has information relating to the investigation and the actions taken by the organisation been recorded and stored in accordance with the organisation's record-keeping procedures?</b>	Be mindful to keep and securely store records in accordance with your organisation's record keeping system, and comply with contractual and legislative obligations.			
<b>Have you completed an evaluation of whether any systemic or practice issues were raised by the investigation?</b>	Make any necessary changes to your complaint-handling policy, or related policies, such as your Code of Conduct or Child Safe Policy to address issues identified during the investigation.			

STAGE 7				
PROVIDE ONGOING SUPPORT				
CHECKLIST	ADVICE	YES	N/A	COMMENTS/ ADDITIONAL ACTIONS
<b>Consider whether the alleged victim or other people in your organisation are likely to need or want any ongoing support.</b>	This might include support that you can provide within your organisation, as well as referrals that you can facilitate to other organisations where required (for example, referrals for counselling).			

For information about identifying, notifying and investigating reportable conduct in different jurisdictions, see:

- ▶ ACT Ombudsman: <http://ombudsman.act.gov.au/reportable-conduct-scheme>
- ▶ NSW Ombudsman: <https://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>
- ▶ Commissioner for Children and Young People, Victoria: <https://ccyp.vic.gov.au/reportable-conduct-scheme/>

# Appendix M

## Complaint Record Form

You can use and adapt this template to record complaints in your organisation.

Include what is relevant to your organisation and add any other details relevant to your organisational environment.

**Date:**

**Complaint record reference:**

**Your name:**

**Complaint assigned to:**

**Position:**

**How was the complaint received (e.g. phone, email, in person):**

**Name of complainant**

1. Name of child or young person involved in the complaint:
2. Name of person making the complaint [if different to above]:

3. Name of the person who the complaint was made about [if applicable]:

**Contact details:**

4. Complainant contact details:

a. Address:

b. Phone number:

c. Email:

\*Preferred contact method: \_\_\_\_\_

**Details relating to the child or young person:**

5. Age:

6. Gender:

7. Do they identify as Aboriginal or Torres Strait Islander?

8. Are they from a culturally and linguistically diverse background? If, yes, specify:

9. Are they in out-of-home care?

10. Do they have a disability? If, yes, provide any relevant details \_\_\_\_\_

11. Do they have communication support needs? If yes:

- Was the child or young person offered an interpreter?
- Was the child or young person offered a communication assistant?
- Was the child or young person offered a support person, advocate, family member?
- Any other supports?

12. Provide any relevant information relating to the child or young person's preferred communication methods, support needs, and involvement in the complaint-handling process:



13. If the complainant has a disability, provide any relevant details relating to their guardianship, advocacy or other decision-making arrangements (e.g. the name and contact details of any nominees authorised to receive information on their behalf):

**Details relating to the complainant (if made by an adult on behalf of the affected child or young person)**

14. Age:

15. Gender:

16. Relationship to the affected child or young person:

17. Do they identify as Aboriginal or Torres Strait Islander?

18. Are they from a culturally and linguistically diverse background? If yes, specify:

19. Do they have a disability? If, yes, provide any relevant details \_\_\_\_\_

20. Do they have communication support needs? If yes:

- Was the complainant offered an interpreter?
- Was the complainant offered a communication assistant?
- Any other supports?

21. Provide any relevant information relating to the complainant's preferred communication methods, support needs, and involvement in the complaint-handling process:

**Nature of the complaint:**

22. Complaint description (accurately record the issues, concerns, details of any witnesses, as far as possible in the child's own words):

23. What outcome to the complaint is the complainant seeking?

**Immediate risk considerations:**

24. Details of any injuries and if the child or others received medical attention:

25. Does the complaint indicate the possibility of criminal conduct? Yes/No/Unsure

26. Is a mandatory child protection report required? Yes/No

27. Does the complaint involve a reportable allegation/incident? Yes/No/Unsure

28. Is any immediate risk management action required? Yes/No

**Next steps:**

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

Complaint records should be meticulously and accurately maintained and securely stored in compliance with legal requirements.



# Appendix N

## Tips for recording key complaints data

Your organisation should outline in its complaint-handling policy the type of information that needs to be documented at critical stages of the complaints process.



### What should be recorded:

- ❑ **A summary of the complaint** including the date it was received and when the relevant conduct occurred.
- ❑ **The key complaint issues should be categorised against a common set of complaint issues, e.g.:**
  - ▶ customer service
  - ▶ case management
  - ▶ casework practice
  - ▶ access to services/supports
  - ▶ charges and fees
  - ▶ staff conduct – concerning conduct, misconduct, reportable conduct, and/or criminal conduct (see also reportable conduct categories below which can be used even if a scheme isn't operating in your jurisdiction)
  - ▶ objections to decisions made by your organisation
  - ▶ investigation process/handling of complaint
  - ▶ service management and/or governance
  - ▶ information management
  - ▶ other.
- ❑ **If the complaint involves a reportable allegation or incident.** Systematically capture allegations against the definition of reportable conduct in accordance with any reportable conduct scheme operating in your organisation's jurisdiction, e.g.:
  - ▶ sexual offences
  - ▶ sexual misconduct
  - ▶ physical assault
  - ▶ psychological/emotional harm
  - ▶ neglect
  - ▶ ill-treatment.

**NB: For providers of disability services, the definitions of reportable incidents should also be reflected as per the National Disability Insurance Scheme (Incident Management and Reportable Incident) Rules 2018.**

- ❑ **Details about the complainant/affected child or young person, including:**
  - ▶ the relationship of the complainant to your organisation – current/past service receiver, parent, carer, advocate/legal representative
  - ▶ demographic information such as age, gender, Aboriginal or Torres Strait Islander, CALD, disability, OOHC status.

**NB: This information should be captured about the person who complains (the complainant) as well as the child or young person who is affected by the complaint.**

- ▶ record to whom a child or young person first disclosed their concerns (where known and irrespective of whether or not the child or young person complained directly to your organisation).
- **Details about the person who has the authority to be informed about the complaint.** Ensure your organisation has clear processes around identifying, verifying and informing nominees.<sup>1</sup>
- **Details about the individual who is the subject of the complaint.**
  - ▶ their role in your organisation – this may be a staff member, carer, volunteer or child or young person receiving a service from your organisation
  - ▶ demographic information such as age, gender, Aboriginal or Torres Strait Islander, CALD, disability, OOHC status.
- **The identity of the key personnel involved.**
  - ▶ the individual responsible for resolving/ investigating the complaint
  - ▶ the child's nominated contact/support person
  - ▶ the decision maker.
- **Whether legislative and other prescribed obligations were fulfilled.**
  - ▶ mandatory child protection report
  - ▶ referral to police
  - ▶ notification made to an oversight body if the conduct/incident is reportable
- ▶ notification to the working with children check operator
- ▶ notification to a regulator (e.g. OOHC, early childhood services, schools, disability services).
- **Details about the investigation process.**
  - ▶ whether ongoing liaison is required with child protection authorities and police
  - ▶ the outcome of the initial risk assessment, and any actions taken
  - ▶ documenting key investigative steps, inquiries made, evidence gathered, witnesses interviewed
  - ▶ documenting the rationale for key investigative actions/decisions including why certain actions weren't undertaken
  - ▶ how and when the subject of complaint was afforded fairness
  - ▶ recording the findings made and the rationale.
- **The key steps taken to involve and support the child/young person.**
  - ▶ the nature of any risk management action taken to address potential risks to a particular child or class of children
  - ▶ whether your organisation explained the complaint process to the affected child or young person and clarified how they would like to be involved
  - ▶ the nature of the child or young person's actual involvement at key stages
  - ▶ reasons for their non-involvement at key stages where relevant
  - ▶ whether a referral was made to support services/advocate

<sup>1</sup> Under the National Disability Insurance Scheme, a 'nominee' is a person appointed to act on behalf of, or make decisions on behalf of, a person with disability. Nominees are only appointed when it is not possible for the person to be assisted to make decisions themselves and usually come about as a result of a person requesting that a nominee be appointed. For more information about nominees see: <https://www.ndis.gov.au/understanding/families-and-carers/guardians-and-nominees-explained#what-is-a-nominee-under-the-national-disability-insurance-scheme>.

- ▶ whether an interview was conducted with the child or young person and if not, why not
  - ▶ the involvement of support people
  - ▶ the involvement of interpreters
  - ▶ the involvement of communication assistants and/or witness intermediaries
  - ▶ including ones specifically informed by, and targeted to, needs and wishes of children and young people?
- The key complaint outcomes.**
- ▶ how the complaint was resolved (e.g. apology provided, service issue addressed)
  - ▶ whether or not each complaint issue/ allegation was found to be proven
  - ▶ whether a police investigation was commenced, charges laid, conviction recorded
  - ▶ whether child protection action was taken
- ▶ the nature of any action taken in relation to the subject of complaint, such as management and/or disciplinary action
  - ▶ outcome of final risk assessment
  - ▶ whether any system or practice issues were identified and how they were addressed
  - ▶ whether the outcome was explained to the complainant (and/or affected child or young person) and the subject of complaint
  - ▶ options for review of the outcome explained to the complaint/subject of complaint.
- Any outstanding undertakings or follow-up action required.**
- ▶ ongoing risk management action and monitoring
  - ▶ actions your organisation has taken to continue to support any child or young person involved in the complaint
  - ▶ actions to improve areas of service provision and/or practice.