

PART E

RESPONDING TO REPORTS AND ALLEGATIONS OF CHILD ABUSE IN ORGANISATIONS



The Committee has established the importance of preventing and minimising the risk of child abuse from occurring in organisations through the creation of child-safe organisations. Unfortunately, as the Committee has also identified, there are nevertheless circumstances in which children in the care of non-government organisations will be exposed to criminal physical, emotional or sexual abuse.

This part of the Report considers the processes that have been adopted by non-government organisations in responding to allegations of criminal abuse of a child currently in their care or that occurred years before. Non-government organisations retain responsibility for the consequences of criminal abuse perpetrated by their personnel. In order to ensure these situations are managed appropriately and allegations are reported to the relevant authorities, organisations need to have effective processes in place to respond to and report allegations and these processes must be properly monitored.

The Committee emphasises that child abuse is a crime and makes recommendations in Part G of this Report that has implications for the failure to report criminal child abuse. This will put additional responsibility on organisations to ensure they have adequate processes for responding and reporting criminal child abuse.

Victims' views on improved responses to allegations

Many victims told the Inquiry they want to see improved responses to disclosures and reports of suspected child abuse. This included responses to abuse that occurred in the past.

Victims emphasised the need for organisations to report perpetrators of criminal child abuse to police. For example, in his submission, Mr Neil Graham made the point that clergy 'offenders should have been reported to the police like any other offender in the community.'¹

Particularly concerning to the Committee were examples where failure by organisations to respond and act on early disclosures or suspicions of criminal abuse allowed those same perpetrators to offend against other children. Mr Hugh McGowan explained that:

The first action should have been to report him to the police so that they could take whatever action was necessary. I am reliably informed that this did not happen. Had it been reported, had he been convicted, had he been jailed and had it been widely reported in the media, it may have been a warning to other paedophiles and I may not have been subjected to the attention of the person who abused me.²

Almost all the victims indicated that one of the reasons they disclosed their experience of abuse was to ensure that other children were protected. Chapter 7 of Part C established that organisations did not always respond to allegations in a manner that ensured children were no longer at risk of abuse.

Victims were also dissatisfied with the process of organisations in responding to the allegation. For example, one victim told the Committee that organisational processes should be structured so that victims do not have to retell their experience at each stage of the process:

Telling him my story was very stressful. In fact I even said, 'Could you please send a copy across ... so I don't have to tell my story again?'... When I went to see [him] ...

1 *Submission S355*, Mr Neil Graham, p. 3.

2 *Transcript of evidence*, Mr Hugh McGowan, Melbourne, 4 February 2013, p. 2.

He made me tell my story again.³

Victims told the Inquiry that better monitoring, accountability and scrutiny of organisations is needed in order to improve the systems that these organisations have in place. For example, one victim said that the Catholic Church in Victoria needs ‘to be accountable, as all authorities should be, to scrutiny, legal jurisdiction and socially mandated checks and balances.’⁴

Others had similar views, such as Ms Mary Rutledge who stated that she ‘would like to see greater transparency in their processes and more accountability.’⁵ She went on to explain her view that ‘someone needs to be able to monitor the accountability of organisations, because victims can get lost in the system and lose their lives.’⁶

Another message to the Inquiry was the need for consistency in processes for responding to allegations of child abuse. Mr John Frederiksen, for example, said that:

All state and non-government schools must be subject to the same level of public reporting and auditing of sexual assaults. This would apply to both government and truly independent schools that receive no funding.⁷

The need for effective responses to allegations

When an allegation of suspected criminal abuse of a child is made in a non-government organisation, there needs to be effective systems and processes to ensure the situation is handled appropriately and reported to the police and relevant authorities.⁸ Organisations also need to support the person making the allegation and ensure that all parties are treated fairly and consistently. They need to provide clarity regarding:

- what behaviour or conduct should trigger a notification
- who should notify any concerns and who to notify in the organisation
- reporting to police and authorities and the timing of reporting
- internal processes during and after an investigation
- internal reviews to assess and improve systems and processes.

The processes that organisations establish need to be simple, transparent and easily accessible for children, personnel and other adults who are involved with the organisation. Ideally organisations should incorporate requirements to undertake internal systemic reviews into their process to ensure ongoing learning and improvement.

During the Inquiry, many organisations said they would welcome expert guidance in the design and implementation of complaints handling policies and procedures, and independent oversight and monitoring of such policies and procedures.⁹

3 *Submission S462*, Name withheld. See also *Transcript of evidence*, Mr Jim Commadeur, Melbourne, 23 November 2012, pp. 3–4.

4 *Submission S469*, Name withheld.

5 *Transcript of evidence*, Ms Mary Rutledge, Melbourne, 1 March 2013, p. 4.

6 *Transcript of evidence*, Ms Mary Rutledge, p. 7.

7 *Transcript of evidence*, Mr John Frederiksen, Melbourne, 4 March 2013, p. 3.

8 See Glossary.

9 For example *Submission S226*, Law Institute of Victoria, p. 34; *Transcript of evidence*, Federation of Indian Associations of Victoria, Melbourne, 12 April 2013, p. 8; *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, Melbourne, 12 April 2013, p. 5; *Transcript of evidence*, Anglican Diocese of Melbourne, Melbourne, 22 April 2013, pp. 10, 15; *Transcript of evidence*, Catholic Archdiocese of Melbourne, Melbourne, 20 May 2013, p. 53; *Transcript of evidence*, Catholic Archdiocese of Sydney, Melbourne, 27 May 2013, p. 34; *Transcript of evidence*, Australian Camps Association, Melbourne, 11 April 2013, pp. 3–4.

Chapter 14

The importance of effective processes for responding to allegations of criminal child abuse in organisations

AT A GLANCE

Background

Effective processes for handling allegations or suspicions of criminal child abuse ensure the situation is managed appropriately, reported to the police and relevant authorities, and that all parties are treated fairly and with consistency.

Key findings

- Processes for handling allegations of criminal child abuse need to be simple, transparent and easily accessible for children, adults and personnel within the organisation.
- An effective process for responding to allegations of suspected criminal abuse of a child should:
 - ♦ clearly state what types of conduct should be notified, who can or should make notifications and who they should notify in the organisation
 - ♦ make it clear what next steps need be taken, including ensuring the child is safe, and reporting suspected criminal abuse to police and relevant authorities
 - ♦ provide guidance for responding to the outcomes of a report of criminal child abuse, including disciplinary processes, ongoing support for the victim and the review of internal policies and processes.
- Internal and external processes in response to an allegation of criminal child abuse may occur in parallel, which requires transparency and communication across all relevant bodies to ensure internal processes do not impede on any criminal investigation in progress.
- Written processes are not always implemented effectively and it is important that there are oversight and monitoring systems to enable scrutiny of an organisation's handling of criminal child abuse if there are concerns.

Having a process in place for responding to reports of suspected criminal child abuse is essential for child-safe organisations. Effective processes for handling allegations or suspicions ensure the situation is managed appropriately, reported to the relevant authorities, and that all parties are treated fairly and with consistency.

If new legislative obligations are introduced for reporting criminal child abuse as suggested in Part G, effective processes will assist personnel in organisations to know what to do to avoid committing an offence.

14.1. The importance of effective processes for responding to allegations of criminal child abuse

The Committee recognises that organisations need to tailor their policies to their management structure, size and operations. It found that the processes do not have to be complex in order to be effective and that clarity and ease of implementation are important. It determined that effective policies:

- are simple and transparent
- are appropriate in scope and level of formality
- are easily accessible to children, parents, personnel in the organisation and other relevant community members
- prioritise the best interests of children
- enable timely and well communicated decision-making and formal review processes
- are responsive to victims
- are fair to all parties.¹⁰

In addition, the process for responding to suspected criminal child abuse needs to be part of an organisation's culture, leadership and internal practices. The culture and senior management of an organisation must actively support the reporting of suspicions or allegations of criminal child abuse to the police and relevant authorities. The organisation must also have an ongoing commitment to reviewing and continuously improving its processes.

14.1.1. Regulatory processes in the non-government sector

The Committee identified differences between non-government organisations that provide services in sectors that are regulated by government and in those that are not. These are broadly outlined in Table 14.1. Organisations that provide services in regulated sectors are required to comply with incident reporting requirements, including reporting to police. However, organisations that provide services in unregulated sectors are

Regulation—is one of the key instruments available to government to achieve its social, economic and environment objectives and to respond to community needs. It is commonly held that government regulation involves an intentional measure or intervention by a government agency that seeks to influence the behaviour of individuals, businesses and not-for-profit organisations.¹¹

10 Adapted from Commonwealth Ombudsman (2009) *Better practice guide to complaint handling*. Canberra, Commonwealth Ombudsman, p. 2; NSW Ombudsman (2010, 2nd Edition) *Effective complaint handling guidelines*. Sydney, NSW Ombudsman, p. 12.

11 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne, Department of Premier and Cabinet, p. 491.

generally not required by any authority to have processes in place for responding to and reporting allegations of criminal child abuse. Largely, the onus has been on individual religious and other organisations to develop their own processes for responding to reports of suspected criminal child abuse.

Table 14.1: Services that interact with children—regulated and unregulated sectors

Services operated by non-government organisation	Is the sector regulated or unregulated?	Responsible government/ statutory authority
Out-of-home care and other DHS funded services	Regulated	DHS
Early childhood services	Regulated	DEECD
Government schools	Regulated	DEECD, VIT
Independent schools	Regulated	VIT
Catholic schools	Regulated	VIT
Places of worship	Unregulated	Not applicable
Other services, including clubs, associations and youth groups	Unregulated	Not applicable

Source: Compiled by the Family and Community Development Committee.

The Committee noted that there is a great deal of variation in the effectiveness of the processes that organisations have in place. It is also conscious that while there are requirements for establishing processes in regulated sectors, this does not guarantee effective implementation. Regardless of the context in which a service operates, effective implementation of written policies and procedures can be varied.

Finding 14.1

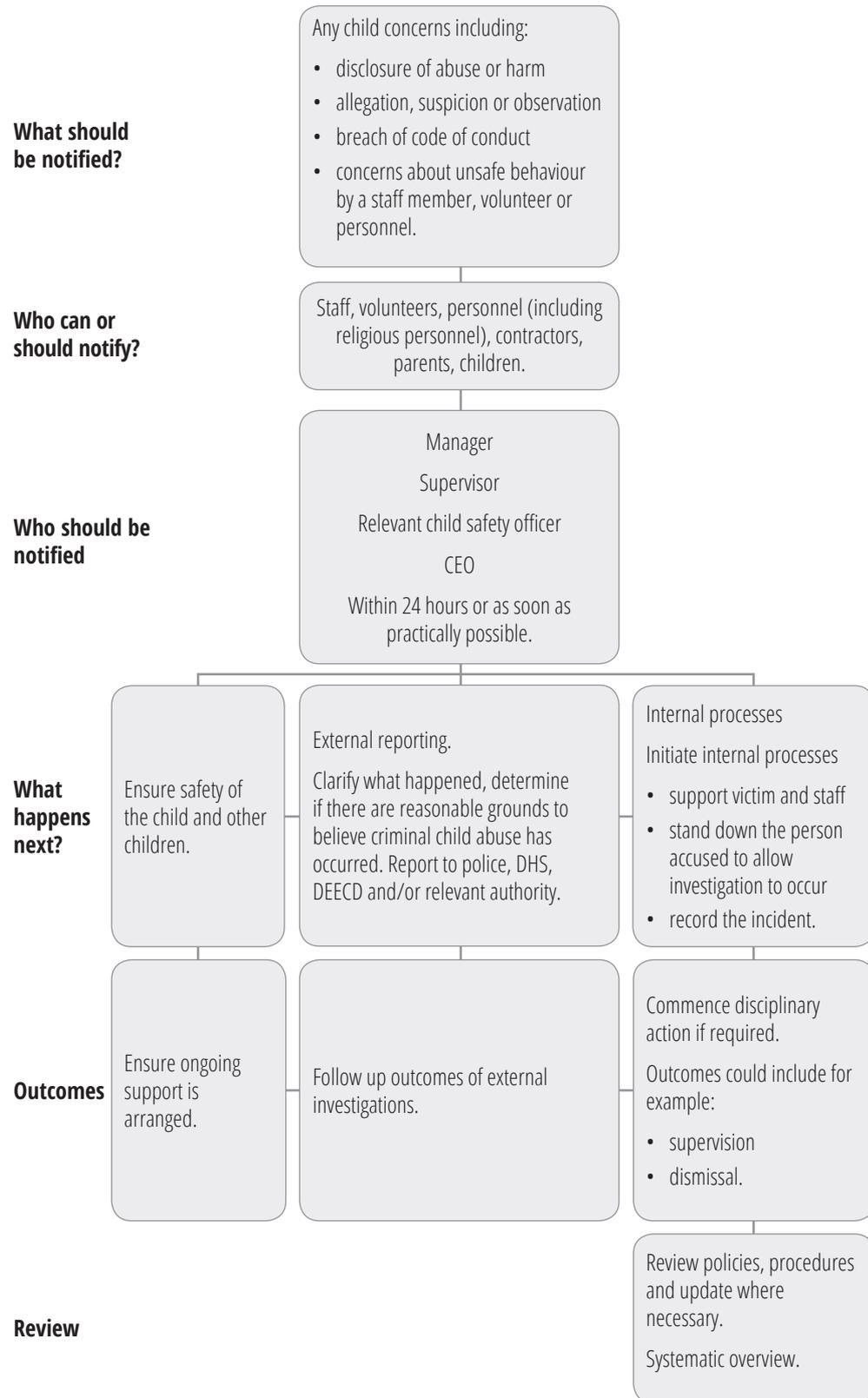
Processes for handling allegations of criminal child abuse need to be simple, transparent and easily accessible for children, adults and personnel within the organisation.

14.2. What is an effective process for responding to allegations of child abuse?

The Committee considered a number of different models for responding effectively to allegations of child abuse, and for complaint handling generally. For example, these included processes encouraged by accreditation organisations such as the Australian Childhood Foundation and Child Wise, as well as processes set out by the Victorian Child Safety Commissioner (now the Commission for Children and Young People) and the New South Wales (NSW) Ombudsman.

It drew upon a range of evidence to identify the broad components of an effective process for responding to allegations of child abuse in an organisation, as illustrated in Figure 14.1. It is important to note that some components of the process can occur in parallel with each other.

Figure 14.1: Process for effectively responding to allegations of child abuse in organisations



Source: Compiled by the Family and Community Development Committee.

12 Using material published by the Australian Childhood Foundation, Child Wise, Victorian Child Safety Commissioner (now the Commission for Children and Young People) and the New South Wales (NSW) Ombudsman.

The Committee identified that an effective process ensures that victims, their family and personnel in the organisation can make reports or disclosures of child abuse without fear of negative repercussions or of not being believed. It emphasises the safety of children and the need to provide adequate supports. It has a clear framework for assessing what happened and whether there are reasonable grounds to believe that criminal child abuse has occurred that should be reported to police or other relevant authorities. It also provides a basis for pursuing any necessary disciplinary processes and ensures that the organisation's systems and processes are subject to review.

Different considerations can apply in determining the suitability of an organisation's response where the allegation relates to events that occurred in the past. However, there are similarities between responses to current and past child abuse, particularly where the alleged perpetrator remains working in the organisation or for other organisations with access to children. Part F examines the evidence received by the Committee in relation to processes for responding to allegations of past criminal child abuse.

The Committee was particularly concerned that the following components of the process for responding to allegations of child abuse were not always well-developed in non-government organisations:

- Encouraging disclosure and notification of incidents.
- Ensuring staff are trained in appropriate initial responses to disclosures, particularly ensuring the safety of the child—this is critical in situations where children could currently be at risk of further abuse.
- Having in place processes for external reporting, including ensuring that management and other relevant staff are able to recognise criminal child abuse and incidents that need to be reported to the police and other authorities, such as the Department of Human Services (DHS), the Department of Early Education and Childhood Development (DEECD) and the Victorian Institute of Teaching (VIT).
- Having in place internal processes, including standing down the alleged offender from their duties pending the determination of facts or police investigation, documenting the incident, and potentially engaging in disciplinary processes.
- Undertaking systemic reviews of organisational processes following allegations or suspicions of criminal child abuse.

The Committee's findings and analysis of these components are discussed in Chapters 15, 16 and 17.

Finding 14.2

An effective process for responding to allegations of suspected criminal abuse of a child should:

- clearly state what types of conduct should be notified, who can or should make notifications and who they should notify in the organisation
- make it clear what next steps need be taken, including ensuring the child is safe, and reporting suspected criminal abuse to police and relevant authorities
- provide guidance for responding to the outcomes of a report of criminal child abuse, including disciplinary processes, ongoing support for the victim and the review of internal policies and processes.

14.3. Parallel processes

Allegations of criminal child abuse can give rise to a number of internal and external processes that can operate concurrently. These vary depending on the organisation and can include investigation by police, government departments and statutory authorities. Incidents can also trigger screening and quality review processes.

For example, for out-of-home care services, DHS has specific processes for addressing concerns about quality of care, which are outlined in Chapter 17. These can occur in parallel with a police investigation and include:

- the departmental investigation, focusing on ensuring the safety and wellbeing of children and young people in out-of-home care
- internal processes by the community service organisation, to ensure that carers are meeting established standards and expectations in the way they provide care
- an independent investigation and suitability process, to assess whether the carer is suitable to remain on the register of out-of-home carers.¹³

Organisations need to be aware of processes that may be occurring at the same time as their own internal response. Particular care needs to be taken to not jeopardise a police investigation. However, this should not mean that organisations should cease to provide support to victims during the process or neglect regular systemic reviews of their internal processes.

Finding 14.3

Internal and external processes in response to an allegation of criminal child abuse may occur in parallel, which requires transparency and communication across all relevant bodies to ensure internal processes do not impede on any criminal investigation in progress.

14.4. In practice, processes vary in scope and focus and involve complex decisions

The extent to which organisations in Victoria have processes in place for responding to allegations of criminal child abuse is not known. Because of the number and range of non-government organisations that currently have contact with children, the Committee found it difficult to determine the extent to which all of these organisations have systems and processes for handling current allegations of suspected child abuse.

In evidence and information provided to the Inquiry, however, it was apparent that organisations vary considerably in their systems and processes (or lack of them). At one end of the spectrum, some organisations reported that they do not have processes in place for responding to or reporting allegations, or that they believe they do not require such a process.¹⁴

¹³ Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*. Melbourne, Children Youth & Families Division, DHS, p. 48.

¹⁴ For example, as explained by the Sikh Council of Australia *Supplementary evidence*, Response to request for information, Sikh Council of Australia, 12 March 2013, p.2.

As described in Section 15.2, some organisations have informal processes in place and others have processes that are difficult to access. A number of non-government organisations have specific processes for responding to allegations of child abuse while other organisations use their general complaints handling process for responding to allegations. At the other end of the spectrum, a number of organisations have extremely complex and detailed processes specifically designed to respond to allegations of suspected child abuse.¹⁵

As described in Chapter 4 of Part B, the maintenance of records about allegations of suspected abuse has significant implications for police investigations and victims' pursuit of justice. The degree to which current practices allow documentation to be available to assist in any investigations of allegations is not known. However, the Committee is aware that over the past decade, governments have strengthened requirements for funded agencies to maintain comprehensive documentation about clients and any allegations of abuse. For example, DHS has developed requirements for funded agencies and instructs them to record any allegation on the client's file.¹⁶

14.5. Oversight and monitoring

While non-government organisations must be encouraged to develop effective processes for responding to criminal child abuse, independent oversight of these processes is also critical.

As noted above, the Committee observed that processes for responding to allegations of child abuse vary considerably across organisations. Some non-government organisations have contractual requirements to establish systems for responding to suspected child abuse by personnel in their agency, while other organisations are not.

While some organisations may have policies and procedures in place, they are not always followed or fully implemented. The Deputy Director of the Australian Institute of Family Studies (AIFS), Dr Darryl Higgins, made this point to the Inquiry:

Policies, though, are not enough if they sit on a shelf; they obviously have to be implemented, so that involves regular training, reviewing the policies, monitoring them, often having sponsors or champions, if you like, who talk about what that policy means.¹⁸

Organisations contracted by the Victorian Government to provide services are required to comply with incident reporting requirements. Their main purpose is to ensure that the department meets its duty of care to individuals who receive services from those organisations it funds.

Oversight—involves an external body reviewing the conduct and decisions of non-government organisations. The review may take the form of an investigation, inspection or audit and can be based on a complaint, a legal obligation or the oversight body's own discretion.¹⁷

15 For example, the approach of the Uniting Church in Australia, which varies depending on the position of the alleged perpetrator and the context in which the allegation arose. *Submission S164*, Uniting Church in Australia, p. 20. and Appendix 3.

16 Department of Human Services (2011) *Critical client incident management instruction*. Melbourne, Victorian Government, p. 14.

17 Adapted from P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's vulnerable children inquiry*, p. 491.

18 *Transcript of evidence*, Australian Institute of Family Studies, Melbourne, 19 October 2012, p. 6.

Finding 14.4

Written processes are not always implemented effectively and it is important that there are oversight and monitoring systems to enable scrutiny of an organisation's handling of criminal child abuse if there are concerns.

Chapter 15

Encouraging disclosure and an appropriate initial response

AT A GLANCE

Background

It is essential that there are opportunities for any child to disclose or tell someone about an experience of abuse or behaviour by personnel in an organisation that makes them feel unsafe or uncomfortable. How personnel initially respond to children who raise any concerns can enable action to be taken to ensure the child and other children are safe. It is equally important that other adults, including parents, know what conduct they can or should notify, who to tell and how to appropriately respond to a disclosure made by a child.

Key findings

- Very few organisations indicated that they had simple, accessible processes that help children to understand what to do if they need to disclose behaviour that makes them feel unsafe or uncomfortable and that may constitute criminal child abuse. This may prevent children from telling an adult if they have concerns.
- Some organisations appeared progressive in their guidance to personnel regarding what they should notify and who to notify if they observe or suspect conduct of concern.
- Many policies used by organisations are complex and unclear regarding the responsibility of personnel to notify, including the person in the organisation they should notify, if a child discloses concerning behaviour or if they have a concern about the conduct of other personnel. This may discourage some individuals and personnel in organisations from reporting or disclosing abusive behaviour.
- A number of organisations provide guidance on how to respond to a disclosure made by a child, yet very few make reference regarding how they ensure the child is safe and receives appropriate medical and other professional support.

It is critical for organisations to encourage disclosure of criminal child abuse. To do this effectively, non-government organisations must promote a culture that makes it safe for children and others to disclose any observations or suspicions of criminal child abuse and to ensure that such disclosures are taken seriously. Organisations must also make their processes accessible and transparent in order to make it easy for victims and others to make a complaint or report an allegation.

The Committee heard that an organisation's initial response to a disclosure is of particular significance to victims of criminal child abuse. Staff need to have the knowledge and skills to respond appropriately and in a timely way in such situations. This includes validating the disclosure, determining if a child is at risk and ensuring their safety, as well as offering counselling and other support.

15.1. Children and disclosure

The Committee heard that to prevent criminal child abuse in organisations, it is critical to encourage disclosure of any behaviour that makes a child or young person unsafe or uncomfortable. In evidence given to the Inquiry, Dr Darryl Higgins of the Australian Institute of Family Studies (AIFS) indicated the importance of facilitating disclosure:

I think that is one of the critical things for organisations. If we are going to be serious about preventing child abuse, we need to be seen to be active in responding to concerns when they are first raised, because it may be that someone has a concern before anything has become too serious.¹⁹

He went further to explain that:

Sexual abuse sometimes is a very serious and one-off single event—ie, a rape. Often it is a whole process, and it is a graduation of experiences that build up. If a child or a young person is able to come and talk to someone who is trusted and say, 'Hey, I feel a little bit uncomfortable about something that someone has said or the way they looked at me', it may be that we are able to intervene, give some support to that young person and stop that abuse before it occurs or intervene in the middle of that cycle before it worsens.²⁰

Yet the reality is that often disclosures are not effectively responded to. Dr Higgins went on to explain to the Inquiry that:

The research on victims' disclosures shows that often they are not believed by the first person that they tell. Often it is not until they have told three or four or five times that they eventually are believed and some concrete action is taken.²¹

As described in Part B of this Report, the Committee heard that victims delay disclosing abuse for years or decades, and in some cases will never disclose the abuse. Professor Patrick Parkinson from Sydney University, for example, explained that:

Children who were abused sometimes 30, 40, or 50 years ago have often not disclosed until their adult lives. In our Anglican Church study we found that the average length of time between boys being abused and boys disclosing was 25 years.²²

19 *Transcript of evidence*, Australian Institute of Family Studies, pp. 6–7.

20 *Transcript of evidence*, Australian Institute of Family Studies, pp. 6–7.

21 *Transcript of evidence*, Australian Institute of Family Studies, p. 7.

22 *Transcript of evidence*, Professor Patrick Parkinson, University of Sydney, Melbourne, 19 October 2012.

In 2006, the AIFS provided tips on developing an effective disclosure policy. It explained that organisations that have contact with children need to demonstrate their capacity to respond appropriately to disclosures of criminal child abuse in order to gain, and keep, public confidence. It suggested that effective processes for encouraging disclosures ensure that:

- all disclosures are acted on
- early disclosure is encouraged
- unacceptable behaviour is clear to all children and adults connected to an organisation
- children and adults are empowered to disclose and are confident their disclosure will be treated appropriately.²³

Other evidence to the Inquiry supported the need for organisations to promote a culture that makes it safe for children to disclose instances of criminal child abuse or talk about behaviour that makes them feel unsafe or uncomfortable. For example, Professor Stephen Smallbone from Griffith University explained that:

Early detection is very important ... In my mind, the best way to do that is to try to create conditions that are conducive to reporting—so making it safe for children to report ... If you have mandatory reporting but the child has a terrible outcome every time abuse is reported, then there is no point. It seems to me the point is to create safety around the disclosure for children.²⁴

The Committee heard that a disclosure policy should emphasise the importance of listening to children's concerns and that abuse is more common in non-government organisations where children are not heard.²⁵ For example, in its submission the Centre for Excellence in Child and Family Welfare highlighted the importance of supportive and protective community attitudes towards children in the context of protecting them from harm:

Efforts to prevent and respond to criminal abuse of children must be undertaken in the context of supportive and protective community attitudes toward children. This requires a whole-of-community awareness about the centrality of children in our community. Further, it requires that the voice of children and young people in all aspects of their lives are listened to.²⁶

The Committee heard that a number of non-government organisations were committed to ensuring a supportive attitude towards children. Anglicare Victoria, for example, stated that it is committed to ensuring children are heard and effectively communicated with. It explained that its:

... staff members typically have an advanced understanding of the dynamics and indicators of child abuse, as well as the importance of 'hearing the voices' of children and young people—of artfully engaging them in discussion, rather than just 'talking about' them and affording them no opportunity to speak. All of this strongly contributes to the child-focused culture within the agency.²⁷

23 M. Irenyi, L. Bromfield, L. Beyer et al. (2006) *Child maltreatment in organisations: Risk factors and strategies for prevention*. *Child Abuse Prevention Issues series*. vol. 25, Spring 2006, Melbourne, Australian Institute of Family Studies, p. 18.

24 *Transcript of evidence*, Professor Stephen Smallbone, Griffith University, Melbourne, 9 November 2012, pp. 6–7.

25 Childwise (Undated) *Choose with care: 12 steps to child safe organisation*. South Melbourne, Childwise.

26 *Submission S327*, Centre for Excellence in Child and Family Welfare, p. 5.

27 *Submission S146*, Anglicare Victoria, p. 7.

Anglicare went on to explain that ‘This allows case managers to gauge how a child or young person is responding to their placement, and gives the child or young person opportunity to safely voice any concerns or complaints that they might have.’²⁸

The Seventh Day Adventist Church told the Inquiry that it had identified a ‘need to recognise that there existed a “reluctance to disclose abuse”, or to act on behalf of those who disclosed.’²⁹ It went on to explain that it has a ‘commitment to respectfully facilitating the reporting of abuse, responding to disclosures and providing appropriate referrals and support.’³⁰

The Committee noted that while organisations might commit to a culture of safety for children, effectively implementing these policies is of equal importance.

15.2. Accessibility of procedures for reporting allegations and making disclosures

Children and others who want to report an allegation of potential criminal child abuse or disclose behaviour that makes them feel unsafe or uncomfortable need to be aware of the organisation’s response process and be able to easily access it.

The Committee found that the policies and processes of some non-government organisations for reporting child abuse were not readily accessible. In particular:

- Policies and procedural documentation were not always publicly available.
- In some cases, copies of the relevant policies had to be requested from the organisation’s head office.
- Some organisations require complaints to be made in writing.

For example, the Salvation Army’s policy for responding to allegations of child abuse is not publicly available. The policy of the Baptist Union of Victoria, *Procedure for allegations of misconduct by pastoral leaders* is only available by request from the organisation’s offices. Girl Guides Australia (Victoria), Jesuit Social Services and the Catholic Church’s *Towards Healing* require allegations of child abuse to be made in writing.³¹

The Committee also heard that some organisations have informal processes in place, and some use their standard complaints procedure for dealing with child abuse. For example, Bishop Iakovos of Miletoupolis of the Greek Orthodox Archdiocesan District of Victoria explained that in the instance of a child abuse allegation, the Archdiocese would follow its standard process for dealing with complaints.³² However, the Committee identified that many generic organisational complaints handling processes make no reference to the need for allegations to be reported to police where the complaint relates to criminal child abuse, as discussed in Section 16.2.

28 *Submission S146*, Anglicare Victoria, p. 7.

29 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 13.

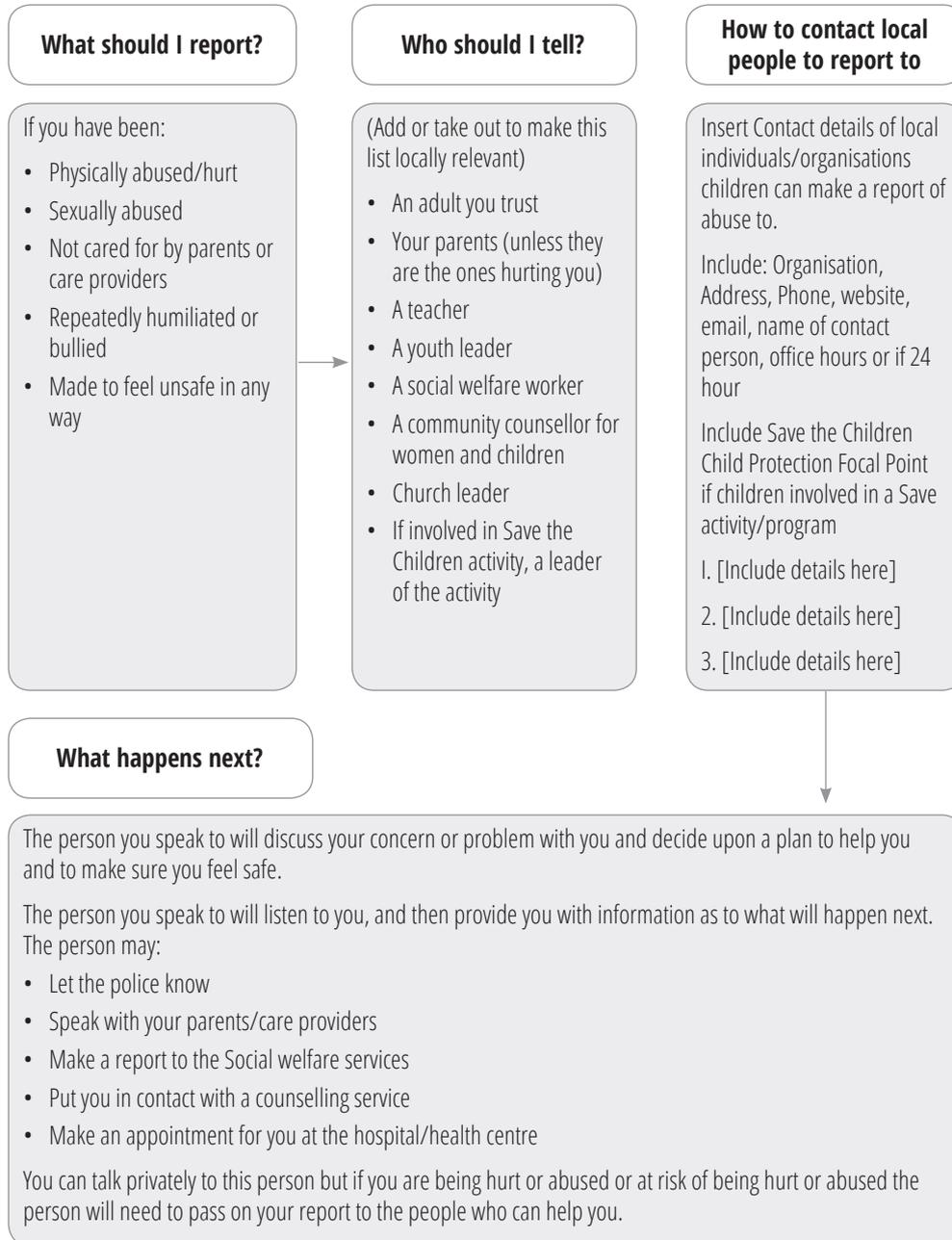
30 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 36.

31 Girl Guides Australia (Victoria) (2013) *Grivance procedure GP43*. South Melbourne, Girl Guides Australia (Victoria), p. 1; Jesuit Social Services (2012) *Policy and Procedure. Participants feedback and complaints* Jesuit Social Services, p. 4 (Section 2.3); Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, Alexandria NSW, National Committee of Professional Standards, p. 16.

32 *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, p. 3.

Where possible, individuals should be offered support to formulate and lodge allegations and suspicions of child abuse.³³ Save the Children Australia gave evidence about how it communicates its reporting process to children, as set out in Figure 15.1.

Figure 15.1: Save the Children Australia reporting process for children



Source: Save the Children (2010), *Child protection implementation guidelines—Australian programs*, p.97.

33 NSW Ombudsman (2010, 2nd Edition) *Effective complaint handling guidelines*, p. 8.

Finding 15.1

Very few organisations indicated that they had simple, accessible processes that help children to understand what to do if they need to disclose behaviour that makes them feel unsafe or uncomfortable and that may constitute criminal child abuse. This may prevent children from telling an adult if they have concerns.

15.3. What should be notified?

Although not all concerning behaviour or conduct amounts to criminal child abuse, the Committee considered that management should be notified of all disclosures of potential child abuse and all concerns about unsafe or concerning behaviour. In addition, personnel in an organisation should notify any allegation, suspicion or observation of concerning behaviour and any possible breaches of the organisation's code of conduct.

Chapter 16 discusses the responsibility of management in forming reasonable grounds for believing that criminal child abuse has occurred and reporting matters to police and other authorities.

15.4. Who should notify?

Linked to the effective facilitation of disclosure by children is the importance of ensuring that any personnel in an organisation who witness or become aware of inappropriate behaviour can and do notify management and relevant child safety personnel.

The Committee identified several examples of effective processes for ensuring personnel notify management about concerns and allegations of child abuse. It noted that in addition to having documented processes, organisations need to ensure that staff are aware of their responsibility to notify concerns to management.

In its guidelines to organisations for responding to allegations, the Australian Childhood Foundation (ACF) provides useful advice. The ACF requires organisations that undergo its accreditation process to have in place a policy that requires the following personnel to immediately report concerns, allegations or disclosures:

- all employees and volunteers who have direct contact with children or young people, and their supervisors and managers
- all senior managers responsible for delivering services to children or young people
- anyone involved in dealing with reports of allegations of child abuse or with access to children's or young people's records
- directors, CEOs, director-generals or equivalent personnel of any organisation whose purpose includes delivering services to children or young people.³⁴

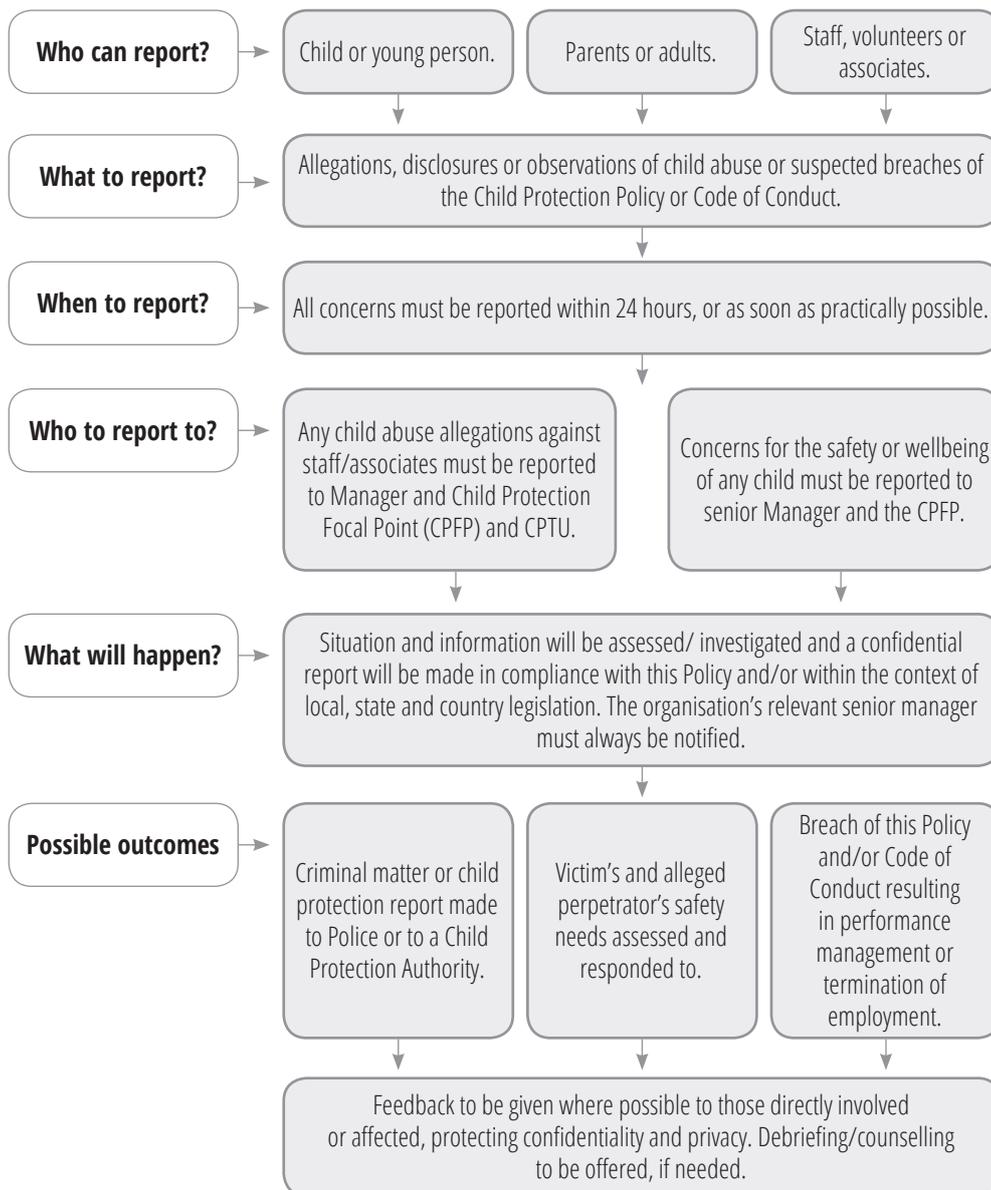
The ACF requires organisations to clearly state the nominated person and/or statutory body (with contact details) to whom the observation or concern should be reported, and the reporting timeframe. Furthermore, it requires organisations to

³⁴ Australian Childhood Foundation *Safeguarding Children: A program resourcing organisations to protect children and young people, Information booklet*. Ringwood, ACF, p. 98.

specify that failing to report instances, allegations, disclosure or concerns of child abuse or neglect is viewed as serious misconduct and as grounds for disciplinary action which may (depending on circumstances) include dismissal.

Another example is the process adopted by Save the Children Australia, shown in Figure 15.2. Save the Children receives funding from AusAID, which requires it to have a policy in place for responding to allegations of child abuse. As noted in Part D, Save the Children is particularly proactive in its approach to protecting children from criminal abuse.

Figure 15.2: Save the Children Australia process for reporting allegations of child abuse



CPTU [Child Protection Technical Unit] can be contacted at any point for advice and support
cptu@savethechildren.org.au

Source: Save the Children, *Submission S252*, Attachment 1.

The Committee noted the following aspects of the Save the Children Australia policy:

- There is no ambiguity as to whether management should be notified about allegations of child abuse—Save the Children staff and associates must report any concerns to management and designated child protection officer.
- The onus is not only on Save the Children staff to notify but also on ‘associates’, who are defined as all consultants, board members, researchers, volunteers, partner organisations, interns and students.
- The timeframe for notifying is clear—within 24 hours or as soon as practically possible.
- The obligation to notify is far reaching—for example, staff must notify management if they become aware that a child or children from another agency (possibly a partner organisation) is experiencing abuse or exploitation, or if a staff member or associate abuses a child outside work.
- The response process is simple to follow.

The Committee also noted that Uniting Church Camping has a process in place for responding to allegations of suspected criminal abuse. It contains many of the same steps as the above example, including advice regarding what to notify and who to notify, but is less clear regarding timeframes for making a notification.

The importance of personnel having clarity about the process was highlighted to the Inquiry. As Mr Paul Mondo, president of Childcare Victoria, commented:

If the support is not there for staff to be certain about the processes in place within a service, it often makes it difficult for them and they would more often than not err on the side of non-reporting than reporting in that circumstance.³⁵

Although having a process that requires personnel to report allegations or suspicions to management is important, there is also a need to ensure that the culture of the organisation supports such disclosures.

The Committee heard from a number of witnesses about their experiences when they attempted to report criminal child abuse.³⁶ These witnesses told the Inquiry that they did not feel supported by management, even where the allegations they had initiated had proved to be of substance. Some explained that they felt pressured to leave the organisation and had suffered repercussions in their careers and in their communities. For example, Inquiry participant Ms Carmel Rafferty explained that ‘I felt bullied, humiliated, isolated and traumatised ... and I was forced to resign.’³⁷

The Committee is aware that the need to report allegations of child abuse must be balanced with the need to ensure that such a policy is not misused. Clearly, the reputations of individuals can be seriously damaged if vexatious or malicious complaints are made against individuals. For example, the Executive Officer of the Australian Association of Christian Schools, Mr Robert Johnston, stated that ‘In the case of vexatious reports that [are] contested vigorously by accused adults ... a great

³⁵ *Transcript of evidence*, Child Care Victoria, Melbourne, 12 April 2013, p. 4.

³⁶ *Transcript of evidence*, Ms Carmel Rafferty, Melbourne, 23 January 2013., *Transcript of evidence*, Mr Graeme Sleeman, Melbourne, 23 January 2013., *Transcript of evidence*, Mrs Carol Crowe, Ballarat, 28 February 2013.

³⁷ *Transcript of evidence*, Ms Carmel Rafferty, p. 5.

deal of trauma is caused to innocent parties in such cases.³⁸ Mr Johnson noted the challenge of balancing the rights of the accused and taking seriously any complaints made. He and other witnesses suggested one option might be to engage an external body to fully investigate the matter.³⁹

Finding 15.2

Some organisations appeared progressive in their guidance to personnel regarding what they should notify and who to notify if they observe or suspect conduct of concern.

15.5. Who should be notified?

The Committee identified the importance of clear policies regarding who in the organisation should be notified about allegations or suspicions of child abuse. However, it found that in some organisations the responsibility for receiving such notifications was overly complex. For example, the Committee noted that notification of incidents within the Uniting Church in Australia, Synod of Victoria and Tasmania (the Uniting Church) vary depending on the position of the alleged offender in the organisation:

- Employees—the line for reporting for complaints against employees of the Synod or one of its agencies is through the person's manager and the director of the Synod Unit, CEO of the Uniting Church agency or principal of a school.
- Minister of religion—in the case of a complaint against a minister which comes within the realms of sexual misconduct, the complaint goes to the General Secretary and is directed to the Synod Sexual Misconduct Complaints Committee.
- Others—any other complaint goes to the Chair of the Presbytery. If an agreeable conclusion cannot be reached, the matter is referred to the Presbytery Pastoral Relations Committee, and if a resolution is not reached, to the Committee for Counselling.⁴⁰

The process also varies depending on the context in which the allegation arises. For example, a different process applies if the allegation arises in the context of a special event.⁴¹

The Committee noted that in its *Complaint procedure for allegations of misconduct by pastoral leaders*, the Baptist Union Victoria process applies to only a limited section of its personnel. Section 2.3 of the procedure states:

We recognise that this document cannot cover complaints against unpaid voluntary leaders who may offend. However it can provide principles and guidelines for the local church to use in these instances. We strongly recommend that local churches value the relevance of this document and use it accordingly.⁴²

38 Australian Association of Christian Schools, Correspondence in response to Committee request for information, 28 February 2013. The Committee was made aware that a number of organisations have formal policies in place that safeguard against abuse of the reporting processes. These include the whistleblowing policies of the Association of Independent Schools Victoria, the Catholic Education Office and Wesley Mission Victoria. The whistleblowing policy of Wesley Mission Victoria also includes specific supports and protections for whistleblowers in case of detrimental action against them.

39 *Submission S382A*, Ms Pam Krstic, p. 32.

40 *Submission S164*, Uniting Church in Australia, p. 20.

41 *Submission S164*, Uniting Church in Australia. Appendix 3, p. 33.

42 Baptist Union of Victoria (Revised 2011) *Complaint procedure for allegations of misconduct by pastoral leaders*. Camberwell, BUV, p. 5.

The Baptist Union's process for responding to an allegation of child abuse by personnel other than pastors is unclear.

The process of the Catholic Archdiocese of Melbourne is fragmented. In its 2011 code of conduct, *May our children flourish*, it outlines its reporting process, stating that:

109. If:

- a) A child makes a disclosure to you that sexual, physical or psychological abuse is occurring, or
- b) You form an objectively reasonable belief that a child is being harmed, or is at risk of being harmed,

you should immediately report the matter to the Independent Commissioner who will discuss your concerns and advise you on the next steps to take.⁴³

However, the document sets out other processes that apply for matters outside the responsibility of the Independent Commissioner, including matters arising in a parish or a Catholic agency:

105. All matters other than those within the purview of the Independent Commissioner should be reported as follows:

- a) Any matter that arises within a parish should be reported in the first instance to your parish priest (unless the matter involves the parish priest, in which case it should be reported in accordance with paragraph 106. The parish priest will listen to the allegations and decide what action to take in accordance with the procedures below at paragraph 108. If, after a reasonable time has elapsed, you are not satisfied with the parish priest's response to your report you may then refer the matter to the Vicar-General of the Archdiocese of Melbourne 03 9926 5677 or vicargeneral@cam.org.au
- b) Any matter that arises within an agency of the Catholic Archdiocese of Melbourne, should be reported in the first instance to the head of the agency (unless the matter involves the agency head, in which case it should be reported in accordance with paragraph 106). The agency head will listen to the allegations and decide what action to take in accordance with the procedures below at paragraph 108. If, after a reasonable time has elapsed, you are not satisfied with the response to your report, you may refer the matter to the HR Office on 03 9926 5677 or human.resources@cam.org.au.

106. Matters relating to parish priests, agency heads, or any other matters should be reported as follows:

- a) Any report that relates to a parish priest should be reported in the first instance to the Vicar-General on 03 9926 5677 or vicargeneral@cam.org.au
- b) Any report that relates to an agency head should be reported to the HR Office on 03 9926 5677 or human.resources@cam.org.au.
- c) Any other matter may be reported to the HR Office on 03 9926 5677 or human.resources@cam.org.au.

Reports will be dealt with in accordance with the procedures at paragraph 108.

107. Any medical emergency, a missing child, or any other emergency situation should be reported in the first instance to the appropriate authorities (such as police, fire or ambulance by dialling 000). As soon as possible thereafter, the child's parent/

43 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*. East Melbourne, Catholic Archdiocese of Melbourne, p. 17.

guardian should be notified and a report should be made (at the latest within 24 hours) to the HR Office on 03 9926 5677 or human.resources@cam.org.au.⁴⁴

To be effective, processes for responding to allegations of suspected or alleged child abuse must be simple, consistent and easy to follow. In addition, personnel in the organisation must be clearly aware of their responsibilities under these processes.

Finding 15.3

Many policies used by organisations are complex and unclear regarding the responsibility of personnel to notify, including the person in the organisation they should notify, if a child discloses concerning behaviour or if they have a concern about the conduct of other personnel. This may discourage some individuals and personnel in organisations from reporting or disclosing abusive behaviour.

15.6. Initial response to notifications

Following notification of a disclosure, suspicion or observation, it is important that the management of the organisation act immediately. The initial response may vary depending on whether the report of child abuse relates to a current situation of abuse or an event that occurred in the past (which might be relatively recent or a long time ago).

Although the Committee identified some comprehensive approaches, it noted that on the whole the level of advice for responding to reports of suspected criminal child abuse is not provided in the written procedures of many organisations. Such an allegation against personnel in their agency may occur very infrequently. However, not having a clearly articulated, written process to follow can lead to inappropriate or inadequate action being taken.

15.6.1. Ensuring children's safety

In the event of a current situation of abuse, the Committee noted the NSW Ombudsman advises that ‘The first step must always be to protect the best interests of the child—once an allegation is made there should be an immediate response that protects the child from further potential abuse or victimisation.’⁴⁵ In such cases, the manager (or a designated child protection officer) should consider:

- whether there is a risk to the child and other children
- whether there is a need to intervene to protect a child or children, including medical and/or forensic intervention
- the support needs of the child and other parties.⁴⁶

A number of organisational policies submitted to the Inquiry included guidance on identifying and minimising the risk of harm to children and young people involved in the allegation. Some organisations had more progressive processes in these circumstances. For example, Berry Street Victoria states in its policy:

44 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 16.

45 *Submission S388*, Child Wise, p. 9.

46 Ombudsman NSW (2012) *Planning and conduction an investigation. Fact sheet 4*. Sydney, NSW Ombudsman.

Within 24 hours of an allegation of abuse or neglect being made, an assessment will be made about whether there is an immediate risk of harm to the child or young person, which may mean the child or young person is removed, or arrangements are made for the removal of the worker/carer that allegations have been made against. This can also occur any time before, during or after a review or investigation.⁴⁷

The Scouts Victoria *Inappropriate conduct or behaviour policy* is another example of organisations taking into account any risk to the safety of children in responding to an allegation. The policy states:

4.3 If an allegation is made against an Adult in Scouting the District Commissioner (DC), Regional Commissioner (RC) or Branch Commissioner (BC), dependent on the organisational location of the Adult in Scouting, will, considering the information available at the time, determine whether the Adult in Scouting is to:

- a) remain in their current role
- b) be temporarily placed in another role, or
- c) be stood down from Scouting duties.

Note: If the alleged incident has occurred during a special activity, eg. a Jamboree, the nominated leader in charge will make the determination.

4.4 The DC, RC or BC considering the allegation must not permit an Adult in Scouting, the subject of an allegation, to continue to carry out any Scouting duties unless and until the DC, RC or BC is satisfied that it has been established that there is no material risk of a future breach occurring by reason of the Adult in Scouting continuing to carry out those duties.⁴⁸

Similarly, the policy of the Victorian Conference of the Seventh Day Adventist Church states that establishing a safe environment for children includes ‘Introducing safeguards ... where a situation of risk has or may be identified such as before, during or after an investigation.’⁴⁹

15.6.2. Validating a victims’ disclosure

The Committee heard that the first response to a victim’s disclosure of criminal child abuse is critical. Importantly, in first responding to any reported allegations of criminal child abuse it is not appropriate for an organisation to determine whether abuse has taken place or not. The role of the manager and personnel in the organisation is to listen, ascertain the facts and determine the appropriate next steps.

In its evidence to the Inquiry, Child Wise stated that:

Organisations should never push the child/young person into giving details of the abuse. Their role is to listen to what the child/young person wants to tell them and not to conduct an investigation. Any leading questions, any undue pressure exerted on the child, may prejudice any subsequent investigation, and indeed may make the child hesitant or unwilling to repeat their disclosure.⁵⁰

McKillop Family Services provides a guide for its staff in the first 24 hours after receiving an allegation of suspected child abuse in their organisation. The guidance has a strong emphasis on protecting children and taking their disclosure seriously. It

47 *Submission S262*, Berry Street, p. 2 Appendix 3.

48 *Submission S200*, Scouts Australia (Victoria), p. 2 Appendix 2.

49 *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 44.

50 *Submission S388*, Child Wise, p. 9.

emphasises that in the first 24 hours (in addition to notifying police and authorities) it is important to:

1. Take the child seriously
2. Contact the manager
3. Protect the child
4. Distance the alleged perpetrator
5. Protect others involved
6. Document the incident.⁵¹

The Catholic Archdiocese of Melbourne code of conduct *May our children flourish* provides the following guidance to those in its organisation who receive disclosures:

Be aware that the child may be feeling ashamed, guilty and scared, and may be worried about the consequences of telling someone about the abuse. Stay calm and listen carefully to the child. Tell them you believe them and that they did the right thing by telling you. Do not make promises you cannot keep such as promising that you will not tell anyone else.⁵²

The 2004 NSW Ombudsman's guide outlines the following checklist to assist in interviewing a child following the making of a disclosure, as outlined in Table 15.1.

Table 15.1: Checklist for interviewing a child who discloses

Do	Do not
<ul style="list-style-type: none"> • interview a child only when it is necessary • learn the relevant background to the allegation • understand the developmental stage of the child • respect the rights of the child • build a rapport with the child • reassure the child they are not in trouble • explain to the child the purpose of the interview • talk to the child in appropriate language • ask simple and clear questions • limit the number of people present during the interview • allow the child a support person, where appropriate • minimise distractions and interruptions • thank the child at the end of the interview. 	<ul style="list-style-type: none"> • ask leading questions • touch the child • intimidate the child • make the child feel bad about what they're disclosing • ask more than one question at a time • interview a child on more occasions than is absolutely necessary • interview a child when someone more qualified is available to do so.

Source: NSW Ombudsman (2004) *Child Protection in the Workplace*, p.141.

51 The guidance also includes reporting in to authorities Advise the Client Protection Panel and Liaise with DHS, Police and Family *Supplementary evidence*, Response to request for information, McKillop Family Services, 8 March 2013.

52 *Submission S185*, Catholic Church in Victoria. Appendix 12; Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 17.

15.6.3. Support for victims during the response process

Although most organisational policies for responding to allegations of child abuse require an initial assessment of a child's safety, the Committee identified that very few appeared to require medical or psychological support to be provided to children and adult victims of child abuse.

Some processes of non-government organisations reviewed by the Committee included guidance on what supports should be in place for victims, however many did not. For example, few identified what steps should be taken if a victim needs medical attention after an incident of suspected child abuse. A number did not specify any arrangements for providing counselling to children who are victims of alleged abuse.

The Committee identified a number of non-government organisations that do have clear processes. For example, St Luke's Anglicare explained the developments in its counselling support before and since 2005:

The complainant was offered the dedicated support of an appropriate staff member. Referrals to other specialist services, for example, CASA [Centre Against Sexual Assault] were offered. Issues of potential conflicts of interest with St Luke's continuing support were discussed ...

A similar practice approach has existed since 2005 as was practiced prior to 2005. However, since 2005 under the Quality of Care processes, a support plan for the complainant is developed with DHS and clear roles and responsibilities for the support of the complainant is negotiated between St Luke's and DHS.⁵³

The Committee noted that government departments that fund organisations can provide specific guidance regarding what non-government organisations should do in this instance. For example, DHS requires agencies to report all instances of alleged sexual assault to the local Centre Against Sexual Assault (CASA), unless a victim does not want this contact.

Finding 15.4

A number of organisations provide guidance on how to respond to a disclosure made by a child, yet very few make reference regarding how to ensure the child is safe and receives appropriate medical and other professional support.

⁵³ *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

Chapter 16

Recognising criminal child abuse and reporting allegations to authorities

AT A GLANCE

Background

In the context of the Committee's recommendation for a new criminal law to make it an offence to fail to report the suspected criminal abuse of children, personnel in organisations will need to be fully informed of their responsibility to report to police. Personnel in positions of authority in organisations will also need the knowledge and skills to consider any allegations or notifications of concerning conduct to determine whether they have reasonable grounds to believe that criminal child abuse may have occurred.

Key findings

- Responding to a notification of concerning behaviour and forming reasonable grounds to believe that a crime may have occurred is complex and requires a skilled and sophisticated level of judgement.
- Some organisational policies reviewed by the Committee for responding to allegations of criminal child abuse were narrowly focused on child sexual abuse rather than all forms of criminal abuse.
- Organisations providing services funded by the Department of Human Services are required to report all physical and sexual assault of clients by staff to the police, yet the inconsistent implementation of this requirement indicates that not all personnel in organisations have the appropriate skills and knowledge to determine suspected criminal conduct.
- Catholic and independent schools are not expected to meet the same requirements as government schools in responding to suspected sexual assault of children and there is no clear guidance for any schools regarding other forms of criminal abuse.
- A number of policies used by organisations that provide services in unregulated sectors do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police, and some policies suggest that the onus is on victims to do so.
- Organisations in regulated sectors have requirements to report critical incidents to a funding or relevant body and can be subject to review if they do not handle allegations of criminal child abuse appropriately.
- Organisations that provide services in unregulated sectors have no overarching requirements or oversight to ensure they report all suspected criminal child abuse to police and relevant authorities and are not subject to any external review of their responses if they do not handle allegations appropriately.

Recommendation

- That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and identifies a benchmark that could be applied more broadly to non-government schools.

Determining whether to make a report to police or other authority is a critical component of a non-government organisation's response to allegations of child abuse. Management and other relevant personnel need confidence and sophisticated skills to recognise and report criminal child abuse. The Committee noted that this is an area in which organisational processes are lacking.

It is critical for organisations to report suspected criminal child abuse to police yet there is currently no legislative requirement in Victoria for personnel in organisations to report such allegations. In view of this, Part G of this Report makes a recommendation to make it an offence to conceal criminal child abuse offences and introduce compulsory reporting to police. This will make it even more important for organisations to have clear processes regarding the responsibility of personnel to report criminal child abuse to police.

The Committee recognises that reporting requirements will vary between organisations. However in the event of suspected or alleged criminal child abuse, it determined that all organisations should be required to report to police and should have appropriate policies in place to ensure staff know their responsibilities in this regard.

16.1. Recognising criminal child abuse

It is essential that non-government organisations notify police and other relevant authorities when there are reasonable grounds to believe that the criminal abuse of a child has occurred.

The Committee determined that many staff in positions of authority in organisations do not have the necessary skills to confidently assess reports of suspected child abuse, identify reportable conduct, and make a decision to report an allegation to the police or other relevant authorities. During the Inquiry, the New South Wales (NSW) Deputy Ombudsman, Mr Steve Kinmond explained that assessing how to respond appropriately to an allegation of child abuse is complex:

At the one end of the spectrum there is the issue of agencies deliberately failing to deal with matters, but at the other end of the spectrum there are agencies that are extremely well intentioned but have no idea what to do in relation to this very complex area of practice.⁵⁵

The NSW Ombudsman covers the reporting of criminal and non-criminal conduct and provides guidance as to what action organisations should take. This is described in Chapter 18.

In its submission to the Inquiry, the Jewish Taskforce Against Family Violence and Sexual Assault also demonstrated the difficult decisions that must be made:

Reasonable grounds for belief—sufficient facts must exist to induce the relevant suspicion or belief in the mind of a reasonable person. The nature of the facts required to be established to demonstrate reasonable grounds for a suspicion or belief are different, as facts sufficient to found a suspicion may be insufficient to ground a belief. A belief is based on reasonable grounds that criminal child abuse has occurred when all known considerations or facts relevant to the formation of a belief are taken into account and these are objectively assessed. Circumstances or considerations may include the source of the allegation and how it was communicated, the nature of and details of the allegation, whether there are any other related matters known regarding the alleged perpetrator.⁵⁴

⁵⁴ See *George v Rockett* [1990] 170 CLR 104, 112.

⁵⁵ *Transcript of evidence*, NSW Ombudsman, Melbourne, 4 April 2013, p. 5.

We have worked with particular Rabbis during certain sensitive cases, including ones where there wasn't enough evidence to charge anyone but there were many concerns. In some cases, advice was given not to allow a person direct contact with children and also to advise parents not to allow a person to be alone with their child. In many cases it is difficult as there is not enough evidence to bring charges, but there is a clear need to protect potential victims.⁵⁶

An organisation often needs to make complex and nuanced decisions when responding to an allegation of suspected child abuse. These decisions require a high level of professional judgement and generally need to be made at the most senior levels. To assess how to respond to suspected child abuse, an organisation needs to:

- understand how to make an assessment about whether the conduct is potentially criminal child abuse
- know the right questions to ask and how to gather the relevant information in order to clarify what has happened and to assist personnel in forming reasonable grounds for a belief that a crime may have occurred
- ensure matters are reported to the right authorities within appropriate timeframes and that appropriate information is provided.

Not all allegations that are made against personnel in an organisation amount to criminal child abuse.

Knowing when to report a matter to police can be a difficult decision. Personnel in organisations need the skills and knowledge to identify and understand:

- potential grooming behaviour
- misconduct
- criminal conduct.

Observations and suspicions of criminal child abuse could include observed behaviour that gives cause for concern. For example, suspicion might be raised by a staff member committing subtle breaches of the organisation's code of conduct, or by a one-off incident. Alternatively, a child or group of children could be exhibiting behaviours which may indicate they are currently, or at risk of, being abused.

The Committee acknowledges that grooming in particular can be difficult to identify and to raise concerns about. Ms Pam Krstic, for example, explained that she did not recognise a perpetrator's grooming tactics at the time 'although looking back they were very obvious'.⁵⁷ She indicated that this was particularly difficult because it involved a senior figure in the organisation. She explained her experience in a Catholic school:

It is very difficult to make allegations on grooming alone particularly when the alleged offender is your boss and in sole charge of both school and parish.⁵⁸

The Committee identified that the majority of organisations emphasise the need to report allegations of child abuse to the police where there are reasonable grounds to believe a child has been criminally abused. Yet the process by which personnel can identify reasonable grounds for forming this belief is often expressed unclearly or

56 *Submission S086*, Jewish Taskforce against Family Violence and Sexual Assault Inc., p. 4.

57 *Submission S382A*, Ms Pam Krstic, p. 12.

58 *Submission S382A*, Ms Pam Krstic, p. 2.

inconsistently in organisational written policies. Organisations that have had little experience in responding to allegations of child abuse, will not necessarily have this knowledge and expertise.

Some organisations do provide such guidance, often within the context of how to determine if a report needs to be made regarding a child at risk of harm in their family. For example, Anglicare provides guidance on ‘forming a belief’ that a child is in need of protection, advising that it is a ‘thinking process, where a person is more inclined to accept rather than reject that there is significant harm for the child or young person.’⁵⁹

The Committee identified a need for increased and ongoing support for staff to build their knowledge and skill in making assessments of allegations regarding all forms of suspected child abuse in their organisation. This will help organisations assess more accurately whether to report an incident to police and to other authorities.

Finding 16.1

Responding to a notification of concerning behaviour and forming reasonable grounds to believe that a crime may have occurred is complex and requires a skilled and sophisticated level of judgement.

16.1.1. Narrow approach to responding to criminal child abuse

The Committee noted that many organisations provide narrow or unclear instructions on how to assess an allegation of suspected criminal child abuse, how to identify the nature of the behaviour being reported and what criteria to consider when deciding whether to report an allegation to police, other authorities and the child’s parents.

The processes established by some organisations focus narrowly on only one type of child abuse, usually sexual abuse. For example, the *Creating a safe place policy* of the Seventh Day Adventist Church states:

The Church recognises that the sexual abuse of a child usually occurs within a context of other forms of child abuse (such as emotional, psychological or spiritual abuse). Therefore, other forms of child abuse (namely emotional abuse, neglect, physical abuse and spiritual abuse) may be canvassed in a Church investigation. However, these other forms (i.e. non-sexual) of a child abuse do not trigger an investigation by Safe Place Services.⁶⁰

This policy is quite specific in clarifying that it does not respond directly to allegations of abuse other than child sexual abuse.

Similarly, in its *Complaint procedure for allegations of misconduct by pastoral leaders*, Baptist Union Victoria refers only to child sexual abuse, sexual assault, sexual boundaries, sexual harassment and sexual misconduct.⁶¹ It does not specifically mention other forms of criminal child abuse.

59 *Submission S146*, Anglicare Victoria. Appendix 1, p. 6.

60 Safe Place Services (2008 & 2011) *AUC and NZPUC Creating a safe place policy—Version 2012.01*. Seventh-day Adventist Church of the New Zealand Pacific Union Conference, p. 13.

61 Baptist Union of Victoria (Revised 2011) *Complaint procedure for allegations of misconduct by pastoral leaders*, p. 21.

Finding 16.2

Some organisational policies reviewed by the Committee for responding to allegations of criminal child abuse were narrowly focused on child sexual abuse rather than all forms of criminal abuse.

16.2. Policies and practices for reporting allegations of criminal child abuse to police

The Committee identified that there are different policies and practices in non-government organisations with regard to reporting to police. There are differences between reporting requirements for organisations that operate in government regulated sectors and those that operate in unregulated sectors. Furthermore, the Committee identified that requirements to report to police are not always clear.

It also noted that having a policy in place for reporting to police does not necessarily translate into good implementation. To ensure the implementation of such policies, it is necessary to have oversight of these processes, as discussed in Chapter 18.

16.2.1. Organisations that operate services in government-regulated sectors

The Committee recognises that organisations that operate services in government-regulated sectors are subject to regulations and guidance that requires them to report allegations of criminal child abuse to police. This includes government-funded out-of-home care and other Department of Human Service (DHS) services, schools and early childhood services.

DHS instructions for reporting to police

Non-government organisations funded by DHS to provide out-of-home care and other DHS services are required to report allegations of criminal child abuse involving clients to police. As stated in the DHS *Responding to allegations of physical and sexual assault Departmental instruction*:

All allegations of physical or sexual assault as defined for the purposes of this document must be reported to the Police, whether or not the victim has consented to the matter being reported.⁶²

The instruction defines physical and sexual assault broadly, with only minor incidents being excluded from the requirement to report to police (examples given of minor incidents are those that do not involve allegations involving personnel—clients shoving one another with no injury, inappropriate touching by a disability client who lacks understanding of the behaviour and exposure in a public place by a disability client in some contexts).⁶³

The instruction operates in conjunction with the DHS critical incident reporting (described in more detail in Section 16.3). The 2011 *Critical incident management instruction* (Critical incident instruction) clearly states that ‘alleged criminal acts that

62 Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*. Melbourne, DHS, p. 7.

63 Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*, p. 7.

occur during service delivery must be reported to the police as soon as practicable.⁶⁴ The *Critical incident instruction* classifies allegations of criminal child abuse perpetrated by a staff member as the most serious (Category One) type of incident.⁶⁵

The Committee found that sometimes there are gaps between the requirements set out in an organisation's reporting policy and its actual practices. For example, organisations funded by DHS are required to report all Category One incidents that are staff to client assaults to police under the DHS critical incident process. The Acting Secretary of DHS, Mr Arthur Rogers, confirmed that in such cases there is no discretion, noting that with:

... a Category One allegation of staff-to-client, there is no discretion; it must be reported to police in child protection and family services.⁶⁶

However, the Committee was informed that in practice there appears to be some degree of discretion in reporting staff to client assault allegations to police. Information provided to the Inquiry by DHS stated:

A review of a sample of three months of reports between April and June 2012 of staff to client assault allegations made in non-government agencies indicates that 79 per cent of all allegations in non-government organisations were reported to police. The department considers all staff to client assault allegations as Category One incidents, however the DHS Critical Client Incident Management Instruction 2011, section 7 notes that reporting to police should be considered in the context of the individual client's behaviour or disability. Where allegations are not of a criminal nature a report to police may not be made, e.g. a staff member may restrain a client from running onto a busy road resulting in an allegation of physical assault. While this would be reported within the department as a category one incident, it may not be reported to police when the context is considered. Other examples where a police report may not be made may include: allegations not supported by sufficient information to establish whether an assault has occurred, or allegations being retracted prior to commencement of investigation.⁶⁷

The Committee noted that according to the Critical Incident Instructions, the 'context of the individual client's behaviour or disability' is not something to be considered in the context of incidents involving staff to client assault. It is only something to be considered in deciding whether to report certain client incidents to police such as inappropriate touching or other inappropriate behaviour by a client with a disability. This discrepancy highlights the distinction between policy and implementation.

Where DHS receives a report of physical or sexual abuse, it jointly investigates allegations with police. Victoria Police and DHS have a protocol governing the different ways in which DHS interacts with Victoria Police, whether this involves investigating child abuse and neglect or responding to other criminal actions that may arise in community service organisations or other contexts.⁶⁸

64 Department of Human Services (2011) *Critical client incident management instruction*, p. 15.

65 Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

66 *Transcript of evidence*, Department of Human Services, Melbourne, 3 June 2013, p. 3.

67 *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013. Department of Human Services (2005) *Responding to allegations of physical or sexual assault. Departmental instruction*, p. 7.

68 Victorian Government (2012) *Protecting children. Protocol between Department of Human Services Child Protection, and Victoria Police*. Melbourne, State of Victoria, p. 48.

Finding 16.3

Organisations providing services funded by the Department of Human Services are required to report all physical and sexual assault of clients by staff to the police, yet the inconsistent implementation of this requirement indicates that not all personnel in organisations have the appropriate skills and knowledge to determine suspected criminal conduct.

Schools and early childhood services—the Joint Protocol

In Victoria, schools and early childhood services are required to report criminal child abuse to police under a joint protocol with DHS and DEECD—*Protecting the safety and wellbeing of children and young people* (the Joint Protocol).⁶⁹ The Joint Protocol's objective is to ensure a 'unified and consistent approach that defines roles and responsibilities to protect the safety and wellbeing of all Victorian children and young people.'⁷⁰

Although much of the Joint Protocol assists schools and early childhood services in their reporting requirements relating to children at risk of abuse within the family, the Joint Protocol states that the following matters must be immediately reported directly to Victoria Police for investigation:

- If there is an allegation of abuse by a proprietor, staff member or visitor at a licensed children's service.⁷¹
- If there is an allegation of abuse by a staff member or visitor at a school.⁷²

Although the Joint Protocol is clear in requiring allegations of criminal child abuse involving personnel of an organisation to be reported to police, confusion may arise where reference is made to other parts of the Joint Protocol, in particular in respect of independent and Catholic schools.⁷³

In the case of early childhood services, the Committee was not aware of any oversight or guidance for developing processes to respond to criminal child abuse. The Community Child Care Association explained that services:

should report an incident to our state regulatory authority, which is the Department of Education and Early Childhood Development. So that would be investigated between the service and the department of education, but it might come down to acknowledging that perhaps some of the staff members are not aware of what indicators of abuse look like.⁷⁴

69 The protocol is between DHS Child Protection, DEECD, licensed children's services and Victorian schools.

70 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*. Melbourne, DHS and DEECD, p. 1.

71 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 20.

72 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 25.

73 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, pp. 20, paragraph 5.4 and paragraph 6.7.

74 *Transcript of evidence*, Community Child Care Association, Melbourne, 15 April 2013, p. 4.

In regard to independent schools, the Joint Protocol states:

If the information refers to allegations made against employees in an independent school, contact should be made in the first instance with the principal of the school. If this is not appropriate, then contact should be made with the chairperson of the school's governing body. Independent Schools Victoria is able to provide advice regarding the appropriate person to contact.⁷⁵

The Committee was not able to identify any overarching procedure or guidance for independent schools on responding to allegations of criminal child abuse. Independent Schools Victoria, the representative body for Victorian independent schools, explained that it is not an oversight body. It noted:

Independent Schools Victoria is a not a system authority managing schools, but a membership organisation providing professional services to inform schools and raise quality standards. We speak to governments and the community on behalf of our membership.⁷⁶

Instead, Independent Schools Victoria advises its member schools that they should have clearly defined policies and procedures for investigating incidents including, amongst other things, sexual assault. It stated that:

Independent Schools Victoria's processes and procedures for the protection of children are closely aligned with DEECD and DHS policies and comply with government education regulations. They are informed by the advice of the Victoria Police and non-government agencies'.⁷⁷

If Independent Schools Victoria is approached by a principal who considers there might be a problem, it explained that one of its directors or managers provides guidance and depending on the circumstances suggests the following actions:

- investigate the alleged incident
- raise the matter with the family
- make a referral to Child FIRST and Child Protection
- contact police.⁷⁸

Responses to allegations in Catholic schools are overseen by the Catholic Education Office Melbourne (CEOM). The Joint Protocol states:

If the information refers to allegations made against employees in a Catholic school contact should be made in the first instance with the Assistant Director, Religious Education and Pastoral Care, Catholic Education Office Melbourne (CEOM). This action and all other procedures to be followed in this case are outlined in <http://web.ceomelb.catholic.edu.au/index.php?sectionid=445>.⁷⁹

The Joint Protocol does not address the fact that CEOM does not coordinate the process for all Catholic schools in Victoria. For example, it does not refer to other Catholic school bodies such as the Catholic Education Offices in Ballarat, Sale or

75 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 20, paragraph 6.8.

76 *Submission S399*, Independent Schools Victoria, p. 1.

77 *Submission S399*, Independent Schools Victoria, p. 4.

78 *Submission S399*, Independent Schools Victoria, p. 4.

79 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, pp. 20, paragraph 6.8.

Sandhurst. Furthermore, the Committee noted that allegations involving Catholic school personnel in congregational schools are excluded from the CEOM procedures. The CEOM policy states that:

The schools of the Society of Jesus operate under a separate set of procedures, as do some other schools owned and operated by Religious Institutes.⁸⁰

A footnote explains that:

Congregational schools may choose to adopt and implement the procedures herein or follow guidelines developed by their respective or affiliated Religious Institutes. An initial point of contact regarding employees of congregational schools/colleges is Towards Healing, [and] Diocesan clergy are covered by the Melbourne Archdiocese Sexual Abuse Strategy. The initial point of contact is the Office of the Independent Commissioner, telephone (03) 9225 7979.⁸¹

The CEOM advises that there are 43 congregational schools in Victoria (1 primary school and 42 secondary). It remains unclear how many congregational schools have adopted the CEOM procedures and how many have developed and implemented other discrete and unique procedures. The Committee sought clarification about this from CEOM but did not receive any further information about congregational school procedures. However, the CEOM did advise that ‘all Catholic schools ... are subject to the same legal requirements in regards to child protection and misconduct matters, including those owned by Religious Congregations.’⁸²

CEOM procedures for ‘misconduct’ and ‘serious misconduct’

The CEOM’s *Procedures for allegations of misconduct against lay employees in Catholic schools and Catholic Education Offices* (revised in 2013) refer to two relevant procedures—one for allegations considered to be ‘misconduct’ and another for ‘serious misconduct’.⁸³ Both procedures apply ‘only to lay employees of parish primary schools and regional secondary colleges.’ Allegations involving a priest associated with a Catholic school would not fall within the CEOM procedure.

Mr Dennis Torpy, Manager, Wellbeing and Community Partnerships, CEOM told the Inquiry that:

... under our policy of allegations of misconduct against lay employees there is clear detail about what processes should be followed hand in hand with mandatory reporting. They include clear steps around maintaining confidentiality, as well as

80 Catholic Education Office Melbourne (2007) *Procedures for allegations of misconduct*. East Melbourne, CEOM, p. 1., Procedure 2.5

81 Catholic Education Office Melbourne (2007) *Procedures for allegations of misconduct*, p. 1., Procedure 2.5

82 *Supplementary evidence*, Response to Questions on Notice, Catholic Education Office, Archdiocese of Melbourne, 2 September 2013.

83 *Procedures for allegations of misconduct against lay employees in Catholic schools and Catholic Education Offices* (revised in 2013) defines ‘**misconduct**’ as including the following conduct: Sexual—inappropriate discussion of matters of a sexual nature with a student; sharing printed material with offensive/inappropriate sexual images or references; Physical—use of excessive force in restraining a student; Emotional—inappropriate isolation of a student; repeated public humiliation of a student. ‘**Serious misconduct**’ is defined to include: Sexual—sexual touching, either over or under clothing; oral sex; penetration by penis, finger or object; photographing or possession of films, photographs, or videos of children/students involved in sexual activity; kissing accompanied by some suggestion of a sexual kind; Physical—actions by another person causing physical harm to a student, e.g. bruises, cuts, burns or fractures; Emotional—a constant attitude or behaviour by another person towards a student that harms him/her emotionally and may delay or impair his/her physical and intellectual development. It can include terrorising, isolation and continued belittling of the child.

appropriate documentation, reporting, and careful listening and understanding of the allegation at the same time. So that is set out as well to ensure confidentiality.⁸⁴

However, the Committee identified that the CEOM procedures do not require allegations of criminal child abuse by a staff member to be referred immediately to police. This CEOM approach appears to be in conflict with the instructions under the Joint Protocol that require such incidents to be reported immediately to police.

The definition of misconduct includes 'sharing material of a sexual nature with a child'. This kind of conduct constitutes a criminal offence and should be reported to police, however the CEOM's procedures for 'misconduct' (as opposed to serious misconduct) do not refer to police reporting.

The procedures for both misconduct and serious misconduct state that:

Any allegation of [misconduct and serious misconduct] of a sexual, physical, or emotional nature against an employee of the school should be referred immediately (within 24 hours) to the Principal/Employer.

Contact must be made with the CEOM Senior Officer for Professional Conduct, Ethics & Investigation to report the allegation and determine the action to be taken.⁸⁵

The procedure for serious misconduct goes on to state:

After consultation with the CEOM Senior Officer for Professional Conduct, Ethics & Investigation, it shall be determined whether contact must be made with the Victoria Police. Discussion with the Police will focus on the nature of the allegation and procedures followed to date, followed by a request for advice.

The Committee noted the CEOM's efforts to create consistency in Catholic schools' approaches to handling cases of suspected child abuse by staff. It also noted the CEOM's procedures for communication and for training staff on mandatory reporting to DHS and child protection legislation. Further the Inquiry saw evidence of CEOM's commitment to training staff about child protection issues and student welfare through its comprehensive professional development calendar, specifically identifying possible child abuse or neglect in the child's home environment. However, the CEOM has an apparent lack of procedural consistency with the Joint Protocol in regard to reporting allegations of criminal child abuse to police.

The Catholic Diocese of Ballarat provided its detailed process for managing allegations of abuse of students by its employees, *Protecting students, maintaining relationships*, along with a covering letter dated 25 May 2012 addressing this to Catholic school principals. This process states that:

... after consultation with the Director CEOB [Catholic Education Office Ballarat] and the OPCEI [Office for Professional Conduct, Ethics and Investigations], the first action of the Principal may be to contact the police.⁸⁶

The policy only applies to lay employees and states that 'clergy and religious staff operate under the Towards Healing 2010 set of procedures'. Although the document is comprehensive and clear in its guidance about police reporting, there is a suggestion

84 *Transcript of evidence*, Catholic Education Office Melbourne & Catholic Education Commission of Victoria, Melbourne, 3 May 2013, p. 6.

85 Catholic Education Melbourne (Revised 2013) *Policy 2.20. Allegations of Misconduct Against Lay Employees in Catholic Schools and Catholic Education Offices*. Accessed on 10 October 2013 from <http://www.ceomelb.catholic.edu.au/publications-policies/policy/policy-2.20-allegations-of-misconduct-against-lay-employees/>.

86 *Right of Reply*, Catholic Diocese of Ballarat Education, 23 July 2013, p. 21.

that consultation with the CEOB or OPCEI following an allegation of criminal child abuse can, *but may not* result in contact with the police. This is at odds with the Joint Protocol, which requires all allegations of abuse by a staff member at a school to be immediately reported directly to Victoria Police for investigation.

Government school processes

In contrast, the Committee found that DEECD's guiding document for government schools, *Responding to allegations of student sexual assault: Procedures for Victorian government schools 2007*, offers a set of instructions that clearly outline the process for dealing with allegations of sexual assault in schools.⁸⁷ For example, the guideline states clearly and unambiguously that schools have an immediate responsibility to report allegations of child sexual abuse to the police:

All allegations that a teacher or school employee has committed a sexual assault must be reported directly to the Victoria Police SOCA [Sexual Offences and Child Abuse] Unit and the Conduct and Ethics Branch of the Department of Education which deals with serious misconduct. Principals should then follow the procedures outlined in this document.⁸⁸

The Committee considered that the DEECD's procedures for Government schools should be extended to apply to criminal child abuse other than sexual assault and that this procedure should apply to all schools regardless of whether they are a government, independent or Catholic.

One possible solution to this might be to update and modify *Responding to allegations of student sexual assault: Procedures for Victorian government schools 2007* to make them apply to the Catholic and independent school sectors as well. The Committee suggests that consultations be undertaken between DEECD, the CEOM and Independent Schools Victoria as well as other non-government schools not represented by the latter two peak bodies.

Finding 16.4

Catholic and independent schools are not expected to meet the same requirements as government schools in responding to suspected sexual assault of children and there is no clear guidance for any schools regarding other forms of criminal abuse.

→ Recommendation 16.1

That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and identifies a benchmark that could be applied more broadly to non-government schools.

87 Department of Education (2007) *Responding to allegations of student sexual assault. Procedures for Victorian Government schools*. Melbourne, Student Wellbeing and Support Division, Office of Government School Education.

88 Department of Education (2007) *Responding to allegations of student sexual assault. Procedures for Victorian Government schools*, p. 11.

16.2.2. Organisations that operate services in unregulated sectors

The Committee determined that many organisations that operate services that are not subject to government regulation nevertheless include reporting to police in their processes for responding to allegations of criminal child abuse.⁸⁹

Scouts Victoria, for example, told the Inquiry it has a zero tolerance policy that requires it to report all allegations of inappropriate conduct to police:

Our policy has always been that if there is an allegation of inappropriate behaviour, even if it is not criminal behaviour, it will be reported to the police and the person will be suspended.⁹⁰

Its *Child protection—reporting policy*, dated March 2013, specifies:

Scouts Victoria has zero tolerance for abuse of any form towards children and youth members.⁹¹

However, its *Inappropriate conduct or behaviour policy*, dated August 2011, is less clear about reporting to police, stating:

If the allegation is of a nature that could be a breach of criminal law, the person reporting it should be encouraged to also report the matter to the Victoria Police. This would not necessarily preclude a Scout's investigation being conducted in regard to possible breaches of the Code of Conduct.

The Catholic Church Towards Healing guidance states that personnel should refer allegations to police, but are not required to reveal the victim's details if the victim does not wish to take the allegation to police:

In the case of an alleged criminal offence, if the complainant does not want to take the matter to the police, all church personnel should nonetheless pass details of the complaint to the Director of Professional Standards, who should provide information to the police other than giving those details that could lead to the identification of the complainant.⁹²

Although not stated in the policy, the Committee considers this approach may be more relevant to New South Wales where mandatory reporting to police has been introduced. The preceding paragraph, suggests that where reporting to police is not mandatory, reluctance by a victim to report to police may merely result in this being noted and certified by the victim:

in all cases other than those in which reporting is mandatory, if the complainant

89 For example refer to *Submission S155*, Buddhist Council of Victoria Inc., p. 6; *Submission S233A*, Jewish Community Council of Victoria (JCCV), p. 3; Jesuit Social Services (2012) *Policy and Procedure. Participants feedback and complaints* p. 8., Section 2.6; Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*. Canterbury, Anglican Diocese of Melbourne, p. 17; Australian Sports Commission (2013, version 7) *Member protection policy template for national sporting organisations*. Bruce ACT, Australian Sports Commission, p. 38.

90 *Transcript of evidence*, Scouts Victoria, Melbourne, 11 April 2013, p. 12. The Committee notes a list provided by Scouts Victoria indicates not all complaints were reported to police, however this was clarified during their testimony as being instances where a report to police could not be confirmed.

91 *Submission S200A*, Scouts Australia (Victoria), p. 1, attachment 4.

92 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, p. 18.

indicates an intention not to take the matter to the police, this shall be recorded and confirmed by the signature of the complainant.⁹³

The Committee found that most policies do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police and some suggest that the onus is on victims to do so. Many of the policies and procedures it reviewed did not specify at what stage in the process the police report should be made, or define what constitutes a timely report.⁹⁴

Although St Luke's Anglicare uses the DHS critical incident reporting for its DHS regulated out-of-home care services, it also operates services in unregulated sectors. St Luke's Anglicare advised the Inquiry that for clients involved with the organisation who are not and have not previously been in care, it uses its general concerns and complaints guidelines. This process does not refer to police reporting. Similarly, the St Luke's Anglicare flowchart for clients, which illustrates how concerns or complaints will be handled, makes no reference to reporting allegations of criminal behaviour to the police.

While the guidelines do not refer specifically to police reporting, in response to queries regarding its processes, St Luke's Anglicare advised in correspondence to the Inquiry:

This guideline directs our process and does not preclude the need to report significant allegations of abuse or criminal activity to Police. This decision is made at a senior level within the agency and guided by an assessment of the alleged criminal nature of the complaint.⁹⁵

In its correspondence, St Luke's acknowledged that its policies do not clearly describe the 'range of pathways required for dealing with complaints/allegations in a manner determined by the funding stream of the program.' It undertook to address this complexity by ensuring that its revised policy and procedural guidelines 'reflect the departmental expectations in relation to this practice.'⁹⁶

These examples highlight the lack of consistency of organisational guidelines for reporting criminal child abuse to police.

The response process of the Catholic Archdiocese of Melbourne does not provide clear direction regarding the reporting of allegations to police. In its 2011 code of conduct, *May our children flourish*, Paragraph 100 states that 'nothing in this Code of Conduct restricts the right of any person to report any matter to the police or other authorities.' This clause is repeated in the corner of a flowchart that states that 'nothing in this document affects the right of any person to report a matter to police or other authorities.'⁹⁷ The flowchart is shown in Figure 16.1.

Further, Paragraph 108 states:

93 Australian Catholic Bishop Conference and Catholic Religious Australia (January 2010) *Towards Healing. Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.*, p. 18.

94 For example refer to Primate of the Greek Orthodox Church in Australia (2013) *Child protection policy*. Accessed on 5 September 2013 from <http://www.greekorthodox.org.au>.

95 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

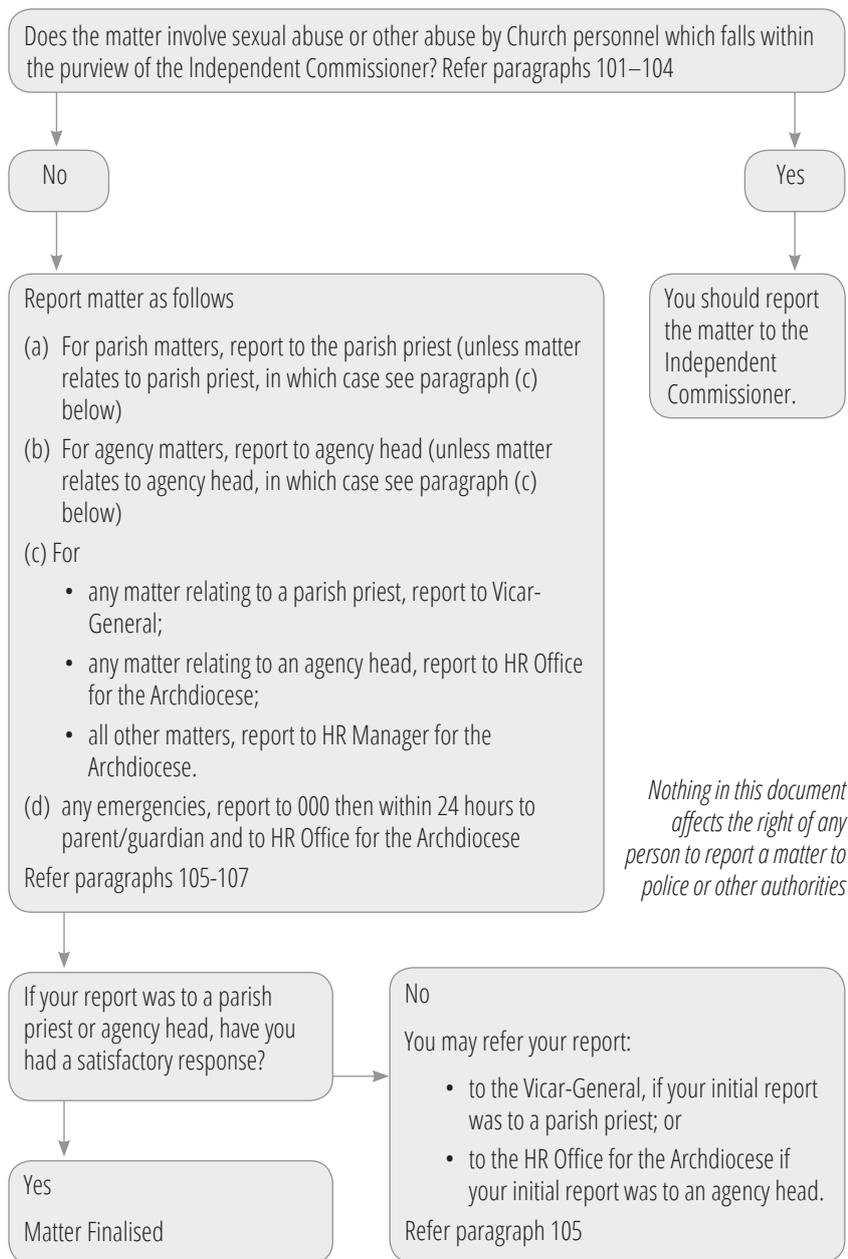
96 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

97 *Submission S185*, Catholic Church in Victoria. Appendix 12, p. 18.

In some cases, it may be necessary to inform relevant authorities or others within the Catholic Archdiocese of Melbourne or the person to whom the report relates. Depending on the nature of the allegation it may be necessary to:

- (i) Inform the police, if the behaviour is or might be criminal;
- (ii) Consider whether a mandatory report must be made to the DHS under the CYF Act;
- (iii) Make or refer a report to the Independent Commissioner.⁹⁸

Figure 16.1: Catholic Archdiocese of Melbourne: May our children flourish—Flow chart for reporting breaches of this Code of Conduct.



Source: *Submission S185*, Catholic Church in Victoria, Appendix 12.

98 Catholic Archdiocese of Melbourne (2011) *May our children flourish: code of conduct for caring for children*, p. 17.

Although Paragraph 108 states that it may be necessary in some circumstances to inform the police, the process does not state that the Catholic Archdiocese of Melbourne is under an obligation to report allegations of criminal child abuse to police. Implicitly, the responsibility is placed on the victim to report to police instead.

The Committee reviewed the Anglican Church policy and found that it contains detailed provisions in regard to reporting allegations to police. In its 'statement of basic principles', the current protocol, *Power and trust in the Church* outlines that:

Where allegations of abuse involve behaviour that may constitute a criminal offence, we will support complainants if they decide to report those matters to the Police and will report serious criminal offences ourselves.⁹⁹

In addition, at paragraph 20.2 it states that:

The Director must notify the Police if the conduct disclosed may constitute an offence whether committed in or outside Victoria that is an indictable offence against a law of the Commonwealth or any jurisdiction in Australia punishable by imprisonment for not less than five years (whether or not the offence is or may be dealt with summarily).¹⁰⁰

And at paragraph 20.3:

The Director may notify the Police if the conduct disclosed may constitute any other criminal offence.¹⁰¹

However, a review of the Anglican Diocese of Melbourne files revealed that the Diocese's approach to the issue of police reporting was flexible and inconsistent. The Director of Professional Standards gave encouragement and assistance to those who wished to report, and acquiesced with the wishes of those who did not want to report. Consideration was given to reporting without complainants' consent, but ultimately this did not occur. The evidence suggested that the Diocese did not encourage complainants to report when they had already done so to no avail. There was evidence that the Diocese sometimes made an internal decision not to report a matter. Also, there were a substantial number of cases where there was no evidence that the issue of reporting had been considered.¹⁰²

The Committee was concerned by the approach that it is the responsibility of victims to report to police. It recognised that the position may be different in some organisations, depending on whether the allegation is current or relates to abuse that occurred in the past. That is, the organisation reports contemporary allegations to police, but it expects adults who were abused as children to decide whether to make a report.¹⁰³ Captain Malcolm Roberts, Territorial Legal Secretary of the Salvation Army, told the Committee that:

99 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 4.

100 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 17.

101 Anglican Diocese of Melbourne (2010) *Power and trust in the church. A protocol under the Professional Standards Act 2009 for responding to abuse harassment and other misconduct within the church*, p. 17.

102 See Appendix 9 for further details.

103 For example refer to Berry Street (2012) *Complaints—adult care leavers policy*. Richmond, Berry Street, p. 5.

Our view about that [the reporting of criminal child abuse by adult victims] is that when people are adults, those adults should have the responsibility of reporting to the police. It does not help if we report to the police when they [the victim] do not want to. It does not help if we report to the police and they choose not to proceed, so the police are left without any evidence. People should report child abuse to the police, especially when they are adults. Even if these things occurred 25, 30 or 40 years, they should report them to the police, and we would do everything to encourage them to do it, but it is not our responsibility. How we deal with the person who they have made allegations against, that is another question.¹⁰⁴

The Victorian Conference of the Seventh Day Adventists explained its perspective that a ‘one size fits all approach’ to reporting may not be appropriate:

Every effort is made to report all allegations of abuse, assault and neglect. However, it is worth highlighting that these issues are often laden with moral and ethical quandaries and a ‘one size fits all approach’ does not translate into what may be ‘best practice’.

The church recognises that there may be times that the pain and consequences for the victim to go to the police may frequently lead to the victim’s reluctance to report the abuse. At these times there may also be a concomitant constraint upon the church to abide by the wishes of the victim. For example, if the ‘child’ is now an adult and expressly states that they do not want the alleged abuse reported, and the person alleged to have committed the abuse was deceased, perhaps it may not be reported, as an investigation would (in all likelihood) be unable to be progressed.¹⁰⁵

The Committee takes the view that organisations have a duty to report allegations of criminal child abuse in the organisation to police, whether they be contemporary allegations or reports of abuse that occurred in the past. The issue of allegations of past abuse is discussed in detail in Part F and G. Recommendation 23.1 in Part G addresses the need for compulsory reporting to police of allegations of criminal child abuse.

Finding 16.5

A number of policies used by organisations that provide services in unregulated sectors do not make it clear that all staff have a responsibility to report allegations of criminal child abuse to police, and some policies suggest that the onus is on victims to do so.

16.3. Reporting allegations of criminal child abuse to other authorities

Although the Committee is strongly of the view that all allegations of criminal child abuse must be reported to police, it acknowledges that other relevant authorities may also require notification. In particular, this relates to government departments that contract non-government organisations to deliver services on its behalf and have a duty of care to clients in those services.

¹⁰⁴ *Transcript of evidence*, Salvation Army, Melbourne, 11 April 2013, p. 11.

¹⁰⁵ *Submission S258*, Victorian Conference of the Seventh-day Adventist Church, p. 45.

16.3.1. Organisations that operate services in regulated sectors

Critical incident reporting to DHS

In Victoria, funded non-government organisations that deliver out-of-home care and other DHS services are subject to service agreements and are required to comply with critical incident reporting requirements. The Secretary of DHS, Ms Gill Callister, explained to the Inquiry:

It is extremely important in such a dispersed system that cares for children across Victoria in multiple ways that we actively seek to have a process that responds to any concerns about children in care.¹⁰⁶

Ms Callister explained that funded non-government organisations that fail to meet the critical incident reporting requirements are in breach of their service agreements with the Victorian Government.¹⁰⁷

The DHS *Critical incident instruction* identifies three levels of incidents that apply to allegations of assaults in out-of-home care services and other DHS funded services (outlined in Table 16.1). Category One incidents are the most serious and require an urgent response. When an agency receives a report about an alleged assault, it is required to categorise the incident and ensure a report is made to DHS. The *Critical incident instruction* states that ‘it is expected that senior staff will use their judgement in considering the sensitivity and appropriate grading of incidents being reported.’¹⁰⁸

Table 16.1: Classifying allegations of assault as critical incidents

Category	Type of alleged assault
Category One	Sexual <ul style="list-style-type: none"> • rape of or by a client • rape or indecent assault by a staff member or volunteer carer • production of child pornography by a client, staff member or volunteer. Physical <ul style="list-style-type: none"> • physical assault of a client by a staff member or volunteer carer • physical assault of or by a client resulting in medical attention being required for the victim (for example, stitches, surgery, setting of a fracture) • physical assault of or by a client involving a weapon such as a knife, hammer or other object.
Category Two	Sexualised play of a concerning nature by a client. Physical assault of or by a client resulting in first aid being required for the victim (this does not include the assault of a client by a staff member).
Category Three	Shoving or pushing by a client that does not cause injury.

Source: Victorian Government (2005) Responding to allegations of physical or sexual assault. Melbourne, Department of Human Services, p.21.

106 *Transcript of evidence*, Department of Human Services, Melbourne, 22 October 2012, p. 4.

107 *Transcript of evidence*, Department of Human Services, p. 4.

108 Department of Human Services (2011) *Critical client incident management instruction*, p. 20.

Any physical or sexual assault of a child allegedly perpetrated by a staff member against a client is a Category One incident according to the *Critical incident instruction*:

Allegations of assault of a client by a staff member, volunteer carer or member of the carer's household must be reported as a Category One incident regardless of whether medical attention is required and regardless of the type of assault alleged (for example, alleged rape or indecent assault).¹⁰⁹

The *Critical incident instruction* also provides clarification on how to identify assault, making it clear, for example, that sexual assault includes a broad range of behaviours, including those that do not involve touching:

Sexual assault includes rape, assault with intent to rape and indecent assault. An indecent assault is an assault that is accompanied by circumstances of indecency. Examples are unwelcome kissing or touching in the area of a person's breasts, buttocks or genitals. Indecent assault can also include behaviour that does not involve actual touching, such as forcing someone to watch pornography or masturbation.¹¹⁰

Despite extensive and detailed guidance on how to report incidents to DHS, the Committee found that in practice non-government organisations can experience challenges assessing allegations of assault and determining what category to apply as part of the DHS critical incident reporting. For example, in a one-month period MacKillop Family Services incorrectly categorised three incidents of staff-to-client assault. These were initially reported as Category Two incidents, requiring a less immediate response. DHS subsequently identified that these should have been categorised as Category One incidents and reported to police as soon as practicable. The Committee suggests that this highlights the need for increased education, assistance and skill-building among personnel in organisations. While organisations might have written processes, personnel need the knowledge and skills to effectively implement them.¹¹¹

The Committee also found that several organisations funded by DHS refer to the policy guidelines provided by DHS, yet do not stipulate the process for reporting incidents to DHS clearly in their own internal policies. An example of this approach is St Luke's Anglicare.¹¹²

Different processes for different clients

The Committee identified that some services have a number of different requirements for reporting incidents. It noted that large organisations that provide multiple services may have different processes for assessing or responding to allegations of suspected child abuse depending on whether those services are government funded and depending on which department the funding is received from.

For example, St Luke's Anglicare, in its response to the Committee's request for information, explained that its processes for handling allegations of child abuse differ depending on who the client is and which government department funds the program. St Luke's Anglicare reports incidents to DHS and the Department of Health

¹⁰⁹ Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

¹¹⁰ Department of Human Services (2011) *Critical client incident management instruction*, p. 23.

¹¹¹ *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013, p.3.

¹¹² *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

but has different processes for each department. In addition, DHS reporting varies depending on whether the client uses St Luke's Anglicare's disability services or its out-of-home care. St Luke's Anglicare informed the Inquiry that:

For all complaints/allegations of abuse relating to the care of young people in Out of Home Care (Foster care or Residential Care), St Luke's is bound by the DHS critical incident reporting guidelines and the Quality of Care guidelines (previously provided) ...

For all complaints/allegations that come from other clients involved now or historically with the agency, who are not in care or had not been previously in care, our process is guided by the St Luke's client concerns and complaints guidelines.¹¹³

Similarly, Berry Street Victoria has separate guidelines for responding to complaints or allegations that relate to out-of-home care and other DHS funded services, and for other service areas, including care leavers.

Anglicare Victoria appears to have tried to make its guidelines apply consistently across all services. It provided policy documents to the Inquiry which stipulate that, in addition to reporting processes for critical incidents in DHS services:

Anglicare Victoria has an expectation that all programs regardless of their funding source report to senior management all critical incidents that occur within programs. This includes Community Programs and Parish Partnerships.¹¹⁴

The Committee considered that this type of variation in reporting processes within the one organisation can make the process for reporting an allegation to the relevant authorities less clear. This highlights the value of creating a consistent process to oversee all organisations and departments, as discussed in Chapter 18.

Government schools and early childhood services—reporting to DEECD and VIT

Under the Joint Protocol,¹¹⁵ Government schools and early childhood service in Victoria are required to report serious incidents to DEECD. As described in Section 16.2.1, serious incidents include 'an allegation of abuse by a proprietor, staff member, family day carer or visitor at a licensed children's service.'¹¹⁶

With respect to Victorian early childhood services, regulatory and enforcement functions are undertaken by the Quality Assessment and Regulation Division of DEECD. DEECD responds to notifications and complaints, grants licences, determines administrative and statutory sanctions and provides advice and guidance to service proprietors and staff on compliance matters.

In relation to Catholic and Independent schools, the Joint Protocol states that matters relating to misconduct of personnel should be referred to the CEOM or in the case of an independent school to the principal/chairperson of the relevant independent school. As described in Section 16.2.1, the Committee found independent schools lacking

113 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013.

114 *Submission S146*, Anglicare Victoria, p. 4 Appendix 2.

115 See Section 16.2.1.

116 Department of Human Services Child Protection & Department of Education and Early Childhood Development Licensed Children's Services and Victorian Schools (2010) *Protecting the safety and wellbeing of children and young people: A joint protocol*, p. 25.

in oversight. Although the CEOM has responsibility for oversight of some Catholic schools in Victoria, congregational schools and Catholic schools in other dioceses have their own procedures for responding to allegations of criminal child abuse.

The Victorian Institute of Teaching (VIT) is the registration body for the teaching profession in Victoria. Under the *Education and Training Reform Act 2006* (Vic) (the ETR Act), VIT is authorised to investigate allegations against registered teachers in the government, Catholic and independent sectors.¹¹⁷ VIT has the authority to conduct investigations into:

- complaints of misconduct, serious misconduct, serious incompetence or fitness to teach
- a teacher's conviction or finding of guilt of an indictable offence
- action taken by an employer in relation to serious misconduct, serious incompetence or fitness to teach.

Under the ETR Act, employers are subject to requirements to notify the VIT about actions taken against a teacher that include those that arise from allegations of criminal child abuse. The ETR Act requires employers to inform the VIT of any action taken against a teacher in response to a teacher's misconduct, serious misconduct, serious incompetence or lack of fitness to teach.¹¹⁸ The employer must also immediately notify VIT if it becomes aware that a teacher has been charged, is on trial, or has been found guilty of sexual offences.¹¹⁹

VIT is required to cancel the registration of a teacher if the teacher is convicted or found guilty of a sexual offence (involving a child) in Victoria, or elsewhere.¹²⁰

The Committee identified that the Joint Protocol does not refer to any obligation of employers to inform VIT of allegations of criminal child abuse involving a teacher.

Furthermore, the Committee is aware that there is an agreement between VIT and CEOM that complaints against registered teachers in Catholic schools are to be investigated by the Catholic Education Office. The Catholic Diocese of Ballarat, for example, explained that there is an agreement ensuring that any allegations made against teachers in schools of the Diocese will be investigated by an officer from the Office for Professional Conduct Ethics and Investigations (OPCEI) from the Catholic Education Office Melbourne, in order to ensure that an officer from outside the Diocese investigates the allegation.¹²¹

There is also the obvious limitation that VIT only has jurisdiction over allegations against registered teachers. Its role does not extend to other staff associated with schools.

Finding 16.6

Organisations in regulated sectors have requirements to report critical incidents to a funding or relevant body and can be subject to review if they do not handle allegations of criminal child abuse appropriately.

117 *Education and Training Reform Act 2006* (Vic) s.2.6.30.

118 *Education and Training Reform Act 2006* (Vic) s.S2.6.301.

119 *Education and Training Reform Act 2006* (Vic) s.S2.6.31.

120 *Education and Training Reform Act 2006* (Vic) s.S2.6.29.

121 *Right of Reply*, Catholic Diocese of Ballarat Education.

16.4. Organisations that operate services in unregulated sectors—no guidelines for reporting to authorities

In Victoria, non-government organisations that operate in non-regulated sectors are under no obligation to report allegations of child abuse to any authorities. The Committee sought advice from a number of peak bodies regarding the level of policies in place in their sectors and the degree to which they are implemented by non-government organisations.

Some peak groups explained in evidence to the Inquiry that they were not sure whether all of their member organisations have robust processes in place to manage complaints of organisational child abuse.¹²² For instance, the Islamic Council of Victoria is the peak body for Muslim organisations in Victoria. It represents Victoria's 90,000 Muslims through 47 member and affiliate organisations. The General Manager of the Council, Mr Nail Aykan, stated at a public hearing that the majority of the 47 groups would not have policies or procedures in place to respond to organisational child abuse.¹²³

Vicsport, the peak body for sports organisations, told the Inquiry that sports organisations are likely to have processes in place for responding to reports of suspected child abuse, but the extent to which they are implementing the processes is unclear. Vicsport represents 170 member groups, 16,000 clubs and associations and an estimated 1.8 million participants, workers and volunteers. The CEO of vicsport, Mr Mark McAllion, stated:

For the national sporting organisation to be funded by the Australian Sports Commission they need to have a member protection policy in place. It would be the same at the state level. So for the state sporting associations to receive money from the state government they would need appropriate member protection policies in place. Some sports would mandate the adoption of these policies. The problem is whether clubs are actually implementing the policy. It is a policy that is now on their website and the club has signed up to it, but are they implementing it? That is the challenge at the local level and there is no way we can answer it.¹²⁴

Finding 16.7

Organisations that provide services in unregulated sectors have no overarching requirements or oversight to ensure they report all suspected criminal child abuse to police and relevant authorities and are not subject to any external review of their responses if they do not handle allegations appropriately.

122 Also refer to *Supplementary evidence*, Child protection briefing paper for the Council of Presidents' meeting, Jewish Community Council of Victoria (JCCV), 22 April 2013; *Transcript of evidence*, Australian Camps Association, p. 7.

123 *Transcript of evidence*, Islamic Council of Victoria, Melbourne, 15 April 2013, p. 16.

124 *Transcript of evidence*, vicsport, Melbourne, 12 April 2013, p. 7.

Chapter 17

Internal processes and systemic review

AT A GLANCE

Background

Internal processes must reflect the gravity of finding that criminal child abuse has occurred in an organisation. In some cases, however, there may have been insufficient evidence to establish criminal child abuse, yet there might be sufficient concerns for disciplinary measures to be pursued within the organisation. In addition, organisations can undertake to review gaps in their systems and processes to ensure continuous learning and improvement of policies.

Key findings

- Most organisations have disciplinary processes in place for breaches of their code of conduct, but in practice find it difficult to make the decision to stand personnel aside when they are subject to an allegation of criminal child abuse.
- Few organisations indicated that they undertake systemic reviews of their systems and processes to identify any internal factors that may have contributed to an incident of criminal child abuse, and those that do are often expected to have such processes in place through contractual arrangements with funding bodies.
- Organisations contracted by government to provide out-of-home care services can be subject to external review of their systems and processes if concerns are raised about the quality of care they provide. The education, recreation, religious and other sectors are not subject to any external review of their systems and processes.

The Committee heard about the importance of effective internal processes as part of an organisational response to allegations of criminal child abuse. Internal processes must reflect the gravity of finding that criminal child abuse has occurred in an organisation. In some cases, while there may be insufficient evidence to establish criminal child abuse, there may nevertheless be sufficient concern for disciplinary measures to be adopted within the organisation. As Professor Patrick Parkinson from Sydney University told the Inquiry:

From my research I know how few cases end up in a conviction in child sexual assault matters, and when it is a long time ago there are all sorts of reasons why you cannot get a conviction. So there needs to be in any organisation disciplinary processes which determine whether this person is fit to remain in that employment in a situation where the police have not pressed charges, the person has not gone to the police, the police do not feel there is enough evidence, they have dropped the case or the DPP has dropped the case—there are a whole range of scenarios out there. They cannot just leave them in ministry; they cannot leave them having access to children. The disciplinary aspect is obviously critical to child protection—to today’s child protection.¹²⁵

There is a strong link between internal processes and systemic reviews and prevention. Review processes triggered by allegations of criminal child abuse can be the basis for reducing the situational risk of child abuse discussed in Part D. Investigation by authorities such as the Victorian Institute of Teaching (VIT) and the Department of Human Services’ (DHS) Suitability Panel should feed into the selection of staff and working with children check as discussed in Part D to decrease the risk of unsuitable personnel gaining access to children through non-government organisations.

17.1. Disciplinary processes and suspending staff

The Committee heard that it is important for organisations to consider how to appropriately respond internally to personnel who are the subject of a criminal child abuse allegation. This includes standing personnel down pending investigation and subsequent disciplinary processes.

The Committee found that many religious organisations stipulate that in serious circumstances, such as a potential criminal investigation, a staff member may be restricted in their duties or suspended from duties while the outcomes of an investigation are pending. Anglicare Victoria’s disciplinary policy states:

In some situations while disciplinary action is pending, it is necessary to place temporary restrictions on an employee’s duties, their access to parts of the workplace, their contact with individuals (colleagues, volunteers or clients) or even to require them not to attend work at all, pending the resolution of disciplinary concerns.¹²⁶

Bishop Iakovos of Miletoupolis of the Greek Orthodox Archdiocesan District of Victoria stated that if a minister of religion in the Archdiocese is involved and the matter is assessed as a potential crime, the Archdiocese reports the case to police and suspends the alleged offender from active duty. When the Archdiocese is informed of the outcome of the investigation, it either reinstates or defrocks the minister of religion.

¹²⁵ *Transcript of evidence*, Professor Patrick Parkinson, p. 6.

¹²⁶ *Submission S146*, Anglicare Victoria, p. 3, Appendix 4.

Scouts Victoria provided a sample letter (shown in Box 17.1) to the Inquiry which is used to notify personnel who have been the subject of an allegation. This provides an example of the range of responses that potentially occur if personnel have potentially breached the code of conduct or had an allegation of criminal conduct made against them.

Box 17.1: Scouts Victoria—notification of investigation

Notification of Investigation

Dear

I have been advised that you have acted in a manner, which if proven to be true, could be a breach of the Scouting Code of Conduct. It is alleged that on (date and time) at (place) whilst involved in (outline Scouting activity) as a (role at the time) you (outline of conduct or behaviour).

I have appointed (name of person) to investigate this matter and you will have the opportunity to speak with that person to explain your understanding of the circumstances and if you wish have a support present at the time. I will keep you informed of the progress of the investigation.

Until the investigation is completed you are to:*

- Remain in your current role;
- Be temporarily placed in another role; or
- Be stood down from Scouting duties.

(* insert as appropriate)

If you have any questions on this matter at any time please contact me on (Telephone Number).

Yours in Scouting

Source: Scouts Victoria, *Submission S200*, p.5, Appendix 1.

While some organisations have comprehensive policies on standing down their staff pending an investigation of an allegation of child abuse, not all organisations have a policy of ensuring action is taken to suspend personnel from their duties.

In an analysis of four months of Category One incident reports in children, youth and family services funded by the DHS, the Committee identified that, on average, only 18 per cent of staff were stood down pending an investigation into an allegation of staff to client assault.¹²⁷ This might mean that organisations need a greater understanding to ensure they take appropriate action in suspending personnel from their duties until the outcomes of any investigations are determined.

The Centre for Excellence in Child and Family Welfare highlighted the complexity of organisational decision-making in response to allegations of child abuse particularly with regard to responding to personnel in an organisation:

Some organisational members have expressed concern about the difficulties of balancing the need to ensure the child's safety and integrity of their voice and unimpeded investigation with the community service organisation's obligations as an employer to ensure transparent and respectful processes for the employee:

¹²⁷ *Supplementary evidence*, Response to request for information, Department of Human Services, 17 June 2013.

such as when required to stand down staff pending an investigation. This places the community services organisation in a position of conflicting responsibilities when a Police investigation cannot be actioned or concluded in a timely way. Some community organisations have expressed concern about the loss of experienced staff or carers in the context of allegations subsequently not substantiated.¹²⁸

The Committee heard that following a review of misconduct or an investigation into an allegation of criminal child abuse, the possible outcomes for personnel in non-government organisations include:

- No further action—the behaviours or complaint are unfounded and there is no evidence of risk or harm to children.
- Ongoing monitoring or performance review—if concern is warranted the basis will need to be outlined to the person who is the subject of the allegation, the organisation’s expectation should be clearly stated and a review period put in place. Ongoing supervision and performance management will be required.
- Disciplinary procedures—if concern is warranted a range of disciplinary procedures may be activated. If there is any risk or threat to children in the organisation, the organisation should suspend the person immediately.
- If the investigation shows no basis for concern, the organisation needs to take care if or when the person returns to work.¹²⁹

The Committee heard examples where no disciplinary action had taken place, despite significant evidence of concerning conduct or substantiated allegations of criminal child abuse. This is discussed in more detail in Chapter 7 of Part C and in Chapter 21 of Part F.

Finding 17.1

Most organisations have disciplinary processes in place for breaches of their code of conduct, but in practice find it difficult to make the decision to stand personnel aside when they are subject to an allegation of criminal child abuse.

17.2. Continuous learning and identifying systemic problems

When an organisation receives a report of suspected criminal child abuse, it is important that it reviews any gaps in its systems and processes that might have enabled the abuse to occur. This type of review contributes to continuous learning and improvement of policies and procedures in the organisation.

This process of systemic review is encouraged by the Government for organisations it contracts to provide services. For example, in its instructions to community service organisations in managing critical incidents, the Victorian Department of Human Services states that:

Where there is organisational learning and change the safety and quality of services to clients will improve ...

¹²⁸ *Submission S327*, Centre for Excellence in Child and Family Welfare, p. 9.

¹²⁹ Childwise (2004) *Choose with care: A handbook to build safer organisations for children*. South Melbourne, Childwise, pp. 118–19.

Incidents should be systematically analysed and ongoing change implemented in order to prevent similar events from occurring.¹³⁰

The DHS instructions recommend exploring the source of a problem and suggesting productive solutions in the form of preventive system changes. DHS focuses on systems and processes, not individual performance.

Most organisations, however, are not expected to undertake such reviews of their processes. The onus rests with them to take the initiative in any circumstances in which criminal child abuse is suspected in their organisation.

The Committee noted that very few organisations undertake systemic reviews. Those that do undertake reviews tend to be the larger community-sector organisations that are funded by DHS and are required to integrate systemic improvement into their processes for responding to allegations of child abuse.

In this context, the Committee noted that some agencies funded by DHS indicated they have processes for systemic improvement. For example, Anglicare has a policy of compiling a monthly summary of incident reports, in order to identify patterns. McKillop Family Services also uses monthly data for continuous improvement and has a detailed flow chart explaining how this works. St Luke's Anglicare uses incident reporting data to inform practice improvements. In its *Client concerns and complaints guidelines*, it notes 'Because St Luke's is committed to the communities, individuals and families that it services, as well as continuous improvement, the Agency is open to receiving complaints and concerns to help improve its service delivery.'¹³¹

Similarly, Berry Street Victoria advised the Inquiry that:

With each instance of complaint being received and investigated Berry Street learns more. More about our own history, about our failures and successes, about the adult lives of children we have cared for and more about resilience, determination and dignity of people that have suffered abuse or maltreatment. This is the gift that complaints give to Berry Street when they have the courage to raise painful issues of childhood abuse and neglect. Our part is to treat people with respect and dignity and provide full and fair reparation commensurate with any harm that has occurred.¹³²

The Committee observed that many organisations do not integrate systemic review into their processes for responding to allegations of child abuse. Some organisations do not regard allegations or complaints as an opportunity to learn. For example, Captain Malcolm Roberts, Territorial Legal Secretary of the Salvation Army, said:

The claims we are dealing with, they started to arise since the 1990s, and we have been dealing with those. When you deal with those and you look back, you can say yes, there was abuse and at various times in those various homes there was lots of abuse and people were really, really badly treated. The Salvation Army has not conducted a review or an investigation into what actually went on in those homes because it was 20, 30, 40 years ago. Most of the people who could give us any guidance around what happened in those homes are dead. It is not possible to make an investigation into what happened at Box Hill Boys' Home in 1950 or 1960.¹³³

130 Department of Human Services (2011) *Critical client incident management instruction*, p. 26.

131 *Supplementary evidence*, Client concerns and complaint guidelines, St Luke's Anglicare, 28 March 2013, p.3.

132 *Submission S262*, Berry Street, p. 11.

133 *Transcript of evidence*, Salvation Army, p. 11.

Similarly, Fr Greg Chambers, Provincial of the Salesians of Don Bosco, stated:

I would have to say that we have not conducted our own particular inquiry. However, we have assiduously followed up on each and every claim that has come to our attention either through Towards Healing or with the involvement of the police, involvement of the lawyers or involvement of the courts. And whilst we have not conducted our own internal study, we have been assiduous in following up all claims and trying to bring perpetrators to justice and to give proper compensation in every respect to the victims.¹³⁴

The Committee notes that internal processes are likely to be different when an organisation receives an allegation about past child abuse. This is because the person against whom an allegation is made may no longer be an employee, there may be few witnesses and there may be few remaining records from the time of the allegation. However, it is the Committee's view that systemic investigations remain an important element of an organisation's response in such situations.

The Committee considers it important that organisations undertake regular systemic reviews following any allegations of child abuse by their personnel. These may help to identify and address any underlying systemic problems and prevent child abuse from happening in the future.

Finding 17.2

Few organisations indicated that they undertake systemic reviews of their systems and processes to identify any internal factors that may have contributed to an incident of criminal child abuse, and those that do are often expected to have such processes in place through contractual arrangements with funding bodies.

17.3. Systemic oversight

The Committee did not identify any peak industry or professional bodies in Victoria that have responsibility for systemic oversight of organisations that operate services in non-regulated sectors.

In the education sector, the Committee is not aware of DEECD or VIT undertaking systemic reviews of allegations in schools and early childhood services in their capacity as oversight bodies.

For organisations funded to provide out-of-home care services, DHS has specific processes for conducting investigations concerning quality of care and suitability of carers.¹³⁵ This is in order to ensure that DHS is satisfied with the performance of the contracted organisations and can identify and request improvements for an organisation to continue to be eligible for ongoing funding.

The Committee identified that a body with responsibility for systemic reviews across all sectors is needed that is able to liaise with peak organisations and regulatory bodies and police.

¹³⁴ *Transcript of evidence*, Salesians of Don Bosco, Melbourne, 29 April 2013, p. 3.

¹³⁵ Department of Human Services (2009) *Guidelines for responding to quality of care concerns in out-of-home care*, p. 48.

Quality of care review

Responding to quality-of-care concerns is a joint responsibility of DHS and community service agencies. The aim is to act in the best interests of all children and young people in out-of-home care and also to satisfy DHS that the organisation it has contracted should continue to be funded to provide the service.¹³⁶ In instances of abuse or those involving quality-of-care concerns in community service organisations, DHS undertakes a departmental quality-of-care/support review. Figure 17.1 illustrates the process for responding to allegations relating to quality of care.

DHS has operated under documented processes for decision making, investigation and formal care reviews since November 2007. These include procedures for managing quality-of-care concerns in all out-of-home care placements, including foster care, lead tenant, residential care and kinship care.

Suitability Panel

The Suitability Panel is a statutory body created under the *Children, Youth and Families Act 2005* (Vic). Its function is:

- (a) to hear any matter referred to it by the Secretary
- (b) to determine whether or not a person should be disqualified from being placed on the register of out of home carers.¹³⁷

On the balance of probabilities, the Suitability Panel has a role in determining whether or not the allegation of physical or sexual abuse is proved. If it finds that the alleged abuse occurred it:

... will make a finding of misconduct and will then decide on the balance of probabilities whether the person poses an unacceptable risk of harm to children.

If the Panel finds that a person poses an unacceptable risk to children, the Panel must find that the person be disqualified as a carer.¹³⁸

The Suitability Panel is chaired by a legal practitioner appointed by the Victorian Government on a three-year basis. It generally comprises people with qualifications and experience in law, social work, psychology and the treatment of sex offenders.

Since 2007 the Suitability Panel has considered 69 matters referred to authorised investigators for investigation. Twenty-five of those have been referred to the Suitability Panel, which has disqualified or placed five carers on a 'negative register'. This prevents them from working in child-related employment in the community service sector and revokes their Working with Children Check card.

DHS told the Inquiry that as part of a broader departmental project examining responses to vulnerable client groups, it was considering the applicability of the *Guidelines for responding to quality of care concerns in out-of-home care*. This included

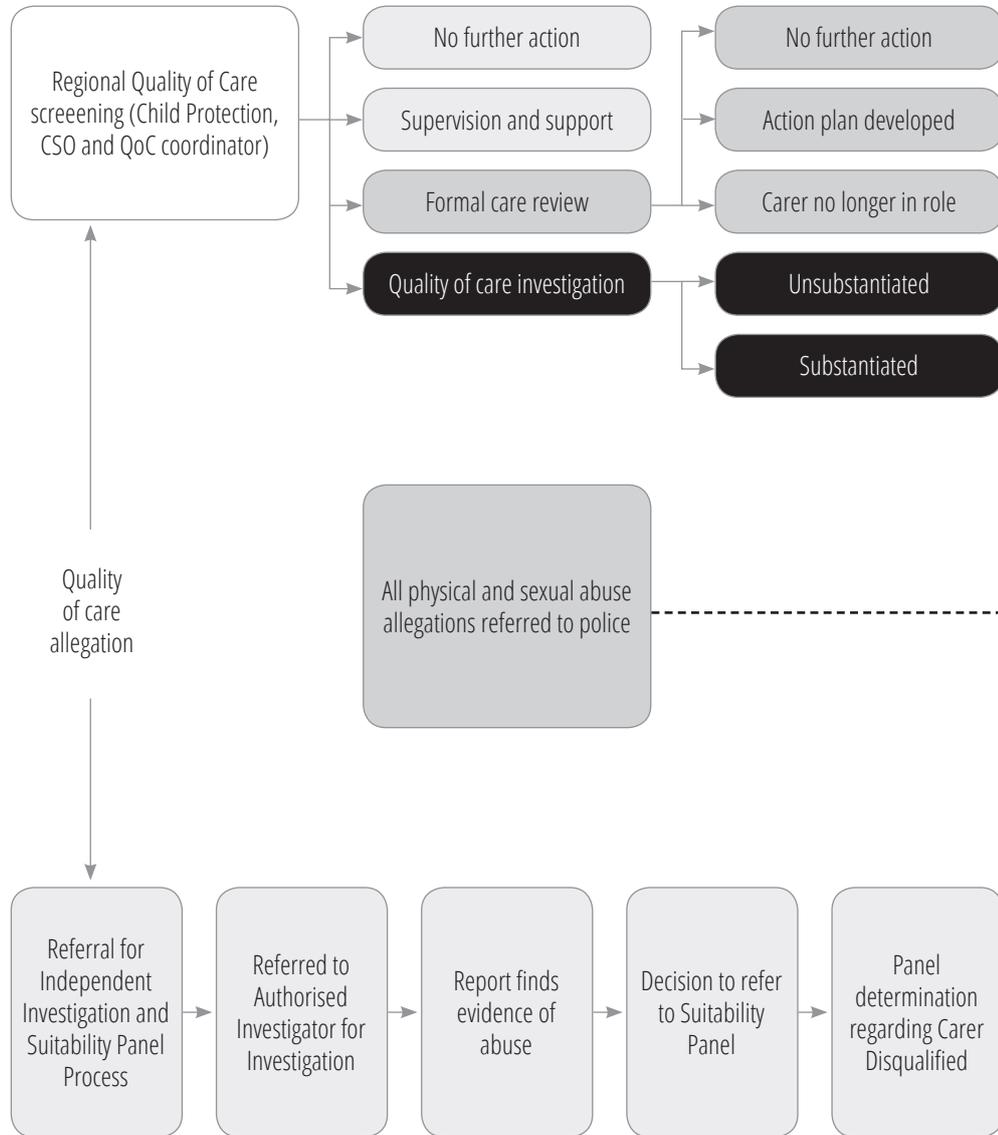
136 The guidelines were developed in consultation with the Centre for Excellence in Child and Family Welfare, the Foster Care Association of Victoria, representatives from Community Service Organisations providing out-of-home care, Aboriginal Community Controlled Organisations providing out-of-home care, the Office of the Child Safety Commissioner, CREATE Foundation and the Department of Human Services.

137 *Children, Youth and Families Act 2005* (Vic) s.101.

138 Suitability Panel Overview. Accessed on 18 October 2013 from <http://www.suitabilitypanel.vic.gov.au/index.htm>.

the roles of the carer register, independent investigation and the Suitability Panel in overseeing out-of-home care funded by Disability Services.¹³⁹

Figure 17.1: Quality of care review: Process for responding to allegations relating to quality of kinship, foster and residential care



Source: Department of Human Services, *Presentation*, Supplementary evidence received 22 October 2012.

Finding 17.3

Organisations contracted by government to provide out-of-home care services can be subject to external review of their systems and processes if concerns are raised about the quality of care they provide. The education, recreation, religious and other sectors are not subject to any external review of their systems and processes.

¹³⁹ *Supplementary evidence*, *Presentation*, Department of Human Services, 22 October 2012.

Chapter 18

Improving monitoring, oversight and capacity building regarding reports of child abuse

AT A GLANCE

Background

Many organisations indicated that they would welcome assistance and guidance in implementing appropriate preventative and responsive policies relating to criminal child abuse. There is no current independent oversight of the systems and processes used by non-government organisations in Victoria for handling allegations of such abuse. The Committee considered the model that operates in New South Wales to oversee and build the skills and knowledge of organisations.

Key findings

- There is a need for independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.
- Many organisations are seeking guidance in developing the skills and knowledge necessary to respond appropriately to allegations of criminal abuse and to report to police and other authorities.
- The New South Wales Ombudsman has a system for independently scrutinising and monitoring the systems and processes of organisations in the handling of allegations of criminal child abuse. The model also provides training and assistance to personnel in building their knowledge and skills in managing allegations of criminal child abuse and has resulted in improvements in the systems and processes of organisations in NSW.

Recommendations

- That the Victorian Government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:
 - ♦ oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
 - ♦ undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
 - ♦ scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
 - ♦ monitor and report on trends associated with allegations by collecting relevant data and report to Parliament on an annual basis
 - ♦ build the skills and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

The Committee found that the systems and processes in place for responding to any suspected child abuse in organisations vary significantly across organisations and sectors. There were some inconsistent, complex and narrowly targeted approaches. Furthermore, organisations vary in how they move through each stage of the process. Organisations find particular stages of the process challenging, such as the initial assessment of an allegation and how to respond and report.

While these inadequacies in the approaches of non-government organisations may only be a consequence of inexperience and lack of knowledge, they can have significant implications for the safety of children.

The Committee identified that some organisations are seeking support and guidance in their assessment of and response to allegations of any suspected child abuse. In addition to the opportunity to build their skills and knowledge, organisations want ready access to technical advice from a body with the relevant investigatory expertise to assist in them to respond appropriately to allegations.

The Committee found that in order to improve responses by organisations to allegations of criminal child abuse, there needs to be a more coordinated system for monitoring and scrutinising existing systems and processes. Such a system would include:

- independent scrutiny of organisations when concerns arise regarding the handling of reported child abuse
- capacity-building for organisations in assessing allegations and in their initial response
- identifying patterns and trends across organisations and sectors.

The Committee considered approaches recommended to the Inquiry, including the NSW Ombudsman system.

18.1. Need for independent monitoring and oversight in Victoria

Many witnesses recommended stronger oversight and scrutiny of the systems and processes of organisations. For example, the CEO of the Australian Childhood Foundation, Dr Joe Tucci, stated that:

I do not think that currently in Victoria we have a tight enough regime of ensuring that organisation policies and procedures can protect children from their own staff and volunteers within those organisations ...

Child abuse is a problem that happens behind closed doors. To fight it, you need to open those doors and enable people to scrutinise the systems that are in place to protect children. In order to do that, you really need systems that have at their heart things like auditing processes and that have policies that can be matched against standards and independent scrutiny of approaches that organisations take.¹⁴⁰

Throughout the Inquiry, the Committee heard a consistent theme in respect of organisational responses to both current and historical allegations—the need for independent scrutiny of the systems and processes that organisations have in place for responding to reported criminal child abuse. The issue of independent scrutiny of the handling of allegations relating to past criminal child abuse is considered in Chapter 21 of Part F.

¹⁴⁰ *Transcript of evidence*, Australian Childhood Foundation, Melbourne, 9 November 2012, p. 4.

Ms Dianne Hadden, for example, identified the need ‘to oversight the issue of the practices, policies and protocols in religious and non-government organisations in relation to how children are treated and how any complaints about their treatment are handled.’¹⁴¹ As stated by Ms Joumanah El Matrah, Director of Australian Women’s Centre for Human Rights:

it is the government that legislates on what is legal and illegal behaviour; therefore they should have the power to monitor everything that is done to eradicate that behaviour.¹⁴²

Independent oversight is important in ensuring that people in positions of power are not immune from scrutiny. Ms Caroline Worth of South Eastern Centre Against Sexual Assault (CASA), for example, commented:

I think there has to be an oversight in some way of a non-involved organisation because one of the things is that, unwittingly, people protect very powerful men—not invariably men, it is women occasionally. I think the systems are set up to do that. You do not get into senior positions without people owing you favours. I think that is the reality of this world. And once you get there you can call in the odd favour, and that is what people do. It is just how everything seems to work. I think you need an outside oversight.¹⁴³

The evidence of some witnesses about their experience in bringing child abuse allegations to light in an organisation provides a strong case for independent oversight. They told of their disappointment that organisations did not appropriately act on their disclosures and some explained that they had felt unsupported and victimised themselves. Their stories suggested there was no avenue to appeal decisions in some organisations or to have them reviewed.¹⁴⁴ In its review of the Catholic Education Office Melbourne (CEOM) procedures, for example the Committee did not identify an appeal process.

Oversight in relation to religious organisations was called for by many witnesses to the Inquiry. Professor Parkinson, for example, stated that ‘there should be independent audits of diocesan and religious institute responses in the future.’¹⁴⁵ This was echoed by Mr Michael Holcroft, President of the Law Institute of Victoria, who stated:

we would support an oversight body to oversee the internal complaints processes of religious organisations and possibly to receive direct complaints and mediate those complaints in accordance with restorative justice principles.¹⁴⁶

Finding 18.1

There is a need for independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.

141 *Transcript of evidence*, Ms Dianne Hadden, Ballarat, 28 February 2013, p. 2.

142 *Transcript of evidence*, Australian Muslim Women’s Centre for Human Rights, Melbourne, 22 April 2013, p. 4.

143 *Transcript of evidence*, Centres Against Sexual Assault, Melbourne, 9 November 2012, pp. 5–6.

144 *Transcript of evidence*, Ms Carmel Rafferty; *Transcript of evidence*, Mr Graeme Sleeman; *Transcript of evidence*, Mr Michael Crowe, Ballarat, 28 February 2013.

145 *Transcript of evidence*, Professor Patrick Parkinson, p. 8.

146 *Transcript of evidence*, Law Institute of Victoria, Melbourne, 17 December 2012, p. 2.

18.2. Organisations—guidance and scrutiny

Many organisations told the Committee that they are seeking support and guidance in establishing appropriate systems and processes for responding to suspected child abuse and for ensuring they offer a child-safe environment. A number of organisations also expressed a willingness to be open to greater scrutiny of their existing systems and processes.

The Committee received evidence from several organisations that advised they would welcome expert guidance in the design and implementation of processes for handling reports of suspected child abuse. For example, the CEO of the Australian Camps Association, Mr David Petherick, explained: ‘My view is that overwhelmingly our members want to do the right thing, and sometimes it is about getting support and help to do that.’¹⁴⁷

The CEO of the Federation of Indian Associations of Victoria, Mr Vasan Srinivasan, highlighted his community’s willingness to learn, stating:

We need to do more to bring the community’s attention to issues such as child abuse and sexual abuse.¹⁴⁸

He wanted to see ‘a platform to bring community organisations together to give us guidance so that if that happens we know what to do.’¹⁴⁹

Several organisations welcomed greater independent oversight and monitoring of their systems and processes for handling reports of suspected child abuse.¹⁵⁰ For example, Cardinal George Pell, Archbishop of Sydney, stated to the Committee:

I think it would be very good to have a general body a little bit similar to the [NSW] Ombudsman. If there are limitations which are unacceptable, I think it would be a very good thing for church bodies and all non-government, and government bodies, to have to report what they are doing to something akin to the role of the Ombudsman. It would be an insurance for the leaders that the right thing is being done and to help protect the kids.¹⁵¹

In its submission, Jesuit Social Services similarly stated that:

We firmly believe that trust and confidence will only be rebuilt when religious and other community organisations are fully transparent and allow themselves to be scrutinised by the public ...

We hope that opening ourselves up to scrutiny will allow us to restore the trust and integrity that forms the basis of our relationship with the community.¹⁵²

147 *Transcript of evidence*, Australian Camps Association, p. 4.

148 *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8.

149 *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8.

150 For example refer to the submission made by *Submission S226*, Law Institute of Victoria, p. 34; *Submission S350*, In Good Faith and Associates, pp. 45–46; *Transcript of evidence*, Federation of Indian Associations of Victoria, p. 8; *Transcript of evidence*, Greek Orthodox Archdiocesan District of Victoria, p. 5; *Transcript of evidence*, Anglican Diocese of Melbourne, p. 15; *Transcript of evidence*, Catholic Archdiocese of Melbourne, p. 53; *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 34; *Transcript of evidence*, Australian Camps Association, pp. 3–4; *Transcript of evidence*, Commission for Children and Young People, p. 5.

151 *Transcript of evidence*, Catholic Archdiocese of Sydney, p. 34.

152 *Submission S206*, Jesuit Social Services, pp. 2, 5.

The NSW Deputy Ombudsman, Mr Steve Kinmond, explained the benefit of having an independent body to provide technical advice and support:

Having an intermediary in such a position that has police information, child protection information, experience around investigative practice and preparedness to pull agencies together to have a look at what needs to be done, has sufficiently strengthened the New South Wales system.¹⁵³

Finding 18.2

Many organisations are seeking guidance in developing the skills and knowledge necessary to respond appropriately to allegations of criminal abuse and to report to police and other authorities.

18.3. Monitoring and scrutinising systems and processes—the NSW Ombudsman model

The Committee received a large amount of evidence recommending that Victoria adopt a model similar to that of NSW in scrutinising the handling of allegations of child abuse in organisations.

In NSW, the Ombudsman is authorised to monitor and oversee responses to suspected child abuse in organisations. Inquiry participants identified four broad areas as particularly important. These are:

- the capacity to scrutinise and monitor an organisation’s response
- to investigate the manner of the organisation’s response
- to build capacity and assist organisations in appropriately responding to complaints
- to identify and monitor trends in the manner of responding to complaints to assess the adequacy and effectiveness of an organisation’s response.

The combined functions of capacity building and organisational oversight were key factors identified in evidence to the Inquiry. In regard to the NSW model, the CEO of the Australian Childhood Foundation, Dr Joe Tucci, stated:

It has worked with organisations in a capacity building way and over time increased the level of scrutiny that organisations can come under in relation to the way that they investigate claims or allegations of abuse by volunteers and employees. I cannot think of a better system in place anywhere in the world.¹⁵⁴

In May 1999, the NSW Ombudsman’s jurisdiction was expanded to include the oversight of certain types of child-related employment and organisational child abuse allegations.¹⁵⁵ The changes came about as a result of recommendations made by the

153 *Transcript of evidence*, NSW Ombudsman, p. 5.

154 *Transcript of evidence*, Australian Childhood Foundation, p. 3.

155 *Transcript of evidence*, NSW Ombudsman, p. 2.

Royal Commission into the NSW Police Service.¹⁵⁶ The NSW Ombudsman scheme is set out in *NSW Ombudsman—Child Protection in the Workplace 2004*.¹⁵⁷

The Deputy Ombudsman, Mr Steve Kinmond, explained the value of the system. He stated that in the context of responding to allegations of child abuse:

the notion that it is simply a matter of reporting these matters to the police and making sure that this is done consistently is not going to be the solution. In lots of cases, it is the work done by the agency and the continued pursuit and monitoring of matters, together with the need to pull together relevant holdings—and that is where an independent external body can play an essential role—that moves a matter from going nowhere to being in a position to make good judgement calls about the risks that might be in play.¹⁵⁸

In NSW, organisations must notify the Ombudsman about the details of any allegation that falls into the ‘reportable conduct’ category outlined in Box 18.1. The notification is to be made within 30 days of the organisation becoming aware of the conduct. This notification includes the details of the allegation or conviction, advice as to whether or not the organisation proposes to take disciplinary action or other action in respect of the employee and reasons and any written material provided to the employee regarding their view of the action to be taken.¹⁵⁹

Not all of these reportable forms of conduct will necessarily be considered criminal child abuse and reportable to police. They may, however, suggest grooming or other inappropriate behaviours in which early intervention can prevent child abuse from occurring. It is important to remember that notifying the Ombudsman does not replace the requirement to report any criminal matters to the police:

I think the obligation to report to police would have to be part of any system. It is interesting. We have in the last couple of years carried out a number of investigations which relate to the Department of Community Services — and I can mention this because it is on the public record — in terms of its failure to see that the allegations it had in front of it ought to have been reported to the police. It is essential that that be built into the system. ... My comment about mandatory reporting to police not being the solution alone does not mean that there should not be mandatory reporting to police.¹⁶⁰

18.3.1. Operation of the scheme in NSW

The NSW Ombudsman’s role in child protection is centred on the prevention and handling of allegations of ‘reportable conduct’ or reportable convictions.

156 Known as the Wood Royal Commission after the Royal Commissioner, Justice James Wood. The Royal Commission ran from 1995-1997.

157 This document, fact sheets and amendments are available at Ombudsman NSW *Child protection*. Accessed on 18 October 2013 from <http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>.

158 *Transcript of evidence*, NSW Ombudsman, p. 5.

159 Ombudsman NSW (2012) *Child protection: Responsibilities of heads of agencies. Fact sheet 5*. Sydney, NSW Ombudsman.

160 *Transcript of evidence*, NSW Ombudsman, p. 5.

Box 18.1: Reportable conduct

Section 25A of the Ombudsman Act defines ‘reportable conduct’ as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Note: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

Some conduct may fall within more than one category.

Source: NSW Ombudsman Child Protection Update September 2013

Part 3A of *The Ombudsman Act 1974* (NSW) requires the Ombudsman to keep under scrutiny the systems/processes that government and some non-government agencies in NSW have for both the prevention and the handling of “reportable conduct” involving its employees. With some agencies the obligation relates to incidents of employees both in and outside of the workplace. The Ombudsman’s role is to ascertain whether the investigation by an agency has been properly conducted and whether appropriate action has been taken as a consequence of the investigation.

The role of the NSW Ombudsman is:

- to scrutinise and audit systems for both responding to complaints of and preventing reportable conduct
- to oversee or monitor agencies internal investigations of ‘reportable conduct’
- to respond to complaints of an inappropriate response of an agency to ‘reportable conduct’
- to undertake a direct investigation where necessary
- report on trends and issues associated in connection with reportable conduct matters.¹⁶¹

¹⁶¹ *Transcript of evidence*, NSW Ombudsman, p. 5.

Table 18.1 outlines the organisations to which the NSW legislation applies, and its broad requirements.

Table 18.1: Application of the NSW Ombudsman model

Feature	Type	Description
Who does the model apply to?	Designated agencies	<ul style="list-style-type: none"> government departments (including community services, tourism, sport and recreation, education and training, etc) statutory authorities (health corporations, ambulance service, etc) non-government organisations (independent schools, child care centres, health organisations, etc).
Reporting requirements	Within 30 days	<ul style="list-style-type: none"> designated agencies must notify the Ombudsman's office of all reportable conduct and convictions that arise either within or outside the employee's work.
Are all organisations subject to same level of oversight?	Class or kind determinations	<ul style="list-style-type: none"> when the Ombudsman is satisfied that a particular organisation or agency has a reasonably robust practice in place for the handling of matters relevant to the Ombudsman's jurisdiction, the Ombudsman will enter into a class or kind determination with that organisation.
How does the Ombudsman scrutinise?	Powers, functions & obligations	<ul style="list-style-type: none"> conduct investigations ability to compel the production of documents ability to interview witnesses ability to respond to complaints about a notification secrecy provisions.

Source: Adapted from NSW Ombudsman (2004) *Child protection in the workplace*.

18.3.2. Investigations

The NSW Ombudsman can undertake a range of interventions and audits. These are broadly outlined in Table 18.2.

Table 18.2: Types of investigations and audits conducted by the NSW Ombudsman

Investigation	Type	Description
Overseeing an investigation	Lowest level of intervention	<ul style="list-style-type: none"> The agency advises the Ombudsman of its proposed plan for dealing with the investigation, which appears appropriate. The agency finalises the matter and advises all relevant parties of the outcome of the investigation.
Monitoring an investigation	Active participation by Ombudsman	<ul style="list-style-type: none"> The Ombudsman may monitor the progress of an agency's investigation into an allegation of reportable conduct by an employee. This may require the agency to provide regular updates about the conduct and progress of the investigation and forward copies of any documents associated with the investigation.
Direct investigation of notification	Involvement in the investigation	<ul style="list-style-type: none"> The Ombudsman may be involved directly when: <ul style="list-style-type: none"> significant risks to children have not been identified by an agency the agency does not have the capacity to investigate the matter adequately there is a conflict of interest preventing the agency from properly investigating the final report of the agency's investigation indicates wrong conduct by the agency.
Direct investigation of complaint about organisation's handling	Review of the process for handling a complaint	<ul style="list-style-type: none"> The Ombudsman assesses the complaint to determine if it should be pursued—a number of factors may lead it to decline to review a complaint.
Auditing agencies	Scrutinising systems in place for preventing reportable conduct	<ul style="list-style-type: none"> Audits of agencies may be conducted randomly and independently of the investigation and monitoring role of the Ombudsman. The purpose of an audit is to assist an agency to improve its systems and practices for providing safe environments for children in its care. It also serves to identify and promote good practice across agencies and provide advice.

Source: Adapted from NSW Ombudsman (2004) *Child protection in the workplace*.

In responding to allegations of criminal child abuse, a number of findings are available to an organisation under the scheme.

- sustained—sufficient evidence reportable conduct occurred—referral to Office of Children’s Guardian
- not sustained due to insufficient evidence—some evidence of reportable conduct though not enough for a conclusive finding—referral to Office of Children’s Guardian
- not sustained due no weight in the evidence
- false—clear evidence reportable conduct did not occur
- conduct reported was found not to constitute reportable conduct.¹⁶²

In some instances it is necessary for the finding to be referred to other agencies, including Office of Children’s Guardian for use in employment Working with Children Checks.

18.3.3. Additional features

The NSW Ombudsman also has a proactive role in promoting child-safe environments, and in this context undertakes a number of functions aimed at preventing and identifying situations involving risk to children. Table 18.3 outlines these roles.

Table 18.3: Components of a policy for responding to allegations of child abuse in organisations

Function	Description
Training and capacity-building	<ul style="list-style-type: none"> • Training to both organisation employees and members of the public. • Training has centred on skills relevant to the handling and investigation of serious reportable conduct matters, that is, those that would constitute a serious criminal matter.¹⁶³
Engaging external partners	<ul style="list-style-type: none"> • Proactive involvement with the NSW Police, Office of Children’s Guardian and with the NSW Department of Community Services. • Ombudsman has direct access to the systems of these agencies. • Has resulted in the commencement of a number of operations and subsequent prosecutions.
Monitoring trends and patterns	<ul style="list-style-type: none"> • Collection of data, and research into trends and the factors that make organisations vulnerable to being exploited and subverted by adults who are intent on harming children.¹⁶⁴

Source: Adapted from Australian Childhood Foundation (2012), *Safeguarding children program guide*, p. 98.

162 *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.1.

163 *Transcript of evidence*, NSW Ombudsman, p. 4.

164 *Transcript of evidence*, Australian Childhood Foundation, p. 3.

18.3.4. Identified improvements in responses by organisations

Since the Ombudsman's employment-related child protection scheme began in 1999, agencies have improved their systems of prevention as well as their competence and skill in responding to allegations:¹⁶⁵

The other thing which is interesting to note is the improvements that have been made in practice since the inception of the jurisdiction. We now have over 20 class or kind determinations with agencies. We enter into class or kind determinations with agencies when we have sufficient evidence to indicate that the agencies have reasonably robust practices in place in relation to the handling of these matters ...

We have class or kind agreements because we are of the view that the quality of their handling of matters is of a sufficient standard for us to exempt certain matters from needing to be notified to us. The types of matters tend to be physical assault allegations where technically the allegation would constitute an allegation of a physical assault but is of a lower order, and we are of the view that they have the competency to deal with them.¹⁶⁶

There are also significant positive implications for the Ombudsman. At the peak of notifications in 2003–04, the Ombudsman was investigating approximately 2,500 formal notifications of reportable allegations or reportable convictions. At present, the Ombudsman oversees approximately 1,000 formal notifications of reportable allegations or convictions a year.¹⁶⁷

18.3.5. Limitations of the model

The Ombudsman must receive notification from the head of an agency within 30 days of the reportable conduct having been alleged. While this is the requirement under the legislation, it would seem more useful to ensure that a matter was reported within 24 hours, or at least as soon as practicable. This was supported by Mr Kinmond, who told the Committee:

I would much more strongly emphasise as soon as practicable, because if you are dealing with a serious criminal matter, then from the moment that allegation arises, there is a potential risk to the investigation if the matter is not moved forward and evidence is not collected.¹⁶⁸

As with many other legislative and regulatory requirements relating to non-government organisations, the NSW Ombudsman legislation does not extend the monitoring framework to religious organisations. Mr Kinmond, the Deputy Ombudsman, explained to the Committee:

Allegations against members of the clergy fall within the Ombudsman's employment-related child protection jurisdiction only if the person is either an employee of a relevant agency or is 'engaged' (by the agency) to provide services to children at the time that the allegation arises.¹⁶⁹

165 A class or kind determination is a method by which the Ombudsman exempts that organization from having to notify the Ombudsman in relation to certain matters. The types of matters that are generally exempt from notification tend to be physical assault allegations where the assault would be captured by the technical definition of 'reportable conduct' but where the conduct was of a lower order and in circumstances where the Ombudsman considers that the organization has the competency to respond to it.

166 *Transcript of evidence*, NSW Ombudsman, p. 5.

167 *Transcript of evidence*, NSW Ombudsman, p. 3.

168 *Transcript of evidence*, NSW Ombudsman, p. 7.

169 *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.8.

Mr Kinmond further explained that ‘Catholic schools and agencies providing out-of-home care services meet the definition of a designated non-government agency for the purposes of the Act’,¹⁷⁰ but many clergy fall outside this definition.

In this chapter of the Report, the Committee recommends that allegations of misconduct not amounting to a serious criminal offence should also be reported to an office similar to that of the NSW Ombudsman. In the context of oversight of members of the clergy in their interactions with children, Mr Kinmond pointed out to the Inquiry:

There is an interesting question as to whether more broadly those leaders of those institutions, if nothing else, should be brought within a scheme where, if there are serious abuse allegations made, those matters have to be systematically reported. One might say, ‘No, those matters are dealt with easily; you just introduce a mandatory reporting requirement to the police’. The reality is that the vast majority of matters that are reported to the police will not end up in a criminal charge and certainly a criminal conviction. That then leaves the agency in a difficult position on many of these matters, not knowing how it should deal with the matter.¹⁷¹

Another weakness in the NSW system identified by Mr Kinmond was the vulnerability of the child care sector with many different services and a number of peak bodies involved making consistency in approach difficult to achieve.¹⁷²

Conscious of these limitations in NSW, the Committee does not believe they should apply in Victoria.

Finding 18.3

The New South Wales Ombudsman has a system for independently scrutinising and monitoring the systems and processes of organisations in the handling of allegations of criminal child abuse. The model also provides training and assistance to personnel in building their knowledge and skills in managing allegations of criminal child abuse and has resulted in improvements in the systems and processes of organisations in NSW.

18.4. Improving monitoring and scrutiny in Victoria

As outlined earlier in this part of the Report, the Committee identified that responses to allegations of child abuse in organisations are often inconsistent, inaccessible, narrowly focused or overcomplicated. In Victoria, there is no overarching system to scrutinise non-government organisations’ responses to reports of suspected child abuse. While organisations funded by government have contractual requirements to report staff-to-client assaults, there is no statewide system for building capacity in non-government organisations to respond appropriately to allegations.

The Cummins Inquiry considered the oversight powers and functions of the Victoria Child Safety Commissioner as compared to those with a similar role in other states.¹⁷³

¹⁷⁰ *Supplementary evidence*, Presentation to the Victorian Parliamentary Inquiry by Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Service Commissioner for NSW NSW Ombudsman, 4 April 2013, p.8.

¹⁷¹ *Transcript of evidence*, NSW Ombudsman, p. 5.

¹⁷² *Transcript of evidence*, NSW Ombudsman, p. 5.

¹⁷³ P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria’s Vulnerable Children Inquiry*, pp. 692 (Appendix 14, Table 5).

As a consequence of the Cummins Inquiry recommendation¹⁷⁴ the Government introduced *The Commission for Children and Young People Act 2012* (Vic) in March 2013 which set up the Commission for Children and Young People.¹⁷⁵ This is an agency independent of government and is able to table its own annual report in Parliament along with the outcomes of any systemic reviews initiated by the Commission. Chapter 8 of Part C outlined the role of the Commission in detail. Its role is similar to children's commissions and guardians in other jurisdictions, including the Office of the Children's Guardian in NSW.

The Senior Project Manager, Commission for Children and Young People in Victoria, Ms Megan Scannell, recognised the benefits of the NSW system:

... my understanding of what the New South Wales Ombudsman does, and I think does quite well, is both the monitoring of how agencies respond when complaints arise, but also some support back to organisations about how to do things well. It is that combination that is really powerful, because a lot of organisations do want to get it right but, particularly for smaller or volunteer-based organisations, it can be really hard to know what to do, particularly if a problem arises and how to go about dealing with it... I think they do it well.¹⁷⁶

The Commission went on to discuss the role of the NSW Ombudsman in the working with children system:

... when we were talking about compliance, we were talking about the working with children check, but it could be a broader compliance role, and whether that sits within a working with children check unit or some other body to both make sure that organisations are abiding by whatever requirements there are, but also to give organisations some information and assistance to enable them to comply, and to be a source of advice to help them if things go awry. It is that combination of things.¹⁷⁷

In this part of the Report the Committee has identified the need for building the skills and knowledge of relevant personnel to assist organisations to effectively handle responses to allegations of suspected child abuse.

The Principal Commissioner, Mr Geary, indicated that for such a body to work effectively, it would be necessary for relevant government departments and agencies to embrace the system and change their culture:

It is certainly a different use of an Ombudsman's office. It is a much more proactive use of an Ombudsman's office that happens in New South Wales... the challenge is, in our instance, that children impact on all of those departments that we talked about before; all of those departments with their own models of operating and with their own objectives. Some are there to educate children, some are there — as in the case of DHS — to protect them, and we even have worked, and we do work closely with police. It is not just a matter of clicking our fingers and saying 'joined-up'; it is a matter of the act of joining up that is our biggest challenge. I believe, that with the way my office is at the moment we can be useful in encouraging that, and also useful in trying to create a culture. But there needs to be a process of inculcation, because I do not think it exists at the moment.¹⁷⁸

174 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p. lxiv (Recommendation 89).

175 *Commission for Children and Young People Act 2012* (Vic) ss.31–49.

176 *Transcript of evidence*, Commission for Children and Young People, p. 6.

177 *Transcript of evidence*, Commission for Children and Young People, p. 6.

178 *Transcript of evidence*, Commission for Children and Young People, p. 7.

Mr Kinmond highlighted to the Inquiry that in any system of oversight relating to the handling of potentially criminal matters, it is important have a ‘solid platform of people’—staff with good legal, policing and child protection investigation backgrounds—as ‘the stakes are high for these matters. There needs to be the highest level of competency from the oversight perspective.’¹⁷⁹ There are currently 15 senior staff with extensive investigative experience working in this area in the NSW Ombudsman’s office. The Ombudsman also has Royal Commission powers¹⁸⁰ that can be invoked to obtain information not only from the public authorities and employees who are the subject of allegations, but from any person within the community.

In advice to the Inquiry about the key components for any new role for an oversight body, Mr Kinmond advised that:

If you were to set up an independent oversight body ... one would need to make sure that it has significant powers; that it has the ability to obtain the necessary information so that it can add value; that it has the ability to establish the necessary relationships, particularly with child protection authorities and also with the police ... There needs to be the powers, there needs to be the competency and there needs to be the relationships which are built.¹⁸¹

→ Recommendation 18.1

That the Victorian Government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:

- oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
- undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
- scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
- monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis
- build the skill and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

179 *Transcript of evidence*, NSW Ombudsman, p. 7.

180 The Royal Commission has broad powers to gather information and assist with its investigations and inquiries. These are sometimes called coercive powers because they can compel an individual to participate in the inquiry. See for example *Royal Commissions Act 1923* (NSW) s.17.

181 *Transcript of evidence*, NSW Ombudsman, p. 7.