

# Policy:

# Addressing Complaints of Past Abuse by former Employees of Uniting Communities

## 1. Purpose

This document addresses allegations of child abuse, against past employees (including employees, careers and volunteers), in the case of adults over 18 years of age, who were as children in the care of Uniting Church organisations in South Australia or its predecessors.

## 2. Policy Statement

Uniting Communities will respond to complaints of past abuse of children who were in its care, with a compassionate approach affording procedural fairness to complainants in accordance with the organisation's core values. In all instances where complaints are received, legal advice should be sought.

### Exclusions

This document should not be used for current employees, carers or volunteers working with the Uniting Church in Australia or any of its organisations. Procedures for addressing these complaints must access the relevant policies of the Uniting Church in Australia or the particular organisation.

This document should not be used where the complaint relates to the possible abuse of children who are still under the age of 18 years. In such circumstances, the mandatory reporting requirements as set out in Section 11 of the *Children's Protection Act 1993 (SA)* must be followed and the relevant Child Abuse Hotline and Police agencies notified. Such matters may not be handled internally by a Uniting Church organisation prior to the completion of formal investigations in accordance with that Act.

### Principles

The Uniting Church in Australia (SA) and its community service agencies, schools and colleges, hereafter referred to as Organisations, will respond to complaints of past abuse of children in care in a manner which promotes healing. To this end it will listen respectfully and compassionately and, where appropriate:

- apologize for past wrongs
- provide access to specialized assistance and/or ex gratia payment
- support access to legal authorities

Complaints and/or allegations of abuse are serious. Each complainant shall and must be treated with respect and consideration, and in alignment with the Church's core values. In all cases where abuse is alleged, the complainant must receive as a matter of first priority, a compassionate response.

Authorised by: Board Chairperson

The Uniting Church will afford procedural fairness to all parties. It is committed to justice, fairness and to the recognition of the rights of all, including those who have been service users, students, employees, carers or volunteers of any organisation of the Uniting Church in Australia or its predecessors.

Any person who has received services from the Uniting Church in Australia, an organisation of the Uniting Church in Australia or its predecessor has the right to complain. All complaints will be accepted without prejudice. All complaints will be addressed in the shortest time possible.

The staff who have access to the complaint and all details surrounding that complaint will be limited to those required to respond to it.

Any complaint or allegation that is considered to be of a criminal nature shall be referred to the Police as soon as possible.

### 3. Scope

This document applies to all staff of Uniting Communities and stakeholders engaged with our organisation.

### 4. Definitions

#### **Abuse**

Abuse includes mistreatment, harm or neglect, and refers to any behaviour, decisions or systemic practices that are regarded by the complainant as having been abusive, including but not restricted to:

- Any sexual offence or sexual misconduct against, with, or in the presence of a child; or
- Any assault, ill-treatment or neglect of a child; or
- Any behaviour that causes psychological harm to a child

but not conduct that is reasonable for discipline, management or care of children having regard to the age, maturity, health or other characteristics of the children, and any relevant professional codes or standards. However, if the complainant considers that abuse did occur in the case of such conduct, the matter will be dealt with in accordance with this policy.

#### **Allegation**

For the purposes of this document, an allegation refers to any claim made regarding an act or acts of abuse as defined below.

#### **Complaint**

This is the bringing forward of one or more allegations for the purpose of having them officially dealt with. A complainant is a person making a complaint, whether or not he or she was the victim of the alleged abuse.

#### **Confidentiality**

Confidentiality is about privacy rather than secrecy. In general terms, sharing of information in relation to allegations of a criminal offence should be strictly limited. These allegations shall be referred to the South Australian Police as soon as possible and with the absolute minimal involvement of other people.

*In the context of counselling*, confidentiality is an assurance that information disclosed through the course of that counselling is not disclosed or shared other than for purposes for which it was collected and, where appropriate, for quality supervision purposes. This assurance applies except where the disclosure of information is required by law, necessary to prevent serious harm to another person (including where the information indicates that a child has been abused or is currently at risk of such abuse, or where the information indicates that there is a serious risk to a person's safety) or where the person involved consents to the disclosure.

*In the context of complaints*, confidentiality is an assurance that information provided is protected from being shared with unauthorised persons or for any purpose other than which it was collected. However, the complainant (together with any person involved concerning the complaint outside the organisation), should be informed that information received by the Organisation will be made available to the General Secretary, insurers, and to such persons as are necessary in the circumstances such that the complaint may be properly considered. Information may also be disclosed to the Police or to other statutory authorities if the circumstances so require.

Information regarding a complaint is not to be disclosed to the person or persons about who the complaint was made except where due consideration has been given to the processes which may be required to protect the safety of the complainant.

All materials and any final report arising from any inquiry into any complaint remain the property of the Organisation and will only be made available to those persons responsible for the preparation and implementation of the report and its recommendations. The complainant is entitled to receive a copy of the report and/or its findings, but should not receive any information that breaches the privacy rights of any other person.

This policy does not override any legal requirement for the release or use of any information or material obtained.

### **Designated Person**

A designated person is appointed by the head of the Organisation and is the person to whom a complainant should direct their complaint and who manages the complaints process within the Organisation.

The appointment of the Designated Person must be kept current.

The Designated Person is responsible for ensuring the appointment of support persons in the manner indicated in Section 3), independent investigators, mediators and counsellors as required; and shall ensure that the complaint process is fully documented. The Designated Person shall also be responsible as far as is possible for keeping the stages of the complaint resolution process to the required timeframes. This person will, at all stages of the process, consider what implications should be drawn from the complaint and its investigation, and the relevance of these implications for current Organisation practices.

### **Ex-employee**

In this context, ex-employee refers to a person who previously worked for a Uniting Church Organisation, whether as an employee, carer or volunteer.

### **General Secretary**

Is the person appointed to this position by the Uniting Church Synod of South Australia (see *Head of Organisation*).

### **Governing Body**

Refers to the Board of a Uniting Church community service agency, the Council of a Uniting Church School or College, or the SA Synod Standing Committee in respect of complaints made regarding a Uniting Church organisation no longer in existence, and for which no current organisation has assumed responsibility.

### **Head of Organisation**

Refers to the CEO of a Uniting Church community service agency, the Principal of a Uniting Church School or College, or the General Secretary of the SA Synod in respect of complaints made regarding a Uniting Church organisation no longer in existence, and for which no current organisation has assumed responsibility.

### **Investigator**

Is appointed by the Head of the Organisation and is a person who is independent of the Organisation and all other people involved in the allegations, appointed to investigate the complaint. The Investigator is responsible to the Head of the Organisation but must work with the Designated Person.

### **Moderator**

The person elected by the Uniting Church Synod of South Australia to provide general and pastoral leadership.

### **Organisation**

Refers to the Uniting Church community service agency, the Uniting Church School or College, or the SA Synod in respect of complaints made regarding a Uniting Church organisation no longer in existence, and for which no current organisation has assumed responsibility

### *Procedural fairness*

In general, procedural fairness refers to two broad principles:

- (a) that a person be given an adequate opportunity to present their case before a decision is reached which may adversely affect them (this includes providing reasonable notice and time to prepare information about the matter under consideration in order that they may properly prepare their case); and
- (b) that the investigation must be free from bias and from the appearance of bias.

### **Support person**

The role of the support person is to assist the complainant through the process of investigation in relation to a complaint made by them. With the complainant's permission, the support person may attend any meetings convened through the investigation process to which the complainant is invited.

Where the person about whom a complaint has been made is informed of the complaint, and is involved in an investigative process, he/she will also be provided with a support person.

A support person may be a staff member of the Organisation or a person external to the Organisation as nominated by the complainant. The support person must not represent the person either formally or informally except where that person is so authorised by law (e.g. as a legal representative or an authorised guardian).

## 5. Responsibilities

**Chief Executive** has the responsibility:

- As the “Designated Person”, to receive complaints of past abuse by former employees of Uniting Communities;
- To delegate this responsibility to such other person.

**Delegated Person** has the responsibility:

- The Designated Person shall ensure familiarity with application of the this Policy;
- For ensuring the appointment of support persons in the manner indicated in Section 3), independent investigators, mediators and counsellors as required;
- To ensure that the complaint process is fully documented.
- As far as is possible for keeping the stages of the complaint resolution process to the required timeframes;
- For ensuring that all information pertaining to the complaint is included in the complainant’s file and, where relevant, the ex-employee’s file.

## 6. Procedure

### Initial enquiry and contact from complainant

Where a person requests information regarding the making of a complaint, they should be referred to the Designated Person. Where the Designated Person is unavailable, the staff member should indicate that the Designated Person will contact them as soon as possible. If the person indicates that this is not acceptable and is reluctant to leave their contact details, the staff member must refer the person to this document available on the relevant website.

Where a person indicates that they intend to report their complaint to the Police, the staff member receiving the report should refrain from obtaining full details of the allegations, particularly where the allegations involve sexual offences. It is important to note that the person to whom a sexual offence is first disclosed becomes a “recent complaint” or “first complaint” witness and is likely to be required to give evidence in any future court proceedings.

Where a complaint refers to the sexual abuse of a child or young person prior to June 30 2018 in a service or home operate by Uniting Communities – or a preceding body – and the person is seeking redress they should be referred to the National Redress Scheme.

Call: The National Redress Scheme on 1800 737 377 (Mon-Fri 8am-5pm local time)

Mail: NRS

Reply Paid 7750

CANBERRA BC ACT 2610

Redress in these circumstances are to be managed solely through the National Redress Scheme to ensure consistency and fairness in response.

The Commonwealth, State and UCA apology links are here:

We join with the Commonwealth (<https://www.pm.gov.au/media/national-apology-victims-and-survivors-institutional-child-sexual-abuse>) and State

(<https://www.childprotection.sa.gov.au/department/royal-commissions-and-reviews/royal-commission/apology>) Governments and the Uniting Church in Australia

**Authorised by:** Board Chairperson



<https://assembly.uca.org.au/news/item/2896-national-apology>) in issuing our genuine and heartfelt apology to anyone who has suffered abuse in our care.

## **When an initial complaint is made**

Where the person does not intend to report their complaint to the police, all complaints received must be referred to the Designated Person as soon as possible so that the Designated Person is the first to receive more detailed information regarding the complaint. Persons receiving a complaint should be encouraged to make notes of the information received as soon as possible so that the maximum amount of detail is recorded.

Initial complaints may be made verbally or in writing, in any language. Complaints should be received by the Organisation's Designated Person wherever possible.

The Designated Person must hear the concerns expressed and explain to the person the principles and processes for the resolution of such complaints. The Designated Person must determine whether the complaint is criminal in nature and discuss this determination with the complainant, including the possibility of reporting the complaint to the Police or relevant authorities.

## **Referral to external complaint procedure**

Where a complainant indicates that they would prefer for their complaint to be handled by an external body, the Designated Person will refer them to the South Australian Police, the Legal Services Commission or to another external body as appropriate in the circumstances.

Where the complaint involves allegations of a criminal offence, the Designated Person must urge the complainant to refer the matter to the Police.

Where the complainant indicates that they do not wish to refer the matter to the Police, the Organisation must obtain advice as to whether it should report the matter of its own accord.

Where a complainant indicates that they do not wish to report the matter to the police, the complainant must be warned that the Organisation itself may make a report of its own accord, depending on the severity of the offence and the public interest involved.

See Appendix 1 for some general information regarding an external complaint procedure.

Following completion or conclusion of any legal processes an internal investigation process may be activated or reactivated by the Head of the Organisation.

## **Internal complaint**

Where the complaint is not of a criminal nature, the Designated Person shall give to the complainant a copy of this document in an easy-to-read format. The complainant has a right to receive a copy of the full policy and should be provided with any specific material or brochures made available for complainants by the Organisation.

## **Outcomes sought in relation to allegations**

The Designated Person must discuss with the complainant the desired outcome of the complaint. The Designated Person must maintain a record of each allegation and the desired outcome for each.

Where a complainant indicates an intention to make a formal complaint in relation to an allegation, the Designated Person must ensure that the Head of the Organisation is informed in writing of that intention within 24 hours.

Where a complainant seeks counselling in relation to any trauma suffered as the result of alleged abuse, the Designated Person should inform the complainant regarding available internal and external counsellors. Where the complainant nominates to receive counselling from an external counsellor, the Organisation may make a contribution towards any costs of that counselling.

Where a complainant seeks counselling only, the Designated Person should nevertheless consider whether any investigation should be conducted into allegations of abuse. The Designated Person should make appropriate recommendations regarding any investigation to the Head of the Organisation and if necessary advise the insurers.

Upon receiving such recommendations from the Designated Person, the Head of the Organisation will inform the Governing Body and the Uniting Church, SA Synod.

## **Support person**

The Designated Person must offer the complainant a Support Person for the duration of the process.

The Support Person may be a staff member from within the Organisation or such other person as nominated by the complainant.

The role of the Support Person is to assist the complainant through the process. The Support Person may, with the permission of the complainant, be present at any meetings convened in relation to the process to which the complainant is invited.

The Support Person must not in any way represent the person either formally or informally unless the support person has the appropriate legal authority to so act.

## **Complaint to be handled internally**

The Designated Person will seek direction from the Head of the Organisation as to whether an internal investigation is to occur (Section on the process for internal investigation), or whether sufficient information is already available to indicate that an investigation is unnecessary. Factors to be taken into account in this decision include the wishes of the complainant, knowledge of other instances of abuse, the length of time since the abuse, the likelihood of being able to locate witnesses etc. It is possible that even though the Head of the Organisation is satisfied that there is sufficient existing information to support the complaint; the complainant may wish an investigation to take place as a matter of natural justice. In these instances the wishes of the complainant should take precedence.

## **Internal investigation unnecessary**

Where there is to be no investigation, the Head of the Organisation should seek the approval of the Governing Body, and proceed to implement an appropriate response as outlined in Section 9.

## **Formal complaint to be in writing**

A person making a formal complaint will be asked to outline that complaint in writing.

The Support Person may assist the complainant with the writing of the outline, or may write it on behalf of the complainant, provided that the resulting document is clearly understood by, and signed by, the complainant.

Where the complainant does not wish to commit the complaint to writing, the Support Person must nevertheless document the complaint notwithstanding the complainant's lack of signature.

The Designated Person will acknowledge in writing their receipt of the written complaint.

## **Process for internal investigation**

Where a complainant requests that an internal investigation be conducted, or the Designated Person determines that such investigation is appropriate in the circumstances (and where any external investigation is either not appropriate or has been completed), the internal investigation process is to be commenced within the shortest possible time.

Internal investigations are to be completed within 3 months of initiation except where the Governing Body and the complainant both agree that the investigation period should be extended as appropriate in the circumstances.

## **The investigator**

The Head of the Organisation shall appoint an Investigator who shall be contacted by the Designated Person to investigate the substance of the complaint and to assist the Organisation to respond appropriately.

The Investigator shall be independent of the Organisation, and shall be independent of any other person involved in the allegations, including but not limited to, the complainant and the ex-employee against whom the allegations are made.

Organisation staff may be required to provide information and/or limited assistance to the Investigator where the Investigator requests such information or assistance.

The costs associated with an internal investigation process are to be borne by the Organisation.

## **Investigation plan**

The Designated Person and the Investigator shall develop an investigation plan.

The investigation plan will –

- summarise the issues to be addressed throughout the investigation
- establish clear objectives for the conduct of the investigation
- list the people who will be interviewed throughout the investigation process
- summarise the evidence to be sought or obtained
- establish a strategy for the confidential management of the investigation
- establish a process by which parties to the investigation will be kept adequately informed as to the status of the investigation.

The investigation plan must be approved by the Head of the Organisation.

## **Contact with the ex-employee**

The Investigator shall, wherever feasible and appropriate in the circumstances, contact the ex-employee against whom allegations have been made.

Where the Investigator determines that contact with the ex-employee is not feasible or appropriate in the circumstances, the reasons for that determination must be provided in writing to the Head of the Organisation.

An ex-employee will be contacted only through the nominee of the Designated Person who will make the appropriate arrangements such that the ex-employee may be interviewed in relation to the complaint.

Where an ex-employee is contacted regarding a complaint or allegation made against them, the Designated Person must offer to provide the ex-employee with a Support Person for the duration of the investigation.

The ex-employee and any person connected to or associated with them, must be requested not to contact or attempt to contact the complainant or to involve themselves in the investigation process in any way except as directed by the Investigator, the Designated Person or the Head of Organisation.

## **Investigator's report**

The Investigator must, at the conclusion of the Investigation, provide to the Head of the Organisation a written report.

The written report must –

- outline the process by which the investigation was conducted
- describe the outcomes of the investigation
- make recommendations as to an appropriate response to the complaint.

## **Procedure following conclusion of the internal investigation**

Following the conclusion of the internal investigation and having received the Investigator's written report, the Head of the Organisation will present to the Governing Body –

- the Investigator's recommendations
- the Head of the Organisation's own recommendations
- the reasons for which the Head of the Organisation considers that the Investigator's recommendations should be implemented, modified or rejected.

The Governing Body will then determine the appropriate course of action to be undertaken.

### **Recommendations to be implemented**

Where the Governing Body determines that there are recommendations to be implemented, the Head of the Organisation will determine whether it is appropriate that such implementation be conducted by current Organisation staff.

Where implementation of recommendations by current staff is inappropriate in the circumstances, an external facilitator may be engaged to implement the recommendations.

The external facilitator should ordinarily not be the same person who conducted the internal investigation except where this is appropriate in the circumstances.

Where the course of action determined by the Governing Body involves any other organisation the Governing Body will, where appropriate, authorise the Head of the Organisation to discuss the implementation of recommendations with the relevant external parties.

## **Provision of information to complainant and ex-employee**

The Head of the Organisation will inform the Designated Person of the Governing Body's determination as to the appropriate course of action.

The Designated Person will present the Organisation's decision to –

- the complainant and their Support Person; and
- any ex-employee involved in the complaint.

## **Response to complaint**

When a complaint is to be handled internally the complaint may or may not be investigated. The following procedure should be followed when both an internal investigation is unnecessary, and, on finalisation of an internal investigation as outlined in the procedure following conclusion of the internal investigation above.

## **Process of implementation: formal apologies**

Where the Governing Body determines that an appropriate response to the complaint requires that the complainant receive a formal apology, the apology is to be made in a form and manner that is negotiated and acceptable to the complainant.

The appropriate form of such apology may include a meeting with any or all of the following –

- the Head of Organisation
- the Moderator
- the General Secretary.

In determining the appropriate form of a formal apology, consideration must be made to –

- the nature of the specific complaint(s)
- the circumstances of the complaint.

## **Process of implementation: financial settlement**

Where the Head of the Organisation recommends that financial settlement be made to the complainant and this recommendation is accepted by the Governing Body, the Governing Body must take advice from the Uniting Church SA Synod Office as to the appropriate quantum and terms of settlement.

Any financial settlement is to be discussed between the Head of Organisation and, the General Secretary, in consultation with the Synod's insurers where the insurance program is relevant to the settlement process.

Offers of financial settlement will be limited in accordance with a capped amount to be determined by the Synod from time to time and having regard to the nature and severity of the allegation.

The Governing Body will not offer financial settlement as compensation for past wrongs. Any financial settlement or contribution offered to the complainant must be made in order to assist the complainant in their current circumstances.

Under an internal investigation, the Organisation will not require the complainant to sign a confidentiality agreement regarding the nature and/or circumstances of the complaint and/or any offer of settlement accepted or received in relation to that complaint.

The Organisation will offer the complainant access to independent legal advice prior to accepting the settlement.

## **Review of complaint process and/or review of outcome**

Complainants, and/or ex-employees against whom allegations are made, are entitled to have the process of investigation and/or outcome reviewed.

### **Right of review**

The Designated Person must inform the complainant and any ex-employee involved as to their right to review of process.

Where a request for a review of process is not initiated by the complainant or an ex-employee within one month of their being informed as to their right to make such request, the recommendations shall be implemented.

Requests for reviews of process are to be made in writing to the Head of the Organisation by the complainant or ex-employee.

Any review of process or outcome is to be conducted expeditiously.

A review of process or outcome shall be undertaken by a person or persons appointed by the Head of the Organisation. The reviewer/s shall have the authority to interview all relevant staff concerned and will have access to all relevant documentation.

The Head of the Organisation shall provide to a person who has requested a review of process and/or outcome a written report on the findings of that review upon completion. The report will also be supplied to the Designated Person and the Head of the Organisation.

The Designated Person will discuss with the complainant and/or the ex-employee, the outcome of the review and the implementation of any recommendations.

Where the review results in the recommendation that a change to the original recommendations be considered, the process described in the procedure following conclusion of the internal investigation above must be followed.

## **Implementation of recommendations**

This should proceed as outlined earlier in this document – Response to complaint.

Where the complainant or ex-employee has had access to a Support Person throughout the investigation process, the Support Person will maintain contact with that complainant or ex-employee until the implementation of recommendations has commenced.

## **Current practice**

The Designated Person shall consider how the complaint and any investigation and determination of the complaint could inform current practice. The Designated Person must then make appropriate recommendations to the Head of the Organisation.

Disciplinary action shall be taken in relation to any current employee implicated in any complaint made under this policy.

## **Post-resolution**

Following the resolution of a complaint, the Designated Person is responsible for ensuring that all information pertaining to the complaint is included in the complainant's file and, where relevant, the ex-employee's file.

Such files shall be securely maintained in the central filing system of the Organisation.

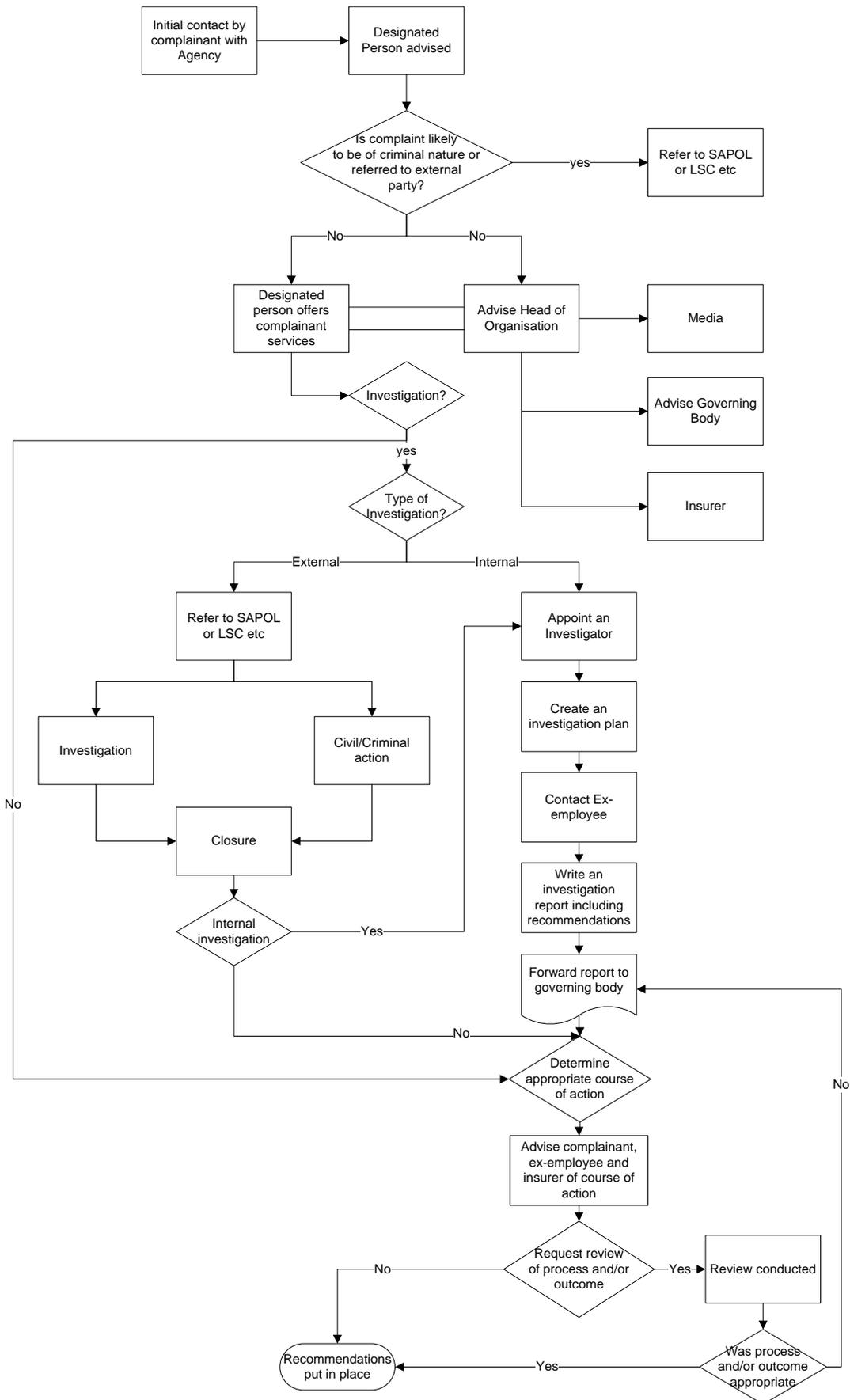
## **Media**

Where a complaint has the potential for media attention or where the media has already become involved, the Designated Person must contact the Head of the Organisation as soon as possible and brief them on the situation.

The Head of the Organisation will then inform the Governing Body and the General Secretary.

The Head of Organisation is to be the only person to speak publicly on behalf of the Organisation in relation to the allegation/s or investigation/s.

# Work flow



# Appendix 1

## Complaint to be handled externally

Where a complainant indicates that they would prefer for their complaint to be handled by an external body, the Designated Person will refer them to the South Australian Police, the Legal Services Commission or to another external body as appropriate in the circumstances.

Options for the external resolution of complaints include criminal investigation and civil litigation.

### Criminal or civil litigation

Where the complaint involves allegations of a criminal offence, the Designated Person must urge the complainant to refer the matter to the Police.

Where the complainant indicates that they do not wish to refer the matter to the Police, the Organisation must obtain advice as to whether it should report the matter of its own accord.

The Organisation may obtain advice from the South Australian Police. However, when determining whether it is appropriate to obtain advice from SAPOL, consideration must be given to the seriousness of the offence alleged and whether formally reporting the offence would be in the public interest.

When urging the complainant to report any criminal offence to the Police, the Designated Person should consider providing the complainant with a number of options. These options may include but are not limited to:

- reporting the matter to the police or not making such a report;
- reporting the matter to the Police anonymously;
- reporting the matter to the Police but requesting that further action not be taken;
- reporting the matter to the Police for investigation.

Where a complainant indicates that they do not wish to report the matter to the police, the complainant must be warned that the Organisation itself may make a report of its own accord, depending on the severity of the offence and the public interest involved.

Where a matter is to be referred to the Police an approved SAPOL complaints fax sheet for Organisations is available for use.

If the matter is referred to the Police, or if the complainant initiates civil litigation at any time before or during any internal investigation, any internal investigation process will cease. If appropriate, however, the complainant's Support Person may continue to offer support.

Where the Organisation becomes –

- aware that a criminal or civil process exists in relation to an allegation of abuse made under this Policy; or
- aware that a criminal or civil process is likely to be initiated in relation to an allegation of abuse made under this Policy; or
- advised to refer a matter to the Police,

the Head of the Organisation will inform the Governing Body and the General Secretary in writing.

Upon receiving such written notification in writing, the Head of the Organisation and, the General Secretary will jointly make a decision as to the manner by which the matter will be managed.

Following completion or conclusion of any legal processes an internal investigation process may be activated or reactivated by the Head of the Organisation.

## 7. Related Documents

Delegations of Authority Policy

Privacy Policy

Records Management Policy

## 8. Links to Legislation, Standards, Guidelines and Resources

[Associations Incorporations Act \(SA\) 1985](#)

[Associations Incorporation Regulations 2008](#)

Department for Human Services 2017, [Australian Service Excellence Standards](#), Government of South Australia,

National Redress Scheme for Institutional Child Sexual Abuse Act 2018:

<https://www.nationalredress.gov.au>

**Status – ACTIVE**