

PROCEDURE FOR HANDLING COMPLAINTS RELATING TO BREACHES OF THE CODE – VOLUME 5

in respect of the Churches of Christ in NSW & the ACT Professional Conduct Protocols
(the “*Professional Conduct Protocols*”)

This is Volume 5 of the Churches of Christ in NSW & the ACT Professional Conduct Protocols.

The Churches of Christ in NSW & the ACT Professional Conduct Protocols comprises:

Volume 1: Dictionary of Defined Terms.

Volume 2: Guide for personal behaviour and practice in ministry.

Volume 3: Code of Conduct

Volume 4: Professional Standards Unit Establishment and Functions Policy

Volume 5: Complaints Procedure

Volume 6: Pastoral Response Policy

INTRODUCTION TO THE PROFESSIONAL STANDARDS SUITE OF DOCUMENTS

The *Professional Conduct Protocols* is a group of documents intended to assist *Ministering Persons* to act appropriately in their *Ministries*. The suite of documents:

- contains a dictionary of terms used in the documents;
- outlines standards and expectations of personal and professional behaviour for *Ministering Persons*;
- prescribes behaviour of *Ministering Persons* which if not observed may lead to a *Complaint* against a *Ministering Person* and, if the *Complaint* is upheld, may lead to the imposition of sanctions against that person;
- establishes a *Professional Standards Unit* to administer the *Code of Conduct*;
- establishes a procedure to deal with *Complaints*; and
- ensures pastoral care is available and provided to the *Complainants* and those against whom *Complaints* are made.

As to the *Professional Conduct Protocols*, note:

- for *Complainants* Volumes 1, 5 and 6 are the principal documents to consider;
- for *Ministering Persons* Volumes 1, 2, 3, 5 and 6 are the principal documents to consider;
- Volume 4 will likely only need consideration in the event a *Complaint* is made;
- Volume 1 contains a dictionary of the terms used in each of Volumes 2 to 6;
- for the assistance of both *Complainants* and *Ministering Persons* some key definitions are also included in other Volumes. If you wish to contact the *Professional Standards Unit Co-ordinator*, the following details are provided:

The address and contact details of the *Professional Standards Unit Co-ordinator* are:

Professional Standards Unit Co-ordinator, Churches of Christ in NSW
Suite 301, Level 3, 1B Homebush Bay Drive
Rhodes NSW 2138
psu@ccnswact.org.au
(02) 8573 6000

All communications are kept strictly confidential, subject to the *Churches of Christ in NSW & the ACT Professional Conduct Protocols* and the *CCNSWACT Procedure for Responding to Child Safety Concerns*.

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1. Introduction

1.1 Purpose

Churches of Christ in NSW & the ACT (CCNSWACT) honours the history that has given local congregations freedom to decide how to function as the body of Christ in their own contexts.

In most instances the appropriate place for the accountability of Christians to each other, and of ministers to congregations, is within the life and structure of each individual congregation. While that is the case, it is recognised that in certain circumstances, given the relationship of *Ministering Persons* and those to whom they exercise ministry, it is appropriate that a proper independent process of accountability in respect of *Ministering Persons* be established.

This document establishes a procedure (**Procedure**) for dealing with complaints of *Serious Misconduct* that breaches any of the *Minimum Standards* contained in the Code of Conduct.

1.2 Commitment to Safety

Churches of Christ in NSW & the ACT believes that they will better transform communities and lives with fresh hope and develop leaders to lead them, when each place of ministry and mission of every *Conference Church* and *Conference Ministry* is a safe place for everyone.

“A new command I give you: Love one another. As I have loved you, so you must love one another. By this everyone will know that you are my disciples, if you love one another.” John 13: 34-35 (NIV)

“We love because he first loved us.” 1 John 4:19 (NIV)

“... O people, the Lord has told you what is good, and this is what he requires of you: to do what is right, to love mercy, and to walk humbly with your God.”
Micah 6:8 (NLT)

Our commitment to expressing the love of Christ leads to the view that all people should be able to live and work in an environment that is free from abuse or harm of any kind.

The purpose of this *Procedure* is to establish a just and fair response to people who make complaints under the *Code (Complainants)* and the persons subject to those *Complaints (Respondents)*.

1.3 Other considerations

Nothing in this document replaces any obligation that a person would ordinarily have under law.

1.4 Defined Terms

Terms and definitions used in this document are defined in the *Dictionary*. Some of the key terms in relation to the *Procedure* includes:

Care Plan means a plan which makes provision of the care of a *Complainant* or *Respondent* in the manner described in the *Pastoral Response Policy* (in whole or in part).

Code means the *Code of Conduct*.

Complainant means the person or entity who makes a complaint against a *Ministering Person*.

Complaint: means information about any allegation, suspicion, concern or report of a breach of any of the *Minimum Standards*. The conduct complained of may or may not constitute *Criminal Conduct* or *Reportable Conduct*.

Dictionary has the meaning set out in Volume 1 of the *Professional Conduct Protocols* and Volume 1 contains the *Dictionary*.

Minimum Standards means the *Minimum Standards* defined in the Code of Conduct.

Ministering Person means each of:

- (a) a person who is an *Endorsed Minister*, or who seeks *Endorsement*, by CCNSWACT under the *Policy for Endorsement of Ministers*; and
- (b) a person who has been appointed to *Conference Executive*;
- (c) such persons who from time to time fill roles within each of:
 - Churches of Christ in NSW; and
 - ACOM,

as *Conference Executive* determines and specifies in a resolution of *Conference Executive*.

PSU Co-ordinator means the person appointed under clause 3.1 of the *Professional Standards Unit Establishment and Functions Policy*.

Respondent: means a *Ministering Person* who is the subject of a *Complaint*.

Serious Misconduct means a breach of a *Minimum Standard*.

1.5 Appendices

Attached to this *Procedure* (and forming part of it) are the following appendices:

- **Appendix A: *Complaint Acknowledgement Letter template*** (referred to in Section 3.2.10)
- **Appendix B: Acknowledgment of PSU Process Template** (referred to in Section 3.4.6)
- **Appendix C: Procedure for *Complaint Handling Flowchart***
- **Appendix D: Appeal Process Flowchart**

Appendices C and D are provided for guidance only. They must be read in conjunction with the other parts of the *Procedure*. Where the contents of an Appendix are inconsistent with the contents of the *Balance of the Procedure*, the *Balance of the Procedure* shall prevail. The "**Balance of the Procedure**" means the *Procedure* (excluding the Appendices).

1.6 Other Policies and Procedures

The *Procedure* is to be read in conjunction with the *Churches of Christ in NSW & the ACT Professional Conduct Protocols* and the following policies and procedures:

- *Policy for Endorsement of Ministers* being the "Churches of Christ Policy for Endorsement of Ministers in NSW & the ACT";
- *Procedure for Responding to Child Safety Concerns* being the "Churches of Christ Procedure for Responding to Child Safety Concerns in NSW & the ACT";

- *Risk Management Framework* being the Churches of Christ in NSW Risk Management Framework Policy.

For advice on specific matters in relation to this *Procedure*, or to make a *Complaint* under this *Procedure*, contact the CCNSWACT Professional Standards Unit (“**PSU**”) as follows:

Professional Standards Unit Co-ordinator, Churches of Christ in NSW & ACT
Suite 301, Level 3, 1B Homebush Drive
Rhodes NSW 2138
psu@ccswact.org.au
(02) 8573 6000

1.7 Authorisation

Responsible person	The <i>Executive Ministry Director</i>
Version	1.0
Review date	February 2025

1.8 Adoption and Effective Date

Adopted by Conference Executive	3 June 2023
The <i>Effective Date</i>	1 July 2023

2. Scope of the Procedure

This *Procedure* deals with *Complaints of Serious Misconduct* made against *Ministering Persons* who are subject to the *Code*. That is *Subscribers* to the *Code*. The *Procedure* may result in considering matters that are also complaints of *Criminal Conduct* or *Reportable Conduct*. This *Procedure* is subject at all times to obligations under the law and the direction and advice of police and government authorities.

This *Procedure* is not intended to cover complaints of behaviour that, although serious, may be considered professional failings or incompetence, personality issues, theological disputes, or matters not relating to a *Ministering Person’s* obligation to maintain high levels of ethical and moral behaviour. The *PSU* is authorised to determine whether a *Complaint* relates to conduct that, if established, would constitute a breach of any of the *Minimum Standards* contained in the *Code*. Any *Complaint* that does not relate to matters that fall within the scope of the definition of *Serious Misconduct* will be referred to the relevant *Accountable Ministry* for further action as is appropriate.

3. Complaints Procedure

3.1 Making a complaint under the Procedure

3.1.1 Subject to section 3.1.9, anyone is able to make a *Complaint*, either verbally or in

writing to:

- a. the *PSU Co-ordinator*; or
- b. the *EMD*; or
- c. the director of a *Conference Ministry*.

An *Anonymous Complainant* must disclose their full name and contact details to the person to whom the *Complaint* is made.

- 3.1.2 *Complaints* may be made by any person, as well as by agencies, such as police or other government authorities. This includes complaints that are referred from, or arise out of information provided by the National Redress Scheme.
- 3.1.3 *Complaints* may be made by third parties and by *Anonymous Complainants*.
- 3.1.4 *Complaints* may be made in any of the following forms:
 - a. emails;
 - b. letters;
 - c. telephone calls; and
 - d. personally.
- 3.1.5 All *Complaints* or information relating to *Complaints* received by the people listed at 3.1.1(b) and 3.1.1(c) must be reported to the *PSU Co-ordinator* at the earliest available opportunity along with all relevant information.
- 3.1.6 *Complaints* may initially take the form of information, such as an informal complaint (where someone has not committed a *Complaint* to writing) or information in the form of rumour or hearsay. In such instances, further enquiries may be necessary to determine the plausibility of the *Complaint*.
- 3.1.7 In the case of *Anonymous Complaints* further enquiry or communication by the *PSU Co-ordinator* with the *Anonymous Complainant* or other sources may be required to determine the details and plausibility of the *Complaint*. The *PSU Co-ordinator* should assist the *Complainant* to put the *Complaint* in writing, including by offering appropriate support (see *Pastoral Response Policy*).
- 3.1.8 If the *Complainant* is unable or unwilling to do so, then the *PSU Co-ordinator* must record the *Complaint*, or information relating to a *Complaint*, in writing.
- 3.1.9 A complaint to the PSU in respect of *Sustained Lower Level Misconduct* may only be brought:
 - a. by the relevant *Accountable Ministry*; or
 - b. by a *Concerned Person* after the process and procedure set out in clause 12 of this *Procedure* (the "**Consultative Process**") has been undertaken and concluded.

3.2 Receiving a complaint

- 3.2.1 After receipt of a *Complaint* the *PSU Co-ordinator* is to:
- a. consider and evaluate the *Complaint*, determine whether it is plausible and determine what response should be made to it, and the actions to be taken in respect of it, under this *Procedure*.
 - b. ensure reporting obligations have been met;
 - c. acknowledge receipt of the *Complaint* to the *Complainant* in writing;
 - d. proceed in the manner set out in clause 3.2.2 or make a determination of the kind described in clause 3.2.4 or 3.2.5 and observe the provisions of such of clauses 3.2.4 and 3.2.5 as apply;
 - e. conduct a *Risk Assessment*;
 - f. develop a proposed *Care Plan* (see *Pastoral Response Policy*); and
 - g. inform the *Accountable Ministry* if taking such action does not jeopardise the investigation.
- 3.2.2 The *PSU Co-ordinator* is to refer any plausible *Complaint* that does not constitute *Serious Misconduct*, or are otherwise outside the scope of this *Procedure*, to the relevant *Accountable Ministry*.
- 3.2.3 The *PSU Co-ordinator* is to keep a written record of all documents relating to a *Complaint*, and record appropriate details, on a complaint register. A record of the receipt of the *Complaint* should be made as soon as it is received.
- 3.2.4 Where the *PSU Co-ordinator* determines the *Complaint* is plausible it should be referred to the *Reference Committee* as soon as that determination is made.
- 3.2.5 Where the *PSU Co-ordinator* determines the *Complaint* is not plausible or is false, untrue or frivolous the *PSU Co-ordinator* shall so advise the *Reference Committee* in writing and provide a copy of the *Complaint* to the *Reference Committee*. On receiving that advice and the copy of the *Complaint* the *Reference Committee* shall review the materials provided and either advise the *PSU Co-ordinator*:
- a. the *Reference Committee* agrees with the *PSU Co-ordinator's* view of the *Complaint*; or
 - b. the *Reference Committee* disagrees with the *PSU Co-ordinator's* view of the *Complaint* in which event the *PSU Co-ordinator* and the *Reference Committee* shall meet, together, to determine what action is to be taken in respect of the *Complaint*.

- 3.2.6 Where the *PSU Co-ordinator* determines that the *Complaint* is not plausible or is false, untrue or frivolous and the Reference Committee agrees with the *PSU Co-ordinator's* determination or at a meeting held pursuant to clause 3.2.5(b) it is determined that the *Complaint* is not plausible or is false, untrue or frivolous the *PSU Co-ordinator* shall so advise the *Complainant* in writing. Where the determination of the *PSU Co-ordinator* (or the *Reference Committee*) is that the *Complaint* is plausible the provisions of 3.3 to 3.6 shall be implement.

Obligations to make a *Complaint* or a report

- 3.2.7 The *PSU Co-ordinator* is to determine whether the reporting obligations set out in the *Procedure for Responding to Child Safety Concerns* have been complied with and to also make all necessary reports which are to be made under, or pursuant to, this document (regardless of whether the alleged conduct has been reported by others). This may include assisting the *Complainant* to make a police report through the provision of appropriate support.
- 3.2.8 *Ministering Persons*, and those listed at 3.1.1, may have other obligations at law in relation to reporting allegations of misconduct to the police or other government authorities, including:
- a. reporting criminal matters to the police, including in response to section 316A of the *Crimes Act 1900* (NSW) or section 66AA of the *Crimes Act 1900* (ACT);
 - b. reporting matters to government authorities in accordance with Mandatory Reporting duties:
 - i. in NSW, under section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW);
 - ii. in the ACT, under section 356 of the *Children and Young People Act 2008* (ACT).
 - c. reporting Reportable Conduct to government authorities, in accordance with:
 - i. in NSW, under s 27 of the *Children's Guardian Act 2019* (NSW);
 - ii. in the ACT, under s 17G of the *Ombudsman Act 1989* (ACT).

The *Procedure for Responding to Child Safety Concerns* sets out reporting obligations.

- 3.2.9 In instances where the *PSU Co-ordinator* determines that the matter should be reported, they are to consult with police or relevant government authorities:
- a. in order to report the receipt of the *Complaint*;
 - b. before commencing an investigation so as not to compromise other investigations;
 - c. to confirm those authorities have no objection to the investigation of the *Complaint*, in the event those authorities decide not to pursue what has been reported; and
 - d. to liaise with those authorities about appropriate risk management steps.

Acknowledge Receipt of the *Complaint*

- 3.2.10 In instances where the *Complainant* is known, the *PSU Co-ordinator* will acknowledge receipt of the *Complaint* in writing to the *Complainant* (by means of a letter in substantially similar terms to the form of letter in **Appendix A: Complaint Acknowledgement Letter**), including:
- a. affirming their right to make a *Complaint*;
 - b. providing them with a copy of this *Procedure* and the *Pastoral Response Policy*;

- c. providing them with an overview of the *Complaint* and investigation process outlined in this Procedure, including:
 - i. a realistic appraisal of likely timeframes, including when matters are also being investigated by police or other government authorities;
 - ii. what may be required of them;
 - iii. if relevant, the reporting requirements that the *PSU Co-ordinator* is subject to; and
 - iv. the protections available at law for those who make reports in good faith in relation to certain matters;
- d. where necessary, requesting that they put the *Complaint* in writing, or provide further information, including arranging an interview with them for those purposes;
- e. discussing the available support options, including providing further information about *Care Plans* outlined in the *Pastoral Response Policy*, and support in reporting to police.

There may be instances where provisions of this *Procedure* must be put on hold as a result of investigations being conducted by police or other government authorities. In that event the *PSU Co-ordinator* will include this information in the Complaint Acknowledgement Letter and also advise the *Reference Committee*.

Risk Assessment

- 3.2.11 Upon receipt of a *Complaint* the *PSU Co-ordinator* must conduct a risk assessment and develop a risk management plan. The risk management plan must be in accordance with the *CCNSWACT Risk Management Framework*.
- 3.2.12 When conducting a risk assessment and developing a risk management plan the *PSU Co-ordinator* should take into account:
 - a. any current or continuing risks related to the safety of the *Complainant* and/or the *Subject Person*;
 - b. any steps that should be taken in respect of the *Respondent* the subject of the *Complaint* including:
 - i. supervision;
 - ii. removal of contact with *Children*;
 - iii. being temporarily removed from ministry or stood down;
 - c. whether there is the need for assistance from other professionals in respect of linguistic, cultural or other factors, including in instances where the *Complaint* relates to a person with a disability;
 - d. the opinion of police, or other government authorities about the risk assessment and risk management plan;
 - e. the need to avoid prejudicing any ongoing police investigation and prejudicing the investigation and handling of the *Complaint*;
 - f. who needs to know about the *Complaint*, and what they should be told, mindful of the need for confidentiality and privacy, and the matters set out in (d) and (e); and
 - g. how to implement the risk management plan.
- 3.2.13 Depending on the circumstances, the formation and implementation of the risk management plan should be undertaken in liaison with the *Accountable Ministry* of the person the subject of the *Complaint*.

- 3.2.14 On completion of the risk assessment, if the *Complaint* relates to *Child Abuse* or *Sexual Abuse* of a *Child*, or any misconduct involving *Children*, and the *Complaint* is plausible, and there is a risk the *Respondent* may come into contact with *Children* in the course of their ministry, then, subject to 3.2.12 (d)-(e), the risk management plan must recommend that the *Respondent* be stood down from ministry while the *Complaint* is investigated, and a determination is made under Section 3.4.
- 3.2.15 The *PSU Co-ordinator* must undertake the risk assessment as promptly as possible and must provide the risk management plan to the *Reference Committee* as soon as possible after it is prepared unless any lawful obligation of the *Reference Committee* prevents that being done.

Pastoral Response Policy in respect of *Complainants*

- 3.2.16 The *PSU Co-ordinator* must take such steps in relation to *Complainants* such as to ensure appropriate pastoral care in accordance with the *Pastoral Response Policy* is provided to the *Complainants*.

Pastoral Response Policy in respect of *Subject Persons*

- 3.2.17 The *PSU Co-ordinator* must take such steps in relation to *Subject Persons* such as to ensure appropriate pastoral care in accordance with the *Pastoral Response Policy* is provided to the *Subject Persons*.

3.3 Consideration by the Reference Committee

- 3.3.1 The *Reference Committee* must consider the *Complaint*, at the earliest available opportunity after receiving it.
- 3.3.2 The Reference Committee must initially determine:
- a. if the *Complaint*:
 - i. relates to conduct constituting *Serious Misconduct* within the scope of this *Procedure*; and
 - ii. if established would amount to a breach of the *Code*;
 - b. If so, then the *Complaint* must then be investigated under this *Procedure*.
- 3.3.3 In doing so, the *Reference Committee* will also consider:
- a. whether the *Complaint* relates to *Criminal Conduct*;
 - b. whether the *Accountable Ministry* should be informed of the *Complaint*;
 - c. whether, acting reasonably, justifiably the *Complaint* is not false or untrue;
 - d. whether more information is required from the *Complainant* prior to the *Complaint* progressing to investigation phase; and
 - e. any other matters deemed relevant.
- 3.3.4 If the *Complaint* relates to a matter which is related to a conviction in respect of *Criminal Conduct*, the *Reference Committee* is to determine the manner in which the *Complaint* is to be handled. To that end the *Reference Committee* may determine to

refrain from taking some of the steps set out in this *Procedure* and give directions to the *PSU Co-ordinator* in relation to the steps to be taken, or put on hold, which are appropriate in the circumstances. In making any such determination the *Reference Committee* must ensure:

- a. the *Respondent* is afforded all of the rights to which the *Respondent* is entitled provided under the *Code*; and
- b. the provisions of clause 3.3.5 to 3.4.17 are observed in a manner which ensures the integrity of the operation of the *Procedure* is maintained.

3.3.5 The *Reference Committee* will also determine whether the risk management plan and any proposed actions under the *Pastoral Response Policy* are appropriate, with particular reference to any police or government authority investigations, and if not, suggest amendments.

3.3.6 After determining the above, the *Reference Committee*, via the *PSU Co-ordinator* will:

- a. inform the *Complainant* of the outcome of their initial deliberation;
- b. inform the *Accountable Ministry* if taking such action does not jeopardise the investigation;
- c. liaise with the *Accountable Ministry* in relation to the risk management plan; and
- d. if the *Accountable Ministry* is informed, provide the *Complainant* with information about the reasons for informing the *Accountable Ministry*.

3.4 Investigation

General Principles

3.4.1 In following the principles of procedural fairness and natural justice, the *PSU Co-ordinator* and/or *Reference Committee* must:

- a. act fairly, in good faith, without bias and without undue delay;
- b. allow the *Complainant* to make a *Complaint*, and respond to relevant evidence that arises in the investigation;
- c. ensure the *Respondent* has received the *Complaint* in writing and has the opportunity to respond to the *Complaint* and any further material or prejudicial statements or evidence that arises in the investigation;
- d. ensure the *Respondent* has sufficient detail to understand the *Complaint*;
- e. ensure witnesses provide written statements so the content of evidence is clear and relevant parties have the chance to respond;
- f. make reasonable diligent enquiries and ensure there is sufficient evidence to make a finding of fact; and
- g. ensure the provisions of clauses 3.4.2 to 3.6 are implemented.

Notify the *Respondent*

3.4.2 The *PSU Co-ordinator* is to make first contact with the *Respondent* by telephone. The purpose of the call is to:

- a. inform the *Respondent* that there has been a *Complaint* made against them, and;

- b. organise a time for the *PSU Co-ordinator* to meet with the *Respondent*. The meeting should be held at the earliest available opportunity and shall be conducted in accordance with clause 3.4.6.
- 3.4.3 The *PSU Co-ordinator* shall not divulge any more information at this point. The *PSU Co-ordinator* may inform the *Respondent* that the *Respondent* may bring a support person (as to which see clause 2.3 of the *Pastoral Response Policy*) with them to the meeting if they wish.
- 3.4.4 If the *Respondent* refuses to take part in the process set out in this *Procedure*, the investigation shall still proceed, with the *PSU Co-ordinator* and/or *Reference Committee* finalising a report, albeit one that acknowledges the limitations of the lack of co-operation.
- 3.4.5 If the *Respondent* refuses to take part or fails to respond, the *PSU Co-ordinator* should:
- a. advise the *Respondent* that the investigation will continue and outline the potential consequences of an adverse finding; and
 - b. provide further opportunity for the *Respondent* to respond to the *Complaint* or any further complaints or prejudicial matters that arise in the investigation.

First Meeting with *Respondent*

- 3.4.6 The *PSU Co-ordinator* (and at least one (1) other person) shall meet face-to-face with the *Respondent* in a public setting. The meeting should only last approximately 15 minutes. If it is not possible for a face-to-face meeting, then another phone/video call and email will be necessary to ensure those same tasks are undertaken. The *PSU Co-ordinator* has six tasks to complete under this clause:
- a. Inform the *Respondent* that a *Complaint* have been made against them.
 - b. Provide a written copy of the *Complaint* to the *Respondent*. The *Respondent* will be instructed to respond to the *Complaint* in writing within 21 days (or such further time as the *PSU Co-ordinator* may stipulate in writing) of the *Respondent* receiving the copy of the *Complaint*. The *Respondent* will also be instructed not to contact the *Complainant* or the *Subject Person*, either directly or indirectly through other people, nor contact the *Complainant's* family or the family of the *Subject Person*.
 - c. Provide the *Respondent* with a copy of the *Professional Conduct Protocols*, and advise the *Complainant* to carefully read the *Professional Conduct Protocols* in relation to the process under this *Procedure* and what will be expected of them.
 - d. Inform the *Respondent* of what support is available for them, and ask them what support they consider that they may require in the initial stage of the process. The *Respondent* may request support at any time.
 - e. Inform the *Respondent* that they are entitled to seek legal advice.
 - f. Provide the *Respondent* with the "Acknowledgement of PSU Process" form (see **Appendix B: Acknowledgment of PSU Process Template**) and request the *Respondent* to complete, sign and return that document to the *PSU Co-ordinator* during the meeting (or otherwise within 7 days of receiving the *Complaint*.)

Pastoral Response Policy in respect of *Respondent*

3.4.7 The *PSU Co-ordinator* must take such steps in relation to *Respondents* such as to ensure appropriate pastoral care in accordance with the Pastoral Response Policy is provided to the *Respondents*.

Investigate the *Complaint*

3.4.8 The role of the *PSU Co-ordinator* and/or *Reference Committee* is to:

- a. set the scope of the investigation;
- b. collect and document evidence;
- c. establish and document facts;
- d. prepare a written report setting out findings (the “**Investigation Report**”); and
- e. conduct the investigation in a timely manner.

3.4.9 In setting the scope of the investigation, the *PSU Co-ordinator* and/or *Reference Committee* must:

- a. In the case where the matter has previously been reported to police or government authorities:
 - i. consult with them about the scope of the investigation; and
 - ii. incorporate their feedback into the scope of the investigation.
- b. Have in mind the seriousness of the conduct and the consequences of adverse findings.

3.4.10 In collecting and documenting evidence, the *PSU Co-ordinator* and/or *Reference Committee* may, in their discretion:

- a. interview people who may have knowledge of the matters set out in the *Complaint* or who may hold information relevant to the *Complaint* and make notes of those interviews;
- b. interview a *Child*, however, the investigator should seek permission from the *Child's Parent/Guardian*;
- c. interview a *Child* who is the *Complainant* (or the *Subject Person*), however, special care must be taken, including assessing if:
 - i. it is necessary to further the *Complaint*;
 - ii. relevant specialist skills are required to conduct the interview;
 - iii. the information may be available in a written statement, in cases where the *Child* has already been interviewed;
 - iv. the information may be available through contemporaneous notes and/or evidence provided by any person who was advised of the conduct the subject of the *Complaint* from the *Child*; and/or
 - v. interviewing the *Child* may result in distress and trauma.
- d. seek written statements from witnesses, and request they sign the statement or interview notes;
- e. consider if specialist assistance is required and, if so, may engage persons such as:
 - i. to obtain legal advice;
 - ii. with expertise in interviewing people with disabilities;
 - iii. with expertise in interviewing Children;
 - iv. who may assist in dealing with cultural matters or linguistic translators;

- f. make enquiries of any relevant ¹*Ministry* or other bodies, including seeking access to any archives;
- g. review and document information gained from public searches, including of books, documents and websites;
- h. do other such things as are reasonable, necessary and consistent with principles of natural justice in order to complete the investigation in a proper and timely manner.

3.4.11 In collecting and documenting evidence, the *PSU Co-ordinator* and/or *Reference Committee* must:

- a. conduct interviews and enquiries in a private, logical manner, with diligence and care;
- b. only provide information which is relevant to conducting the investigation to people interviewed in respect of the *Complaint*;
- c. keep information secure and confidential;
- d. document the investigatory steps they have taken; and
- e. provide only information about the investigation to the *Reference Committee* or *PSU Hearing Committee* or *Appeal Panel* if required.

3.4.12 In establishing and documenting facts, the *PSU Co-ordinator* and/or *Reference Committee* are bound by the standard of proof known as the 'balance of probabilities' with regard to the principles set out in *Briginshaw v Briginshaw*², meaning:

- a. facts must be established on the basis of being 'more probable than not';
- b. they must take into account the seriousness of the *Complaint* and any consequences which would flow from an adverse finding.

3.4.13 In preparing an *Investigation Report*, the *PSU Co-ordinator* and/or *Reference Committee* must set out:

- a. the *Complaint*;
- b. the response of the *Respondent* to the *Complaint*;
- c. the investigation process;
- d. the available findings in relation to the *Complaint*;
- e. the evidentiary basis for those findings; and
- f. available outcomes as a result of those findings.

Referral of Report to the PSU Hearing Committee

3.4.14 Where a *Complaint* is to be dealt with under this *Procedure*:

- a. the *PSU Co-ordinator* and/or *Reference Committee* must provide the *Investigation Report* to the *PSU Hearing Committee* at the earliest available opportunity; and
- b. the *Complaint* shall be determined by the *PSU Hearing Committee*. *PSU Co-ordinator* at the earliest available opportunity.

3.4.15 The *PSU Hearing Committee*:

¹ To include only Accountable Ministries may impede adequate investigations.

² (1938) 60 CLR 336

- a. must act in a manner that is consistent with the principles of natural justice and procedural fairness;
- b. is bound by the standard of proof known as the ‘balance of probabilities’ with regard to the principles set out in *Briginshaw v Briginshaw*;
- c. must consider the *Investigation Report*, and determine:
 - i. whether there are reasonable grounds for the findings made in the *Investigation Report*; and
 - ii. whether more information is required from the *PSU Co-ordinator* and/or the *Reference Committee* and/or the *Complainant* and/or the *Respondent*.

3.4.16 The PSU Hearing Committee may accept or reject the available findings made in the *Investigation Report*, including available outcomes. In doing so, the *PSU Hearing Committee* should consider all of the available material.

3.4.17 If the *PSU Hearing Committee* determines that it requires more information from the *Complainant* and/or the *Respondent* the *PSU Co-ordinator* should be directed to seek that information from the *Complainant* and/or the *Respondent* and provide it to the *PSU Hearing Committee*.

3.4.18 When the *PSU Hearing Committee* determines it has the necessary information available such as to properly conduct a hearing it must prepare a final version of the Investigation Report (the “**Hearing Paper**”) which must contain:

- a. particulars of the *Complaint* concerning the *Respondent*;
- b. particulars of the *Respondent’s* rights to:
 - i. present evidence;
 - ii. call witnesses; and
 - iii. make submissions;
- c. a summary of the potential outcomes of the determination of the *Complaint*; and
- d. state the *PSU Hearing Committee* is to conduct a hearing about the *Complaint*.

3.4.19 The PSU Hearing Committee is to:

- a. convene a hearing as soon as practically possible after the *Hearing Paper* is prepared; and
- b. after it convenes the hearing give the *Respondent* a copy of the *Hearing Paper* along with a notice:
 - i. setting out the time, date and place of the hearing (which must be not less than 35 days after the *Hearing Paper* is given to the *Respondent*); and
 - ii. requiring the *Respondent* to provide to the *PSU Hearing Committee* such materials and submissions as the *Respondent* sees fit to provide in answer to the *Complaint* (the “**Respondent’s Reply**”) within 28 days after the *Hearing Paper* is given to the *Respondent*.

3.4.20 At the hearing the *PSU Hearing Committee* may call on the *PSU Co-ordinator*:

- a. to cause the witnesses in respect of the *Complaint* to attend to give evidence in relation to the *Complaint*;
- b. to present materials as evidence in relation to the *Complaint*; and

- c. to make submissions in respect of the *Complaint*, the outcome of the *Hearing* and at the imposition of sanctions.

3.4.21 The *PSU Hearing Committee*, in the conduct of the hearing, must take into account:

- a. the nature of the *Complaint*;
- b. the contents of the *Respondent's Reply*;
- c. the evidence presented by the *PSU Co-ordinator* and the *PSU Co-ordinator's* witnesses;
- d. the evidence presented by the *Respondent* and the *Respondent's* witnesses;
- e. the submission of the *PSU Co-ordinator* which may be in respect of both the outcomes and the imposition of the sanctions;
- f. the submissions of the *Respondent* which may be in respect of both the outcomes and the imposition of sanctions;
- g. the gravity of the matters alleged;
- h. the standard of proof described in, and observe its obligations set out in, clause 3.4.15; and
- i. whether the *Complaint* relates to conduct that is in breach of the Minimum Standards.

Outcomes

3.4.22 Following the hearing the *PSU Hearing Committee* must determine the *Complaint* and communicate its determination in writing to the *PSU Co-ordinator* ("**PSU's Final Determination**"). The *PSU's Final Determination* must incorporate the *PSU Hearing Committee's* substantive findings and must be dealt with in accordance with clause 3.4.23 and may contain and address one or more of the matters set out in 3.4.24.

3.4.23 When a *Respondent* is subject to either a:

- a. conviction in relation to *Criminal Conduct* involving a *Child*; or
- b. substantiated *Complaint* in relation to *Sexual Misconduct* involving a *Child* or *Children*;

the *PSU Co-ordinator* must notify the *EMD*, who must remove the *Respondent* from any role they have in any *Conference Ministry*, revoke the *Respondent's Endorsement* and prohibit the *Respondent* from holding themselves out as a person licenced, authorised or affiliated with *Churches of Christ in NSW & the ACT*. Where the *Respondent* is engaged or employed by, or involved with, a *Ministry*, other than the *Conference Ministry*, the *EMD* must use the *EMD's* best endeavours to have the *Respondent* removed from their engagement, employment or involvement with that *Ministry*.

3.4.24 Other than those mandatory outcomes described in 3.4.23. The *PSU Hearing Committee* may impose other sanctions on the *Respondent*, such as, but not limited to obligations or requirements in respect of any one or more of the following:

- a. Counselling, supervision or monitoring;
- b. Training/re-training;
- c. A public or private apology;
- d. The payment of compensation;
- e. removing themselves from their ministry role for a particular period;
- f. submitting to a period of probation;

- g. Continuance of *Endorsement*, with conditions or restrictions on practice of ministry;
 - h. Removal of *Endorsement*:
 - i. pending completion of sanctions; or
 - ii. for a set time frame; or
 - iii. permanently;
 - i. No change to *Endorsement*; and
 - j. Such other action as is deemed appropriate in the situation.
- 3.4.25 If *Endorsement* is ordered to be revoked by the *PSU Hearing Committee* or the *Appeal Panel*, the *EMD* must add the *Respondent's* name to the *Ministers Disqualified from Service list*.
- 3.4.26 Any of *Churches of Christ in NSW, Conference Executive* and the *EMD* are empowered to enforce any sanctions or outcomes that the *PSU Hearing Committee* and/or the *Appeal Board* imposes on the *Respondent*.
- 3.4.27 The *PSU Co-ordinator* will communicate the *PSU's Final Determination*, on behalf of the *PSU Hearing Committee*, by written notice (the "**Written Notice**") to:
- a. the *Complainant* (and where appropriate, the *Subject Person*);
 - b. the *Respondent*;
 - c. the *Accountable Ministries*;
 - d. any relevant *Ministry*;
 - e. the *EMD*; and
 - f. any relevant police or government authority, as required.
- 3.4.28 The *Written Notice* will include:
- a. the *PSU's Final Determination*;
 - b. a copy of the *Acknowledgement of PSU Process* (being the document in the form set out in **Appendix B**);
 - c. a statement that the *Respondent* must properly complete, sign and provide to the *PSU Co-ordinator* the *Acknowledgement of PSU Process* within 14 days of receiving the *Written Notice*;
 - d. a statement regarding the right of *Appeal* and the *Appeal* process including the right of the *Respondent* to have the appeal conducted as a re-hearing; and
 - e. an email address to which a *Notice of Appeal* may be sent (the "**Appeal Email Address**").
- 3.4.29 Unless the circumstances do not permit it, the *Written Notice* will be delivered in person to the *Respondent* by the *PSU Co-ordinator* (or a person nominated by the *PSU Co-ordinator*) and at the time it is delivered, the opportunity for discussion of the consequences of the contents of the *Written Notice* is to be afforded to the *Respondent*. This communication will occur in a timely manner, and with due sensitivity to the gravity of information being shared. Where the circumstances do not permit delivery of the *Written Notice* in person to the *Respondent* the *Written Notice* will be sent by registered post to the *Respondent* in an envelope addressed to the *Respondent* at the *Respondent's* current address (or address last known to the *PSU Co-ordinator*) and marked "Private and Confidential". Where the *Written Notice*

is posted from postcodes 2000 or 2138 it will be deemed to be received by the *Respondent* seven days after it is posted.

3.5 Failure of *Respondent* to complete, sign and return the *Acknowledgement of PSU Process*

3.5.1 Where a *Respondent* does not properly complete, sign and provide to the *PSU Co-ordinator* the *Acknowledgement of PSU Process*, that will not in any way prejudice, or prevent, the implementation or operation of this Procedure.

4. Appeal Process

4.1 Right of Appeal

4.1.1 The *Respondent* has the right to make an appeal ("**Appeal**") in respect of the *PSU's Final Determination* subject to the *Respondent* having complied with the obligation to provide the *Acknowledgement of PSU Process* and subject to the *Notice of Appeal* being provided to the *PSU Co-ordinator* within 21 days of the receipt by the *Respondent* of the *Written Notice*.

4.1.2 The *Appeal* must be in writing ("**Notice of Appeal**") and set out the grounds for the *Appeal* (including the facts and circumstances in support of the *Appeal*) including whether the grounds for the *Appeal* relate to:

- a. procedural fairness and natural justice; and/or
- b. the investigation process; and/or
- c. findings; and/or
- d. sanctions; and/or
- e. outcomes;

Any *Notice of Appeal* which is not provided to the *PSU Co-ordinator* within 21 days of the receipt by the *Respondent* of the *Written Notice* shall have no effect.

4.1.3 The *Notice of Appeal* must:

- a. contain the address of the *Respondent* to which correspondence in respect of the *Notice of Appeal* (and the *Appeal*) may be sent. That address (the "*Respondent's Address*") must be:
 - i. a physical residential address; or
 - ii. an email address; and
- b. contain a statement as to whether the *Respondent* requires the *Appeal* to be conducted as a re-hearing in which event the *Appeal* must be conducted as a re-hearing.

4.1.4 The *Notice of Appeal* must be:

- a. delivered by hand or by registered post in an envelope addressed to the *PSU Co-ordinator* at the address of the *PSU Co-ordinator* set out in this *Procedure*;
or
- b. sent by email to the *Appeal Email Address*.

The *PSU Co-ordinator* must acknowledge receipt of each *Notice of Appeal*, in writing, to the *Respondent's Address* within five (5) days of the date the *Notice of Appeal* is received.

4.1.5 The *PSU Co-ordinator* will refer the *Notice of Appeal* to the *EMD* who will select the

Appeal Panel. The PSU Co-ordinator will, in turn, convene the *Appeal Panel* and the *PSU Co-ordinator* must assist the *Appeal Panel* in respect of the administrative matters in relation to the conduct of the *Appeal*.

4.1.6 The meaning of the expression “**in writing**” in this section 4.1 shall include an email.

4.2 Appeals

4.2.1 Either of the *Appeal Panel* or the *Respondent* may require an *Appeal* to be determined by way of a re-hearing.

4.2.2 At the earliest reasonable opportunity after the *Notice of Appeal* is received, the *Appeal Panel* is to meet to consider the *Notice of Appeal*, having regard to the *Code* and this *Procedure*, and to:

- a. consider the *Notice of Appeal*;
- b. consider the Hearing Paper;
- c. consider the *Written Notice*;
- d. consider whether there has been any materially significant error in the process undertaken or any apparent miscarriage of justice or failure to afford the *Respondent* natural justice or procedural fairness or incorrect findings or inappropriate sanctions or incorrect conclusions reached;
- e. subject to Section 4.1.3b, determine whether the *Appeal* is to be conducted by way of a re-hearing or otherwise;
- f. determine whether the operation of any sanctions should be stayed or modified, and on what terms, pending the determination of the *Appeal*, in which event the *Appeal Panel* must cause the *PSU Co-ordinator* to notify the *Respondent* of the terms of any such modification or stay of the sanctions to have effect until the *Appeal* is determined; and
- g. determine, in the event the *Respondent* does not require the *Appeal* to be conducted as a re-hearing, how the *Appeal Panel* will deal with the *Appeal*.

4.2.3 The *Appeal Panel* may request further information, to be provided within 14 days, from the:

- a. *PSU Co-ordinator*;
- b. *Reference Committee*;
- c. *PSU Hearing Committee*; and
- d. *Respondent*.

4.2.4 If the *Appeal Panel* determines to conduct the *Appeal* as a re-hearing it must convene a hearing as soon as practically possible after notifying the *Respondent* of its determination under clause 4.2.2e.

4.2.5 In the event of the *Appeal* proceeding as a re-hearing the re-hearing is to be conducted in the manner set out in clauses 3.4.20, 3.4.21, 3.4.22, 3.4.23 and 3.4.24:

- a. as if a reference to the *PSU Hearing Committee* in those sections is a reference to the *Appeal Panel* and as if a reference to the hearing is a reference to the hearing of the *Appeal*; and

- b. as otherwise modified to suit the circumstances, as the Chair of the *Appeal Panel* determines.
- 4.2.6 After the hearing, or other consideration, of the *Appeal* the *Appeal Panel* must determine the *Appeal* and determine whether to uphold or dismiss the *Appeal* or to substitute alternative findings or sanctions.
- 4.2.7 As soon as reasonably practical after the *Appeal Panel* make its determination of the *Appeal* the *Appeal Panel* must advise the *Respondent* in writing within seven days of its determination by a “**Notice of Determination of Appeal**” which must contain:
- a. the determination of the *Appeal*;
 - b. any alternative findings;
 - c. the grounds for that determination; and
 - d. the sanctions arising out of the *Appeal*.
- 4.2.8 The provisions of sections 3.4.27 to 3.4.29 will apply to the *Notice of Determination of Appeal* as if the reference to the *Written Notice* in those sections was a reference to the *Notice of Determination of Appeal*.

5. Record Keeping

5.1 Storage

- 5.1.1 All records relating to *Complaints* will be securely stored in a fire-proof safe by *Churches of Christ in NSW*. Only the *PSU Co-ordinator*, *Conference President* and the *EMD*, or their delegates will have access to any case files.
- 5.1.2 The *PSU Co-ordinator* will also maintain a digital *Complaint* register in accordance with section 5.2, and will record only the minimum information necessary to understand the *Complaint* and its status.
- 5.1.3 All records will be kept for a minimum of 100 years.

5.2 Complaints Register

- 5.2.1 A complaints register should be kept which records:
- a. the name and contact details of the *Complainant*, any *Subject Person*, the *Respondent* and others relevantly involved in the *Complaint*;
 - b. the date of:
 - i. the conduct the subject of the *Complaint* of;
 - ii. the receipt of the *Complaint*;
 - c. any contact with the *Complainant*, any *Subject Person*, others involved in the *Complaint* and the *Respondent*;
 - d. any reporting to police or other government authorities;
 - e. information and documents obtained and prepared during the investigation, including any report;
 - f. the outcome of any investigation, including the reasons and any determination of the *PSU Hearing Committee* and of the *Appeal Panel*; and
 - g. the identity of the *PSU Co-ordinator* who oversaw the *Complaint* process and the date the record was made.

6. Appendices

The attached Appendices are indicative templates and flow diagrams in relation to this Procedure.

Appendix A: *Complaint Acknowledgement Letter Template*

[Date]

[Name of *Complainant*]
(Address of *Complainant*)

Dear [name of *Complainant*]

We have received your complaint about [name of *Ministering Person*]. The person handling your complaint is [PSU Co-ordinator's Name or Reference Committee's Member's name].

We affirm your right to make a complaint, and commit to responding to you in a just and fair manner.

Please find **enclosed**:

- the *Complaints Procedure* (Procedure);
- the Pastoral Response Policy.

What we do first

The *Professional Standards Unit (PSU) of Churches of Christ in NSW & the ACT*, is empowered to make decisions about breaches of the *Code*. It is important for you to know that [PSU Co-ordinator's Name or Reference Committee's Member's name] is impartial in this process, and cannot make decisions in relation to disciplinary action.

Generally speaking, when we receive a complaint we undertake an initial process to consider whether your complaint is in respect of a breach of the *Code*. We may need to seek further clarity from you, and if you have not done so yet, ask you to put your complaint in writing and sign the complaint. We will also seek your desired outcomes as a result of your complaint.

We will then communicate your complaint to [name of the *Ministering Person*], in writing, and invite them to respond to us in writing.

You are advised not to contact [name of the *Ministering Person*] or their family about your complaint, and they will be instructed in the same manner with regard to you and your family.

The formal investigation

An investigation can take quite some time to complete. This can be for a variety of factors including:

- any other ongoing investigations (and particularly police or other government authority investigations)
- needing to seek comment or interviews with yourself and other people;
- inspecting files and documents;
- visiting the Ministry site;
- seeking advice from experts that specialise in the matters relevant to your complaint;
- undertaking other lines of enquiry.

Professional Standards Unit
PSU Co-ordinator
Suite 301, Level 3, 1B Homebush Bay Dr
Rhodes NSW 2138
(02) 8573 6000
psu@ccnswact.org.au

These actions take time, but we will try to complete them and let you know the results within [number of weeks/months]. We will keep you informed of our progress as things move forward.

Post Investigation

Following an investigation, the *PSU* will consider the findings of the investigation to determine an outcome.

The *PSU* will write to you in relation to its findings and the outcomes of the processing of the *Complaint*.

Support

We acknowledge that it took some courage for you to contact us, and we realise that undertaking this process may be difficult for you. We would like to offer you impartial pastoral support throughout the process by means of a support person. We will contact you again soon to discuss this further with you. You are not obligated to accept this offer.

We will work through the complaint you have made and the facts you have given us, in accordance with the Procedure, and will contact you again as the process is carried out.

Yours sincerely

[Full name]

[Title]

Appendix B: Acknowledgment of PSU Process Template

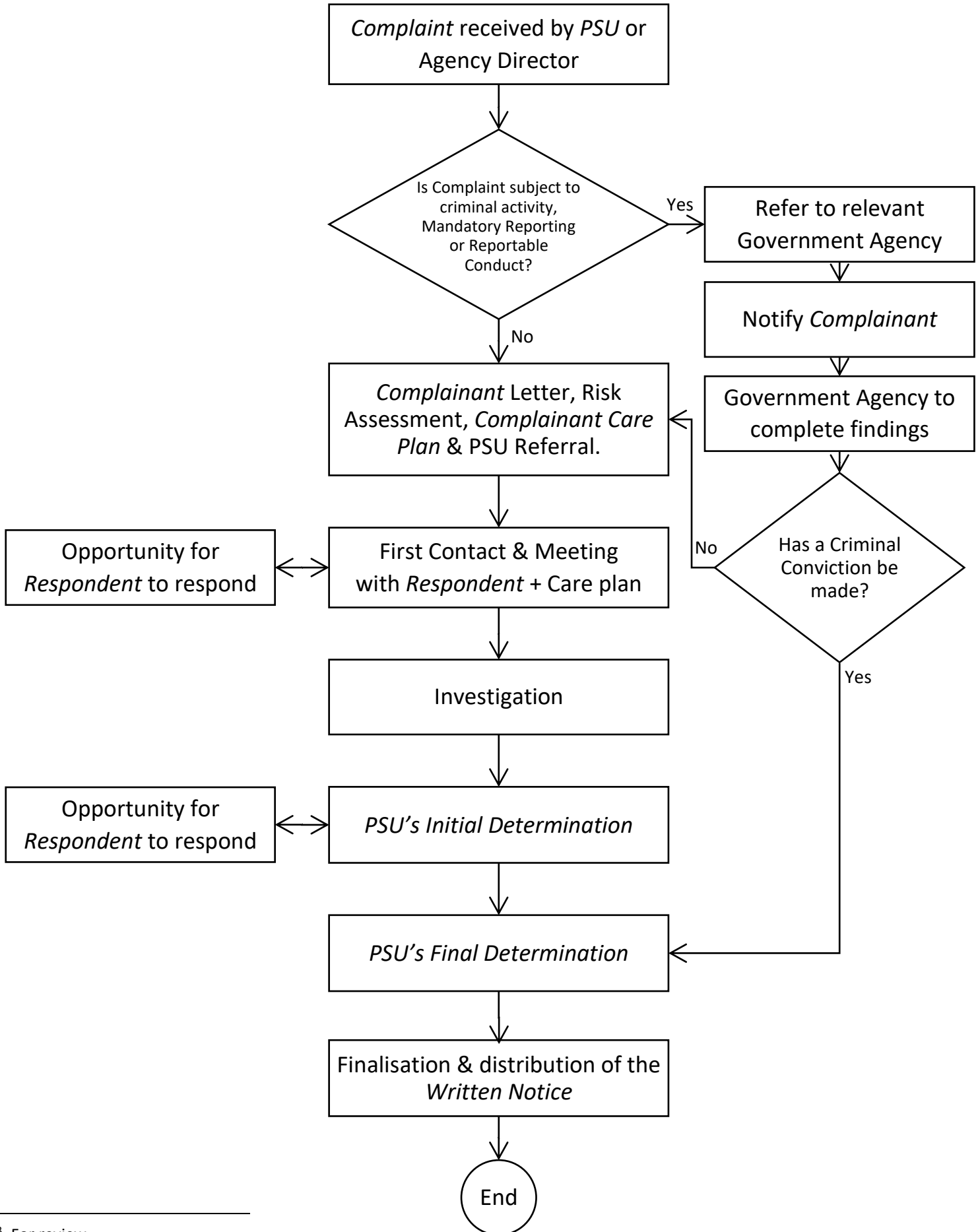
Acknowledgment of PSU Process
C O N F I D E N T I A L

Name of <i>Respondent</i>	[insert details]
Residential Address	[insert details]
Phone contacts	[insert details]
Email Address	[insert details]

I acknowledge allegations have been made against me in relation to the alleged breaches of the Code of Conduct (to which I am a <i>Subscriber</i>) and I have had the <i>Complaints Procedure</i> provided to me. I understand that if the allegations against me are of criminal nature or involve any form of conduct that is reportable under the law that they have been, or may be, reported to the police or other relevant authority.	Please initial
I acknowledge I have received a copy of the <i>Complaint</i> in writing, and acknowledge that I am to respond in writing to each allegation within 21 days (or such longer period as the <i>Professional Standards Unit</i> Co-ordinator may stipulate in writing) of the date of the receipt by me of the <i>Complaint</i> .	Please initial
I acknowledge that I have been instructed that I should not contact the <i>Complainant</i> (or the person who is alleged to be the subject of my actions) or their family, either directly, or indirectly through other people.	Please initial
Options for support have been outlined to me by the <i>Professional Standards Unit Co-ordinator</i>	Please initial
At this stage my support needs during this process are:	[insert details]

My address for correspondence in relation to the *Complaint* is each of my Residential Address and my Email Address and I consent to such correspondence (including any notices) being sent to either of those addresses.

Signature of <i>Respondent</i> :	
Date:	



³ For review.

