



Policy and process for managing allegations of abuse made by people who were formerly in the care of agencies under the responsibility of the Uniting Church NSW.ACT

1. Purpose

This policy is to address allegations of mistreatment by people who in the past have been in the care of agencies which are part of the UnitingCare network [e.g. UnitingCare Burnside and Wesley Dalmar] and organisations which no longer exist, but which were community service organisations of the Uniting Church or its predecessors, and where the allegations relate to situations which do NOT involve employees, carers or volunteers currently working for a UnitingCare agency at the time the allegation is received.

Allegations relating to employees, carers or volunteers currently working with agencies fall under the requirements of Part 3A of the Ombudsman Act, 1974.

2. Principles

- a) UnitingCare adheres to an ongoing commitment to natural and procedural justice for all those who have been service users of Uniting Church programs and for those who have worked for the Uniting Church, including employees, carers and volunteers.
- b) Any person who has been a service user of Uniting Church programs has the right to complain. All complaints will be accepted without prejudice.
- c) Complaints and/or allegations of mistreatment are serious for the complainant. Each complainant shall and must be treated with respect and consideration, and in alignment with the Church's core values. A compassionate response to the complainant must be the first priority in all cases of alleged abuse.
- d) The Uniting Church will not allow for any retribution against any person for bringing a complaint against a part of UnitingCare and/or its ex-employees.
- e) All complaints will be addressed in the shortest time practicable.
- f) Staff will maintain confidentiality around the complaint on a 'need to know' basis.
- g) Any formal investigation into allegations under this Policy will be undertaken by a person or persons independent of UnitingCare, and of the Uniting Church.

3. Definitions

"Complaint"

an allegation of ex-employee(s) behaviour or decisions or systemic practices that are regarded by the complainant as having been abusive or neglectful, including but not restricted to:

- incidences of sexual assault or any conduct of a sexual nature, including sexual harassment, between past carers and children or young people previously in care
- behaviour by a person or persons with responsibility for a child or young person which caused serious pain, physical abuse or ill treatment, or psychological harm.

“Agency”

This refers to organisations currently providing care [e.g. UnitingCare Burnside and Wesley Dalmar]. Where a complaint is made in respect of an organisation no longer in existence, UnitingCare NSW.ACT will assume the role of the agency.

“Confidentiality”

is not about secrecy but is an assurance 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 collected. The complainant however, together with any person involved concerning the complaint outside the Agency, must acknowledge that information received by the Agency may be made available by the Agency to such persons as the Agency considers appropriate, including employees of the Agency, personnel of the NSW Synod of the Uniting Church, and, if appropriate, its advisers, so that the complaint may be properly considered. The information will also be provided to the person or persons about whom the complaint is made. All materials and the Final Report arising from any inquiry remain the property of the Agency and will only be made available to those persons responsible for the preparation and implementation of the Report and its recommendations. The complainant must maintain any information provided by the Agency in confidence and any disclosure would normally require the consent of the Uniting Church. However, this policy will not override any legal requirement for the use of any material or the Report, which is required in any legal proceedings.

“ Designated Person”

is the person appointed by the CEO to whom a person may make a complaint and who manages the process within the Agency. The appointment of the Designated Person must be kept current. This person is responsible for the appointment of support persons, independent investigators, mediators and counsellors as required; and shall ensure that the complaint process is fully documented. This person will be responsible, as far as possible, for keeping the stages of the process to the required timeframes. This person will, at all stages of the process, consider what implications should be drawn from the complaint and its investigation for current practice in the Agency.

“ Ex-employee”

in this Policy refers to a person who previously worked for an Agency of UnitingCare either as an employee, carer, or volunteer.

“ Natural Justice”

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, natural justice 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.

4. Procedures

4.1 When a complaint is made:

- a) Complaints may be first received verbally or in writing, in any language.
- b) The first person to receive a verbal complaint will hear the concerns expressed, and explain to the person the Agency's principles and processes for dealing with these complaints. That person shall give the complainant a copy of the process and principles. If the Agency has specific material or a brochure this should be provided.
- c) All complainants will be referred as soon as possible to the Designated Person to discuss options for action. The Designated Person will seek to learn from the complainant the desired outcome of the allegation. The Designated Person will maintain a record of each allegation and ensure that this is recorded. If the complainant decides to continue with a formal complaint the Designated Person will ensure that the Head of the Agency is informed in writing within 24 hours.
- d) The Head of the Agency will inform the Board and/or Uniting Church if the nature of the complaint warrants such action.
- e) Where a complaint has the potential for media attention or where the media has already become involved, the Designated Person must contact the Head of the Agency as soon as possible and brief them on the situation. The Head of the Agency or her/his delegate is the only person to speak publicly on behalf of the Agency.
- f) The Designated Person will offer the complainant a Support Person for the duration of the investigation. This could be a staff member or a support person from outside the agency nominated by the complainant. The Support Person will assist the complainant with the process, and, with the complainant's permission, be present at any meetings convened for the process to which the complainant is invited to be present. The Support Person must not in any way represent the person, either formally (ie legal representation) or informally unless that person has the authority in law (eg as an authorised guardian)
- g) The complainant will be requested to outline the complaint in writing within fourteen days, if not already done. The Support Person may assist with, or write this, if required, as long as it is also signed by the complainant.
- h) The Designated Person will acknowledge in writing, receipt of the written complaint.
- i) If a written complaint is not received within the required timeframe, the Designated Person shall write to the complainant to the effect that if a written complaint is not received, then the Agency is not able to proceed further concerning the allegation.
- j) Where the complainant would prefer to discuss options for action externally, the Designated Person will refer them to the Community Services Division of the Ombudsman's Office, or to other appropriate external bodies. Options available are:
 - the Agency's internal process
 - a criminal investigation
 - a civil litigation process.

4.2 Criminal or civil investigation

- a) If the complaint involves allegations of a criminal offence, the complainant will be strongly urged to refer the matter to the police.
- b) If the complainant does not refer the matter to the police, the Agency will seek advice as to whether it should do so, including advice from the Child Protection Enforcement agency of the NSW Police Service.

- c) If the matter is referred to the police, or the complainant decides to engage in civil litigation, at any time before or during the Agency's internal process, the internal process will cease at that point. However, the complainant's Support Person may continue to offer support if appropriate.
- d) When the Agency becomes aware of a criminal or civil process, or the threat of such a process, the Head of the Agency will inform their own Board, the Executive Director of *UnitingCare NSW.ACT* and the Board of Finance and Property in writing.
- e) The Head of Agency, the Executive Director of *UnitingCare NSW.ACT* and the Executive Director of the Board of Finance and Property will jointly make a decision as how the matter will be managed.
- f) The Agency's internal process may be re/activated by the Designated Person once legal action has ceased, at the complainant's request.

4.3 Internal process – investigation

- a) If and when the internal process is requested by the complainant, it will be commenced within the shortest possible time.
- b) The Designated Person shall meet with the complainant to determine if an investigation of the substance of the complaint is necessary.
- c) If the complainant seeks only counselling regarding the trauma of past experiences, the options of internal or external counsellors can be offered. If external counselling is chosen, the Agency may make a contribution towards the costs of the counselling. The costs of counselling should generally not exceed \$3000.
- d) If the complainant is seeking other responses from the Agency, an investigation of the substance of the complaint should take place.
- e) If the complainant requires no action further than counselling, the Agency should nevertheless consider whether an investigation should take place.
- f) Where the complaint is against a named ex-employee, that person should be notified of the allegations and shall be offered a Support Person.
- g) An investigator, independent of the Agency and of the Uniting Church, and independent of the allegations, the complainant and any ex-employee against whom allegations are made, shall be contracted by the Agency to investigate the substance of the complaint and to assist the Agency to respond appropriately.
- h) The Designated Person and the investigator shall develop an investigation plan, which shall include a summary of the issues to be addressed, clear objectives for the investigation, people who should be interviewed, other evidence that should be obtained, and a strategy for dealing with confidentiality and with keeping all parties adequately informed of the process.
- i) This investigation plan should be approved by the Head of Agency and their Board or supervisor.
- j) The investigation should be completed within a three-month period unless an extension is approved by the Agency and by the complainant.
- k) Other staff may be required to provide information and/or limited assistance to the investigator.
- l) An ex-employee against whom allegations are made shall be given the opportunity to be interviewed as part of the investigation. Contact with ex-employees will be done only through the Manager, Human Resources, who will offer to make arrangements for an interview.
- m) The independent investigator must make a full report in writing to the Head of Agency at the end of the investigation, outlining the process, outcomes and making recommendations as to an appropriate response.
- n) The costs of the investigation process are to be borne by the Agency.

4.4 Internal process – determination

- a) The Head of Agency will take the report to the Board of Management with his/her own recommendations. The Board will then determine the course of action and make clear its reasons for implementing, modifying or rejecting the recommendations of the investigator.
- b) Where there are recommendations to be implemented, the Board will determine whether this should be done by staff or whether an external facilitator is required. If an external facilitator is required this should not, as a general rule, be the person who undertook the investigation.
- c) If the course of action involves any outside agency (eg the Uniting Church), the Board will authorise the Head of Agency to discuss with the relevant external parties how best the recommendations can be implemented.
- d) The Head of Agency will inform the Designated Person of the Agency's response. The Designated Person will then present and discuss the Agency response with the complainant and their Support Person. If an ex-employee is involved, the response will also be discussed with them. The complainant and, if relevant, the ex-employee, will be informed of their right to a review of process. If the complainant states that they do not wish a review implementation should commence immediately. If no request for a review of process is made within one month, the Designated Person will implement the response.

4.5 Internal process – implementation

- a) Where a formal expression of regret or apology is indicated, this will take place in a way that is suitable and acceptable to the complainant. This may include a meeting with the Head of Agency and/or any ex-employee involved in the complaint and/or a Board representative and/or a representative of *UnitingCare NSW.ACT*, and/or a representative of the NSW Synod. It should take into account the specific complaint (s), circumstances at the time, and the recommendations of the investigator
- b) Where a settlement and or some form of reparation is recommended and accepted by the Board, the Board will take advice from the Uniting Church as to the appropriate quantum and terms of settlement. The Board will not offer a financial settlement as compensation for past wrongs but may make an offer of contribution or settlement to assist the person in their current circumstances.
- c) Where a financial settlement is made, \$50,000 should be regarded as the upper limit which would apply in the most serious cases of abuse. The decision as to which account should provide any financial settlement should be a matter for decision between the Head of Agency, the Executive Director of *UnitingCare NSW.ACT* and the Executive Director of the Board of Finance and Property.
- d) No complainant shall be required to give an undertaking, which imposes upon them an obligation of silence concerning the circumstances which led them to make a complaint, as a condition of an agreement with the Agency.
- e) The Designated Person shall consider how the investigation and determination could inform current practice, and make recommendations to the Head of Agency accordingly.
- f) Disciplinary action shall be taken against any current staff implicated in the complaint.

4.6 Review of Complaint Process and/or Review of Outcome

- a) A review of process and/or review of outcome is available for complainants who are not satisfied with the Agency's offer of response. A review of process and/or review of outcome is also available for ex-employees involved in a complaint.

- b) A person may request a review of process by writing to the Moderator of the NSW Synod of the Uniting Church within one month of the meeting with the Designated Person presenting the Agency's intended response.
- c) The review shall be undertaken by a person or persons appointed by the Moderator.
- d) The review shall be conducted expeditiously.
- e) The reviewer/s shall have authority to interview all Agency staff concerned and will have access to all relevant documentation.
- f) At the completion of the review, the Moderator shall provide a written report to the person who requested the review. A copy of the report will be supplied to the Designated Person.
- g) As soon as convenient, the Designated Person shall discuss with the complainant and, if relevant, ex employee(s), the outcome of the review and implementation of any recommendations.

4.7 After the Complaint is resolved

- a) The Designated Person is responsible for ensuring that all information pertaining to the complaint is kept, both in the complainant's and (if relevant) the ex-employee's file.
- b) The ex-employee's file is maintained securely by Human Resources for the required legal period and then forwarded to the Archives
- c) If the complainant has had access to a Support Person for the duration of the complaint process, this person will maintain contact with the complainant until the response agreed upon, eg counselling, practical support, has begun.

This Policy was endorsed by the UnitingCare NSW.ACT Board on 19 August 2004

To be reviewed in 2009