

Policy and process for responding to allegations of abuse

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POLICY STATEMENT ON RECEIVING AND INVESTIGATING ALLEGATIONS OF ABUSE AT SCARBA HOUSE BETWEEN 1917 - 1986

With the release of the report of Senate Inquiry into Children in Institutional Care in August 2004, The Benevolent Society became aware of a small number of allegations of abuse from people who were formerly placed in Scarba House when it operated as a children's home between 1917 and 1986, and the probability that there were others who, for whatever reason had not come forward so far. The Society took a number of steps at that time, including the issue of a public apology (see appendices) and the preparation of this policy for dealing promptly, compassionately and respectfully. with such allegations in the future.

1. PURPOSE

This policy governs the receiving and investigating of allegations of abuse (see definition on page 2) against ex-employees and ex-volunteers of The Benevolent Society from people who were in the care of The Benevolent Society between 1917 – 1986. It does NOT cover allegations against current Benevolent Society employees, or volunteers at the time the allegation is received. Allegations relating to employees, carers or volunteers *currently* working for The Benevolent Society fall under the requirements of The Benevolent Society, Centre for Children Policies and Procedures 8.10 and/or Part 3A of the Ombudsman Act, 1974, and will therefore be addressed through The Benevolent Society Policy 8.10

2. HOW TO USE THIS POLICY

Parts 1 – 4 of this policy outline the purpose, use, principles and definitions to assist in using the document. Part 5 outlines the steps for responding to a complaint. It is divided into seven sections as follows:

- 5.1 When a complaint is made
- 5.2 Criminal or civil investigation
- 5.3 Internal process
 - investigation
 - determination
- 5.4 Review of the complaint process and/or review of the outcome
- 5.5 After a complaint is resolved
- 5.6 Complaints record-keeping
- 5.7 Appendices

3. PRINCIPLES

- Allegations of abuse are serious. Each complainant will be treated with respect and consideration, and in accordance with The Benevolent Society's values. A compassionate response to the complainant will be the first priority in all cases of alleged abuse within this organisation.
- The Benevolent Society is committed to procedural fairness ("Natural Justice") for all those who have been service users and for those who have worked for The Benevolent Society, including employees, carers and volunteers.
- Any person who has been a service user of The Benevolent Society since its foundation has the right to complain about any aspect of their service experience, including complaint involving abuse.
- The Benevolent Society will seek to prevent any retribution against any person for bringing a complaint against The Benevolent Society and/or its ex-employees.
- All complaints will be addressed in the shortest time practicable.
- Benevolent Society staff will maintain confidentiality around the complaint for the complainant, other service users and, as far as possible, for staff and third parties.
- Any investigation into allegations under this Policy will be undertaken by a person or persons independent of The Benevolent Society.

4. DEFINITIONS

In this document, an **allegation** refers to any claim made about an act or acts of abuse as defined below. A **complaint** is the bringing forward to The Benevolent Society of one or more allegations for the purpose of having them officially dealt with by the Society. A **complainant** is a person making a complaint, whether or not he or she is or was a victim of the alleged abuse.

Abuse: includes mistreatment, harm or neglect, and refers to any behaviour, decisions or systemic practices that are abusive, including but not restricted to

- (a) any sexual offence or sexual misconduct against, with or in the presence of a child or
- (b) any assault, ill-treatment or neglect of a child
- (c) any behaviour that causes psychological harm to a child

but not conduct that is reasonable for discipline, management or care of children having regard to the age, maturity, health or other characteristics of the children, and any relevant professional code or standard.

Confidentiality: is not about secrecy but privacy. It 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, together with any person involved concerning the complaint outside The Benevolent Society, should be informed that information received by The Benevolent Society may be made available to such persons as The Benevolent Society considers appropriate on a “need to know” basis, including employees, the Board, and any advisers so that the complaint can be properly considered. In some instances the information may need to be referred to the Police or other statutory authorities. The information may also be provided to the person or persons about whom the complaint is made.

All materials and reports arising from any inquiry remain the property of The Benevolent Society and will only be made available to those persons responsible for the preparation and implementation of the report and its recommendations. The complainant will be entitled to receive a copy of the findings of the 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.

Designated Person: is the person appointed by the CEO to whom a person may make a complaint and who manages the process within The Benevolent Society. The appointment of the Designated Person must be kept current. This person is responsible for the appointment of support persons, independent assessors, 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 Benevolent Society.

The Designated Person will usually be the Director, HR or other member of the Executive as appointed by the CEO.

Ex-employee: in this Policy refers to a person who previously worked for The Benevolent Society, either as an employee or volunteer.

Procedural Fairness: 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, procedural fairness refers to two broad principles:

1. 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.
2. The investigation must be free from bias as well as the appearance of bias.

5. PROCEDURES

5.1 When a complaint is made

- 5.1.1 Complaints may be first received verbally or in writing, in any language.
- 5.1.2 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 complaint. The Designated Person will maintain a record of each allegation. If the complainant decides to continue with a formal complaint, the Designated Person will ensure that the CEO is informed in writing within 24 hours.
- 5.1.3 The CEO will inform the Board if he or she believes the nature of the complaint warrants such action.
- 5.1.4 Where a complaint has the potential for media attention or where the media has already become involved, the Designated Person must contact the CEO and the Marketing Director as soon as possible and brief them on the situation. The Marketing Director will make the necessary arrangements for responding to media questions. The CEO or her/his delegate is the only person to speak publicly on behalf of The Benevolent Society.
- 5.1.5 The Designated Person will offer the complainant a support person for the duration of the investigation. This could be a counsellor from the Post Adoption Resource Centre, or a support person from outside the agency nominated by the complainant. The role of support person will be to assist the complainant with the process, and, with the complainant's permission, to 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 the signed authority of the complainant or as a legally appointed guardian).
- 5.1.6 The complainant will be requested to outline the complaint in writing, if not already done. The support person may assist with, or write this, as long as it is signed by the complainant.
- 5.1.7 The Designated Person will acknowledge in writing, receipt of the written complaint.
- 5.1.8 If a written complaint is not received within 14 days, the Designated Person shall write to the complainant advising them that if a written complaint is not received, then The Benevolent Society is not able to proceed further concerning the allegation.
- 5.1.9 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, to a solicitor (see below), the police or to other

appropriate external bodies. Whilst the former body may not be able to undertake a formal investigation due to statutory limitations, they are usually able to provide useful advice and guidance on options, including:

- a criminal investigation or
- a civil litigation process.

Advice about these options is also available from private solicitors, the Legal Aid Commission, the Law Society or Community Legal Centres. The police will also provide advice on their own criminal investigation processes.

5.2 Criminal or civil investigation

5.2.1 If the complaint involves allegations of a criminal offence, the complainant will be strongly urged to refer the matter to the police.

5.2.2 Whether or not the complainant wishes to refer the matter to the police, The Benevolent Society will seek advice as to whether it should do so, including advice from the Child Protection Enforcement Agency of the NSW Police Service.

5.2.3 If the matter is referred to the police, or the complainant decides to engage in civil litigation, at any time before or during The Benevolent Society's internal process, legal and police advice should be obtained about whether or to what extent the internal complaint process should cease at that point. However, the complainant's support person may continue to offer support, if appropriate and The Society may continue to look into issues of a broader or systemic nature.

5.2.4 When The Benevolent Society becomes aware of a criminal or civil process, or the threat of such a process, the CEO will inform the Board in writing.

5.2.5 The CEO and the President of the Board will jointly make a decision as how the matter will be managed, and who will be the Designated Person from that point on.

5.2.6 The Benevolent Society's internal process may be re/activated by the Designated Person once legal action has ceased, at the complainant's request

5.3 Internal process – investigation

5.3.1 If and when the internal process is requested by the complainant, it will be commenced within the shortest possible time.

5.3.2 The Designated Person will meet with the complainant to determine if an investigation of the substance of the complaint is necessary.

5.3.3 If the complainant seeks only counselling regarding the trauma of past experiences as a response by The Benevolent Society to the allegation, the options of internal or external counsellors can be offered. If external

counselling is chosen, The Benevolent Society may make a contribution towards the costs of the counselling. The costs of counselling paid should generally not exceed \$3,000. This amount covers approximately 25 counselling sessions.

- 5.3.4 If the complainant is seeking other responses from The Benevolent Society, an investigation of the substance of the complaint will take place.
- 5.3.5 If the Complainant requires no action further than counselling, The Benevolent Society will nevertheless consider whether an investigation should take place.
- 5.3.6 Where the complaint is against a named ex-employee, that person will be notified of the allegations by the Director, HR, and will be offered a support person as determined by the CEO and Director HR.
- 5.3.7 An investigator, independent of The Benevolent Society and independent of the allegations, the complainant and any ex-employee against whom allegations are made, will be contracted by The Benevolent Society to investigate the substance of the complaint and to assist The Benevolent Society to respond appropriately.
- 5.3.8 The Designated Person and the investigator will develop an investigation plan, which will 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.
- 5.3.9 This investigation plan should be approved by the CEO and the Board. If the timing is such that there is not a suitable Board Meeting, at least one Board member should be contacted and approve the plan before it proceeds.
- 5.3.10 The investigation will be completed within a three month period unless an extension is approved by The Benevolent Society and by the complainant.
- 5.3.11 Other Benevolent Society staff may be required to provide information and/or limited assistance to the investigator. These workers may include archivist staff, Managers, or Senior Managers.
- 5.3.12 An ex-employee against whom allegations are made will be given the opportunity to be interviewed as part of the investigation. Contact with ex-employees will be done only through the Director, Human Resources, who will offer to make arrangements for an interview.
- 5.3.12 The independent investigator must make a full report in writing to the CEO at the end of the investigation, outlining the process, outcomes and making recommendations as to an appropriate response. Feedback from the complainant about the process and their experience should be sought for continuous improvement purposes.

Internal process – determination

1. The CEO will take the report to the Board with his/her own recommendations. The Board will then determine the course of action and record its reasons for implementing, modifying or rejecting the recommendations of the investigator.
2. Where there are recommendations to be implemented, the Board will determine whether this should be done by Benevolent Society 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.
3. The CEO will inform the Designated Person of The Benevolent Society's response.
 - The Designated Person will then present and discuss this 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 process and that they have one month to request a review.
 - If no other person is involved (eg. ex-staff) and the complainant states that they do not wish a review, implementation of the response should commence immediately.
 - If no request for a review is made within one month, the Designated Person will implement the response.

Internal process – implementation

1. 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 CEO and/or any ex-employee involved in the complaint and/or a Board representative. It will take into account the specific complaint(s), circumstances at the time and the recommendations of the investigator.
2. Where a settlement and/or some form of reparation is recommended and accepted by the Board, the Board will take advice as necessary 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.
3. No complainant will 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 Benevolent Society.

4. The Designated Person will consider how the investigation and determination could inform current practice, and make recommendations to the CEO accordingly.
5. Disciplinary action will be taken against any current staff implicated in the complaint according to the processes outlined in The Benevolent Society's Centre for Children policies and procedures 8.10.

5.4 Review of Complaint Process and/or Review of Outcome

- 5.4.1 A review of process and/or review of outcome is available for complainants who are not satisfied with The Benevolent Society's response. A review of process and/or review of outcome is also available for ex-employees involved in a complaint.
- 5.4.2 A person may request a review by writing to the CEO within one month of the meeting with the Designated Person presenting The Benevolent Society's intended response.
- 5.4.3 The review will be undertaken by a person or persons appointed by the CEO.
- 5.4.4 The review will be conducted expeditiously.
- 5.4.5 The reviewer/s will have authority to interview all staff concerned and will have access to all relevant documentation.
- 5.4.6 At the completion of the review, the CEO will provide a written report to the person who requested the review. A copy of the report will be supplied to the Designated Person.
- 5.4.7 As soon as convenient, the Designated Person will discuss with the complainant and, if relevant, ex employee(s), the outcome of the review and implementation of any recommendations.

5.5 After the Complaint is resolved

- 5.5.1 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.
- 5.5.2 The ex-employee's file will be maintained securely by Human Resources for the required legal period and then forwarded to the Archives within the guidelines of the general complaints policy of The Benevolent Society.
- 5.5.3 If the complainant has had access to a support person from within The Benevolent Society 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.

5.6 Complaints Record Keeping

Complaints record keeping in this policy are as for The Benevolent Society complaints and record keeping policies.

Acknowledgement

The Benevolent Society would like to thank Uniting Care Burnside for their generosity in allowing us to refer to their policy on allegations about former employees in the preparation of this document.