

NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse

Best practice principles in responding to complaints of child
sexual abuse in institutional contexts

NSW Government

13 May 2016

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Introduction

The NSW Government welcomes the opportunity to respond to the Royal Commission's Consultation Paper – Best practice principles in responding to complaints of child sexual abuse in institutional contexts ("the consultation paper") which seeks feedback on best practice principles, oversight of complaints handling and provision of advice and support for institutions.

The NSW Government is a major provider of services to children including, but not limited to, services provided by the Department of Family and Community Services (FACS), Ministry of Health (NSW Health), Department of Education and Juvenile Justice. As a service provider, the NSW Government has in place child safe policies and practices and complaint handling mechanisms that closely align with the Royal Commission's proposed best practice principles.

Six best practice principles

The Royal Commission has identified six principles as contributing to strong and effective practice in responding to complaints of child sexual abuse. The outcomes these principles seek to achieve closely align with the intention of frameworks in place for NSW Government agencies.

Any nationally consistent principles-based framework for the management of complaints would need to take account of existing jurisdictions' commitments and legislation relating to victims' rights (i.e. the NSW Charter of Victims' Rights, as reflected in the *Victims Rights and Support Act 2013*). It should also give further consideration to the complexity of managing allegations of child-to-child sexual abuse and sexual exploitation.

In addition, it would need to be flexible enough to account for the diversity of the sectors involved in the delivery of services to children and the variety of institution types providing services within those sectors. The benefits of a consistent approach need to be carefully balanced with the possible regulatory impact of this approach. Undue regulatory burden on service providers may have the unintended consequence of reducing level of service and opportunities for children.

Principle 1: An institutional culture that makes decisions based on the best interests of the child and is aware of the inherent vulnerability of children in their care

The culture establishes and leads appropriate standards of behaviour. It creates an environment in which children and adults connected to the institution are alert in identifying and enabled to report incidents or behaviour that could indicate, or be a precursor to, child sexual abuse.

An institutional culture that establishes and leads appropriate standards of child safe behaviour requires the implementation of effective child safe policies and practices that are well understood, accessible and actively guide how complaints are handled. There should be recognition that in matters of child sexual assault, children rarely lie and whilst children may be coached, it is not a reason to disregard the concerns they may raise in relation to child sexual abuse.

An institution and all its employees should understand what constitutes harm to a child, how to recognise it and what to do when it is detected. This includes: an awareness of how abuse affects children; the process of disclosure and that this can occur over time; and the factors that may cause a child to deny allegations or retract a disclosure once made.

Strong disciplinary management processes are also important to ensure that any misconduct or inappropriate behaviour is responded to appropriately.

In NSW, the *Children and Young Persons (Care and Protection) Act 1998* makes certain occupations mandatory reporters of child abuse. However, it is important that all employees and volunteers working with children understand when and how to make a report. Strategies to strengthen institutional culture can include empowering children to increase the likelihood they will report incidents; educating families and carers about grooming behaviours; and training staff including senior management to recognise the link between strong governance and child safety.

NSW Government examples:

- The Department of Education's *Allegations against Employees in the Area of Child Protection Policy* outlines the Department's legislative responsibilities and demonstrates its commitment to protect the safety and wellbeing of students. Child protection awareness training [readings](#) for

school staff detail relevant NSW child protection legislation, note employees' duty to plan and provide a safe environment for children and young people and to be responsive to their needs.

- Through Juvenile Justice's [Client Protection and Wellbeing Policy](#), employees are made aware of their responsibilities to promote the safety, welfare and wellbeing of clients. This includes individual and organisational reporting obligations in relation to children and young people who are at risk of harm. Appropriate policies, procedures and systems are also in place to ensure the safety, welfare and wellbeing of clients and to address concerns and complaints about employee conduct. Any allegations of sexual assault or misconduct are immediately reported to police.

Principle 2: A child-focused complaint handling policy

This policy guides the institution's response to complaints and specifies protections for people who make complaints. The policy needs to be accessible to all children and any adult survivors – taking into account cultural diversity as well as communication and support needs. It also needs to be enforced and regularly reviewed.

The NSW Government's response to *Issues Paper 3 - Child Safe Institutions* outlines that institutions should have policies and procedures in place that ensure an appropriate response to complaints. Policies and procedures should be easily accessible to children, their parents and carers. Policies should make it clear that a child or someone acting on their behalf can approach any person in the institution to express concerns and they will be taken seriously and external authorities notified.

A complaint handling policy should also address instances of child-to-child sexual abuse and sexual exploitation. This includes outlining the supports in place for children who may have been harmed as well as those who have allegedly caused harm. NSW Government examples:

- The Department of Education's [Protecting and Supporting Children and Young People policy and procedures](#) set out the roles and responsibilities of staff in relation to child protection, including training, monitoring, evaluating, reporting on safety, and supporting children and young people. In addition, the [Allegations Against Employees in the Area of Child Protection](#) sets out clear arrangements for handling of complaints against employees.
- Juvenile Justice's [Policy and Procedures for Managing Complaints about Juvenile Justice Services](#) provides guidance to staff to effectively manage complaints in a quick, transparent and fair manner, and to ensure procedural fairness for both the complainants and staff. The policy protects the rights of young people, particularly those in custody, noting a young person's rights to a support person or advocate to assist them when making a complaint.
- The Department of Family and Community Services' (FACS') [Managing Allegations of Reportable Conduct Against Authorised Carers – Policies and Procedures](#) sets out best practice for managing allegations. It specifically facilitates participation of children and young people in investigative processes, including Aboriginal children and those from culturally and linguistically diverse (CALD) backgrounds. FACS is currently updating this policy in response to the [Child Protection Legislative Amendment Act 2015](#), which facilitates better sharing of information about reportable conduct investigations with the child or young person concerned, and with their carers where appropriate.
- Units within specific NSW Government agencies are also responsible for conducting investigations of child protection allegations against staff. For instance, within the Department of Education, there is the Employee Performance and Conduct Unit, a specialist internal investigation unit to which all child protection allegations against employees must be notified. The FACS Reportable Conduct Unit is required to conduct

investigations. FACS authorised carers know their rights and are afforded procedural fairness.

Principle 3: A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability

Information should be available about how and where to make a complaint. The process should be simple. Support should be provided for any child or adult making a complaint. The response should be prompt. Those accountable for the process and outcome should be identified.

Complaints should be easy to make, especially for children. Access to effective but straightforward complaint handling policies and a good understanding of an individual's rights, including other avenues to make complaints (i.e. independent regulators such as the NSW Ombudsman) is also important.

NSW Government examples:

- Department of Education's information on making a complaint is detailed in their [Complaint Handling Policy Guidelines](#) which outlines how and where to make a complaint, along with how it will be assessed and managed, through internal or formal procedures. The available support is also outlined, noting that the person dealing with the complaint is responsible for monitoring the wellbeing of all parties involved in or affected by the complaint. The NSW Government's response to *Issues Paper 9 on Addressing the risk of child sexual abuse in primary and secondary schools* outlines further details on the Department's systems and practices for dealing with allegations of child sexual abuse in NSW government schools.
- Juvenile Justice's information on making a complaint is detailed in their [Policy and Procedures for Managing Complaints about Juvenile Justice Services](#) and must be provided to a child or young person during initial contact and when admitted to a centre as part of induction. The child or young person must also be informed of other avenues to make a complaint such as to the NSW Ombudsman and Official Visitors. This information is made widely available through the Juvenile Justice's community offices, the centres' admission areas, brochures and information kits. The policy makes clear that a young person has the right to a support person when making a complaint.
- FACS' information on complaints handling processes is made available to carers and children in out-of-home care through their caseworkers and is publicly available on the FACS website under '[client complaints](#)'. Other channels, including the [Connecting Carers NSW](#) website and *Fostering Our Future* magazine, are used to disseminate information to carers about making complaints and allegations. The [Caring For Kids](#) manual for carers (which is currently being revised) also gives an overview of policies and processes for complaints handling and reportable conduct investigations.

Principle 4: Protocols are in place for managing relationships and sharing information with other agencies

The institution should maintain contact with agencies such as the police and child protection to ensure that the institution reports and discusses complaints in a manner that protects the safety and wellbeing of children.

In NSW, Chapter 16A of the *NSW Children and Young Persons (Care and Protection) Act 1998* allows information to be exchanged between prescribed bodies for purposes including identifying and responding to incidents and risks of child sexual abuse. These arrangements prioritise the safety, welfare and wellbeing of children over privacy and confidentiality provisions. Please refer to the NSW Government's response to *Issues Paper 4 Preventing Sexual Abuse of Children in Out-*

of-Home Care and the NSW Government's response to *Consultation paper – Institutional responses to child sexual abuse in Out of Home Care* for more information on sharing information about carer histories.

The [Child Wellbeing and Child Protection – NSW Interagency Guidelines](#) provide advice and guidance to mandatory reporters in the government and non-government sectors on their child protection responsibilities and how to uphold them. The Guidelines cover how information can be shared in relation to the safety, welfare and wellbeing of a child or young person.

Principle 5: Training is provided about the complaint handling process

All staff members, volunteers and others involved in the complaint handling process receive adequate and ongoing training in the institution's expectations about reporting concerns and its policy and procedures for managing complaints.

The NSW Government's response to *Issues Paper 3 – Child Safe Institutions* identifies the importance of including child protection training in induction processes to enhance the knowledge and skills of employees and volunteers and reduce exposure to risk. This child protection training should cover the institution's policies and procedures (including its code of conduct), compulsory training as required by industry standards or legislation; how to identify, assess and minimise risk; how to respond to a concern or complaint about behaviour towards children (including a disclosure from a child); and reporting guidelines and obligations. Ongoing training and support in these areas should also be available to all employees and volunteers.

NSW Government examples:

- The Department of Education's child protection awareness training *E-learning readings* for school staff in [Section 2](#) specifically detail employees' responsibilities, including how to identify and report risk of harm, and allegations against employees. Part 4 of the *Allegation Against Employees in the Area of Child Protection Policy* notes that the complaints handling procedure must be incorporated into the child protection training provided at induction and annual child protection updates for all employees.
- For Juvenile Justice, all youth officers are required to complete an Induction Training Assessment Program (ITAP) before working directly with young people in a Juvenile Justice centre. Training is conducted over an initial 20 days period followed by four work-based learning blocks. Workplace supervisors and managers provide ongoing monitoring and supportive feedback to the ITAP participants as they complete their work-based learning.

The *Juvenile Justice Child Protection and Wellbeing Policy* aims to ensure employees are aware of the division's and their professional obligation to protect and promote the safety, welfare and wellbeing of clients. It also aims to ensure employees are aware of personal reporting obligations and that of the division in relation to children and young people who are, or may be, abused, neglected or at risk of significant harm.

Principle 6: An ongoing audit process is in place

This helps institutions monitor the efficacy of their policy and procedures for responding to complaints of child sexual abuse.

In addition to being subject to having internal monitoring and audit processes, NSW Government agencies are also subject to independent oversight by the NSW Ombudsman.

Part 3A of the *Ombudsman Act 1974* provides the NSW Ombudsman with powers to manage a reportable conduct scheme. The NSW Ombudsman works with agencies to build their capacity to respond to complaints of child sexual abuse and is responsible for regularly auditing institutions' complaint handling systems to ensure they are effective and comply with legislative requirements. NSW Government agencies subject to oversight of the NSW Ombudsman under the reportable conduct scheme include the Department of Education, FACS, NSW Health, Juvenile Justice and the NSW Police Force.

NSW Government examples:

- The Department of Education has internal audits of compliance with existing policies and procedures. Audits examine the reporting, assessment, investigation and recording of child sexual abuse allegations and the provision of mandatory child protection staff training.
- The Juvenile Justice Strategic Projects Unit is responsible for monitoring complaints, coordinating complaint information and statistics and providing information and advice to staff about the complaints policy and process. All complaints are registered in the Juvenile Justice Client Information Management System (CIMS) Complaints Section. This is regularly reviewed and is available for inspection by the NSW Ombudsman and the Official Visitor. An accurate record must be kept of each complaint, detailing the history of a complaint from registration to resolution.
- The FACS' Reportable Conduct Unit is responsible for investigating allegations of reportable conduct made against authorised carers. The *Managing Allegations of Reportable Conduct Against Authorised Carers – Policies and Procedures* specifies that the Reportable Conduct Unit undertakes ongoing quality control and evaluation of investigative processes to ensure maintenance of best practice standards.

Complaints handling policy

The Royal Commission has sought views on matters that should be included in the complaint handling policy and how those matters might be addressed.

Information under the six best practice principles above details the elements already incorporated within various NSW Government agency policies and guidelines (please also see [Appendix A](#)).

In addition, the NSW Government makes the following comments in relation to specific issues relevant to complaints handling policies:

Relevant section and dot points on topics under section 3.2 of the Consultation Paper	Comment
Section 4.4 – lists ‘positive’ grooming tactics	Consideration should be given to including recognition of ‘negative’ grooming tactics such as persistent criticism, discrediting, and singling out a child as untrustworthy or ‘manipulative’.
Section 4.9 - Communicating with other children, parents, guardians and others	In NSW, there is a protocol in place for the NSW Joint Investigation Response Team (JIRT) regarding responses to ‘classes of children’ who are or may be subject to child sexual assault investigations by JIRT. The protocol establishes a ‘Central Contact Point’ which coordinates communication with the parents and/or carers of children who may have been sexually abused but where a disclosure has not been made.
Section 4.10 and dot point 10 – Topic regarding how to investigate the complaint	The role of determining whether an allegation has reached a criminal threshold should be with the Police. If there is any doubt whether a matter reaches the threshold, the agency should immediately seek advice from the Police and/or their relevant child protection agency.
Section 4.13 and dot point 14 – Topic regarding documentation of complaints and investigative actions	<p>NSW Public Sector agencies (including NSW Health agencies) are subject to the State Records ‘General Retention and Disposal Authority’ (GA28) which requires that records relating to the management of instances or allegations of misconduct involving abuse or neglect of children (including the advice of allegation and response, the investigation documentation and reports, referrals to external bodies, records of remedial and/or disciplinary action and records of appeals) are retained for a minimum of 100 years after the action has been completed, and then destroyed.</p> <p>Any document retention policies adopted by an institution must ensure that evidence is preserved when potential litigation is reasonably anticipated. This obligation applies to all relevant documents, even those damaging to the institution¹. Institutions must assess whether any litigation ‘may be’ commenced in the future in respect of the documents, and to assess whether the particular</p>

¹ *Australian Competition and Consumer Commission v Visy Holdings Pty Ltd (No 2)* (2007) 239 ALR 762 at [78]–[93]

Relevant section and dot points on topics under section 3.2 of the Consultation Paper	Comment
	<p>document may be required in evidence. Such records should be retained for as long as proceedings are current or anticipated.</p> <p>In NSW, the <i>Limitations Act 1969</i> has been amended to remove limitation periods for claims in respect of sexual abuse, serious physical abuse or other abuse perpetrated in connection with sexual or serious physical abuse against a person under 18.</p> <p>In addition, some institutions (specifically non-government institutions) may also be required to comply with the Australian Privacy Principles.</p>
<p>Dot point 16 – Topic regarding how to put into effect any decisions – including informing the complainant and other interested people, institutions or other agencies</p>	<p>In NSW, bodies that can share information under Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) are generally limited to those with responsibility for the safety, welfare or wellbeing of children. Sharing information with other parties (i.e. general public) would not be covered under Chapter 16A.</p> <p>Consideration needs to be given to the potential impacts of allowing information to be communicated to the general public such as the potential to prejudice any official investigation of the conduct and endanger the safety of the child and accused perpetrator of abuse.</p>
<p>Dot point 17 – Topic regarding appeals processes</p>	<p>Consideration should be given to the context when developing elements relating to appeals and existing arrangements in place. Employees who are dismissed on the basis of a complaint would have the right to apply to the Industrial Relations Commission of NSW (for NSW local and state government employees) or the Fair Work Commission (for private enterprise employees) if they consider their dismissal to have been unfair.</p>

Oversight of complaints handling

The Commission have sought views on the value of independent oversight mechanisms (eg. reportable conduct scheme), whether similar schemes should be established in all Australian states and territories, and what features an independent oversight scheme should include and whose conduct should be subject to oversight.

Value of independent oversight mechanisms

The NSW reportable conduct scheme requires institutions to notify the NSW Ombudsman of any allegations of reportable conduct, which allows for oversight over the handling of such allegations.

As identified by the Royal Commission, the NSW reportable conduct scheme allows for oversight of complaints of child sexual abuse in institutional contexts conducted by a body independent of the lead department and all service providers. The scheme assists in enhancing public confidence in the outcomes of child abuse investigations.

Considerable work has been undertaken in NSW to balance reporting requirements and ensure the more serious matters are prioritised. In addition, adequate promotion and training regarding the reportable conduct scheme has been considered essential to the scheme's success.

Establishment of reportable conduct schemes in all states and territories

The establishment of independent oversight mechanisms such as reportable conduct schemes is an issue for consideration by each state and territory. If similar schemes were created in other jurisdictions, consideration could be given to facilitating information sharing between them, noting this would be dependent on a number of factors including the level of consistency between the schemes. Information sharing would assist in circumstances such as where a teacher or carer who presents a potential risk regarding working with or caring for children, moves interstate.

Features of an independent oversight scheme

The Commission has heard views that oversight mechanisms require a combination of: (1) reportable conduct scheme, (2) Working with Children Checks, (3) Information sharing provisions.

Effective oversight mechanisms require a combination of factors, as outlined by the Royal Commission. A key aspect of this relates to consistent definition and terminology, particularly if different agencies have responsibility for different aspects of the oversight.

Commentary regarding the reportable conduct scheme and information sharing has already been detailed above. Commentary on the Working with Children Checks (WWCC) was provided in the NSW Government Response to *Issues Paper 1 - Working with Children Check*.

Advice and support for institutions

The Commission sought views on:

1. *How to improve institutions' access to advice and support when responding to complaints of child sexual abuse, especially for small institutions.*
2. *Options for consideration to include possible increased roles for various bodies.*

Institutions' access to advice and support

The policy should set out the training to be provided to staff about the complaint handling policy including the code of conduct.

Access to advice and support, including specialist training for staff in leadership positions, is necessary. Staff involved in investigating complaints should also have access to subject area experts on the impact of child sexual assault and the dynamics of child sexual assault and perpetrator tactics. As noted in the Royal Commission's Consultation Paper *Institutional Responses to Child Sexual Assault in Out-of-Home Care*, the quality of the response to a disclosure by a victim of child sexual assault influences how comprehensive the disclosure may be. It is possible for some victims to retract disclosures if they are questioned in a manner they perceive as disbelieving or blaming.

In NSW, the Department of Education's Employee Performance and Conduct Directorate has developed expertise in effective responses to child sexual abuse complaints. It coordinates training, liaises with other agencies and facilitates effective and timely reporting to the NSW Ombudsman's Office. The Directorate is led by a senior officer with access to the Executive and the ability to develop and input into policy and practice across the Department.

This approach may not be feasible or appropriate for smaller agencies. Bringing in private investigative services may provide some level of independence and be cost effective for smaller agencies. However, the skills mix of these services varies greatly and there is not always a strong understanding of the specific employment requirements or agency circumstances when making recommendations.

The NSW Government, through the work of the Office of Children's Guardian and NSW Ombudsman, assists institutions to respond to complaints of child sexual abuse, including through access to information and training.