

1. Purpose

Since 1877, many thousands of children and young people have been assisted by Berry Street¹ and our founding agencies, including Sutherland Homes and Lisa Lodge. Sadly, we know that a small number of children and young people experienced abuse or neglect while in our care or through accessing services operated by Berry Street.

The purpose of this Policy is to provide those people who were previously in the care and or participated in a service provided by Berry Street:

- the options available to them to provide feedback or make a complaint; and
- how Berry Street will respond when their feedback or complaint is received.

2. Scope

The scope of this policy extends to persons 18 years and over, who were previously in the care of Berry Street and or participated in one of its services (and any of its founding agencies² since 1877).

Complaints and allegations may implicate any or all of the following; current or former employees, volunteers, carers, Berry Street clients or contractors and allege some failure in Berry Street's duty of care.

This Policy is based on our strong belief that any abuse suffered by children and young people while in our care or through accessing one of our services is totally unacceptable.

3. Background

Berry Street is committed to being a child safe, child friendly and child empowering organisation. In everything we do we seek to protect children; we listen and respond if harm or abuse occurs and remain open, honest and transparent about any failings.

We are committed to constantly improving our services and ensuring a safe environment for the children and young people we work with. It is fundamental that we listen to and learn from the experiences of people who have previously been in the care of Berry Street, and continually consider opportunities to improve our practises and safeguard the children and young people in our care.

Through the courage of people prepared to tell their stories, we now know that our past practice was not always consistent with the principles of Berry Street or its founding agencies (Sutherland Homes and Lisa Lodge). As the current custodians, the Berry Street Board of Directors, accept that in Berry Street's many years of operation, harm has occurred to some children and young people who were in our care. For this, we deeply and most sincerely apologise.

Formal apologies to those who suffered harm in our care can be accessed [Berry Street's website](#).

We understand that the impacts of childhood abuse and neglect can last a lifetime. We also understand that people who have experienced significant childhood trauma from abuse or neglect may not speak about these experiences until well into their adult lives. We are committed to ensuring that all former service users of Berry Street can raise issues and concerns and make formal complaints in relation to any abuse or neglect they may have suffered while in our care.

4. Definitions

¹ For the purposes of this document, 'Berry Street' refers to Berry Street Victoria 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)

Refer to Appendix One

5. Policy

5.1 Feedback and Complaints that do not involve personal experience of child abuse and neglect

Any person who is a past service user of Berry Street may provide Berry Street with feedback or make a complaint regarding any aspect of our services, programs, procedures or policy. Feedback and complaints from a past service user that does not involve their experience of child abuse or neglect is governed by the Berry Street Feedback and Complaints Policy. Further information and a copy of this Policy is available on [Berry Street's website](#).

5.2 Complaints that involve personal experience of child abuse and neglect by a person that Berry Street was responsible for bringing the former service user into contact with

When receiving a complaint from a person who was formerly a service user of Berry Street alleging abuse or neglect Berry Street will convey to the person the following possible options:

- an application to the National Redress Scheme
- an application to the Berry Street Independent Redress Scheme
- the engagement of a suitably qualified legal representative to advise them in relation to any potential claim for compensation through a legal process.

Any decision on what course, if any, to take is entirely a matter for the individual or their legal guardian.

Further information regarding each of the above options is outlined below. A diagram illustrating how these options apply is provided in **Appendix Two**.

5.3 National Redress Scheme

The National Redress Scheme (the Scheme) was established in response to the Royal Commission into Institutional Responses to Child Sexual Abuse³. The National Redress Scheme provides support to people who experienced institutional child sexual abuse. The Scheme started on 1 July 2018 and will run for 10 years. Berry Street is a participating institution in the Scheme and operates in accordance with the relevant governing legislation, rules and frameworks established for the scheme.⁴

Any person who is considering making an application for Redress through the Scheme should refer to information provided directly by the National Redress Scheme. Information available includes eligibility, how to make an application, the types of support that can be applied for and support services available. This information is available at www.nationalredress.gov.au or by telephoning the National Redress Scheme directly on 1800 737 377.

5.4 Berry Street Independent Redress Scheme

At the time of the release of the recommendations of the National Royal Commission into Institutional Responses to Child Sexual Abuse in 2015⁵, it was recognised that it would take some years for government to establish a redress scheme. Within this context, the Royal Commission also recommended that institutions, such as Berry Street, amend their existing complaints and redress arrangements to ensure they are as independent as possible and provide redress consistent with the advice of the Royal Commission. Berry Street actively supported the work of the Royal Commission in relation to complaints and redress and formulated the Berry Street Past Client Abuse Policy 2015. This included provision for those people who suffered child abuse (see definitions Appendix One) in the care or direct service contact with Berry Street

³ <https://www.childabuseroyalcommission.gov.au/final-report>

⁴ <https://www.nationalredress.gov.au/about/about-scheme>

⁵ <https://www.childabuseroyalcommission.gov.au/final-report>

prior to 1 January 1987 to access the Berry Street Independent Redress Scheme. Complaints received in relation to allegations of abuse or neglect that took place on or after 1st January 1987 are referred by Berry Street to the Victorian Managed Insurance Authority (VMIA)⁶.

While this Policy supersedes the Berry Street Past Client Abuse Policy 2015, Berry Street will continue to operate the Independent Redress Scheme in accordance with the previous Policy parameters. This scheme provides for the following:

- the standard of proof for a complaint to be upheld shall be “reasonable likelihood”. Refer to definitions, Appendix One.
- the complaint will be considered by an independent person not directly employed, however engaged by Berry Street to hear the complaint from the complainant.
- the independent person will make recommendations once considering the complaint to the Chief Executive Officer.
- if the complaint is upheld a redress payment will be offered in accordance with the recommendations of the Independent person.
- redress payments will be within three levels; considering the severity of the abuse, and the impact of the abuse, providing a tangible acknowledgement of any abuse or neglect:
 - level 1 - payment of \$5,000 to \$40,000
 - level 2 – payment of \$40,001 to \$65,000
 - level 3 – payment of \$65,001 to \$90,000.
- no deed of release will be required as a condition of complainants receiving a redress payment under the Berry Street Independent Redress Scheme.

People considering an application to the Berry Street Independent Redress Scheme should refer to the *Berry Street Independent Redress Scheme Operational Overview* for further information regarding the application and assessment process. Read the [Berry Street Independent Redress Scheme Operational Overview \(PDF 381 KB\)](#).

5.5 Civil claim

A person who was previously in the care of Berry Street and experienced child abuse or neglect may choose to seek compensation through the civil claim process. The decision as to whether or not to pursue a civil claim is entirely a matter for the individual or their legal guardian. Berry Street will encourage the person, in considering this option, to obtain the advice of an appropriately qualified and experienced legal representative. Berry Street will not advise or refer people seeking advice to a particular law firm; however, it can provide on request a list of law firms known to Berry Street who undertake this type of work.

When receiving a claim for compensation Berry Street will undertake the following process:

- **for claims that allege abuse or neglect that occurred prior to 1 January 1987:** on receipt of the Claim, Berry Street will appoint an appropriately qualified and experienced law firm to act on its behalf. Legal representatives acting on behalf of the person making the claim will be notified of the law firm and contact details of the legal representative acting on behalf of Berry Street. All requests of Berry Street in relation to the claim will be required to be directed to the Berry Street nominated legal representative.

⁶ All Community Service Organisations (CSOs) in Victoria that receive State Government funding fall under the provisions of the VMIA Professional Indemnity and Personal Injury and Public Liability. For more information refer to the VMIA Community Service Organisations Program: <https://www.vmia.vic.gov.au/insure/community-service-organisations>

Berry Street acknowledges the potential for litigation can be a traumatic experience for claimants who have suffered abuse or neglect. Where possible, within the context of the circumstances of the claim and any legal requirements, in good faith, early settlement negotiations between the parties will be undertaken as soon as possible.

- **for claims that allege abuse or neglect that occurred post 1 January 1987:** All Community Service Organisations (CSOs) in Victoria that receive State Government funding fall under the provisions of the Victorian Managed Insurance Authority (VMIA) Professional Indemnity and Personal Injury and Public Liability Insurance Scheme with a retroactive date of 1 January 1987. These policies require that Berry Street notify the VMIA of any reported or alleged incident or event, such as alleged client maltreatment, abuse or neglect that may fall under VMIA insurance policies⁷.

On receipt of a claim that alleges abuse or neglect post 1 January 1987, the claim will be referred to the VMIA for consideration under the policy.

If the policy responds, legal representatives acting on behalf of the person making the claim will be notified of the law firm and contact details of the legal representative, once appointed by the VMIA. All requests of Berry Street in relation to the claim will be required to be directed to the VMIA appointed legal representative who will act on behalf of Berry Street and respond accordingly.

6. Reporting

Depending on the nature of the complaint, an allegation relating to Berry Street employees, carers or volunteers may also fall within the scope of the Victorian Department of Families, Fairness and Housing processes for complaints regarding abuse in Out-of-Home Care (OOHC) or the Reportable Conduct Scheme managed by the Victorian Commission for Children & Young People. As a registered community service organisation, Berry Street is obliged to adhere to the requirements of these schemes. If the complaint received falls within the scope of these requirements, the complainant will be informed of the information Berry Street is obliged to provide.

Complainants who raise allegations of a historical criminal act are encouraged to notify the Police. Berry Street will not proceed with assessments or inquiries into allegations if there is the potential that those assessments may intersect with active or anticipated police inquiries or investigations. Berry Street will fully cooperate with any Police inquiry or investigation.

7. Privacy and confidentiality

Berry Street is committed to ensuring that personal information of people is collected purposefully and lawfully, handled and disclosed (when necessary) appropriately, and stored or disposed securely. To learn further how Berry Street collects and manages service user information please refer to the [Berry Street Privacy Statement](#).

8. Accountabilities and authorities

The Board of Directors is responsible for reviewing the Past Abuse Complaints Policy, monitoring the outcomes of the policy, including de-identified and aggregated data and feedback.

⁷ <https://www.vmia.vic.gov.au/insurance/policies-and-cover/community-service-organisations-program>

The Chief Executive Officer, or their nominated Executive is responsible for:

- ensuring that complaints from past service users are handled in accordance with this Policy and that the Board of Directors are informed of complaints received from past service users and their outcomes.
- contracting suitable independent persons authorised to investigate and determine complaints as part of the Berry Street Independent Redress Scheme.
- attending, where deemed appropriate, conferences and hearings that involve listening to past service users about their experience and the impact this had upon them.
- authorising and or providing statements of apology to people who have experienced abuse or neglect in the care or while participating in a service of Berry Street. These may include written and or verbal apologies.
- ensuring that where complaints fall under the terms of any insurance policies of the Victorian Managed Insurance Authority applicable to registered Community Service Organisations (CSOs) Berry Street acts in accordance with the requirements of the applicable VMIA insurance policies;
- in line with this Policy, appointing suitable legal representation to act on behalf of Berry Street when required.
- providing information to the Board of Directors Quality and Risk sub-committee regarding feedback and complaints from past clients (de-identified).

The Head of Risk, or their nominated delegate is responsible for:

- receipt and coordination of complaints received;
- responding to enquiries from internal and external stakeholders of Berry Street in relation to the provisions of this Policy;
- provision of information to VMIA in accordance with the terms of the applicable VMIA insurance policies;
- provision of information to legal representatives appointed to act on behalf of Berry Street;
- responding to requests for information from the National Redress Scheme;
- maintaining accurate and up to date records including a register and file system of complaints received and their outcome.

9. Evaluation and review

- 9.1 This Policy will be reviewed by the Berry Street Board of Directors at a minimum of three-year intervals. In the instance that circumstances or information becomes available before this time that should be considered, and it is determined changes to the Policy are required, this will be undertaken. This may include and is not necessarily limited to: changes in Government Policy and or legislation that impacts on the implementation of this Policy and or provides for the opportunity to improve the complaints process for people who were previously in the care or participated in a service of Berry Street.

10. Enquires relating to this Policy

All enquiries relating to this Policy please contact the Head of Risk on 03 9429 9266 or redress@berrystreet.org.au.

11. Version control

Version number:	4.0
Approved by:	Board
Approved date:	9 November 2021
Review date:	9 November 2024
Process owner:	Head of Risk - Organisational Effectiveness
Manager responsible:	Chief Executive Officer
Version 4.0:	Policy

Appendix one: definitions

1. Definition of abuse

Berry Street has been guided by the definition of child abuse and maltreatment published by the Australian Institute of Family Studies (June 2012) and the advice of the Victorian Aboriginal Child Care Agency (VACCA) and the Victoria Government 2015 public consultation paper on a *Victorian Redress Scheme* for a definition of cultural abuse of Aboriginal and Torres Strait Islander children.

<p>Physical abuse</p>	<p>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.</p>
<p>Emotional abuse</p>	<p>Emotional abuse refers to a 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 abuse may include:</p> <ul style="list-style-type: none"> • 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. • witnessing family violence in their care placement. • denigrating, bullying or harassing of a child or young person based on their cultural background, religious beliefs, gender, identity or sexual orientation.
<p>Sexual abuse</p>	<p>Child sexual abuse may include:</p> <ul style="list-style-type: none"> • the use of a child for sexual gratification by an adult or significantly older child/adolescent • 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 • 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.
Cultural abuse of Aboriginal or Torres Strait Islander children	<p>Cultural abuse of Aboriginal or Torres Strait Islander children may include:</p> <ul style="list-style-type: none"> • the deliberate and sustained denial or denigration of an Aboriginal or Torres Strait Islander child’s cultural identity with the effect of significantly undermining the child’s identity and sense of self • the deliberate and sustained bullying or harassment of an Aboriginal or Torres Strait Islander child based on their cultural background.
Neglect	<p>Neglect refers to the failure by a 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. Neglectful behaviours may include:</p> <ul style="list-style-type: none"> • 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.

2. Other definitions

Allegation: A claim made about an act or acts of abuse as defined above.

Child/young person: A person under the age of 18

Independent Redress Scheme: The Scheme established by Berry Street to provide an independent process for responding to complaints

Past service user: Refers to people who were previously in the care, or received a service from Berry Street Victoria 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. The person is now 18 years or over.

Reasonable likelihood: Refers to the standard of proof recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse that is required for a complaint to be upheld. Reasonable likelihood is taken to mean that;

- it is plausible that the allegation and events described in a complaint took place, and that
- there is some information or evidence to suggest that the event(s) described are reasonably likely to have taken place
- This information does not need to be from an additional source other than the complainant. Under the reasonable likelihood standard of proof, it is not required to establish on the balance of probabilities that the event(s) described took place.

Appendix two

	Alleged experience occurred any time prior 1 July 2018	Alleged experience occurred any time after 1 January 1987	Allegations relate to any time prior to 1 January 1987	Alleged experience includes child sexual abuse	Alleged experience includes forms of child abuse and neglect (see Appendix 1) but does not include sexual abuse
National Redress Scheme ⁸	✓	X	✓	✓	X
Berry Street Independent Redress Scheme ⁹	X	X	✓	✓	✓
Civil Claim ¹⁰	✓	✓	✓	✓	✓

⁸ Please refer to <https://www.nationalredress.gov.au/> to confirm eligibility, application process, resources provided.

⁹ Refer to 5.4 of this Policy

¹⁰ Refer to 5.5 of this Policy