

**Submission  
No 122**

Attachment 2

## **INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES**

**Organisation:** Ombudsman New South Wales

**Date received:** 1/04/2016

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A decorative graphic consisting of a teal gradient bar at the top, with a wavy, layered teal shape below it that tapers towards the right.

# **NSW Ombudsman Disability Reportable Incidents Scheme**

## NSW Ombudsman responsibilities in relation to people with disability include:

- handling and investigating complaints and reviewing complaint-handling systems
  - inquiring into major issues affecting people with disability and service providers
  - reviewing the deaths of people with disability in residential care
  - monitoring, reviewing and assisting in setting standards for the delivery of disability services
  - coordinating the Official Community Visitors scheme
  - overseeing service providers' responses to Disability Reportable Incidents
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## Part 3C of the Ombudsman Act

- Our oversight of reportable disability incidents falls under Part 3C of the *Ombudsman Act 1974*. This function commenced on 3 December 2014.
  - The Part 3C Disability Reportable Incidents Scheme enables the NSW Ombudsman to oversight **reportable incidents** involving people with disability who live in supported group accommodation.
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## What is the Disability Reportable Incidents Scheme?

- The Secretary of FACS, or the head of agency of a funded provider, must notify us of all reportable incidents within 30 days of the head of agency becoming aware of the allegations.

### The NSW Ombudsman will:

- consider whether an investigation into a reportable incident has been properly conducted, and whether appropriate risk management action has been taken arising from the incident
  - keep under scrutiny the systems that FACS operated and funded providers have for ***preventing, handling and responding*** to reportable incidents in supported group accommodation.
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## What is a reportable incident?

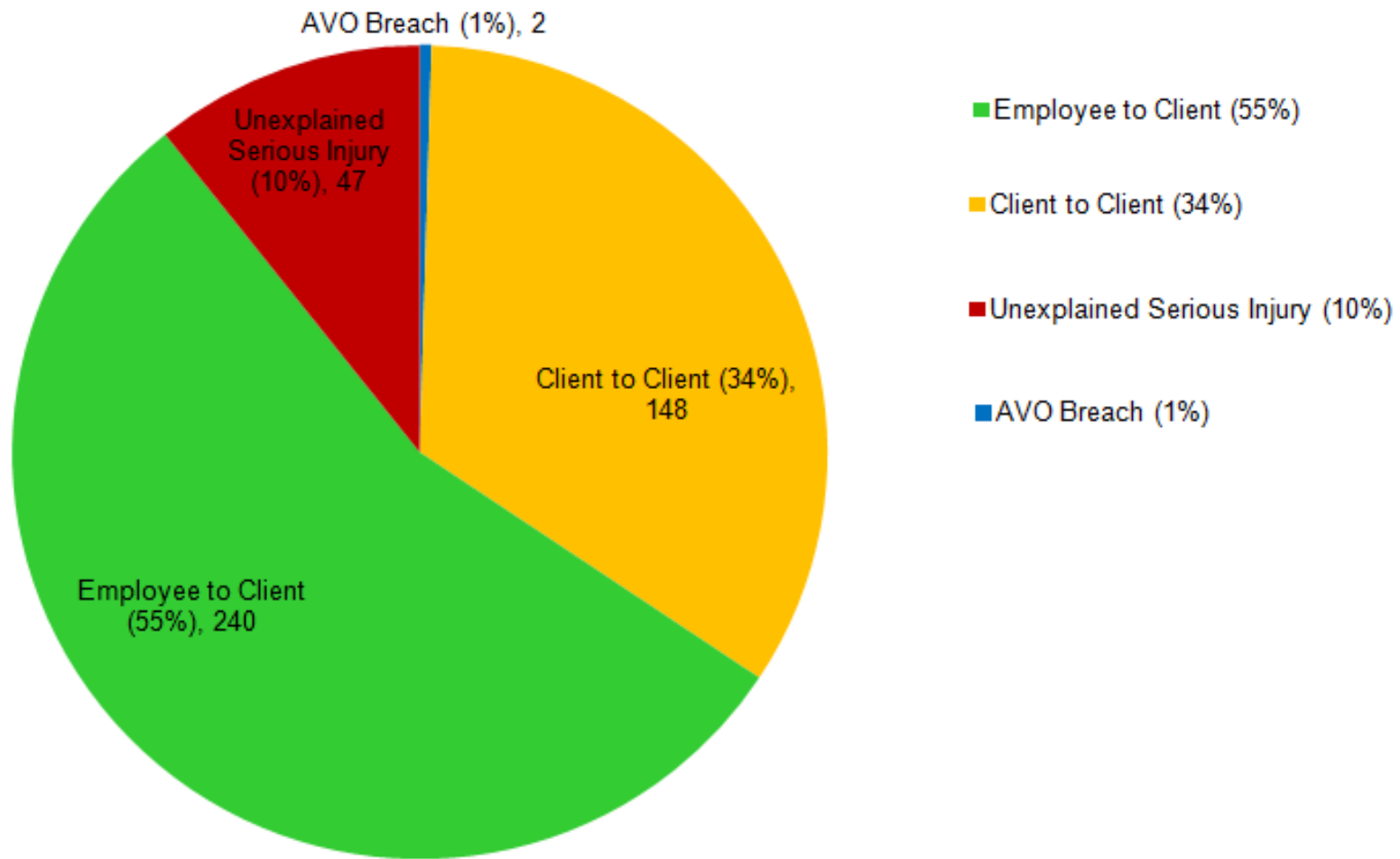
There are four categories of reportable incidents:

1. Employee to client incidents
2. Client to client incidents – high threshold before a report is required
3. The contravention of an apprehended violence order made for the protection of a person with disability
4. An incident involving an unexplained serious injury

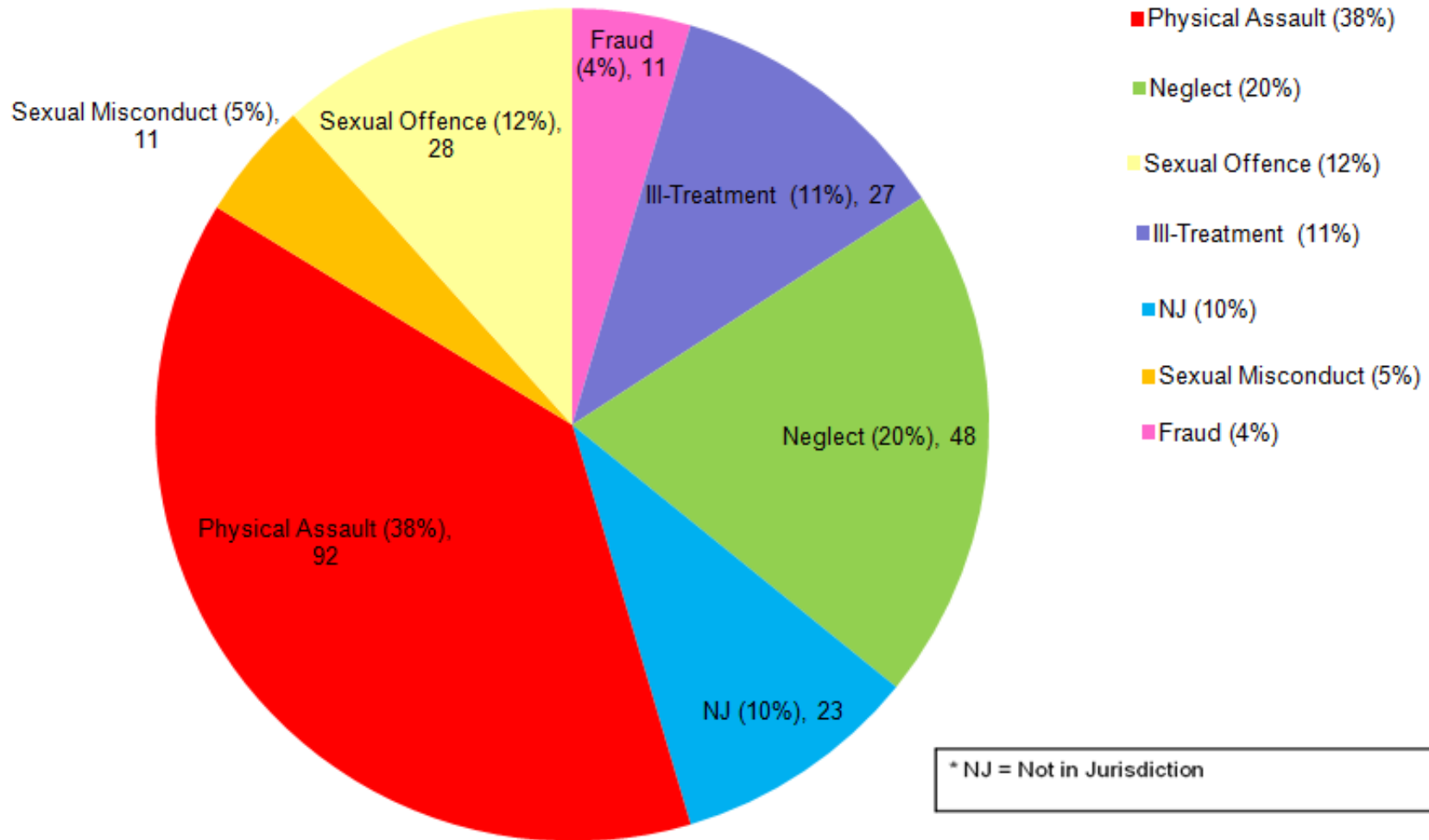
Incidents must involve a person with disability living in supported group accommodation.

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## From 3 December 2013 to 25 August 2015: 437



## Employee to Client: 240



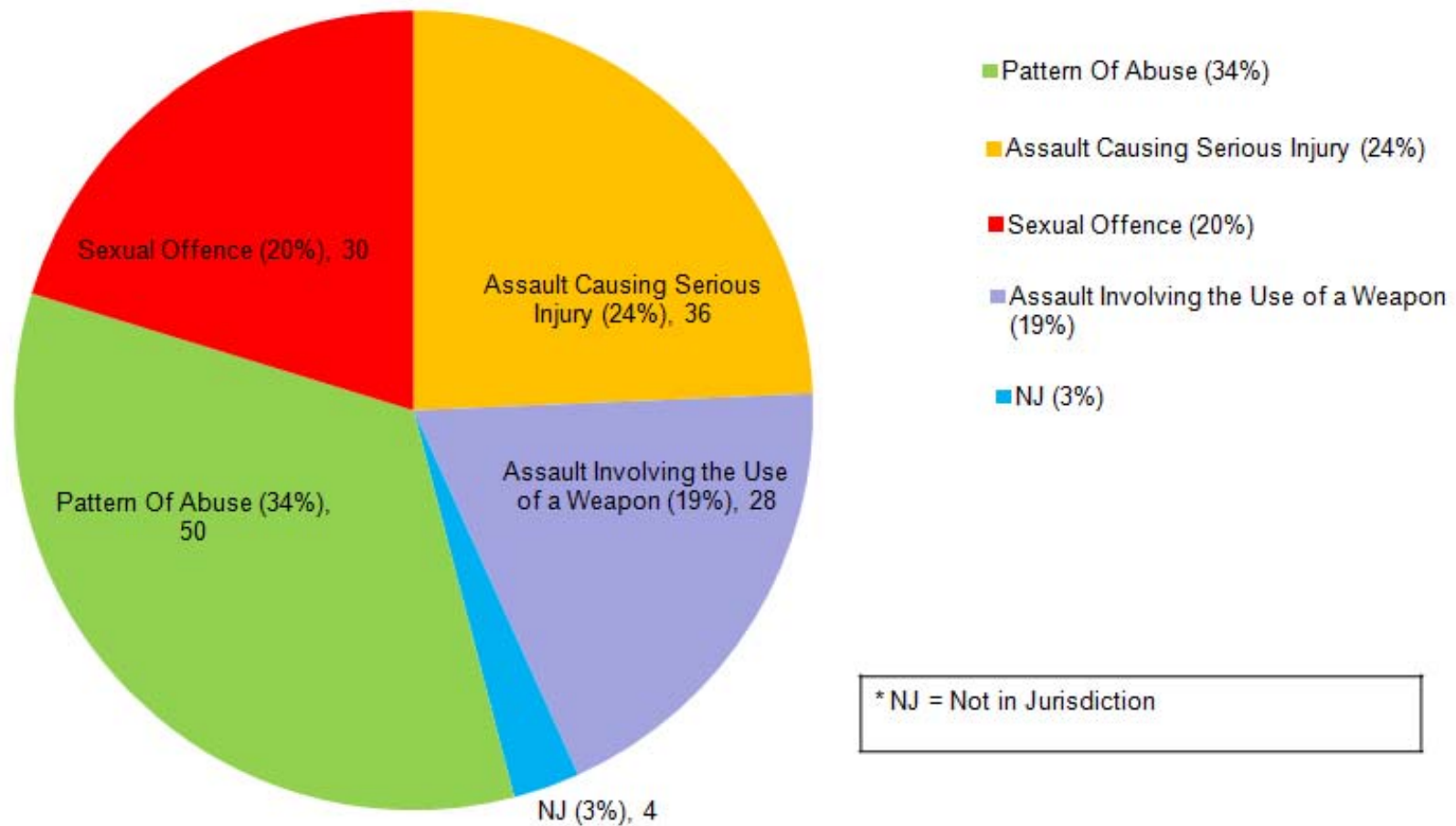


## Examples of types of allegations

### Employee to Client – allegations received

- **Sexual offence/misconduct:** sexually assaulted residents; touched resident's penis; pulled resident's pubic hair; tickled resident and touched breasts; slept in bed with resident; and had inappropriate personal relationship with resident.
  - **Neglect and ill treatment:** withheld food; inappropriately used restrictive practices to manage behaviour: locked resident outside for extended period of time and deprived of food and water; failed to connect or flush enteral nutrition tube; and left residents unsupervised for an extended period of time.
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## Client to Client: 148



## Examples of types of allegations

### **Client to Client – allegations received**

- Allegations of physical force involving resident on resident incidents: punched resident in the head, causing concussion; hit with chair, causing deep cuts; and choked, pushed and punched, causing extensive bruising.
  - Allegations include that residents: threatened to hit other residents with a butter knife, piece of wood and other objects.
  - Sexual offence allegations include that residents: made resident touch penis; sexually assaulted residents; and tried to get other residents to touch genitals
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## Promoting a 'client-safe' environment

From **both** our reportable disability incidents and reportable conduct jurisdiction, we have observed that the following is required to create safe environments:

- rigorous pre-employment screening and recruitment processes
  - codes of conduct for staff which outline clearly what is acceptable and unacceptable behaviour
  - clear policies and procedures
  - comprehensive induction for new staff and training for all staff
  - high quality staff support, supervision, monitoring and performance management
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## Promoting a 'client-safe' environment

Particularly in relation to providing a client safe environment for vulnerable people with disability, we emphasise that it is critical that service providers have client support systems in place to promote client safety which include:

- placing clients at the centre of decision-making
  - good practice regarding pre-placement planning, risk assessments, client matching and assessments of compatibility
  - effective risk management to minimise safety risks, manage challenging behaviours and client incompatibility:
    - relevant clinicians (such as mental health or behaviour support clinicians)
    - expert responses to high risk sexual behaviour
    - appropriate support and supervision of clients that balances upholding rights vs managing risk
    - adequate staffing levels
  - best practice in relation to restrictive/restricted practices
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## Identifying and responding to significant incidents

It is also critical that service providers have systems in place to appropriately identify and respond to any serious incident which might occur. This requires a policy/practice framework for:

- ensuring staff recognise that a serious incident has occurred
  - high quality support to victims and appropriate engagement with family/carers/guardians following incidents
  - making the correct call around the involvement of police (and other external agencies) when an incident occurs
  - effective investigations, investigators and investigative practice
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## Best Practice Working Group

We have established a Best Practice Working Group with the aim of achieving tangible and sector-wide improvement and cultural change through a partnership approach. The Group includes disability leaders and key subject-matter experts within and outside of the disability sector, and is currently considering issues such as:

- staff screening and recruitment practices, and information exchange
  - the availability of, and access to, relevant clinicians and expert advisors
  - assessing the capacity of individuals to consent to sexual activity
  - support for victims with disability (and, where relevant, their family members), and
  - the criminal justice response to people with cognitive impairment.
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## Our current focus

### **1. Service provider practice development**

- The development of a practice guide for frontline disability staff on effective initial and early response to abuse and neglect of people with disability
- File review of responses to client to client matters led by the Chair of Intellectual Disability Behaviour Support, Associate Professor Leanne Dowse
- Proactive work with service providers on identifying best practice and promoting collaborative practices

### **2. Raising the profile of the scheme**

- Disability e-Newsletter to the sector containing information on the work of the Division, including jurisdictional updates and data
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## Our current focus

### **3. Sector education**

- Since 2012, we have run workshops with disability services' staff on responding to serious incidents.
  - For example, last financial year, we delivered 77 workshops to 1,629 staff of disability services.
  - Of completed surveys:
    - 96% would recommend the workshop to others
    - 98.1% rated the workshop overall as good/excellent
    - 98.5% rated the presenter as good/excellent
    - 90% rated the content as good/excellent
    - 90.4% rated the resources as good/excellent, and
    - 95.3% agree/strongly agree that they feel confident they can implement what they have learnt in the workplace
  - In addition, we have been delivering a large number of presentations to disability services, advocates, peak agencies and justice agencies to promote the disability reportable incidents scheme and its objectives.
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## Our current focus

### **4. Proactive work with government agencies**

- Our work has highlighted the importance of building capacity in the Police Force to effectively respond to serious incidents involving people with disability (whether victim, offender or witness); in particular, ensuring that the police response is timely and appropriate, and that police develop skills around interviewing people with disability.
  - We are keen to pursue criminal justice reform, and recently met with the Department of Justice to follow up the progression of NSW Law Reform Commission reports on people with cognitive and mental health impairments in the criminal justice system, including 135 (pre-court diversion) and 138 (criminal responsibility and consequences, including amendment of the *Crimes (Domestic & Personal Violence) Act 2007*).
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## Our current focus

### ***5. Data collection, analysis and reporting***

- There is a lack of accurate and comprehensive data relating to serious incidents involving people with disability in residential care settings.
  - We aim to collect a substantial body of data relating to disability reportable incidents.
  - We are also exploring IT solutions to streamline and simplify the notification process for disability services; including engaging Orima to develop a system for electronic notifications (and related reporting). Orima has already developed products for the Office of the Disability Services Commissioner in Victoria, and these have been adapted by FACS for use in NSW.
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