

Past Abuse Complaints Policy

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	CEO:	<input type="checkbox"/>
	Exec Leadership Team:	<input checked="" type="checkbox"/>
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Commitment to Child Safety

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. Berry Street works with groups of children and young people who may be particularly vulnerable to abuse. Accordingly, Berry Street pays particular attention to:

- The safety of children in out of home care
- The cultural safety of Aboriginal and Torres Strait Islander children
- The cultural safety of children from culturally and/or linguistically diverse backgrounds
- The safety of children with a disability
- The safety of children who identify with a sexual minority identity and/or gender minority identity.

1. Purpose

This policy sets out how Berry Street manages complaints that allege abuse or neglect of children who have been in the care of or in service contact with Berry Street and our founding agencies.

The purpose of this policy is to provide all past clients of Berry Street with:

- access to an independent, supportive, non-traumatising, transparent, fair and consistent complaints process regarding allegations of any abuse or neglect that they may have experienced while in Berry Street's care or in service contact with Berry Street, and
- access to fair and reasonable redress, including but not limited to acknowledgement of the abuse or neglect, an apology from Berry Street, counselling and support, a financial payment and undertakings to not repeat past wrongs.

2. Scope

The scope of this policy extends to:

- All persons who have been in the care of Berry Street and any of its founding agencies¹ since 1877. This includes agencies with which Berry Street has amalgamated or merged including Sutherland Homes and Lisa Lodge, and to
- All forms of child abuse including physical abuse, sexual abuse, emotional abuse, cultural abuse and neglect.

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.

Allegations relating to current Berry Street employees, carers or volunteers may also come under the scope of the Victorian Department of Health and Human Services 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.

Persons in Care or Service Contact with Berry Street Prior 1987

Where the complaint relates to the possible abuse or neglect prior to 1987, Berry Street will refer the matter to an independent person for determination.

Persons in Care or Service Contact with Berry Street After 1987

Where the complaint relates to possible abuse or neglect after 1987, Berry Street will manage and respond to complaints in co-operation with the Victorian Managed Insurance Authority (VMIA). The VMIA provides professional liability insurance for all Registered Community Service Organisations in Victoria and has authority to directly investigate and respond to allegations relating to events that occurred since January 1st 1987.

The Independent Redress Scheme is not offered as compensation or damages for any asserted, perceived or possible legal liability on the part of Berry Street and does not constitute an admission of liability on the part of Berry Street.

¹ 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)

3. Background and Context

Berry Street believes that all children should have a good childhood. We know however that not all children do and that the impacts of childhood abuse and neglect can last a lifetime. This is particularly the case where harm to children and young people is not quickly identified, acknowledged and assistance provided for their recovery. Children and young people may experience abuse or neglect within their families and the community but also within institutions and organisations with which they have had contact, or within organisations that have had some responsibility for their support, education, care, protection and wellbeing.

This Policy is based on our strong belief that any abuse suffered by children and young people while in our care is totally unacceptable.

It is common that people who have experienced significant childhood trauma from abuse or neglect may not speak about these experiences until well into their adult lives. Adults who have experienced abuse or neglect during their childhood should be given every opportunity to have their childhood experiences acknowledged, to access support and assistance to recover and to realise their full potential.

Since 1877 many thousands of children and young people have been assisted by Berry Street 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 their service contact with Berry Street.

We are committed to ensuring that all former clients are able to raise issues and concerns and make formal complaints in relation to any abuse or neglect they may have suffered while in our care.

We accept our responsibility to support and assist any adult, who as a child or young person in our care is found to have suffered some form of abuse or neglect.

We acknowledge that some adult care leavers and other past clients may be reluctant to trust the institution responsible for their care to manage and hear complaints regarding abuse or neglect.

To facilitate trust in our complaints process, the Berry Street Board appoints Independent Persons to hear and investigate complaints and make an independent decision on how Berry Street should respond to each complaint.

An outline of the context in which the policy is set, including any relevant legal, regulatory or government policy requirement or guideline; and reference to relevant terms of Berry Street's strategic plan, business plan or priorities.

Berry Street and its founding agencies have worked to support children, young people and families since 1877. Our work with children and young people has included, and continues to include, providing direct care for children and young people who have been separated from their families and parental care.

The form this care takes has evolved over time. Institutional models of care, boarding children out with families and family group homes have been phased out and replaced in recent decades by models of care intended to be more home like including residential care homes and models of home based care such as foster care and kinship care.

In 2013 a national Royal Commission into Institutional Responses to Child Sexual Abuse was established to investigate the sexual abuse of children and young people within institutions and how institutions respond to children, young people and adults who have suffered institutional abuse. In August 2015 the Royal Commission released recommendations supporting the establishment by government of a national redress scheme to independently hear complaints from adult survivors of institutional abuse, to assess the nature and impact of abuse and to make financial payments and other assistance available to complainants.

Recognising that it may take some years for government to establish a redress scheme, 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 has actively supported the work of the Royal Commission in relation to complaints and redress and has formulated this policy to implement the advice of the Royal Commission.

4. Definitions

See Appendix 1

5. Policy Provisions

5.1 Any past client of Berry Street has the right to make a complaint about any aspect of their service experience. In particular, we encourage any adult care leavers who have concerns about their care to raise them with us.

5.2 Complaints received in relation to allegations of abuse or neglect that took place on or after January 1st 1987 will be referred by Berry Street to the Victorian Managed Insurance Authority (VMIA)².

5.2.1 In referring complaints to the VMIA the CEO will;

- liaise with and if necessary establish memorandums of understanding to ensure that as far as possible the VMIA investigation and decision making process is conducted in a manner and achieves outcomes consistent with this policy and with the Berry Street *Guideline: Responding to Claims for Redress*.
- without contravening any of Berry Street's obligations under VMIA insurance policies, make arrangements for the complainant and any abuse or neglect to be appropriately acknowledged by Berry Street and for the complainant to receive an apology from Berry Street where this is sought.

5.3 Berry Street's Independent Redress Scheme for past clients shall include the following:

5.3.1 The standard of proof for a complaint to be upheld shall be reasonable likelihood. This standard of proof is higher than plausibility and significantly lower than balance of probabilities.

5.3.2 No Deed of Release will be required as a condition of complainants receiving reparations under Berry Street's complaints and redress arrangements.

5.3.3 Guidelines and assessment criteria to be applied by the Independent person appointed by Berry Street.

² 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. These policies require that all CSOs including 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 policies. Having been notified, the VMIA conduct an investigation including seeking information from the complainant, Berry Street and other relevant sources in order to assess a claim and reach a settlement. For more information refer to the VMIA Community Service Organisations Program

<https://www.vmia.vic.gov.au/insure/community-service-organisations>

- 5.3.4** A schedule of reparations payments to be made as a tangible acknowledgement of any abuse or neglect.
- 5.3.5** Provision of limited legal advice, where sought, to complainants to assist complainants to fully understand Berry Street's complaints and redress arrangements
- 5.3.6** A review process, where complainants are not satisfied with the outcome of their complaint with the review, to be conducted by a person appointed by Berry Street who has not been involved in the investigation or determination of the complaint.

5.4 Role of the Independent Person

- 5.4.1** Berry Street will approve membership of a panel of suitable Independent Persons to independently investigate, assess and determine the outcome of complaints and applications for redress. Each complaint will be investigated and determined by one Independent person from the panel who may seek advice and consult with other members of the panel as part of their consideration of complaints.
- 5.4.2** The investigation process managed by the Independent Person will:
- Be based on principles of procedural fairness.
 - Reflect a commitment to address past grievances and provide a pathway toward recovery and healing.
 - Consider the complainant's expressed wishes, gender, culture, language and accessibility throughout the process.
 - Be as open and transparent as possible, while respecting rights to privacy and confidentiality.
 - Take a person-centred, rather than legalistic approach.
 - Ensure confidentiality and appropriate record-keeping, including clear and factual reports
- 5.4.3** The Independent Person will:
- contact the complainant within three days of receiving the request from Berry Street and arrange a time to meet.
 - Help the complainant to complete the Application for Redress form, where necessary.
 - Ensure the complainant understands the Policy and clarify any issues.
 - Discuss the process for investigating the complaint. The process should be completed within three months unless the complainant and Independent Person agree otherwise.
 - Advise the complainant that they may seek additional information from them which may include a medical or psychological report or other supplementary information.
 - Check what support the complainant may want or need.
- 5.4.4** Once the investigation is complete, the Independent Person will provide a draft report to the complainant. Once he/she is satisfied it is factually correct, they will sign it and return it to the

Independent Person. The Independent Person will forward it to the Berry Street CEO for execution, within seven days of receiving the report.

5.4.5 Where an Independent Person determines that a complaint is upheld, Berry Street will provide reparations as determined by the Independent Person in consultation with the complainant.

This may include:

- An apology, which may be in person or written in a manner which is acceptable to the complainant.
- Information about measures that have been put in place to prevent abuse occurring.
- Access to counselling and support services.
- A redress payment.

5.4.6 Where an Independent Person appointed by Berry Street determines that a complaint cannot be upheld the Independent Person will provide a written response to the complainant and to Berry Street advising the reason.

5.4.7 Complainants who raise allegations of a criminal act will be advised of their right to also make a formal complaint to the Police and will be encouraged to do so.

5.4.8 Whether or not the complainant wishes to refer the matter to the Police, if Berry Street considers that a criminal act may have occurred, Berry Street will refer the matter to the Police. In making this referral Berry Street will only provide information about the allegation that does not disclose the identity of the complainant unless the complainant agrees.

5.4.9 The Independent Person will provide the complainant with an evaluation form that they will be encouraged to complete at any time about their experience of the process and the outcome. These de-identified forms will inform the review of complaints process.

5.5 Redress Payment / Reparation

In determining whether a redress payment should be offered, the Independent Person will consider the severity of the abuse and the impact of the abuse.

Redress payments will be provided from within the following three levels:

- 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

The factors that will be considered when determining the severity of the abuse, include but are not limited to:

- The age of the complainant at the time of the abuse
- The response, support and assistance, if any, provided to the complainant by Berry Street (or any of its founding agencies) at the time of the abuse

- The nature, intensity, extent and duration of the abuse
- Whether the abuse has been more than one type of abuse
- Whether physical force or coercion was used
- The existence of multiple perpetrators
- The nature and extent of injuries caused by the abuse at the time of the abuse
- The nature and extent of any enduring injury or harm from the abuse

The impacts of abuse may include or have included any of the following over a substantial period of time:

- Clinical mental health conditions such as depression, anxiety, post traumatic stress, suicidal thoughts, episodes of self-harm, substance misuse and dependency, difficulties establishing and maintaining relationships, trust and intimacy difficulties, a compromised sense of self-worth, deep feelings of shame and guilt and feeling some responsibility for the abuse.

Any form of abuse could potentially be assessed for payment at any one of the three payment levels under the Scheme.

The assessment as to which level of redress payment is applicable to any particular redress claim is not to be undertaken by reference to the quantum of damages or compensation payable were legal liability to be established against Berry Street for the alleged abuse.

A payment to a person under the Scheme is not paid as compensation or damages for any asserted, perceived or possible legal liability on the part of Berry Street or for any injury, disease or impairment, and does not constitute an admission of liability on the part of Berry Street.

5.6 Records and Access to Information

5.6.1 Berry Street will provide the complainant with full access to and copies of information and client records that contain information about them.

5.6.2 A copy of the Application for Assessment under Berry Street's Redress Scheme and Independent Person's report will be placed on the complainant's original client file.

5.6.3 Berry Street will maintain a record of information about any staff, carers or contractors where there have been allegations of past abuse made about them.

5.7 Accountabilities and Authorities

5.7.1 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.

5.7.2 Chief Executive Officer

The Chief Executive Officer is responsible for:

- ensuring that complaints from past clients are handled in accordance with this Policy and that the Board of Directors are informed of redress applications and outcomes

- contracting suitable Independent Persons to the panel of Independent Persons authorised to investigate and determine complaints
- providing all reasonable assistance, information and support required by Independent Persons to enable them to conduct and conclude investigations under this policy
- reviewing any appeal from the complainant that the Independent Person has not followed due process and feedback from claimants.
- ensuring that where complaints and redress applications 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; and
- providing annual, de-identified information to the Board of Directors regarding feedback and complaints from past clients.

5.7.3 The Director – Office of the CEO is responsible for maintaining a register and file system of all complaints from past care leavers. The register may include summary information on the complaint allegations, persons referred to by complainants as possibly responsible for abuse, dates of complaint lodgement and finalisation and the outcomes of complaints.

5.8 Policy Review

5.8.1 The *Berry Street Past Abuse Complaints Policy* will be reviewed by the Board every two years or as required.

5.8.2 A review of all complaints from past care leavers, including access to de-identified information from Independent Person reports, will be conducted annually by the Board Quality and Risk Management Committee and reported to the Board.

6. Related Berry Street Documents

- Berry Street Privacy Policy

7. Other Relevant Documentation

- Redress and Civil Litigation Report – Royal Commission into Institutional Responses to Child Sexual Abuse (2015)

Appendix 1 – Definitions

Abuse / Neglect	<p>Abuse includes:</p> <ul style="list-style-type: none">• sexual abuse• physical abuse• emotional abuse• cultural abuse• neglect <p>Refer to Appendix 2</p>
Adult Care Leavers	<p>Any person over the age of 18 who had been in the care of Berry Street and/or any of our founding agencies.</p>
Allegation	<p>A claim made about an act or acts of abuse as defined above.</p>
Application for Assessment under Berry Street’s Redress Scheme	<p>The application which is completed and signed by the complainant requesting assessment</p>
Child/Young Person	<p>A person under the age of 18</p>
Complaint	<p>An allegation that the complainant suffered abuse or neglect while in the care or service contact with Berry Street. It may be verbal or written.</p>
Complainant	<p>A person making a complaint to Berry Street about past abuse or neglect. 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.</p>
Confidentiality	<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, 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 Independent Person’s 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>

Deed of Release	Berry Street does not require a Deed of Release.
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
Independent Person	<p>The person or persons appointed by Berry Street to manage, investigate and determine the outcome of complaints received under this policy. 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 if implications should be drawn from the complaint for current practice in Berry Street. He/she is specifically responsible for;</p> <ul style="list-style-type: none"> • the assessment and determination of complaints and applications for redress under this policy • contacting and meeting with complainants, clarifying their complaint, the outcomes they are seeking and explaining the process • assessing information relevant to the complaint including information provided by the complainant and related Berry Street records and information • liaising with Berry Street about the engagement of any Independent Person, mediators and/or counsellors that may be required to assist the complainant through the complaints process
Independent Redress Scheme	The Scheme established by Berry Street in December 2016 to provide an independent process for responding to complaints. It is expected that this Scheme may not be required once an appropriate Victorian or National Redress Scheme has been established.
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	<p>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.</p> <p>In general, procedural fairness refers to two broad principles:</p> <ol style="list-style-type: none"> (a) An adequate opportunity must be given to a person to present their case before a decision is made. 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.
Reasonable likelihood	<p>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;</p> <ul style="list-style-type: none"> • 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

Reparation	<p>The measures taken by Berry Street where a complaint is upheld in order to acknowledge the harm caused to the victim or victims. Reparations may include but will not be limited to:</p> <ul style="list-style-type: none"> • Acknowledging any possible failures in Berry Street’s duty of care • Developing and providing a formal apology in a format and in a manner agreed with the complainant • Assistance with access to counselling and support services • A financial payment • Remedial actions to prevent the re-occurrence of any acts of maltreatment, abuse or neglect against other clients
Service contact	<p>Refers to contact between Berry Street and a child or young person arising from a service, program or activity provided by Berry Street including but not limited to education and school programs, youth services, case management, mentoring and recreational activities, therapeutic services, family violence and family support services.</p>
Support Person	<p>A person the complainant chooses to support him/her. They cannot formally represent the complainant unless he/she has the authority in law (e.g. guardian).</p>
Victim Survivor	<p>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 or neglect.</p>

Appendix 2 – Definition of Child Abuse

What is Child 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.

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 Abuse

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:

- 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.

Sexual Abuse

Child sexual abuse may include:

- 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

Cultural abuse of Aboriginal or Torres Strait Islander children may include:

- 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

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:

- *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