



POLICY

Complaints - Adult Care Leavers

1. Background

Separating children and young people from their family, friends and community is always a major disruption in the lives of those children and young people and can cause long-term grief, pain, anger and loss.

Child welfare authorities and Courts responsible for separating children and young people, and the agencies and carers that accept responsibility for caring for them, have a particular duty of care towards these children and young people. That duty of care includes making every effort to nurture those children and young people, maintaining positive family connections and protecting them from any further harm. When the distress of separation from family is exacerbated by further maltreatment whilst in care the child's sense of betrayal is compounded and the impact is likely to be profound and life-long.

Through the advocacy efforts of adults who have lived through childhood separation from family, only to be subjected to further harm while in care, the community is more aware of these issues. In recognition of the profound harm caused to many children and young people whilst in State care and for our part in those child welfare practices, Berry Street has made three formal apologies: an apology to Aboriginal and Torres Strait Islander families and communities impacted by the forced removal of their children, the *Stolen Generations*; an apology to Australians who experienced harm in institutional care as children, *the Forgotten Australians*; and an apology to people harmed through Forced Adoption. These apologies are available on our website (www.berrystreet.org.au).

Berry Street believes that all children should have a good childhood. Wherever children have experienced maltreatment, abuse or neglect they must be given every form of support and assistance to heal, recover, have their experiences acknowledged and be provided with opportunities to realise their full potential. Berry Street knows and advocates that the impacts of childhood trauma can last a life time. We accept our responsibility to support and assist any adult, who as a child or young person in our care, suffered some form of maltreatment, neglect or abuse, during their time in our care.

We are committed to ensuring that all complaints by adult care leavers are handled with respect and compassion.

2. Current Context

Berry Street recognises that with the Victorian Parliamentary Inquiry into Institutional Abuse (2013) and the Royal Commission into Sexual Abuse within Institutions, there has been, and will continue to be, significant learning and developments in the area of organisations responding to complaints of past abuse in care. Berry Street is committed to staying abreast of these new developments and to this end Berry Street will review our process and management of complaints every 12 months to ensure that we are acting upon the recommendations put forward for community service organisations.

In particular, Berry Street has noted comments about the need for complainants to be reassured that their complaints will be dealt with fairly and in good faith. Some organisations have responded by establishing an independent process to resolve complaints.

At this stage, Berry Street will retain its current process to resolve complaints internally. Our experience is that it is important for complainants to feel 'heard' by the organisation and the Designated Person being the Deputy CEO/Director of Services signifies the seriousness with which Berry Street takes complaints.

Our current process also means that people don't need to retell their story and enables complaints to be resolved quickly, which is important for the complainant.

Informal feedback from complainants to date has been positive and they have appreciated the sensitivity and respectful approach of the Designated Person, the reparation provided, the way apologies have been made and the speediness of our response.

3. Purpose and scope

This Policy outlines the broad considerations applicable when Berry Street receives an allegation of maltreatment, abuse or neglect from or about a person formerly in our care. It sets out how we will respond to complaints and allegations of maltreatment, abuse or neglect against current or former employees and current or former volunteers of Berry Street from people who were in the care of Berry Street and our founding agencies¹ from 1877.

The possible outcomes from making a complaint about past abuse in care are:

1. Counselling support
2. An apology
3. Financial reparation
4. Seek further information
5. That the allegation is not accepted

The detailed process for responding to an allegation of maltreatment, abuse or neglect is outlined in the Berry Street Procedure: Complaints - Adult Care Leavers. Allegations relating to current Berry Street employees or carers or volunteers of Berry Street may also come under the scope of the Victorian Department of Human Services processes for complaints regarding abuse in care or quality of care concerns.

4. Definitions

Abuse: Berry Street accepts and relies upon the definition of child abuse and neglect and child maltreatment as published by the Australian Institute of Family Studies August 2012, (copy attached), and as accessed at:

<http://www.aifs.gov.au/cfca/pubs/factsheets/a142091/index.html>

In summary that definition states that child abuse and neglect and child maltreatment include any:

- (a) sexual abuse or sexual misconduct against, with or in the presence of a child;
- (b) physical abuse;
- (c) neglect;
- (d) emotional maltreatment; and
- (e) witnessing and experiencing family violence.

Adult Care Leavers Any person over the age of 18 who had been in the care of Berry Street and/or any of our founding agencies².

¹ Berry Street Inc; Berry Street Child and Family Care; Berry Street Babies' Home and Hospital; The Foundling Hospital and Infants Home; The Victorian Infant Asylum and Foundling Hospital; The Victorian Infant Asylum; Sutherland Child, Youth and Family Services; and Sutherland Homes for Children; Lisa Lodge (from July 2012)

² Berry Street Inc; Berry Street Child and Family Care; Berry Street Babies' Home and Hospital; The Foundling Hospital and Infants Home; The Victorian Infant Asylum and Foundling Hospital; The Victorian Infant Asylum; Sutherland Child, Youth and Family Services; and Sutherland Homes for Children; Lisa Lodge (from July 2012)

Allegation:	Any claim made about an act or acts of abuse as defined above.
Child/Young Person	A person under the age of 18
Complaint:	A registered expression of dissatisfaction with the service, lodged verbally or in writing by a complainant or their representative. A complaint may be related to a specific episode, occurrence or failure in provision of service that has resulted in an impact on an individual or group. A general expression of concern is not a complaint.
Complainant:	A person making a complaint to Berry Street about a past or current employee, foster carer or volunteer of Berry Street. The complainant may or may not be the victim. Where the complainant is making the complaint on behalf of the victim they will need to demonstrate that they have the authorisation of the victim to make the complaint.
Confidentiality:	<p>Berry Street will protect and respect the privacy of complainants, victims and other parties involved in any process or investigation carried out under this policy. Complainants are under no obligation to keep their complaint secret or confidential and Berry Street acknowledges that they may disclose allegations to the Police or other parties at any time</p> <p>Berry Street's undertakings in relation to confidentiality include:</p> <ul style="list-style-type: none"> ○ keeping the fact that an allegation has been made and a process commenced confidential from anyone who does not have a clear need to know about the process ○ ensuring that written and spoken information is protected from being shared with unauthorised persons, or used for a purpose other than that for which it was provided ○ advising the complainant when information they have provided may be made available to other persons on a "need to know" basis, including to current or former employees and volunteers, so that the complaint can be properly considered ○ where information is provided to a person or persons about whom an allegation is made this will not include the identity of the complainant unless the complainant authorises this disclosure ○ in some instances, including where Berry Street believes a child or young person is currently at risk of abuse or maltreatment, information regarding the allegation will be referred to the Police and/or other statutory authorities. The complainant will be advised. <p>All materials and reports arising from any inquiry remain the property of Berry Street. The complainant will be entitled to receive a copy of the findings of the investigation report, but these should not contain information that breaches the privacy rights of other people. This policy will not override any legal requirement for the use or release of any material.</p>
De-identified information:	Copies of reports, records, files and information in which the individual identity of people has been protected by redacting or blacking out the names of individuals or other information about them that might enable them to be identified.

- Designated Person:** Is the person appointed by the CEO to manage the process. He/She is responsible for ensuring that the process is as supportive as possible for the complainant, that it keeps to agreed timeframes and that it considers what implications should be drawn from the complaint for current practice in Berry Street. He/she is specifically responsible for;
- meeting the complainant and clarifying their complaint and the outcome they are seeking,
 - making appropriate support available to the complainant to assist them during the process, and
 - appointing any independent assessors, mediators and counselors that may be required.
- The Designated Person will be the *DEPUTY CEO/DIRECTOR OF SERVICES*, unless the CEO makes a determination otherwise on a specific case by case basis.
- Investigator:** The person appointed by the CEO to investigate the complaint, inquire into allegations made in the complaint and prepare a report with findings on the complaint. This may be an external person if requested by the claimant or decided by the Designated Person.
- Past employee/
Volunteer:** A person who previously worked for Berry Street, a volunteer who previously volunteered at Berry Street or a person who was previously a foster carer for Berry Street.
- Procedural Fairness:** Refers to a specific group of common law principles that are designed to ensure that a person is given a fair hearing before a decision is made that might adversely affect their livelihood or status.
- In general, procedural fairness refers to two broad principles:
- (a) An adequate opportunity must be given to a person to present their case before a decision is reached that might adversely affect them. This includes providing reasonable notice and time to prepare, sufficient information about the matter to be decided to enable the person to prepare their case.
 - (b) The investigation must be free from bias as well as the appearance of bias.
- Reparations:** The measures taken by Berry Street where a complaint is upheld in order to acknowledge and remedy the harm caused to the victim or victims. Berry Street will be guided by the van Boven Principles, *Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law*, (United Nations Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities E/CN.4/Sub.2/1996/17) Available at <http://www2.ohchr.org/english/law/remedy.htm>
- Victim:** The person that the complainant alleges has suffered as a result of the alleged act or acts of abuse. In most instances the complainant is likely to be the victim of the alleged abuse, neglect or maltreatment. The victim may be seeking any of the following: a hearing to be acknowledged and believed; help to recover (e.g. counselling); assurances that such behaviour does not re-occur, an apology from Berry Street and/or accused individuals, and/or financial reparation.

5. Policy provisions

- 5.1 Any client of Berry Street has the right to make a complaint about any aspect of their service experience. In particular, we encourage any care leavers who have concerns about their care to raise them with us.
- 5.2 Complainants who raise allegations of a criminal act will be advised of their right to also make a formal complaint to the Police.
- 5.3 All complaints will be taken seriously and will be addressed in the shortest time practicable.
- 5.4 Complainants will be provided with an evaluation form that they can complete at any time about their experience of the process and the outcome. These de-identified forms will form part of the annual process review of complaints.
- 5.5 Where Berry Street believes that a complaint should be upheld, the response from Berry Street may include some form of reparation, as authorised by the CEO.
- 5.6 Reparations may include but will not be limited to:
 - 5.6.1 Acknowledging any failures in Berry Street's duty of care
 - 5.6.2 Developing and providing a formal apology in a format and in a manner agreed with the complainant.
 - 5.6.3 Assistance with access to support services.
 - 5.6.4 A financial payment
 - 5.6.5 Remedial actions to prevent the re-occurrence of any acts of abuse against other clients
- 5.7 The process used by Berry Street will:
 - 5.7.1 Be based on principles of procedural fairness for all parties.
 - 5.7.2 Be as open and transparent as possible, while respecting rights to privacy and confidentiality.
 - 5.7.3 Take a person-centred, rather than legalistic approach.
 - 5.7.4 Reflect a commitment to address past grievances and provide a pathway toward recovery and healing.
 - 5.7.5 Consider the complainant's expressed wishes, gender, culture, language and accessibility throughout the process.
 - 5.7.6 Endeavour to ensure staff and independent contractors maintain confidentiality and appropriate record-keeping.
 - 5.7.7 Use de-identified information where it is possible to do so in the course of the Investigation.
- 5.8 Where Berry Street believes a complaint cannot be upheld, we will provide a written response to the complainant advising the reason(s).
- 5.9 If the complaint involves allegations of a criminal offence, the complainant will be strongly urged to refer the matter to the Police.
- 5.10 Whether or not the complainant wishes to refer the matter to the Police, where Berry Street has accepted on the balance of probabilities that the abuse occurred, Berry Street will refer the matter to the Police, and inform the complainant about this. Berry Street may also seek advice from appropriate authorities, including the Police.

6. Authorities and accountabilities

6.1 The Board of Directors is responsible for reviewing de-identified and aggregated data, resolving disputes from complainants and reviewing Berry Street's Policy and Procedure for Complaints from Adult Care Leavers through the Quality and Risk Management Committee.

6.2 Chief Executive Officer

The Chief Executive Officer is responsible for:

- ensuring that complaints from adult care leavers are handled in accordance with this Policy and its Procedures and that the Board of Directors are informed of these and any recommendations from investigations.
- determining the most appropriate response to the complaint and any reparations offered.
- providing annual, de-identified and aggregated statistics to the Board of Directors regarding complaints from adult care leavers. The Board of Directors may deal with any review of de-identified and aggregated reports via its Quality and Risk Management Committee.

6.3 Deputy CEO/Director of Services is responsible for acting as the *Designated Person* in accordance with this Policy and its Procedures in handling all complaints from adult care leavers.

6.4 The Executive Officer is responsible for maintaining a register and file system of all complaints from adult care leavers.

7. Specification of related Berry Street and other relevant documentation

7.1 Berry Street Documents

- Berry Street Procedures - Complaints from Adult Care Leavers
- Berry Street Policy - Handling Misconduct Allegations (2003)
- Berry Street Guidelines for Investigators of Misconduct Allegations (2003)
- Berry Street Privacy Policy

7.2 Public Records and Reports

- Senate Committee Report - Community Affairs Reference Committee - Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children (2004)

8. Policy & Procedure Review

8.1 The *Berry Street Policy - Complaints from Adult Care Leavers*, *Berry Street Procedure - Complaints from Adult Care Leavers* and all other relevant Berry Street policy and procedures will be reviewed at least every three years.

8.2 A review of all investigations into complaints from adult care leavers including access to de-identified investigation reports will be conducted annually.

9. Approval and revisions table

9.1 Approval

Approved by:	Board of Directors:	<input checked="" type="checkbox"/>
	CEO:	<input type="checkbox"/>
	Deputy CEO:	<input type="checkbox"/>
	Exec Management Team:	<input type="checkbox"/>
Date of Initial Approval:	October 17, 2007	
Effective Date:	November 1, 2007	
Accountable Officer:	Chief Executive Officer	
Current incumbent:	Sandra de Wolf	
Contact Details:	Richmond Office 03 9429 9266 sdewolf@berrystreet.org.au	
Berry Street File Name:	Policy - Governance - Complaints - Adult Care Leavers	

9.2 Revision/modification history

Revised Date:	June 2014
Version:	Four
Review Date:	April 2015 or as required
Current title:	POLICY - Complaints - Adult Care Leavers June 2014
Approval authority:	CEO

APPENDIX 1

Detailed Definition of Child Maltreatment, Abuse and Neglect

In this policy, the terms "child abuse and neglect" and "child maltreatment" are used interchangeably. Berry Street accepts the definition of Child maltreatment provided by the Australian Institute of Family Studies as at June 2012. In the application of this policy and related procedures Berry Street may seek advice and make reference to the detailed definitions of child abuse and neglect and child maltreatment available through the Australian Institute of Family Studies.

See: <http://www.aifs.gov.au/cfca/pubs/factsheets/a142091/index.html>

Child maltreatment, abuse and neglect refers to any non-accidental behaviour by parents, caregivers, other adults or older adolescents that is outside the norms of conduct and entails a substantial risk of causing physical or emotional harm to a child or young person. Such behaviours may be intentional or unintentional and can include acts of omission (i.e., neglect) and commission (i.e., abuse) (Bromfield, 2005; Christoffel, et al., 1992).

For the purposes of this policy child abuse and neglect and child maltreatment includes:

- (a) sexual abuse or sexual misconduct against, with or in the presence of a child;
- (b) physical abuse;
- (c) neglect;
- (d) emotional maltreatment; and
- (e) witnessing and experiencing family violence.

The following material is summarised from “*What is child abuse and neglect?*” Australian Institute of Family Studies (AIFS) June 2012

Physical abuse

Physical abuse refers to the non-accidental use of physical force against a child that results in harm to the child. A person does not have to intend to physically harm the child to have physically abused them (e.g., physical punishment that results in bruising would generally be considered physical abuse). Depending on the age and the nature of the behaviour, physical force that is likely to cause physical harm to the child may also be considered abusive (e.g., a situation in which a baby is shaken but not injured would still be considered physically abusive). Physically abusive behaviours include shoving, hitting, slapping, shaking, throwing, punching, kicking, biting, burning, strangling and poisoning.

Emotional maltreatment

Emotional maltreatment refers to a parent or caregiver's inappropriate verbal or symbolic acts toward a child and/or a pattern of failure over time to provide a child with adequate non-physical nurture and emotional availability. Emotional maltreatment may include:

- *rejecting*: the adult refuses to acknowledge the child's worth and the legitimacy of the child's needs;
- *isolating*: the adult cuts the child off from normal social experiences, prevents the child from forming friendships, and makes the child believe that he or she is alone in the world;
- *terrorizing*: the adult verbally assaults the child, creates a climate of fear, bullies and frightens the child, and makes the child believe that the world is capricious and hostile;
- *ignoring*: the adult deprives the child of essential stimulation and responsiveness, stifling emotional growth and intellectual development;
- *corrupting*: the adult "mis-socializes" the child, stimulates the child to engage in destructive antisocial behaviour, reinforces that deviance, and makes the child unfit for normal social experience.

Neglect

Neglect refers to the failure by a parent or caregiver to provide a child (where they are in a position to do so) with the conditions that are culturally accepted as being essential for their physical and emotional development and wellbeing (Broadbent & Bentley, 1997; Bromfield, 2005; WHO, 2006).

Neglectful behaviours may include:

- *physical neglect*: characterised by the caregiver's failure to provide basic physical necessities, such as safe, clean and adequate clothing, housing, food and health care;
- *emotional (or psychological) neglect*: characterised by a lack of caregiver warmth, nurturance, encouragement and support (note that emotional neglect is sometimes considered a form of emotional maltreatment);
- *educational neglect*: characterised by a caregiver's failure to provide appropriate educational opportunities for the child; and,
- *environmental neglect*: characterised by the caregiver's failure to ensure environmental safety, opportunities and resources. (Dubowitz, Pitts, & Black, 2004)

Sexual abuse

Although some behaviours are considered sexually abusive by almost everyone (e.g., the rape of a 10-year-old child by a parent), other behaviours are much more equivocal (e.g., consensual sex between a 19-year-old and a 15-year-old), and judging whether or not they constitute abuse requires a sensitive understanding of a number of definitional issues specific to child sexual abuse.

Child sexual abuse may include:

- the use of a child for sexual gratification by an adult or significantly older child/adolescent (Tomison 1995);
- any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards (Broadbent & Bentley 1997)
- sexually abusive behaviours can including 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 to or involving the child in pornography (Bromfield, 2005; US National Research Council, 1993).

Berry Street understands that unlike the other maltreatment types, the definition of child sexual abuse varies depending on the relationship between the victim and the perpetrator. For example, any sexual behaviour between a child and a member of their family (e.g., parent, uncle) would always be considered abusive, while sexual behaviour between two adolescents may or may not be considered abusive, depending on whether the behaviour was consensual, whether any coercion was present, or whether the relationship between the two young people was equal (Ryan, 1997).

Berry Street accepts that different definitions apply for each category of perpetrator: adults with no familial relationship to the child, adult family members of the child, adults in a position of power or authority over the child (e.g., carer, teacher, doctor), adolescent or child perpetrators, and adolescent or child family members.

Adults with no familial relationship to the child

Any sexual behaviour between a child under the age of consent and an adult is abusive.

Family members of the child

Any sexual behaviour between a child and an adult family member is abusive. The concepts of consent, equality and coercion are inapplicable in instances of intra-familial abuse.

Adults in a position of power or authority over the child

Sexual abuse occurs when there is any sexual behaviour between a child and an adult in a position of power or authority over them (e.g., a carer or teacher). The age of consent laws are inapplicable in such instances due to the strong imbalance of power that exists between children and authority figures, as well as the breaching of both personal and public trust that occurs when professional boundaries are violated.

Adolescent or child perpetrators

Sexual abuse is indicated when there is non-consensual sexual activity between minors (e.g., a 14-year-old and an 11-year-old), or any sexual behaviour between a child and another child or adolescent who - due to their age or stage of development - is in a position of power, trust or responsibility over the victim. For example, any sexual activity between a 9-year-old and a 15-year-old would be considered abusive as the age difference between the two children leads not only to marked developmental differences, but also disparities in their levels of power and responsibility within their relationship. Another example of abuse due to an imbalance of power would be sexual activity between two 15-year-olds, where one suffers an intellectual disability that impairs their ability to understand the behaviours that they are engaging in. Normal sexual exploration between consenting adolescents at a similar developmental level is not considered abuse.

Adolescent or child family members

Sexual abuse occurs when there is sexual activity between a child and an adolescent or child family member that is non-consensual or coercive, or where there is an inequality of power or development between the two young people. Although consensual and non-

coercive sexual behaviour between two developmentally similar family members is not considered child sexual abuse, it is considered incest, and is strongly proscribed both socially and legally in Australia.

Witnessing and experiencing family violence

The witnessing of family violence has been broadly defined as "a child being present (hearing or seeing) while a parent or sibling is subjected to physical abuse, sexual abuse or psychological maltreatment, or is visually exposed to the damage caused to persons or property by or family member's violent behaviour" (Higgins, 1998, p. 104).

Berry Street accepts that children and young people in care can be subjected to a similar form of harm as described above where they are present while a carer, sibling or other children in care is subjected to physical abuse, sexual abuse or psychological maltreatment, or is visually exposed to the damage caused to persons or property by or family member's or carers violent behaviour.