

National Catholic Safeguarding Standards

Implementation Guide Standard 6

DRAFT 2: November 2018



STANDARD 6



Effective complaints management

Processes for raising concerns and complaints are responsive, understood, accessible and used by children, families, carers, communities and personnel

A child safe entity encourages and welcomes the reporting of concerns, responds to complaints, allegations and disclosures promptly, thoroughly and fairly, and immediately protects children at risk.

A 'complaint' includes any allegation, suspicion, concern or report of a breach of the entity's Code of Conduct. It also includes disclosures made to an entity that may be about, or relate to, child abuse in an institutional context.

A complaint can be made by anyone – including a child, adult survivor, parent, trusted adult, independent support person, staff member, volunteer or community member. A complaint may be made about an adult allegedly perpetrating child abuse or about a child exhibiting harmful sexual behaviours. Institutions may receive complaints directly or indirectly.¹

Having a clear and well communicated Complaints Handling Policy significantly increases the likelihood of concerns being reported. Reporting concerns can be difficult, so the procedures need to be child-friendly and accessible to children, families, carers, communities and all personnel.

6.1 The entity has an effective Complaints Handling Policy and procedures which clearly outline the roles and responsibilities, approaches to dealing with different types of complaints, reporting obligations and record keeping requirements.

How could your entity implement this criterion?

An entity's Complaints Handling Policy and procedures should be publicly available in a variety of formats, including age and developmentally appropriate formats for children that are easily understood.

It should be capable of dealing with different types of complaints, from a breach of the entity's Code of Conduct to allegations made against the Church Authority.

The Complaints Handling Policy should include:

- a process that prioritises the safety of children;
- step-by-step guidance in dealing with different types of complaints, including concerns, disclosures, allegations, breaches of Codes of Conduct and claims arising through the National Redress Scheme, including current or historic;
- detailed guidance on how personnel should respond when receiving allegations, including reporting requirements within the entity and to statutory authorities (see below);
- specific procedures for responding to adult complainants of child sexual abuse (refer to Criterion 6.5);
- initial, ongoing and final risk assessments;
- guidance on liaising with relevant organisations and taking advice as necessary;
- approaches to dealing with situations in which a child may cause abuse-related harm to another child;
- reporting obligations to the various statutory authorities. This includes police, child protection authorities, teacher registration bodies, and in some states and territories this also includes complying with reporting obligations under Reportable Conduct Schemes;

¹ Final Report: Volume 7, *Improving Institutional Responding and Reporting*. Royal Commission into Institutional Responses to Child Sexual Abuse. Pp. 13

- key roles and responsibilities within this process;
- a documented procedure for identifying and mitigating conflict of interests in complaint management (see below);
- actions to be taken where the respondent is from within the entity; another child; or a person otherwise associated with the entity. In the case of personnel, for example, this may include supervision, a formal warning, removal from contact with children, suspension or dismissal;
- referral and support for children, their families and respondents; and
- communication and information sharing protocols, in line with the entity's Record-keeping and/or Privacy Policy in relation to the handling of sensitive information involved in receiving and handling complaints and undertaking investigations (refer to Criterion 1.6).

Assigning responsibility for responding

Entities can increase accountability and improve responses when responsibility for responding to complaints is clearly and transparently assigned to a dedicated person (or persons). An entity should specify the individual(s) who will:

- be told of any complaint within the entity;
- be responsible for handling the complaint (if the person is different from the person to whom the complaint was raised);
- oversee the investigation; and
- maintain a complaints' register.²

Conflict of interest

If an internal investigation needs to occur following an allegation and there is no police investigation, it is important that the investigator and/or decision maker does not have a conflict of interest (actual or reasonably perceived).

Actual or reasonably conceived conflicts of interest in an investigation can have damaging and long-term effects for all concerned. For example:

- the child, the child's family or the person subject of the allegation may be less likely to be satisfied with the outcome, and may seek other redress (e.g. through legal action);
- the reputation of the person subject to the allegation may suffer if it is seen or reasonably perceived that a favourable finding was affected by bias;
- the reputation of the entity may suffer; and
- there can be a loss of faith or trust by parents and/or the community generally in the entity.³

Aligned with

National Principles for Child Safe Organisations - National Principle 6.1

Royal Commission Child Safe Standard 6 (b)

Royal Commission Recommendations 7.2, 7.7, 8.1 and 16.39

² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving Institutional Responding and Reporting*, p 16, 2017.

³ NSW Ombudsman, *Recognising and managing conflict of interests*, Child Protection Fact Sheet 7.

6.2 The entity has a child-focused complaints handling system that is understood by children, families, carers and personnel.

This requires the entity to be proactive and understand the particular needs and circumstances of children in their care.

Children, especially younger children, may not complain by following a formal complaint process. Children may instead make a verbal or non-verbal disclosure of abuse. Children with disability may make non-verbal disclosure of abuse via behaviours and/or physical signals.

Appropriate support to communicate a complaint, such as communication aids, language translators or provision of culturally competent staff who can work with children from culturally diverse backgrounds, enables the substance of a complaint to be heard and understood by the entity.⁴

How could your entity implement this criterion?

- Ensure that the complaints handling system prioritises the safety of children and recognises the role of families and communities in understanding and using the policy;
- ensure that children, families and personnel know who to talk to if children are worried or are feeling unsafe;
- offer a variety of avenues for children to make complaints;
- have an open culture that supports safe disclosure of risks of harm to children;
- provide information in accessible, age-appropriate and meaningful formats to children, families and carers, mindful of their diverse characteristics, cultural backgrounds and abilities;
- ensure that personnel are trained to understand the different ways children express concerns or distress and disclose harm;
- provide information about the complaint handling process, including how to make a complaint and what to expect including possible timeframes; and
- provide timely feedback to children, families, carers and personnel who raise concerns or complaints.

CPSL Tools

6.2.2 Child Safety Reporting Process

Aligned with

National Principles for Child Safe Organisations - National Principle 6.2

Royal Commission Child Safe Standard 6 (b)

Royal Commission Recommendation 7.7

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving Institutional Responding and Reporting*, p 15, 2017.

6.3 Complaints are taken seriously, and responded to promptly and thoroughly.

Complainants should be responded to promptly and kept informed as to the progress of their complaint. Responses should be timely and thorough and relevant people are kept informed of the progress, outcomes and resolution of the complaint.

Entities should take a proportionate approach to responding to complaints. For example, the urgency of response to a disclosure of current sexual abuse of a child needs to take into account and respond to immediate risks to children, which may be different to the response to a complaint of historical abuse where the alleged perpetrator is deceased and therefore a current threat to children is immediate.⁵

How could your entity implement this criterion?

Offer support and care to the child and other affected parties

The immediate response to a complaint should be one that ensures the safety of the child or other children.

Children reporting abuse or safety concerns must be treated with sensitivity and provided with support from the outset. This must be the entity's first consideration. They and their families should be connected with services that can provide them with support to manage difficult or traumatic experiences.

Other affected parties, such as other children, other personnel and the respondent, may also require support and pastoral care, depending on the nature and circumstances of the complaint.

Report

Report any allegation of criminal behaviour against children to the police. It is not appropriate for entities to decide whether the abuse has taken place or not. Follow the advice of police in relation to next steps.

Other reports to statutory authorities may be required depending on the nature of the complaint and the relevant state or territory legislation. It is important that entities are fully cognisant of their local legislative obligations.

Conduct risk assessments

Risk assessments should be conducted once an allegation has been made, during an investigation and at the end of the investigation so that a final decision can be made regarding what action, if any, needs to be taken regarding the respondent to address any risk to:

- the child(ren);
- other children with whom the respondent may have contact;
- the respondent; and
- the proper investigation of the complaint.

Align with disciplinary and grievance policies

An entity's Complaints Handling Policy should be aligned with its documented disciplinary and grievance policies which includes information about what might happen to the respondent at any stage of the investigation (e.g. provision for standing down or suspension, moved to another role without contact with children, dismissal).

Factors to consider in making a decision include:

- the nature and seriousness of the complaint;
- the vulnerability of the children the respondent would be working with or providing services to;

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving Institutional Responding and Reporting*, p 16, 2017.

- the nature of the position held by the respondent (e.g. the position is one of authority; the position requires one-to-one interaction);
- the level of oversight and/ or professional supervision available to the respondent;
- the availability of support for the respondent on a day-to-day basis if their duties are unchanged (e.g. if they are managing children with challenging behaviours in a classroom or living in out of home care);
- the respondent's disciplinary history; and
- possible risks to the investigation.⁶

Investigating the complaint

Entities should make every effort to investigate complaints to determine:

- whether a person has breached the entity's Code of Conduct or another policy or procedure;
- whether they pose a risk to safety of children; and
- what action, if any, is required to prevent harm to children.

The investigation should examine the circumstances of the complaint to determine all relevant facts, document appropriately and establish a basis for a decision (that is, whether the complaint is or is not substantiated).

The investigation should be carried out by an impartial, objective and trained investigator. The investigator may be an employee of the institution, a contractor or otherwise independent of the entity. Some entities may use a combination of internal and external investigation resources.

The investigation should be undertaken in a way that is proportionate to the seriousness of the allegation, frequency of occurrence of alleged incidents and severity of the complaint.

Where the conduct associated with the complaint has been reported to the police, entities should consult the police before starting their own investigation to make sure they do not compromise any criminal investigation.⁷

Respondents

It is important that the respondent is treated fairly and afforded procedural fairness. This includes, but is not limited to:

- assistance being offered by way of counselling, union referrals (where appropriate), and a support person;
- all allegations/complaints that are put to the respondent give sufficient detail and are accurate to enable an adequate response (these must be in writing);
- clear information is provided about the investigative process and potential findings;
- regular contact providing information as to the progress of the investigation;
- outcomes/findings provided in writing; and
- the right to a review.

Objectivity and fairness

Address complaints objectively, fairly and impartially. Declare and appropriately resolve conflicts of interest and observe procedural fairness. Protect complainants from victimisation or harassment.

⁶ NSW Ombudsman, *Risk management following an allegation against an employee*, Child Protection Fact Sheet 9.

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving institutional responding and reporting*, p 16, 2017.

Ensure appropriate confidentiality

- Observe privacy legislation and confidentiality and only inform involved parties in accordance with relevant information sharing legislation. Information should not be shared otherwise (refer to Criterion 1.6).
- In the case of criminal investigations, always seek advice from the police before sharing any information as sharing information may compromise an investigation.

Communication

- Communicate regularly with all parties affected by the complaint.
- Entities may need to consider media interest (including social media) in some cases.

Record-keeping practices

- Document all child safety complaints regardless of whether the complaint meets statutory reporting thresholds. Documenting includes notes regarding actions taken, including all internal investigations and reports made to statutory authorities or professional bodies.
- Ensure record-keeping practices are in accordance with the law (refer to Criterion 1.6).

Protection for reporters

Every state and territory have enacted legislation which protects individuals who make reports about suspected child abuse in good faith. 'Good faith' means the reporter has a valid and reasonable concern and is acting without malice or retaliation towards the alleged offender.⁸

Entities should ensure that all personnel are made aware of their rights and protections in reporting any child safety concerns and this is reflected in the Complaints Handling Policy.

Implementing outcomes

After the investigation has been completed, the entity should:

- decide the outcome of the complaint;
- advise the victim and/or complainant of the outcome;
- advise the respondent of the outcome;
- provide ongoing support, including any necessary assistance required from the entity itself, and access to advocacy, support and therapeutic treatment services, and a safety plan for the complainant and family;
- inform relevant agencies as required (e.g. the Ombudsman or working with children check authorities); and
- advise those in the community affected by the conduct.⁹

Right of review

- Make internal and/or external review of complaint outcomes available; and
- make known these avenues of review to every complainant and every respondent.

⁸ Our Community & Moores Legal, *Child Protection Toolkit: How to create a child safe organisation*, p23, 2018.

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving institutional responding and reporting*, p 17, 2017.

Achieving systemic improvements following a complaint

The creation of a child safe environment requires vigilance and necessitates paying attention to systemic issues. A complaint of child abuse could indicate wider systemic child safety issues within an entity, or that there may be deficiencies in the entity's child safe approach.

Entities should undertake a careful and thorough review of the initial complaint at the earliest opportunity, and then review the complaint outcome, to identify:

- the root cause of the problem;
- any systemic issues, including failures; and
- any remaining risks in the entity.

NOTE: Indicators 6.3.8 and 6.3.9 apply to Church Authorities and related entities with seminarians, clergy and those in formation programs with, or members of, religious institutes.

6.3.8 *Where a complaint related to child sexual abuse against a seminarian, clergy or religious is substantiated on the balance of probabilities, or they are convicted of an offence relating to child sexual abuse, that individual should be permanently removed from ministry. The Church Authority must take practicable steps to prohibit these individuals from holding themselves out as being a person with religious authority.*

6.3.9 *Where a cleric or member of a religious institute is convicted of an offence relating to child sexual abuse, the Church Authority must immediately present a case to the relevant dicastery for laicization or dispensation from vows.*

In the above instances the Church Authority must forward these matters, along with all documentation, including the response of the accused, to the relevant dicastery in Rome:

- the Congregation for the Doctrine of the Faith (CDF) for clergy; or
- the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CICLSAL) for religious.

Canonical procedures must follow the directions of the Congregations.

Aligned with

National Principles for Child Safe Organisations - National Principle 6.3

Royal Commission Child Safe Standard 6 (c)

Royal Commission Recommendations 16.51, 16.52, 16.55 and 16.56

6.4 The entity has policies and procedures in place that address reporting of complaints and concerns to relevant authorities, whether or not the law requires reporting, and co-operates with law enforcement.

Whilst each state and territory have different legislative requirements in relation to reporting child abuse and reporting children at risk of harm, there are still some sectors and professions that are not mandated by law to report suspected or actual child abuse.

In all Australian states and territories, however, any person may make a voluntary report of child sexual abuse to appropriate authorities. In most jurisdictions, the appropriate authorities are the police or the child protection authority. The possibility of making a voluntary report of child abuse exists, whether or not a pathway for such reports is provided by legislation.¹⁰

In addition to entities being fully aware of, and compliant with, mandatory reporting legislation, they should also encourage voluntary reporting through their policies and procedures. This avoids confusion and reinforces the concept of shared responsibility in safeguarding.

How could your entity implement this criterion?

- Ensure that the Complaints Handling Policy articulates the moral and ethical responsibilities of all personnel to report child abuse to statutory authorities, regardless of mandatory reporting obligations;
- ensure that all personnel co-operate with law enforcement processes and directives; and
- document and record all correspondence to and from the statutory authorities and any resulting actions or inactions by both the entity and the statutory authority as a result of the directives. For example, police may direct an entity not to inform personnel of an allegation until law enforcement have conducted a preliminary investigation.

Aligned with

National Principles for Child Safe Organisations - National Principle 6.4

¹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving institutional responding and reporting*, p 37, 2017.

6.5 Reporting, privacy and employment law obligations are met.

Legislative requirements depend on the state or territory in which the entity operates, the nature of the entity and, in some cases, the circumstances of the complaint. The laws setting out these requirements change from time to time, as do regulatory or other instruments that reflect those laws.

Those responsible for complaint handling processes within an entity need to understand the legal requirements that an entity must follow when handling complaints. They also need to ensure that the entity's policies and procedures are consistent with these requirements.

In addition, certain sectors that provide child-related services, such as education, childcare, disability service providers and out-of-home care, are subject to sector-specific complaint handling requirements and regulations.

Industrial agreements, such as enterprise agreements, may also require procedures to be followed when a complaint is made about a staff member of an employer entity. An entity that is party to an enterprise agreement under the Fair Work Act 2009 (Cth) is prohibited from contravening a term of that agreement. If it contravenes a term of an agreement (e.g. by not following complaint procedures that were the subject of the agreement) an employee or union could apply for a civil remedy.¹¹

How could your entity implement this criterion?

- Ensure that the Complaints Handling Policy articulates all relevant legislation and the entity's obligations and processes in relation to reporting, privacy and employment laws;
- ensure that specific roles and responsibilities for meeting these laws and obligations are articulated; and
- ensure that all relevant documentation is kept in the investigation/complaint file.

Aligned with

National Principles for Child Safe Organisations - National Principle 6.5

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving institutional responding and reporting*, p 137-138, 2017.

6.6 The Church Authority ensures mechanisms are in place to care for adult complainants.

Adult complainants who have suffered abuse as children from personnel associated with the entity deserve a compassionate response when they come forward with their complaint.

Concern and support for the person who is making a complaint about child sexual abuse must be at the heart of an entity's response. Support is required throughout all stages of the complaint process – from the time of disclosure or the initial complaint until after any investigation has been completed and the complaint finalised. Support may include the provision of advocacy or therapeutic treatment services.

How could your entity implement this criterion?

The entity has specific procedures, based on trauma-informed practice, for responding to and supporting adult complainants of child sexual abuse. This includes, but is not limited to:

- a compassionate response;
- appropriate pastoral care;
- an offer from the Church Authority to meet with the complainant in person;
- a full explanation of the process; and
- respecting and facilitating choices for the adult complainant in all aspects of the process.

Aligned with

Safeguarding children policy and standards for the Catholic Church in Ireland 2016 – Standard 3

6.7 The Church Authority ensures mechanisms are in place to monitor and support respondents facing allegations.

This criterion applies to all respondents facing allegations including lay, clergy and religious (refer also to 'Respondents' under Criterion 6.3 above).

How could your entity implement this criterion?

- The entity provides access to appropriately trained personnel whose clearly defined roles are to listen to and represent the pastoral needs of the respondent (in consultation with the respondent).
- This support person should be advised to note any concerns about the respondent's well-being and conduct, and report these to the entity as appropriate.
- The respondent must be accorded natural justice, in terms of both civil and canon law. He/she must:
 - be informed, when appropriate, that an allegation against him/her has been referred to the statutory authorities;
 - be informed, when appropriate, of the allegation itself;
 - be advised of his/her right to civil and canonical legal support;
 - be fully informed of the process; and
 - be supported throughout.¹²
- Proper consideration should be given to the importance of confidentiality in the handling of the complaint, particularly prior to the conclusion of an investigation. If the respondent is stood down from the role or ministry they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are implied by this fact. Care should be taken at all times not to take away the good name of anyone involved in the process [Canon 220].
- The entity has suitable arrangements in place for the monitoring and support of the respondent, where there is a plausible complaint, until (and if) they no longer have responsibility for monitoring them.

NOTE: The following applies to Church Authorities and related entities with seminarians, clergy and those in formation programs with, or members of, religious institutes.

As well as the above:

- The Church Authority has an important duty of care for its member who is subject of an allegation. It is imperative that, during the initial days, the accused person is offered the opportunity for a pastoral meeting with the Church Authority. Recognising that the Church Authority will have to make important decisions in relation to the matter, all parties must respect the agreed boundaries of communication.¹³
- The Church Authority needs to establish procedures to monitor and support the wellbeing of the respondent, including, but not limited to:
 - access to counselling;
 - an appropriate safe place for the accused to stay;
 - arrangements for an accused priest to celebrate Mass, but not in public;
 - arrangements for spiritual direction;
 - restrictions on contact with parish;
 - accessibility to visitors; and
 - consideration for other practical and financial needs.

Aligned with

Safeguarding children policy and standards for the Catholic Church in Ireland 2016 – Standard 4

¹² Scottish Catholic Safeguarding Service, *In God's Image: Safeguarding in the Catholic Church in Scotland*, p 31, 2018.

¹³ *ibid*