

Gaps in protection for individuals making internal complaints are of particular relevance to child sexual abuse in institutions. It is important that where institutions respond inadequately or improperly to incidents or allegations of child sexual abuse, those within an institution who become aware of these problems report them.

In our view, building on child protection legislation is the simplest and most direct means to extend protection to individuals making internal complaints relating to child sexual abuse. We recommend that child protection legislation provides adequate protection for individuals who make complaints or reports to any institution that engages in child-related work about child sexual abuse in that institution, or the response of that institution to child sexual abuse (see Recommendation 7.6).

Improving institutional responses to complaints

Understanding complaint handling

A ‘complaint’ includes any allegation, suspicion, concern or report of a breach of the institution’s code of conduct. It also includes disclosures made to an institution that may be about, or relate to, child sexual abuse in an institutional context.

A complaint can be made by anyone – including a child, adult survivor, parent, trusted adult, independent support person, staff member, volunteer or community member. A complaint may be made about an adult allegedly perpetrating child sexual abuse or about a child exhibiting harmful sexual behaviours. Institutions may receive complaints directly or through a redress scheme.

Common problems with institutional complaint handling

Our case studies, private sessions and research revealed many common problems with institutions’ responses to complaints of child sexual abuse. We heard that some institutions had not developed or implemented clear and accessible complaint handling policies and procedures that could guide them on how to respond to complaints. Our case studies revealed numerous instances where institutions ignored or minimised complaints, engaged in poor investigation standards, and did not assess and manage risks to the safety of children in their care. The mishandling of complaints has meant that some allegations of child sexual abuse were not properly investigated and children were not adequately protected.

Improving complaint handling by being child safe

Institutions can improve complaint handling by implementing the 10 Child Safe Standards recommended in Volume 6, *Making institutions child safe*. Standard 6 focuses on institutional complaint processes. However, all the standards should inform an institution's complaint handling process, and its policy and procedures, to create an environment where children, families, volunteers and staff feel empowered to raise complaints and these complaints are taken seriously.

Child-focused complaint policies and procedures

A child-focused complaint process is important for helping children and others in institutions make complaints. Child safe institutions have in place a child-focused complaint handling system that is understood by children, staff, volunteers and families.

Institutions that provide services to or engage with children are diverse and vary in almost every characteristic – size, resources, workforce, location, regulatory context and the degree of risk they pose to children. This means that not all institutions can adopt the same complaint handling policies and procedures. Each institution needs to develop policies and procedures that reflect its own context. Complaint handling policies and procedures also differ according to the laws that apply in each jurisdiction in areas such as reporting obligations, employment law, privacy and victims' rights. Government agencies or peak bodies could help smaller institutions by supplying complaint handling policy templates, which can then be tailored to suit the sector and/or institution involved.

We recommend that institutions have clear, accessible and child-focused complaint handling policies and procedures that set out how they should respond to complaints of child sexual abuse (see Recommendation 7.7). The complaint handling policies and procedures should cover:

- making a complaint
- responding to a complaint
- investigating a complaint
- providing support and assistance
- achieving systemic improvements following a complaint.

Making a complaint

An institution's complaint handling policy and procedure should explain how a complaint can be made within the institution. Institutions should establish mechanisms for children and adults in the institution to make a complaint. These mechanisms should be designed to suit those who could raise a complaint, including children, families and staff. Complaint mechanisms should be confidential, accessible and culturally appropriate.

Leaders of institutions should actively encourage children, staff, volunteers and others associated with the institution to make a complaint when they encounter actual abuse or potentially concerning behaviours, and make sure they are supported in doing so.

Behaviours that could be the subject of a complaint

Typically, three categories of behaviour might be the subject of a complaint of child sexual abuse:

- concerning conduct – behaviours, or patterns of behaviour, that are a risk to the safety of children. This also refers to ambiguous behaviours that are potentially inappropriate for children to be exposed to
- misconduct – behaviours that constitute a breach of the institution’s code of conduct
- criminal conduct – conduct that, if proven, would constitute a criminal offence.

Code of conduct

A code of conduct establishes a common understanding of the standards of behaviour expected of staff and volunteers (including senior leaders and board members). As part of an institution’s governance framework, it serves to facilitate child safe outcomes for the children in an institution’s care.

We recommend that institutions that deal with children should have a clear code of conduct that:

- outlines behaviours towards children that the institution considers unacceptable
- includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution, or to an external authority when required by law and/or the institution’s complaint handling policy
- outlines the protections available to individuals who make complaints or reports in good faith (see Recommendation 7.8).

Supporting children to communicate a complaint

When concerns about child sexual abuse arise, no matter how they arise, institutions should support victims or other children making complaints. This requires the institution to be proactive and understand the particular needs and circumstances of children in their care.

Children, especially younger children, may not complain by following a formal complaint process. Children may instead make a verbal or non-verbal disclosure of sexual abuse. Children with disability may make non-verbal disclosure of sexual abuse via behaviours and/or physical signals.

Appropriate support to communicate a complaint, such as communication aids, language translators or provision of culturally competent staff who can work with children from culturally diverse backgrounds, enables the substance of a complaint to be heard and understood by the institution.

Responding to a complaint

Any complaint of child sexual abuse in an institution must be taken seriously. Institutions should take a proportionate approach to responding to complaints. For example, the urgency of response to a disclosure of current sexual abuse of a child would be different from the response to a complaint of historical abuse where the alleged perpetrator is deceased.

Assigning responsibility for responding

Institutions are made accountable if responsibility for responding to complaints is clearly and transparently assigned to a dedicated person. An institution should specify the individual or individuals who will:

- be told of the complaint within the institution
- be responsible for handling the complaint (if the person is different from who will be told of the complaint)
- oversee the investigation
- maintain a complaints register.

Assessing risks and establishing safeguards

When a complaint has been made, the institution should assess the risks associated with the complaint and implement necessary safeguards. Assessment of risk should be continual – beginning when the complaint is initially made and continuing as the complaint is being investigated.

Investigating a complaint

Institutions should make every effort to investigate complaints of child sexual abuse to determine:

- whether a person has breached the institution's code of conduct or another institutional or oversight body's policy or procedure
- whether they pose a risk to children's safety
- what action if any is required.

This sort of investigation examines the circumstances of the complaint to determine all relevant facts and establish a documented basis for a decision (that is, whether the complaint is or is not substantiated).

The investigation should be carried out by an impartial, objective and trained investigator. The investigator may be an employee of the institution, a contractor or independent of the institution. Some institutions may use a combination of internal investigation resources and external investigators.

The investigation should be undertaken in a way that is proportionate to the seriousness, frequency of occurrence and severity of the complaint.

Where the conduct associated with the complaint has been reported to the police, institutions should consult the police before starting their own investigation to make sure they do not compromise any criminal investigation.

Procedural fairness

Institutions should comply with the requirements of procedural fairness when investigating a child sexual abuse complaint and determining outcomes. By observing procedural fairness, an institution manages risk properly, ensures that it responds in a manner that is fair to affected parties and minimises the prospect that its decisions might be challenged. A complaint handling policy should specify steps that will be taken to comply with the requirements of procedural fairness for both the victim and the subject of a complaint.

Documenting the complaint and investigation

Institutions should be aware of legal, contractual, professional and other obligations to document complaint handling, maintain records and provide access to those records. Institutions should provide that all steps taken in the complaint handling process are documented.

Implementing outcomes

After the investigation has been completed, the institution should:

- decide the outcome of the complaint
- advise the victim and/or complainant of the outcome
- advise the person who was the subject of the complaint of the outcome
- provide ongoing support, including any necessary assistance required from the institution itself, and access to advocacy, support and therapeutic treatment services, and a safety plan for the complainant and family
- once a complaint of child sexual abuse has been substantiated, and the complaint process has concluded, refer to its redress policy and consider the relevant next steps (see our *Redress and civil litigation* report)
- inform relevant agencies as required, for example, the ombudsman or children's guardian
- advise those in the community affected by the conduct.

Providing support and assistance

Concern and support for the person who is making a complaint about child sexual abuse must be at the heart of an institution's response. Support is required throughout all stages of the complaint process – from the time of disclosure or the initial complaint until after any investigation has been completed and the complaint finalised. Support may include the provision of advocacy or therapeutic treatment services.

Achieving systemic improvements following a complaint

The creation of a child safe environment requires vigilance and necessitates paying attention to systemic issues. A complaint of child sexual abuse could indicate wider systemic child safety issues within an institution, or that there may be deficiencies in its child safe approach.

Institutions should undertake a careful and thorough review of the initial complaint at the earliest opportunity, and then review the complaint outcome, to identify:

- the root cause of the problem
- any systemic issues, including failures
- remaining institutional risks.

Oversight of institutional complaint handling

The need for independent oversight

In our view, independent oversight is important in addressing some problems with institutional complaint handling, such as conflicts of interest that can arise when institutions investigate their own staff and volunteers. Independent oversight is beneficial because it helps to:

- increase identification and reporting of institutional child sexual abuse
- improve the capacity of institutions to receive and respond to complaints
- strengthen institutions' accountability and transparency in accordance with best practice complaint handling
- ensure the risk of child sexual abuse is adequately addressed
- improve the welfare and wellbeing of primary and secondary victims
- promote consistent standards in reporting and responding across institutions.

Independent oversight can assure the public that the institutions entrusted to care for children cannot minimise or ignore complaints, and that the leaders and employees of these institutions cannot operate with impunity.

Oversight through nationally consistent reportable conduct schemes

In Australia, a reportable conduct scheme is the only model for independent oversight of institutional responses to complaints of child abuse and neglect across multiple sectors. Such schemes oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. The schemes also oblige the oversight body to monitor institutions' investigation and handling of allegations. The only reportable conduct scheme in full operation during the period of this inquiry was in New South Wales. Schemes began in July 2017 in Victoria and the Australian Capital Territory.

State and territory governments have a unique opportunity to achieve national consistency in reportable conduct schemes by using the New South Wales scheme as a model – as Victoria and the Australian Capital Territory have already done.

We recommend that state and territory governments establish nationally consistent legislative reportable conduct schemes, based on the approach adopted in New South Wales (see Recommendation 7.9).

In our view, the potential benefits of nationally consistent implementation of reportable conduct schemes are significant. Implemented on this basis, reportable conduct schemes could:

- remove any advantage to potential offenders of travelling to jurisdictions that do not have a reportable conduct scheme
- contribute to the equal protection of children from child sexual abuse in institutions regardless of their circumstances and geographic location
- allow for collection and analysis of national data on institutional child abuse and neglect
- provide a level of uniformity for institutions operating across jurisdictions for responding to, reporting, and oversight of, complaints, which would allow national institutions to standardise complaint handling policies and procedures
- address some of the issues that arise from employee mobility between jurisdictions – for example, a nationally consistent approach would allow institutions to give employees consistent training in complaint handling and reduce the administrative burden and the need for employees to learn new requirements when they move interstate

- have desirable flow-on benefits for other regulatory systems, such as the Working With Children Checks system, carers' registers and teacher or other professional registers, including through sharing of information and experience
- support the implementation of other recommendations that we have made – particularly on Child Safe Standards, complaint handling, Working With Children Checks and information sharing.

Key elements of reportable conduct schemes

There are some elements of reportable conduct schemes that should be consistent across all jurisdictions for the schemes to operate effectively. We recommend (see Recommendation 7.10) that reportable conduct schemes provide for the following key elements:

- Independent oversight – the oversight body under a reportable conduct scheme should be independent of government and of the institutions whose operations it monitors.
- Obligatory reporting by heads of institutions – reportable conduct schemes should oblige heads of institutions to notify the oversight body of any reportable allegation, conduct or conviction in a timely and consistent manner.
- Inclusion of sexual misconduct as reportable conduct – reportable conduct schemes should require the reporting of conduct by employees that is broader than conduct that would constitute a criminal offence. Under existing reportable conduct legislation, reportable conduct includes both sexual offences and 'sexual misconduct'.
- Inclusion of historical conduct – reportable conduct schemes should not place a time limit on when the conduct occurred in order for it to be reportable. Reportable conduct should include the historical conduct of any existing employee of an institution, as well as current or recent conduct.
- Coverage of employees, volunteers and contractors – reportable conduct schemes should require the reporting of conduct by any individual engaged by an institution to provide services to children, whether or not they are a paid employee.
- Protections for persons making reports – reportable conduct schemes should protect those who inform the head of an institution or the oversight body about reportable conduct so as to encourage reporting and an institutional culture that is committed to the scheme.
- Powers and functions of the oversight body – the oversight body that administers a reportable conduct scheme should have a core range of powers to enable the effective monitoring of institutional complaint handling, and to ensure that institutions are held accountable for their actions. These powers should include those relating to: scrutinising institutional complaint handling systems; monitoring investigations and handling of allegations; own motion investigations; class and kind agreements; capacity building and practice development; and public reporting.

Provision for review of schemes

Regular review of reportable conduct schemes is important. Experience in New South Wales shows that schemes need to adapt to changing dynamics and new challenges relevant to employee-related child abuse. We recommend that state and territory governments should periodically review the operation of reportable conduct schemes, including to determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse (see Recommendation 7.11).

Scope of reportable conduct schemes

We believe regulation and oversight should be consistent, balanced and proportionate to an institution's risk, in order to avoid placing unnecessary or excessive regulatory burden on institutions and government.

Our starting point is that the handling of child sexual abuse complaints should only be subject to the oversight of a reportable conduct scheme where institutions:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- accommodation and residential services for children
- activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- childcare services
- child protection services and out-of-home care
- disability services and supports for children with disability
- education services for children
- health services for children
- justice and detention services for children (see Recommendation 7.12.).

Recommendations

The following is a list of the recommendations made in this volume.

Reporting institutional child sexual abuse (Chapter 2)

Recommendation 7.1

State and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters.

Recommendation 7.2

Institutions and state and territory governments should provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations.

Recommendation 7.3

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry.

Recommendation 7.4

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

Recommendation 7.5

The Australian Government and state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report, including in relation to:

- a. mandatory and voluntary reports to child protection authorities under child protection legislation
- b. notifications concerning child abuse under the Health Practitioner Regulation National Law.

Recommendation 7.6

State and territory governments should amend child protection legislation to provide adequate protection for individuals who make complaints or reports in good faith to any institution engaging in child-related work about:

- a. child sexual abuse within that institution or
- b. the response of that institution to child sexual abuse.

Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report.

Improving institutional responses to complaints (Chapter 3)

Recommendation 7.7

Consistent with Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused, institutions should have a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints of child sexual abuse. The complaint handling policy and procedure should cover:

- a. making a complaint
- b. responding to a complaint
- c. investigating a complaint
- d. providing support and assistance
- e. achieving systemic improvements following a complaint.

Recommendation 7.8

Consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, institutions should have a clear code of conduct that:

- a. outlines behaviours towards children that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct
- b. includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law and/or the institution's complaint handling policy
- c. outlines the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work (see Recommendation 7.6 on reporter protections).

Oversight of institutional complaint handling (Chapter 4)

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body
- b. obligatory reporting by heads of institutions
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- d. a definition of reportable conduct that includes the historical conduct of a current employee
- e. a definition of employee that covers paid employees, volunteers and contractors
- f. protection for persons who make reports in good faith
- g. oversight body powers and functions that include
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions

- iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
- iv. power to exempt any class or kind of conduct from being reportable conduct
- v. capacity building and practice development, through the provision of training, education and guidance to institutions
- vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Recommendation 7.11

State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

Recommendation 7.12

Reportable conduct schemes should cover institutions that:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- a. accommodation and residential services for children, including
 - i. housing or homelessness services that provide overnight beds for children and young people
 - ii. providers of overnight camps
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- c. childcare services, including
 - i. approved education and care services under the Education and Care Services National Law
 - ii. approved occasional care services

- d. child protection services and out-of-home care, including
 - i. child protection authorities and agencies
 - ii. providers of foster care, kinship or relative care
 - iii. providers of family group homes
 - iv. providers of residential care
- e. disability services and supports for children with disability, including
 - i. disability service providers under state and territory legislation
 - ii. registered providers of supports under the National Disability Insurance Scheme
- f. education services for children, including
 - i. government and non-government schools
 - ii. TAFEs and other institutions registered to provide senior secondary education or training, courses for overseas students or student exchange programs
- g. health services for children, including
 - i. government health departments and agencies, and statutory corporations
 - ii. public and private hospitals
 - iii. providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people
- h. justice and detention services for children, including
 - i. youth detention centres
 - ii. immigration detention facilities.