

INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Ombudsman New South Wales

Date received: 1/04/2016



**Initial and early response to abuse or neglect in
disability services**

RESOURCE GUIDE FOR DISABILITY SERVICES

DRAFT

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General inquiries: 02 9286 1000
Facsimile: 02 9283 2911

Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050

Web: www.ombo.nsw.gov.au

Email: nswombo@ombo.nsw.gov.au or training@ombo.nsw.gov.au

© State of New South Wales through the NSW Ombudsman 2015. All rights reserved.

This work is subject to copyright under the Copyright Act 1968 (Cth). You must obtain permission from the NSW Ombudsman for all reproduction and distribution purposes, including but not limited to presenting the work to others for a fee; charging others for access to the work; incorporating all or part of the work in advertising or a product for sale; modifying the work.

ACKNOWLEDGEMENTS

Many people contributed generously to the development of this Resource through stakeholder interviews. They included representatives from: NSW Department of Family and Community Services, NSW Health, NSW Police, Victoria Police, Victorian Disability Services Commission, Official Community Visitors, National Disability Services, NSW Council for Intellectual Disability, Disability Council of NSW, Cerebral Palsy Alliance, House with No Steps, Sunnyfield, Life Without Barriers, McCall Gardens, Achieve Australia, National Disability Insurance Agency, Intellectual Disability Rights Service, and academics from the University of NSW and Southern Cross University.

Stakeholders also gave feedback on aspects of the draft Resource. Among those invited to participate in this process were NSW Justice Victims' Services and Support, Office of the Director of Public Prosecutions, NSW Attorney General's Disability Advisory Group, Victorian Ombudsman, Commonwealth Department of Social Services, National Disability Insurance Authority, Victorian Department of Human Services, and members of the NSW National Disability Services State Committee.

The Ombudsman also sincerely thanks frontline and management staff who provided input through disability services focus groups and Local Area Commands.

DRAFT

CONTENTS

Message to frontline disability staff	1
Introduction – How to use this resource and other tools	2
PART A – BACKGROUND INFORMATION – ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY	3
1. What is abuse and neglect in disability services?	3
2. How common is abuse and neglect in disability services?	3
3. What are the indicators that abuse or neglect may be occurring?	4
4. What are the barriers to identifying and reporting abuse and neglect?	7
5. What is the role of the NSW Ombudsman in relation to serious incidents in disability services?	9
PART B – RESPONDING TO ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY	11
6. Ensuring immediate safety	11
7. Client disclosures and how you should respond	11
8. Protecting evidence	14
9. Reporting suspected/alleged abuse or neglect	16
10. Alleged abuse and/or neglect by a staff member	20
11. Alleged abuse by a client	21
12. Supporting clients in response to abuse and/or neglect	22
13. Working with the Police	24
14. Support for clients in the legal system	26
Appendix 1: Useful contacts	28
Appendix 2: Relevant NSW laws and policies	31
Appendix 3: Types of abuse and neglect	32
Appendix 4: Sample client protocol to give to police	34
Appendix 5: How can services reduce and prevent abuse and neglect of clients?	35
Appendix 6: The role of the management/response team	38
Appendix 7: What should you do if an allegation is made about you?	40
Appendix 8: Flowchart for initial and early response	41

DRAFT

Message to frontline disability staff

This practice resource gives important information to frontline workers about responding to abuse and/or neglect in disability services.

In 2008, the Australian Government accepted the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Under the CRPD, Australia must have systems in place to prevent abuse of people with disability.

To meet Standard 1 of the Disability Services Standards, disability services have to:

- make sure clients are supported *'in an environment free from discrimination, abuse, neglect or exploitation'*
- report any instances of discrimination, abuse, neglect or exploitation, and
- support clients and their families to do the same.

Under the *Disability Inclusion Act (2014)*, disability services must notify the NSW Ombudsman of certain serious allegations, including abuse and neglect of people with disability who live in supported group accommodation. The Ombudsman's office looks at how agencies respond to these matters.

As a disability support worker, you must:

- help to prevent abuse and neglect in your service
- identify and report whenever abuse and/or neglect happens, and
- support the person with disability to recover from trauma of abuse or neglect.

If you work with children with disability, you should also read the Guidelines, which explains what to do when a child has been abused or neglected.

I hope that this guide and related training will help you to understand how to prevent and respond to abuse and neglect of your clients.

Steve Kinmond

**Community and Disability Services Commissioner
Deputy Ombudsman**

DRAFT

Introduction – How to use this resource and other tools

This resource gives important information about what you need to do if you think or know that abuse and/or neglect has, or may have, occurred in your service.

You can get to know this information by:

- taking time to read the guide
- attending the NSW Ombudsman's one day course: *Responding to abuse and/or neglect in disability services*([insert hyperlink](#)),and
- attending Team briefing led by one of your managers. The NSW Ombudsman has prepared a briefing pack to help managers deliver the briefing.

This resource has two parts.

PART A – BACKGROUND INFORMATION – ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY, gives general information about abuse and neglect. There is more specific information in the appendices at the back, including:

- definitions of abuse and neglect
- how services can reduce and prevent abuse and neglect of clients
- the role of the management/response team, and
- relevant NSW laws and policies.

PART B – RESPONDING TO ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY gives you information about what to do when abuse and/or neglect has, or may have, occurred in your service.

For quick information, we have also developed:

- a six-page Quick Guide for frontline staff ([insert hyperlink](#)),and
- a one-page flowchart of *How to respond to alleged abuse and/or neglect in disability services* ([insert hyperlink](#)) (Appendix 7).

You can also find these resources on the NSW Ombudsman website.

TERMINOLOGY

In some organisations, staff report possible abuse and/or neglect to a special team that is separate from line management. In other services, staff report possible abuse and/or neglect to management, who then direct the initial response. When this resource says 'management/response team', it includes both reporting approaches.

PART A – BACKGROUND INFORMATION – ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY

1. What is abuse and neglect in disability services?

There are many different types of abuse and neglect, and many ways that abuse and neglect can show. All types of abuse and neglect go against a person's rights.

Common forms of abuse and neglect in disability services include:¹

- physical abuse
- sexual abuse
- psychological or emotional abuse
- domestic violence (which includes not only couples but also others who live in the same house)
- financial abuse
- neglect
- unlawful restraint and restrictive practices, and
- systems abuse (where services or staff do not provide, or try to provide, adequate or appropriate support).

2. How common is abuse and neglect in disability services?

Research shows that people with disability are much more likely than the general population to experience all forms of abuse and neglect.

Why is it so common?

There are many reasons why people with disability tend to experience abuse and/or neglect more often, including:

- other people not recognising the rights of people with disability
- poor environments or supports, leading to frustration, challenging behaviour and aggression
- inadequate staffing and/or training, and
- some people with disability:
 - requiring personal care
 - being less able to resist or complain
 - having behaviours of concern that make them more vulnerable to inappropriate physical restraint and physical abuse
 - being excluded from decisions about who they will live with and who will work with them
 - relying on staff to make purchases for them and to manage their money, which can give opportunity for fraud and misuse of funds, and
 - being socially isolated and having limited close contact with people other than the support staff.

¹ Definitions of each of these forms of abuse and neglect are at Appendix 3.

DRAFT

Research has also found that people with disability in supported accommodation are at greater risk for many reasons, including:

- they tend to rely heavily on staff for daily support
- they may live with many other people
- they may live with people they are not compatible with, and
- there tends to be only one staff member on overnight shifts.

Abuse and/or neglect can occur anywhere, including work, respite, travel, day programs, therapy and accommodation.

You must report to your management/response team any concerns about abuse and/or neglect of your clients so that they (and others) can be protected.

3. What are the indicators that abuse or neglect may be occurring?

Signs of abuse and/or neglect can come in many forms. When you see any sign of possible abuse and/or neglect, you must report this to your management/response team.

The indicators below are only a general guide – not all clients who are experiencing abuse and/or neglect will show these signs.

People who are familiar with a client and have a good relationship with them are best placed to recognise changes that may suggest the person is being abused.

Client indicators of abuse including assault and neglect²

Types of abuse	Behavioural indicators and physical signs
Physical abuse	<ul style="list-style-type: none">• Inconsistent, vague, or unlikely explanation for the injury• Unexplained injuries – broken bones, fractures, sprains, bruises, burns, scalds, bite marks, scratches or welts• Other bruising and marks may suggest the shape of the object that caused it• Avoiding or being fearful of a particular person or staff member• Being overly compliant with staff• Frequent and overall drowsiness (associated with head injuries)• Out of character aggression
Sexual abuse	<ul style="list-style-type: none">• Saying they are being abused or dropping hints that appear to be about abuse• Bruises, pain, bleeding – including redness and swelling around breasts and genitals• Torn, stained, or bloody underwear or bedding• Repeating a word or sign, such as 'bad', 'dirty'• Has a sexually transmitted disease• Pregnancy• Sudden changes in behaviour or character, e.g.: depression, anxiety attacks (crying, sweating, trembling, withdrawal, agitations, anger,

² Source: Department of Family and Community Services (Ageing, Disability and Home Care) *Abuse and Neglect Policy* 2015.

DRAFT

	<p>violence, absconding, seeking comfort and security)</p> <ul style="list-style-type: none"> • Sleep disturbances, refusing to go to bed, and/or going to bed fully clothed • Refusing to shower
Psychological or emotional abuse and verbal abuse	<ul style="list-style-type: none"> • Depression, withdrawal, crying • Being secretive, and trying to hide information and personal belongings • Speech disorders • Weight gain or loss • Feelings of worthlessness about life and themselves; extremely low self-esteem, self-abuse, or self destructive behaviour • Extreme attention-seeking behaviour and other behavioural disorders (e.g.: disruptiveness, aggressiveness, bullying)
Domestic violence	<ul style="list-style-type: none"> • Depression, withdrawal, crying • Feelings of worthlessness about life and themselves; extremely low self-esteem, self-abuse, or self-destructive behaviour • Extreme attention-seeking behaviour and other behavioural disorders (e.g.: disruptiveness, aggressiveness, bullying) • Excessive compliance
Neglect	<ul style="list-style-type: none"> • Inappropriate or inadequate shelter or accommodation • Weight loss • Requesting, begging, scavenging, or stealing food • Very hungry or thirsty • Inadequate supply of fresh food • Constant fatigue, listlessness or falling asleep • Saying they are being neglected, or dropping hints that appear to be about neglect • Extreme longing for company • Poor hygiene or poor grooming – overgrown fingernails and toenails, unclean hair, unshaven, unbathed, wearing dirty or damaged clothing • Smelling of urine or faeces • Unclean and unsanitary living conditions • Improper sleeping, cooking, bathing arrangements • Inappropriate or inadequate clothing for the weather • Unattended physical problems, dental, and/or medical needs • Social isolation • Loss of social and communication skills • No means of communication • Displaying inappropriate or excessive self-comforting behaviours • No social or recreation activities

DRAFT

	<ul style="list-style-type: none">• No daytime or work activities• No family contact• Ripped or torn clothing
Financial abuse	<ul style="list-style-type: none">• Sudden decrease in bank balances• No financial records or incomplete records of payments and purchases• Person controlling the finances does not have legal authority• Sudden changes in banking practices• Sudden changes in wills or other financial documents• Unexplained disappearance of money or valuables• Person does not have enough money to meet their budget• Person is denied outings and activities due to lack of funds• Borrowing, begging, stealing money or food
Restraints and restricted practices	<ul style="list-style-type: none">• Using restrictive practices without authorisation or consent, including:<ul style="list-style-type: none">• physical restraint• exclusionary time out• use of PRN psychotropic medication• locks on outside of bedroom doors• locks on food pantry, cupboards, or refrigerators• seclusion• Overdose of medication• Use of medication to control behaviour without positive behaviour support
Systems abuse (including wilful deprivation)	<ul style="list-style-type: none">• Over or under use of medication• Over or under use of restrictive practices• Lack of staff to provide necessary support• Care provided by a staff person who makes the person feel uncomfortable or unsafe• Ignoring a person when they ask for help• Intentionally making a person wait for help• Providing physical care in a way that is unnecessarily rough or careless• Refusing to provide help unless the person agrees to lend money• Purposely unplugging or turning off or not maintaining adaptive equipment• Neglecting to recharge the battery of a person's wheelchair

Warning signs of potential for abuse/neglect or crossing professional boundaries by staff

Sometimes, you may have a 'gut feeling' about things or see the following behaviours:

- a staff member who:
 - thinks it is OK or finds reasons to take a client to his/her home

DRAFT

- wants to spend more time with a client by going on outings with them, or who provides excessive gifts and treats
- spends excessive time in a client's room, or with the door closed
- wants to be rostered on more night shifts, without reasonable explanation
- has an overly close relationship with the family of a client so that they may then be reluctant to complain
- inappropriately touches clients
- inappropriately discusses sex, has sexualised behaviours, or brings pornography into the workplace
- gives or accepts gifts from a client
- lends cash to a client for something they want
- 'bends the rules' with restricted practices
- frequently looks or sounds overly stressed and agitated by clients' behaviours of concern
- appears to have ongoing drug and/or alcohol dependency issues
- appears to have gambling or other financial issues
- has problems with anger management and violence outside of work
- regularly 'bad-mouths' clients, and excuses their own behaviour by blaming clients
- doesn't respond to client needs because they see the behaviour as attention-seeking
- ignores or does not implement recommendations or client plans, such as behaviour support, health care support, or reporting procedures, and
- increased staff secrecy, rumours and/or chatter.

Any indicators you see (in clients or staff) must be discussed with your management/response team.

While some of the signs may not seem like much by themselves, you need to report them because they might be part of a bigger picture. You play an important role in seeing these signs and working with the management/response team to find out what is happening.

When there are warning signs of abuse, it is very important to record information in client progress notes, house communication books, etc. This information can then be studied to see what is happening for the client.

4. What are the barriers to identifying and reporting abuse and neglect?

Barriers for clients and their families

There are many reasons why people with disability, their families, and other supporters may not report abuse and/or neglect, including:

- limited communication
- a fear of not being believed
- they rely on staff for daily and ongoing support
- they don't know their rights
- poor understanding of what abuse and/or neglect is and how to report it

DRAFT

- a belief that people with disability make unreliable witnesses
- prior experience of seeing poor outcomes for other clients who have reported abuse or neglect, and
- prior experience of police not charging alleged perpetrators.

Barriers for staff

a) **Correctly identifying abuse and neglect**

Australian research has shown that abuse and neglect of people with disability tends to get minimised and downplayed, including:³

- serious client to client assaults being seen as a behaviour management issue without thinking about the abuse of the victim(s)
- re-naming client to client assaults as 'accidents'
- staff becoming de-sensitised to client to client assaults, and
- staff (and others) assuming that clients are not affected by abuse and/or neglect.

Our work has also found that abuse and/or neglect of clients is not recognised, because of:

- assumptions that the client may not remember or understand what has happened to them
- staff dismissing clients who report abuse or neglect because they are seen to have a history of making up stories
- staff thinking that physical signs of abuse and/or neglect are due to the client's mobility problems, self-injurious behaviours, refusal to eat or bathe
- services not looking closely enough at the possible cause of behaviours, and
- unclear guidelines or policies for staff to report or respond to incidents.

b) **Reporter's personal concerns**

Fear is a major reason why frontline workers don't always report suspected abuse or neglect of clients, including:

- fear that revenge or negative action will be taken against them for making a report, especially if the staff member they are reporting has a close relationship with peers and managers
- fear that they will be seen as a 'trouble maker' and lose shifts, and
- fear about what a supervisor will do if the frontline staff member reports them.

It is important that disability services make it very clear that staff who report abuse and/or neglect will be protected from negative action being taken against them for making the report. Disability services should do a risk assessment of the likelihood that negative action will be taken against the staff member who has made a report, and provide that staff member with appropriate protection. Any evidence of reprisal will be poorly viewed, and may result in action, by oversight bodies such as the NSW Ombudsman.

³ Robinson, S., 2012. *Enabling and Protecting*, Children with Disability Australia.

DRAFT

Staff are often reluctant to report a co-worker they have known for some time. Sometimes staff can be groomed so they find it difficult to believe that their colleague would abuse a client.

c) The reporting process

Staff are much less likely to report abuse and/or neglect if they believe that no action has been taken on previous complaints or incident reports. Section 4 contains information about what to do if you have concerns that no action has been taken in response to your report.

Staff aren't always confident about the signs of abuse and/or neglect. Reporting processes can be seen as complex and time consuming. Sometimes, staff prefer to wait and see rather than report immediately.

It is vital that disability services have a 'reporting culture' that supports staff to make a report even when they're not sure if what they are seeing is abuse or neglect. When in any doubt, staff must report— either through an initial verbal discussion or a written report.

Frontline staff have a professional responsibility to report concerns or incidents to management, including client abuse and/or neglect. Reporting helps the service to look at and respond to the situation so that clients can be safe.

5. What is the role of the NSW Ombudsman in relation to serious incidents in disability services?

Disability Reportable Incidents scheme

The Disability Reportable Incidents scheme started on 3 December 2014. The Department of Family and Community Services (FACS) and non-government disability services have to report to the NSW Ombudsman⁴ any reportable incident or allegation that involves a person with disability who lives in supported group accommodation (permanently or on respite).⁵

Some – but not all – of the incidents you report to your management/response team will be notified to the NSW Ombudsman.

The Disability Reportable Incidents scheme is 'allegations based'. This means that the Ombudsman is notified whenever certain matters are *alleged* to have occurred – the matters don't have to have been witnessed or proven.

The NSW Ombudsman looks at how disability services handle and respond to 'reportable incidents', and monitors services' actions to prevent these incidents from happening again.

The Ombudsman must be notified of all of the following allegations involving a person with disability living in supported group accommodation:

Staff to client incidents:

- any sexual offence or sexual misconduct that is committed against the client (or is committed with them, or takes place when they are present)
- physical assault of the client

⁴ Under Part 3C of the *Ombudsman Act 1974*

⁵ Under the Disability Inclusion Act, 'supported group accommodation' requires that:

- a) at least two people with disability live there
- b) none of the people with disability has a guardian or a family member responsible for their care living in the accommodation
- c) the accommodation is under the control, direction or management of a disability service
- d) support is provided 'on-site' at the accommodation, and
- e) a fee is charged if the accommodation is permanent.

DRAFT

- fraud committed against the client
- ill-treatment or neglect of the client.

Client to client incidents:

An assault of a client who lives in supported group accommodation by another client who lives at the same place, that:

- is a sexual offence
- causes serious injury
- involves the use of a weapon, or
- is part of a pattern of abuse of the client by the other client.

Breach of an Apprehended Violence Order (AVO):

An incident in supported group accommodation that involves a breach of an AVO made to protect a client.

Unexplained serious injury:

An unexplained serious injury to a client who lives in supported group accommodation.

For more information, visit the Incidents website page, including our [Guide and notification forms](#).

Information about the scheme is also included in the NSW Ombudsman's [Responding to Abuse and Neglect in Disability Services](#) (insert hyperlink) course for frontline staff, and sector course for managers and investigators.

Employment-related child protection scheme

Certain government and non-government agencies have to notify the NSW Ombudsman of allegations of the following 'reportable conduct' by their employees in relation to children:⁶

- any sexual offence or sexual misconduct that is committed against a child (or is committed with them, or takes place when they are present) – including a child pornography offence
- any assault, ill-treatment, or neglect of a child
- any behaviour that causes psychological harm to a child.

The Ombudsman looks at how the agencies handle and respond to these matters, and monitors agencies' actions to prevent these incidents from happening again.

Other functions

The NSW Ombudsman has other functions that allow him to look into serious incidents in disability services.⁷ For example, he can:

- handle complaints by any individual
- make inquiries of his 'own motion' (such as in response to an anonymous complaint or information from other sources), and
- take a close look at issues that affect clients of disability services, or that affect disability services.

The NSW Ombudsman can look into concerns about *any* serious incidents in disability services.

⁶ Under Part 3A of the Ombudsman Act

⁷ Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*

NOTE: Your reporting of incidents to your management/response team is not limited to those matters notified to the Ombudsman. Even minor concerns about client mistreatment or other incidents should be reported to management so they can look into them and take action. Reporting is in the best interests of both clients and staff.

PART B – RESPONDING TO ABUSE AND NEGLECT OF PEOPLE WITH DISABILITY

6. Ensuring immediate safety

What do I need to do if a physical or sexual assault has just happened?

- Immediately secure the safety of the clients, yourself, and other staff.
- Protect the victim from any further harm.
- Contact police if there is a risk of immediate harm which requires their assistance.
- Contact a doctor or the ambulance if someone is injured.
- Contact your duty manager.

7. Client disclosures and how you should respond

When you directly see abuse and/or neglect of a client, you should provide support to the client to meet their immediate needs and to calm the situation (and then report the incident). You should NOT ask the client questions about the incident.

Sometimes you will not see abuse or neglect directly, but a client will tell you ('make a disclosure') that abuse or neglect is happening or has previously happened.

Timing of a disclosure

For each person with disability, disclosures of abuse and/or neglect will be different. At times, a client will verbally disclose abuse and/or neglect to a staff member. However, not all clients use verbal language – in some cases, a client may seek to report abuse to a staff member using other communication methods.

People may disclose abuse at any time. It could be while the abuse is happening, or weeks, months, or even years later. If the client is supported and not punished when they first tell a staff member, they are more likely to disclose the abuse during a formal investigation.

Sometimes clients give direct information about:

- what abuse and/or neglect they are referring to
- where it took place
- when it happened, and if they are still in danger, and
- who was involved.

This information should be reported to your management/response team as soon as possible.

When a client has provided information that gives you a general understanding of their allegation, DO NOT keep questioning them – you might affect an investigator's interview.

DRAFT

However, if the client is giving you information that is not clear, take time to listen. Sometimes, the client can reveal important details without you having to ask any questions or interrupt their flow of information.

If the client still doesn't give a picture of what might have happened, should I ask any questions?

Yes. You are the person the client has chosen to tell. However, any questions you ask **must** be open questions (see below) and limited to getting basic information so that it can be reported and investigated. **When you have the basic details, you MUST stop questioning.** Your ongoing role is to provide support and reassurance to the client.

It is the responsibility of police, other external agencies and internal investigators/managers in your service to investigate allegations. However, you must not close down a disclosure – the client needs to have confidence that you will hear them. The message by an abuser may have been that no-one will hear or believe them.

Even if you don't get clear information but you feel that something might have happened, report it. Police or your own service may be aware of other allegations, and your additional information could help them to 'put the pieces together'.

Can I use the client's usual communication aides?

Generally, the answer is yes – you should use whatever aides help the client to communicate. However, using aides that only allow a 'yes or no' response can be seen as 'leading' or suggesting to clients a particular response. If you think this is possible, you should ask your manager (if no conflict of interest) to consult the Police or another expert investigator.

Some people think that clients will not be able to use a communication aide in court. This is not the case. The Criminal Procedures Act 1986 (NSW) – s275B means that a witness with communication difficulty can get help from a person or a communication aide.

Use OPEN questions

If you need more information to get a clear picture, the best questions to ask are 'Open Ended Questions' because they give the client the chance to give all of their information. Open-ended questions = questions that can't be answered by yes or no.

e.g.: 'Tell me more about that?'

'What do you mean by _____?'

'Can you explain...?'

'Can you explain that to me in more detail?'

'What happened next?'

STOP asking questions as soon as you have enough information to make a report.

What should I do if OPEN questions do not give enough basic information?

If this does not give enough information, consider as a last resort asking questions starting with Who? What? When? Where?

e.g.: 'What happened?'

'When did this last happen?'

'Who was it?'

DRAFT

'Where did it happen?'⁸

WARNING: You should not ask further questions once you have a general understanding of what your client is alleging.

What questions shouldn't I ask?

Don't ask LEADING questions – they can damage any police (or other) investigation. Be careful not to 'lead' a client by saying something they haven't said first.

e.g.: **Don't ask** 'Was it Fred who did this to you?' **Ask** 'Who did this to you?'

Don't ask 'Did this happen yesterday?' **Ask** 'Which day did this happen?'

Don't ask 'Did this happen in the bus?' **Ask** 'Where were you when this happened?'

Listen and support – don't ask the client to repeat what they have already told you

Your role is to reassure and support the client and then report. Do not get the client to 'go over' information they have already given you. This can make the client think that you doubt what they have said, and can lead them to change their response. It can also lead to problems in court, with suggestions that the client was 'led' due to repeated questioning.

Don't make promises you can't keep

Clients will sometimes ask you to promise 'not to tell' before they disclose. Tell the client 'I can't make that promise, but I will do my best to keep you safe'. This can reassure the client and encourage them to speak about the abuse.

Use words that reassure the client that it is right to speak up, such as:

'It's good that you told me about this'

'It's not your fault'

'I will try and help to stop this happening again'

In some cases, you may need to support the client for a long time while matters go through the courts and/or they recover from the trauma of abuse and/or neglect. It is very important that you show the client that they can trust what you say and do.

Don't be afraid of saying the 'wrong' thing

If a client has chosen to disclose to you, it shows that they trust you. Don't worry about saying the wrong thing to support them. As long as you listen supportively, the client will benefit from talking with you.

Stay calm

It is best to stay calm. You can give the best comfort to the client if you show strength, even if you are distressed by what you have heard.

Let the client take their time

A client may disclose quickly and then want to return to some other activity. Other clients will also want your time. It is important that you make sure that you have the time to spend with the client who has made a disclosure – you might need another staff member to take over with other clients so you can give the person the time they need. Give them your full attention. You – and key staff in your service – also need to be alert to the possibility that other clients may disclose over a period of weeks or months.

⁸ Joint Investigation Response Team, 2014. *Joint Investigation Response Teams*. NSW unpublished presentation.

DRAFT

Let the client know what you will do next

Towards the end of the disclosure, let the client know what will happen next in a way they will understand. It may be useful to say things like:

'It is good that you have told me about this. I need to talk to some people who can help you to be safe in the future. They might want to talk to you about what you've told me.'

Don't talk about authorities and organisations that are unfamiliar to the client without giving an explanation they will understand.⁹

DO NOT make a formal record of interview. This is a job for police or other investigators if they interview the client and/or you. However, you should take notes to assist your reporting (see further information on p16).

Your response must focus on the clients and in line with their support plans. You must treat your clients with care and respect, and maintain their privacy and confidentiality.

8. Protecting evidence

The main forms of evidence include:

- individual statements from victims, witnesses and defendants
- electronic or hard copy documents, including emails, rosters, progress notes, communication books, restricted practice authorisations, and reviews
- medical/forensic evidence, which can be from:
 - existing records
 - an examination of a victim or offender following an alleged offence
 - examination of samples/swabs taken from a crime scene, and
 - examination of the victim's clothing
- record of the crime scene, including what objects might have been disturbed, and
- medication which has been used or not used.

Looking at all of the available evidence allows police and/or your service's investigators to decide what needs to happen next.

What is my immediate role in relation to protecting evidence?

- Staff at the scene must try their best not to disturb any evidence that may be needed in an investigation.
- Evidence may be lost if a victim of sexual assault bathes, showers or wipes themselves clean soon after the assault. Try to delay this until police arrive or the client has been seen by a Sexual Assault Service. This will improve the chances of getting forensic evidence.
- Encourage the client not to change their clothing unless they have to for their wellbeing. If possible, keep the victim's clothing as evidence after any assault. Do not wash bed linen.
- If possible, protect the area – do not clean where the incident took place, and do not allow anyone to enter until police arrive.¹⁰

⁹ Hunter, C., 2011. Responding to children and young people's disclosures of abuse. Australian Institute of Family Studies.

¹⁰ Department of Family and Community Services (Ageing, Disability and Home Care), *Abuse and Neglect Procedures* 2015.

DRAFT

- Explain to the client(s) why the above is important, if needed.
- Make sure that relevant documents (electronic and hard copy) are kept.

If a client has an unexplained injury, you should take the same steps as above. There may have been a criminal offence, and evidence will be important to find out what happened.

However, it is a priority to get medical help for any injuries.

What examination does a Sexual Assault Service do and why?

If there is an allegation of sexual assault, contact should be made with a specialised medical and forensic service. If the person has a guardian, staff should immediately tell the guardian about the alleged abuse. If the client has given consent (or if they are unable to give informed consent), staff should tell their family and/or other supporters about the abuse as soon as possible so they can support the person and help with decisions.

Forensic evidence is time sensitive. Clients should attend a Sexual Assault Service (SAS) as soon as possible. If the time for getting forensic evidence has passed, staff should still support clients to go to a SAS for a check of their physical condition and possible pregnancy or sexual infections. Unfortunately, this process can be very hard for any victim – and can be even harder for people with disability. Often there are long waiting periods in hospitals. When possible, you should plan carefully to try to avoid unnecessary stresses for the client.

You may be picked to be the worker who takes the client to a NSW Health SAS. Your role will be to help the client to communicate with the health worker, support them, and keep a record of any issues from the appointment, including any follow-up such as testing for sexually transmitted infections or pregnancy.

At a SAS, a counsellor and a doctor will usually see the client before the examination and give information about what is involved. This gives the client time to talk about any concerns. It may be decided that a medical examination would be helpful. This examination involves a general health check, and may include an external or internal examination of the client's genitals or bottom. It may also include examination of a person's mouth, breasts or any other part of their body that has been touched in the assault.

A client is never forced or restrained for an examination. You can be there during the examination to support the client, if needed.

Children under 16 years old have to be examined by doctors with special training.¹¹ As these doctors are not available everywhere, this can cause delays (particularly in some rural and remote areas).

Who consents to an examination at a Sexual Assault Service?

The sexual assault worker and medical and forensic examiner have to get consent and consult with the client and their guardian.

Adults

Some adults may not be able to give informed consent to a forensic examination, due to their disability or other reasons. The health worker will look at whether the client can understand the examination and give informed consent. When a forensic examination is needed and the client is not able to give informed consent to treatment, the health worker may obtain substitute consent.

¹¹ Children under 16 years may be examined by paediatricians and paediatric registrars, sexual assault forensic medical officers, (GPs) with paediatric privileges, or senior staff specialists in paediatric health. Children between 14 and 16 years may also be examined by registered medical practitioners with specialist sexual assault training or sexual assault nurse examiners (SANEs).

DRAFT

A 'person responsible' can only give consent to a sexual assault forensic examination if it is part of treatment of the client. Otherwise, the consent needs to be given by the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT), or a guardian appointed by NCAT for this reason.

The Guardianship Division of NCAT is available 24/7 to consider urgent applications. In urgent matters, an application can be made over the phone and the Tribunal can hold a telephone hearing to make a decision about a guardianship order.

The consent for a sexual assault forensic examination does not include consent to release the medical report to police. If the client is not able to give informed consent, only a guardian appointed by NCAT can consent to release the report.¹²

NCAT may make an order with either or both of the following functions:

- Forensic examination OR
- Forensic examination and release of a Sexual Assault Investigation Kit (SAIK).

Children and young people

Under 14 years old – the consent of a parent/guardian or a section 173¹³ order (*Children and Young Persons (Care and Protection) Act 1998*) is required for a forensic examination.

Between 14 and 16 years old – the child can consent to a forensic examination if they have capacity to give informed consent. However, it is better for a parent/guardian to give consent or for there to be a section 173 order.

16 or 17 years old – the young person can give consent, if they have capacity to do so.

The results of a forensic examination of a child can be given to police and FACS under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

9. Reporting suspected/alleged abuse or neglect

Reporting to your agency's management/response team

If you become aware of possible abuse and/or neglect:

Write it down

- Record the details of what the victim has told you, using their exact words if possible.
- You should not interview the person who allegedly committed the abuse. However, if you witness any abuse, you should record what you have seen and heard.
- Record details of any witnesses.
- Record what you saw, and did.
- Don't leave out any important details.
- DO NOT include anything that you did not directly hear or see.
- DO NOT include opinions or your interpretations. Stick to the facts.
- Sign and date what you write.

You should usually give the notes to your supervisor or to the person who is responsible for handling abuse allegations – unless they are involved in the alleged abuse or have a potential conflict of interest. An example of a conflict of interest is when there is a personal

¹² NSW Health, 2005. *Sexual Assault Services Policy and Procedure Manual (Adult)*. NSW: NSW Government.

¹³ Under Section 173 of the *Children and Young Persons (Care and Protection) Act 1998*, the Secretary of Department of Family and Community Services (or their delegate) or a police officer may serve a notice 'requiring the child to be forthwith presented to a medical practitioner specified...or some other place specified for the purpose of the child being medically examined.'

DRAFT

relationship between the manager and the alleged offender. If you have any concerns, seek advice from more senior management. You should also keep a copy of the notes.

Keep all records up-to-date, including progress notes, incident reports and other reports. These are very important for police or other investigators. Let them know what is available and where it is. Keep all notes and file information confidential and secure so it is not removed or destroyed.

If you have contact with police or other investigators, tell them that you have kept notes, and provide them when asked. If an alleged offence has occurred, you may need to give a statement to police and appear in court as a witness. Your notes will be important.

What abuse/neglect of a client must be reported to my management/response team?

Any:

- alleged abuse and/or neglect of a client by a staff member, including financial abuse
- alleged abuse of a client by a client
- alleged abuse and/or neglect of a client by family, another service, visitors, members of the community, etc.
- breach of an AVO made to protect a client
- any injury to a client, and
- other matters listed in your service's reporting policy.

What if I'm not sure if it needs to be reported to my management/response team?

When in doubt – report it!

While you may think the incident or issue is not serious enough to report, your management/response team will look at anything that is reported and decide what action is needed.

What if it seems like nothing happens after you report to your management/response team?

If you believe that your report has not been properly dealt with, you have a responsibility to take further action. There is no simple answer to what you should do next, because every case is different. However, generally you should first ask your management/response team what is happening about your report. Your manager may have taken the issue to a more senior level.

If, after doing this, you do not think the matter has been handled properly, you may wish to contact the NSW Ombudsman's office or the National Disability Abuse and Neglect Hotline to discuss your concerns.¹⁴

What if negative action is taken against me for making a report?

If you believe that you are being targeted or have had negative action taken against you because you made a report, raise it as soon as possible with your management/response team. If you believe that the management/response team is involved in the negative action, raise the issue with more senior management. You can also contact the NSW Ombudsman's office to discuss your concerns.

¹⁴ Refer to 'Useful resources' at Appendix 1 of this Guide for contact details

DRAFT

Reporting to the Police

Alleged abuse by a staff member

Any allegation of a criminal offence by a staff member against a client **must** be reported to the Police.

For more detailed advice on this topic, see section 10.

Alleged abuse by a client

Any allegation of a sexual offence or serious physical assault by a client against another client must be reported to the Police.

Intellectual disability (and other conditions) can affect a client's control of, and responsibility for, their actions. Disability services need to carefully consider whether to report assaults between clients in cases where the clients may not understand their actions or the consequences.

For example, it may not be necessary to report incidents to police that are minor or don't have a big impact. While some violent or harmful behaviour by a person in supported accommodation with an intellectual disability (or similar) may meet the threshold of criminal behaviour, the same behaviour in family homes would likely be managed without the involvement of police.

Behaviours of concern need to be managed in a way that supports the person who has shown the behaviour, and protects all residents and workers.

However, disability services **must** uphold the rights of the client who is the victim of abuse. Wherever there has been alleged abuse of a client by another client, staff **must** talk with the alleged victim to find out their wishes before making a decision not to report a crime to police. If the alleged victim is not able to make an informed decision about this, staff should talk with the person's guardian, family, or other supporters. This contact should generally be made by your management/response team.

Important points:

- If the alleged abuse by a client involves a sexual offence or a serious physical assault, the matter **must** be reported to police.
- For other matters, disability services should give appropriate information and support to any alleged victim to help them to make an informed decision about whether they want the matter to be reported to police:
 - Discussion with the alleged victim must take place away from the alleged offender, and – wherever possible – involve a person they trust and who was not involved in the incident.
 - Information must be given to the alleged victim about what reporting to police generally involves and what it means for them, and must be given in the best way for them to understand (involving any communication aides they use).
 - Staff must not influence the decision of the alleged victim (e.g.: by saying what they think the victim should do; or what they would do in that situation).
 - If the alleged victim indicates that they do not want the matter reported to police, staff must identify whether the person is making an informed decision.¹⁵ For

¹⁵ The Capacity Toolkit provides guidance for staff on assessing whether a person is making an informed decision. 'Broadly speaking, when a person has capacity to make a particular decision, they are able to do all of the following:

- understand the facts involved

DRAFT

example, staff should consider: whether the alleged victim understands their decision and what it means; the reasons why the person doesn't want the matter reported to police; whether the person is afraid of what will happen to them (or others) if a report is made; and whether the person feels pressured not to involve police.

- Staff must record the details of the discussion with the alleged victim, including who was present, what the person communicated, and how staff worked out whether the person was making an informed decision.
- If the alleged victim is unable to make an informed decision about whether they want the matter reported to police, all relevant information should be given to the person's guardian, family member, or other supporter to help them to make an informed decision – including:
 - what is alleged to have occurred
 - any injury to the alleged victim
 - any views communicated by the alleged victim
 - any environmental or other factors that have contributed to the incident, and
 - other actions the service intends to take.
- Staff must record the details of the discussion with the alleged victim's guardian/family, including who was involved, what information staff provided, and the decision of the guardian/family member.

For further advice on responding to alleged abuse by a client, see section 11.

Reports made to police

If a report about a client is made to the Police, staff must inform police that the offender with disability is a 'vulnerable person'. Police then have to arrange a support person to be present before an interview takes place.¹⁶ For more detail, see section 14 (Support for clients in the legal system).

Police can decide whether or not to charge a client. Sometimes, police will decide not to charge a client if they believe that the client is not responsible for their actions because of their intellectual or other disability.

Police may get an AVO to protect a victim. However, the AVO should not place conditions on a person with disability if they cannot understand the conditions.

If you're not sure whether a report needs to be made to police, talk to your manager or NSW Police. Each service has its own protocols about who will make a report to police. The urgency of the situation will often determine who should report. It is important that reports to police are made without delay – police are best able to investigate when the events and evidence are fresh.

Reports can be made:

- in person at a police station, or
- in an emergency, by calling 000.

-
- understand the main choices
 - weigh up the consequences of the choices
 - understand how the consequences affect them
 - communicate their decision.'

Attorney General's Department of NSW (2008) *Capacity Toolkit*, p18 www.justice.nsw.gov.au/diversityservices

¹⁶ Clause 24 of the Law Enforcement (Power and Responsibilities) Regulation 2005

DRAFT

Reporting to the FACS Child Protection Helpline

Alleged criminal offences against children should be reported in the same way as offences against adults. Where a child is at risk of significant harm, there must also be a report to the FACS Child Protection Helpline.

A Mandatory Reporters Guide (MRG) is on the FACS website to help reporters to work out whether a report needs to be made to the Helpline.

Mandatory reporters are people who deliver services directly to children and young people. Mandatory reporters should use the MRG to see whether a child is at suspected risk of significant harm and whether they need to contact the Child Protection Helpline on 133 627. Your management/response team can give you advice on how to use the MRG. Non-mandatory reporters, including the general public, should phone 132 111.

Report – don't investigate!!

If a matter has been reported, do not question the alleged offender about the incident. This may affect police or other investigations and put the client at further risk.

This is the role of the investigators after they have gathered the information they need.

Where the alleged offender is a client, staff should continue to provide all necessary support to the client and follow their care and behaviour support plans.

Confidentiality

Other than reporting the matter, you should generally not share any information about an allegation of abuse and/or neglect with other staff unless an appropriate manager has given you permission. The only exception is when it is **essential** in order to deal with an immediate client safety issue. You must use your service's procedures for reporting and follow the directions of your management/response team about sharing any further information.

It is important to keep information confidential to respect the dignity and rights of clients and staff. Any breaches of confidentiality can also affect an investigation.

Your management/response team will decide who else needs to be informed (see Appendix 6).

Informing guardians, families, and/or other supporters about the alleged abuse

If the client has a guardian, they should be immediately informed of the alleged abuse. Where the client has provided consent (or they are unable to provide informed consent), their family and/or other supporters should be quickly informed so they can help the person with support and decision-making. However, these decisions (and the contact) should generally be made by your management/response team.

Where the allegations are about financial abuse, the person who manages the client's finances (such as the NSW Trustee and Guardian) should also be informed as soon as possible after the report is made.

For children, their parent or guardian should generally be advised by your management/response team. However, you should talk to an expert first if you believe that providing this information to a parent or guardian may cause harm or risk to the child (such as police or FACS child protection services).

10. Alleged abuse and/or neglect by a staff member

In staff to client matters, the main focus of the management/response team will be whether they need to make a report to the Police and/or take disciplinary action.

DRAFT

Police will determine the extent of their investigation, along with the victim or, if they need help, with their guardian, family or other supporters. Police will also decide whether to charge the staff member.

Sometimes family, guardians or other support persons may not want police to be told that a sexual or physical assault has occurred. Disability services staff may need to explain that they have to report the matter because they have a duty of care to the victim and other clients.

It is the victim's choice if they will make a statement to the Police (or their guardian/ family if they are unable to make this choice).

After a police or internal investigation, if abuse is not proven but there are still concerns that abuse may have occurred, other action should be taken to protect clients. This may include action to improve staff training, supervision and support; identifying ways to manage risks; and looking at whether there are bigger issues that need to be addressed.

No one strategy prevents abuse and neglect – it is important to have a number of strategies to reduce risks and improve protections. Appendix 5 provides information about how services can reduce and prevent abuse and neglect of clients.

Allegations are serious matters for staff and can have an impact even if they are found to be wrong. Appendix 7 gives information about what you should do if an allegation is made about you.

11. Alleged abuse by a client

The reasons for violence or other abuse by a client in supported accommodation vary and are often linked to a range of factors, including, for example:

- their health and mental health
- their compatibility with the people they live with and the staff that support them
- the accommodation environment, including their ability to have their own space, and the behaviour, health and mental health of others in the house
- the support they receive to meet their individual needs, including support to communicate, make decisions, and develop and maintain relationships
- the support they receive to reduce things that affect their behaviour (such as noise, change in routine, boredom)
- the amount of choice and control they have over their life and circumstances, including their own activities and schedule, and
- the way they are treated, including the way they are spoken to, spoken about, and supported.

The main focus in responding to client to client abuse should be on managing and reducing risks, including identifying:

- **what caused the abuse, and**
- **what action needs to be taken, and what support needs to be provided, to prevent such abuse from happening again.**

As part of the response to client to client abuse, the disability service should review the circumstances as soon as possible, including:

- what immediate changes may be needed to the accommodation arrangements to protect all clients

DRAFT

- the need for a medical review of the victim and alleged offender
- the use and effectiveness of behaviour supports¹⁷
- the need for a mental health review of the alleged offender
- whether the needs of the victim and alleged offender (and other clients in the accommodation) are being met, and
- the staffing and supervision arrangements.

The review should include input from a range of different people. This includes the clients involved; disability services staff (accommodation and other services, such as day program); guardians, families and/or other supporters; and experts, such as behaviour support clinicians.

Consent and sexual relationships

People with disability have the right to have sexual relationships, the same as everyone else.¹⁸

- If you know your clients well, you will be in a good position to tell whether are uncomfortable with a particular relationship. Consent needs to be ongoing if the sexual relationship is to continue.
- You may need to involve a psychologist or other professional to assess whether the client is able to give informed consent.
- Sex education may help a client's ability to provide informed consent. There are many useful resources that can help staff to talk with clients about sex. For example, on the Family Planning Association's website, you can find [All About Sex](#) factsheets for people with intellectual disability and the people who support them.

It is important to know that, under the law:¹⁹

- consent must be given freely and voluntarily, and
 - a person cannot consent if they lack capacity due to reasons such as age or cognitive impairment.
- Any sexual relationship between a staff member and client is unethical and a clear breach of codes of conduct. If the client has a cognitive impairment, it is also a **criminal offence** – even if the client consented.
 - Any person who has sexual intercourse with a person who has a cognitive impairment, *with the intention of taking advantage of that person's cognitive impairment*, is also guilty of an offence.

12. Supporting clients in response to abuse and/or neglect

In NSW, there is a [Charter of Victims' Rights](#) that sets out all of the rights of victims of crime, and what NSW government and funded agencies – including disability services – have to do to support them.

¹⁷ It is very important that behaviour supports for clients are understood and followed. For detailed information about behaviour support, see [Department of Family and Community Services, *Behaviour Support: Policy and Practice Manual*, 2009.](#)

¹⁸ You can find more information about capacity, consent and decision making in:

a) FACS (ADHC) [Decision Making and Consent Policy and Procedures](#) and Sexuality and Relationship Guidelines

b) [Guardianship Division, NSW Civil & Administrative Tribunal \(NCAT\)](#) website and fact sheets.

¹⁹ [s.61HA](#) of the *Crimes Act 1900*

DRAFT

You play an important role in helping clients after abuse and/or neglect. You need to be aware of the impact of trauma on your clients, and help to link them to the services they need.

Trauma can be caused by one incident or many incidents of abuse and/or neglect. It can result in clients continuing to feel unsafe, even long after the event. Many clients with disability experience trauma due to many events over their lives. This includes life-long discrimination and bullying; separation from their family; lack of control over their life; and experience of abuse and/or neglect. If the person has difficulty communicating, it can be harder to deal with trauma.

Responses to trauma can include that the person:

- is less able to control their emotions and urges, such as anger
- self-harms
- has chronic guilt or embarrassment
- has difficulty trusting others
- is less able to do things for themselves
- increases showering, and
- has more incontinence and smearing.

Victims of abuse and/or alleged offenders often have a history of trauma. Ongoing trauma from abuse and neglect can have negative impacts on health.

It is important that disability services provide support that is 'trauma-informed'.²⁰ This includes providing a safe environment; communicating openly and respectfully; helping clients to have maximum choice and control; and linking them to trauma services, such as counselling. Key workers or managers are usually responsible for finding an appropriate counsellor who has the skills to work with the client. Not all counsellors have experience in working with people with intellectual disability.

Some places to find suitable counsellors include:

Justice NSW – Victims Services and Support

Justice NSW provides the Approved Counselling Service. This is a free counselling service for people who are victims of violent crime in NSW. You can apply for counselling online, or call a Support Coordinator at the Victims Access Line on 1800 633 063.

Counselling is provided on a short-term basis. Initially, 10 hours of counselling can be approved. More counselling may be approved, if needed.

Approved Counsellors can support victims in different ways. For example, they may provide counselling to help the victim to prepare to report a crime to police; support them to attend court; and help them to prepare a Victims Impact Statement.

The Justice NSW Victims Services and Support website has more information about what is available, including Recognition Payments (used to be called Victims Compensation).

NSW Health Sexual Assault Services:

- provide counsellors who are trained to talk with clients about feelings and the problems they may be having after a sexual assault
- support and counsel clients and carers to help them to deal with some of the effects of a sexual assault
- give information about going to court, and can support clients at court

²⁰ Mental Health Coordinating Council, 2013. *Trauma Informed Care and Practice: Towards a cultural shift in policy reform across mental health and human services in Australia*, Sydney: Mental Health Coordinating Council.

DRAFT

- help with claims for Recognition Payments, and
- provide advocacy support.²¹

The contact details for Sexual Assault Services in your local area can be found on the [NSW Kids and Families website](#) or by calling your local hospital.

Referral by a GP

There are some private psychologists who have experience in working with people with disability. If referred by a GP, some will bulk bill under Medicare. Depending on the client, there may be Medicare rebates for psychological treatment, e.g.: if they are referred by a GP as part of a Mental Health Treatment Plan (up to 10 visits).

13. Working with the Police

What is the role of police?

Police are responsible for:

- responding to emergencies and other calls for help, and
- investigating possible crimes, and finding and prosecuting offenders.

Developing a relationship with your Local Area Command

It is very important that disability services have a relationship with their Local Area Command (LAC) so that police are well prepared to respond to possible client abuse cases or other calls for help.

A good way to start to build a relationship with police is for disability service managers to talk with the Crime Manager. A meeting between police and a disability service can be used to discuss:

- where the service's houses are located
- the best contacts in the LAC for specific situations and ongoing communication
- what issues are likely to come up in the disability service where police help may be needed, and
- how the service and police can best work together.

What do police need from you to do their job?

- It is important to report an alleged or suspected crime as soon as possible.
- Sometimes, your service will need to do some basic checks (such as who was on duty at specific times; and what else happened during the shift) before police start their investigation. Managers should contact police as early as possible and talk with them about the checks that the service is planning to make. This gives police the chance to give advice or become involved at this point.
- Be clear about the crime or suspected crime you are reporting (e.g.: an assault or a theft).
- Make sure police know that the client is a 'vulnerable person'.
- Police may need your help to communicate with the client. This may include sharing communication aides, communication profiles, and 'important to/important for'²² information. Let police know if the client needs an interpreter.

²¹ Education Centre Against Violence, 2014. *Helping to Make it Better*. NSW Government.

DRAFT

- Tell police if there has been a change in medication which might impact on the police interview.
- Where your client is a victim, you must do everything possible to help the client to tell their story and make their wishes known to police. You must also assist police to identify any other evidence that might help, such as witnesses, and physical and electronic evidence.
- When police are investigating, make sure they know about all sources of information. Some things that are obvious to disability services staff are not obvious to others. For example, as well as incident reports, there are also daily records, such as progress notes and communication books.
- Follow previous information about client disclosures (section 7), protecting evidence (section 8) and reporting (section 9).
- If a victim needs to go to a police station to be interviewed, ask them whether they agree to go. If the person has a guardian, they should be involved in this decision. If the person gives consent (or isn't able to give informed consent), their family and/or other supporters should also be involved in the decision.

You may need your manager to help with extra staffing or vehicles.

NOTE: If you might be asked to provide a witness statement, or be called to court as a witness, you **should not** be present when a client is being interviewed by police. Being present during a client interview may affect your objectivity as a witness.

- The police interview or questioning process may take a long time due to some clients needing regular breaks and the use of communication aides.
- For clients who are likely to have frequent contact with police (e.g. they might have a history of absconding), it may be useful to develop a Police Profile and seek the consent of the client to give it to the local police (see Appendix 4 for a sample). This information can help police to manage the person appropriately and stop incidents from getting bigger. However, do NOT assume that the police officer who turns up has seen the profile – bring it to their attention.

What do police need to know about the client's ability to make decisions?

Police should be given information about:

- the person's disability and its impact, including their communication needs and whether they have had any recent assessment
- whether the person is under guardianship and, if so, details of the guardian and the decisions they can make, and
- whether the person has informal support from family or close friends.

What should you ask for from the police?

When you have contact with the Police, you should ask for:

- the event number and the names and contact details of the officers who responded – police have to give this information on a 'Victim's Card' or during a follow-up call by police with the event number
- when the Police will be able to tell you if they will investigate or take other action

²² 'Important to/ Important for' is a basic person-centred thinking tool. It helps to identify what is important to the person to get the most out of life, and what others see as important for the person to stay healthy and safe. For more information, see FACS' *Lifestyle Planning Guidelines*, https://www.adhc.nsw.gov.au/_data/assets/file/0005/258584/Lifestyle_Planning_Guidelines_Aug_2012_web.pdf

DRAFT

- what information (if any) about the involvement of police can be shared and with who – it is common in an investigation for police to ask services not to mention police involvement to an alleged offender and/or others, and
- details of any AVOs (and their conditions), charges, bail conditions, and court dates.

You need to pass on to your manager/response team any of the above information from police.

Ask police for a quick response so your service can protect the client and deal with issues relating to the alleged offender.

14. Support for clients in the legal system

People with disability are vulnerable in the legal system. They often have limited access to protection and justice as victims and offenders.

Support people for vulnerable people at police stations

People with intellectual or physical disability are 'vulnerable persons' in police regulations.²³ When NSW Police take someone into custody who they suspect is a vulnerable person, police have to immediately contact a support person.²⁴

All people who are arrested have the right to talk privately with a legal representative within the view of police.²⁵ Before an interview takes place, police must tell the detained person that they can ask for a lawyer to be present.

One role of the support person is to check that the person understands their right to a lawyer, and to help them to get legal advice.

It is the right of a client, whether they are a victim, witness or alleged offender, to decline a police interview.

Any vulnerable person who is to be interviewed by police has the right to a support person.²⁶

Support for clients who are alleged offenders

A suspect does not have to make a statement to police, and should receive legal advice before they decide whether to be involved in an interview. The Criminal Justice Support Network can provide access to free legal advice for suspects with intellectual disability (see below).

You will need to give information to police about the person's disability, and their support, medical, and communication needs.

If you go with an alleged offender with disability to a police station, don't try to give legal advice or instruct the client to 'tell the police what happened'.

Where there is a client-to-client assault, the alleged offender should have an independent support person.

Criminal Justice Support Network

The Criminal Justice Support Network is a support and information service for people with intellectual disability who are involved in criminal matters in NSW. The service can provide

²³ Law Enforcement Powers and Responsibilities Regulation 2005

²⁴ CRIME (Custody Rights Investigation Management and Evidence) Code of Practice.

²⁵ Law Enforcement (Powers and Responsibilities) Act 2002, Section 123

²⁶ NSW Police Force, 2014. *Disability Issues and the NSW Police Force*.

Available at: https://www.police.nsw.gov.au/community_issues/disabilities [Accessed 12 May 2015].

DRAFT

support workers to help a person with intellectual disability at police interviews, at court, and at related legal appointments.

The Criminal Justice Support Network provides:

- Legal advice
 - Free of charge, over the phone and face to face
 - Appointments can be made by calling the Intellectual Disability Rights Service
- Support at court
 - For people with intellectual disability going to court for criminal matters
 - Available for legal appointments and other court processes
 - Statewide service in NSW for victims, witnesses and defendants
- Support at police stations
 - Statewide service in NSW for people with intellectual disability
 - Includes telephone legal advice at the police station
 - Available to victims, witnesses and alleged offenders
 - Operates 9AM-10PM, Monday-Sunday (7 days per week)
 - Phone contact 1300 665 908²⁷

²⁷ Intellectual Disability Rights Service, 2014. *Fact Sheet – CJSN*
Available at: http://www.idrs.org.au/pdf/factsheets/FACTSHEET_about_CJSN.pdf [Accessed 3 May 2015]

DRAFT

Appendix 1: Useful contacts²⁸

NSW POLICE FORCE

Telephone contact 000 (emergencies only) or Police Assistance Line 131 444

<http://www.police.nsw.gov.au/>

Police can investigate crimes, including assault, theft and fraud, and in many cases provide immediate safety.

FACS CHILD PROTECTION HELPLINE 132 111 or 133 627

http://www.community.nsw.gov.au/welcome_to_docs_website.html

Receives reports of possible risk of significant harm to children and refers them to Community Services Centres and Joint Investigation Response Teams for response.

HEALTH SERVICES

SEXUAL ASSAULT SERVICE (NSW MINISTRY OF HEALTH)

Staff should contact their local Sexual Assault Service (SAS) for advice if they are not sure about reporting an incident as sexual abuse.

- 24 hours at most services, or telephone the local hospital after hours.
- Local SAS contact details are below or can be found at:
<http://www.kidsfamilies.health.nsw.gov.au/current-work/programs/programs-and-initiatives/sexual-assault-services/>
- The SAS provides a range of services that can include immediate care and counselling for victims of sexual assault.
- The SAS can also provide advice to staff about their duty of care and other issues relating to an allegation of sexual assault.

LEGAL SERVICES

INTELLECTUAL DISABILITY RIGHTS SERVICE (IDRS)

Telephone contact: 02 9318 0144 or 1800 666 611 <http://www.idrs.org.au/home/index.php>

The Intellectual Disability Rights Service provides telephone advice on a range of legal issues, and represents people with intellectual disability in criminal law, care and protection, and guardianship matters. The service also undertakes community education.

CRIMINAL JUSTICE SUPPORT NETWORK (CJSN)

Telephone contact: 1300 665 908 (9am – 10pm)

http://www.idrs.org.au/pdf/factsheets/FACTSHEET_about_CJSN.pdf

The Criminal Justice Support Network is a statewide support and information service for people with intellectual disability who are involved in criminal matters (whether victims, witnesses, suspects or defendants). The service can provide support workers to help a person with intellectual disability at police interviews, at court, and at related legal appointments.

LAW ACCESS NSW

Telephone contact: 1300 888 529

²⁸ Resource list developed from NSW Department of Family and Community Services, 2014. *Abuse and Neglect Policy and Procedures*.

DRAFT

Law Access NSW is a website <http://www.lawaccess.nsw.gov.au/> and telephone service that can help people to get legal information and services.

COMMUNITY LEGAL CENTRES NSW

Telephone contact: 02 9212 7333 <http://www.clcnsw.org.au/http://www.clcnsw.org.au/>

Community Legal Centres are independent services that provide free legal advice, information and referrals for people in NSW – especially people on low incomes or who are disadvantaged.

AUSTRALIAN CENTRE FOR DISABILITY LAW (FORMERLY KNOWN AS DISABILITY DISCRIMINATION LEGAL CENTRE (NSW))

Telephone contact: 02 8014 7000 or 1800 800 708 <http://disabilitylaw.org.au/>

The Centre provides free legal advice, representation and assistance for problems of discrimination against people with disability and their associates. The Centre helps in cases of disability discrimination under the Commonwealth Disability Discrimination Act or the NSW Anti-Discrimination Act.

COMPLAINTS

NSW OMBUDSMAN

Telephone contact: 02 9286 1000 or 1800 451 524 or TTY 02 9264 8050

<https://www.ombo.nsw.gov.au/>

The Ombudsman's office has a wide range of responsibilities in relation to people with disability and disability services, including:

- handling, resolving and investigating complaints about NSW public sector agencies and a range of non-government services, including disability services and assisted boarding houses
- inquiring into matters affecting people eligible to receive disability services, and service providers
- the Disability Reportable Incidents scheme
- managing the employment-related child protection reportable conduct scheme
- coordinating and supporting the Official Community Visitor scheme, and
- providing community education and training.

HEALTH CARE COMPLAINTS COMMISSION (HCCC)

Telephone contact: 1800 043 159, or www.hccc.nsw.gov.au

The Health Care Complaints Commission can receive complaints about most health professionals.

AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC) phone (02) 9284 9600,
www.humanrights.gov.au

The Commission can hear cases where a person with disability believes they have been discriminated against.

INDIVIDUAL AND GROUP ADVOCACY SERVICE (People with Disability Australia)

Telephone contact: 02 9370 3100 or 1800 422 015

TTY 1800 422 016 <http://www.pwd.org.au/>

This is a free advocacy service for individuals and groups of people with disability who have serious and urgent problems. The service is available to people with all kinds of disability

DRAFT

across NSW. The service also gives advice and information to people with disability and their associates about how to advocate for themselves.

REPORTING ABUSE

NATIONAL DISABILITY ABUSE AND NEGLECT HOTLINE

Telephone contact: 1800 880 052 or TIS 131 450 or NRS 1800 555 677

<http://www.disabilityhotline.net.au/>

The National Disability Abuse and Neglect Hotline is an Australia-wide telephone hotline for reporting abuse and/or neglect of people with disability using government funded services. Allegations are referred to the appropriate authority for investigation.

VICTIMS' SUPPORT

VICTIMS SERVICES – Justice NSW

Telephone contact: 02 8688 5511 or 1800 633 063 or TTY 1800 555 677 (ask for 1800 633 063). <http://www.victimsservices.justice.nsw.gov.au/>

- Victims Services is a NSW Government agency that provides support services including free counselling and financial assistance to people who are victims of violent crime in NSW.
- Victims Access Line staff provide information on the rights of a victim of crime (as in the Charter of Victims' Rights).
- Victims Access Line staff provide confidential emotional support and practical information on how to access other groups and services that may assist with a victim's recovery following a crime.

1800 RESPECT

Telephone contact 1800 737 732 (24 hours a day, 7 days a week)

www.1800respect.org.au

National Counselling and Support Service providing online and phone counselling services for:

- women and men directly affected by domestic and family violence, or sexual assault by family or friends, and
- workers from within health, legal and community services to better identify and provide support for women and men who are, or have been, directly affected by sexual assault or by domestic or family violence.

Local Contacts

Emergency Services – (Police, Ambulance, Fire)	000
Local Police Station
On-call management/response team
Back up numbers for on-call management/response team
Sexual Assault Service

DRAFT

Appendix 2: Relevant NSW laws and policies

Below are some of the NSW Government agencies that play a role in preventing and responding to abuse and/or neglect in disability services. This is just a brief summary – the [hyperlinks](#) in the table take you to more detailed information.

Agency(s)	Key legislation	Roles in relation to neglect/abuse include:
NSW Ombudsman Official Community Visitors Scheme	Ombudsman Act 1974 Community Services (Complaints, Reviews and Monitoring) Act 1993	Complaint handling (NSWO) Oversight of agency handling of allegations notified to the Disability Reportable Incidents scheme and the Reportable Conduct scheme (NSWO) Monitoring the delivery of disability services (NSWO and OCV)
Guardianship Division NCAT ²⁹ NSW Public Guardian	Guardianship Act 1987	NCAT appoints guardians/ financial managers and consents to medical/dental treatment when necessary
Family and Community Services (Ageing, Disability and Home Care – ADHC)	Disability Inclusion Act 2014	Service provision directly and through contracted services. Relevant ADHC policies some of which also apply to NGOs, e.g. Abuse and Neglect, Lifestyle Planning, and Behaviour Support
Family and Community Services (Community Services)	Children and Young Persons (Care and Protection) Act 1998	Investigations and assessment of children reported as being at risk of significant harm Provision of out-of-home care
Police	Crimes Act 1900 Law Enforcement (Powers and Responsibilities) Act 103/2002 Crimes (Domestic & Personal Violence) Act 80/2007	Responding to crime, emergencies and other calls for assistance Investigating crime, finding and prosecuting offenders
Victims Support Scheme – Justice NSW	Victims' Rights and Support Act 2013	Recognition payments, counselling and other services for victims of crime

²⁹ NCAT (NSW Civil and Administrative Appeals Tribunal)

DRAFT

Appendix 3: Types of abuse and neglect

The FACS – ADHC *Abuse and Neglect Policy and Procedures* include definitions of types of abuse and neglect.³⁰ Abuse is not limited to the types listed below; employees need to consider that any inappropriate behaviour towards a person may be abuse.

Physical abuse

Physical abuse is any non-accidental physical injury to a person by any other person. This includes inflicting pain of any sort, and causing harm or injury, or causing bruises, fractures, burns, electric shock, or any unpleasant sensation.

Restraints and restricted practices

Restraining or isolating an adult for reasons other than medical necessity or the absence of a less restrictive alternative to prevent self-harm.

This may include the use of chemical, physical, or mechanical restraint, and seclusion. These practices are not considered abuse if they are applied under restricted practice authorisation (see ADHC's *Behaviour Support* policy).

Sexual assault

Any sexual contact between an adult and a child under 16 years of age; or any sexual activity with an adult who lacks the capacity to give or withhold consent, or is threatened, coerced, or forced to engage in sexual behaviour.

Psychological or emotional abuse

Psychological or emotional abuse includes verbal assaults, threats of maltreatment, harassment, humiliation or intimidation, or failure to interact with a person, or to acknowledge that person's existence.

Domestic violence

Domestic violence is a range of abusive behaviours perpetrated in the victim's home by someone who is well-known to them.

Financial abuse

The improper use of another person's assets or the use or withholding of another person's resources.

Systems abuse (also includes wilful deprivation)

Failure to recognise, provide, or attempt to provide, adequate or appropriate services, including services that are appropriate to the person's age, gender, culture, needs or preferences.

Neglect

Neglect is a failure to provide the necessities of care, aid or guidance to dependent adults or children by those responsible for their care.

Physical neglect

Physical neglect involves the failure to provide adequate food, shelter, clothing, protection, supervision, medical and/or dental care, or to place persons at undue risk through unsafe environments or practices.

³⁰ Sourced from: Department of Family and Community Services, *Abuse and Neglect Policy and Procedures*, 2015

DRAFT

Emotional neglect

Emotional neglect involves the failure to support and encourage, protect and provide stimulation needed for the social, intellectual and emotional growth or wellbeing of an adult or child.

Passive neglect

Passive neglect involves a caregiver's failure to provide (or wilful withholding of) the necessities of life, including food, clothing, shelter or medical care.

Appendix 4: Sample client protocol to give to police

De-identified example

Ms Joe is a 42 year old woman who lives at She enjoys time in the garden, has a small vegetable patch and can have a good sense of humour. She has a mild intellectual disability, borderline personality disorder, and post-traumatic stress disorder. She can become stressed and aggressive and PRN is needed. Police sometimes need to be called for the safety of clients, staff and Ms Joe. She meets the criteria of a 'vulnerable person' in the Law Enforcement (Powers and Responsibilities) Regulation 2005.

Current Medications:	Epilim 500mg 3x daily Brevinor 1x morning Seroquel 300mg 2x daily Serenace 5mg 3x daily Oroxine 50mg 1x morning photo Metformin 500mg 1x morning
PRN Medication:	Serenace 5mg – maximum 2 twice daily Benztropine 2mg – maximum 1 twice daily

After PRN medication (which can be given by house staff or ambulance), she becomes more settled after 30 minutes. House staff will tell police if and when she has last been given PRN medication. However, for PRN to be effective it must be given before she 'over-escalates'. It doesn't work if she has already escalated to an extremely high level.

Communication

Ms Joe is verbal. When she is stressed, her speech becomes repetitive, fast, and difficult to understand. She mostly understands what is said to her, as long as it is in simple and single steps. However, when she is stressed she finds it more difficult to understand what is being said. She is a fan of the Swans AFL team and loves to talk about the players – this can be helpful in calming Ms Joe.

When police arrive at the house please note:

- Don't ask Ms Joe about her family as this upsets her.
- Although she is likely to be aggressive when police arrive, she is actually very scared and very anxious.
- Only call for an ambulance if there is a visible injury or staff believe she may be feeling physically unwell or may be hurt and requires an ambulance.
- Do not take Ms Joe to the Emergency Department unless she requires medical attention.
- Ms Joe may show aggressive behaviours in order to be taken to hospital. Please be aware of this.

Guardianship Order

Ms Joe is subject to a Guardianship Order, which gives the Public Guardian the authority to make decisions on her behalf in relation to restricted practices, services, medical and dental consent, and health care. The Public Guardian can be reached on 9287 7660.

Written by: Fred Smith, Psychologist
Endorsed by: Sue Jones, Manager
Consented to by Public Guardian:

Insert photo

DRAFT

Appendix 5: How can services reduce and prevent abuse and neglect of clients?

No single strategy reduces and prevents abuse and neglect. The key is to have a number of strategies that all contribute to the goal.

Setting up the service's culture and values

The service's culture and values are so important in stopping abuse and neglect, and putting your client's rights first in everything that you and your service do. The right values need to be demonstrated from management level down to support staff, and shown in your daily work.

The *Disability Inclusion Act 2014* sets standards in regards to the '**RIGHTS**' (of clients).

'Each person receives a service that promotes and respects their legal and human rights and enables them to exercise choice like everyone else in the community'

To see if your service meets this standard, think about whether:

- clients have access to information and support to help them to understand and exercise their rights
- your service culture does not tolerate any discrimination, abuse, neglect or exploitation
- clients have support to develop and exercise self-protective strategies and behaviours
- your service asks clients individually if they are happy and whether there is anything making them unhappy or worrying them
- your service actively promotes the reporting of incidents, and
- your service supports clients and their families/ other supporters when they raise allegations of discrimination, abuse, neglect or exploitation.³¹

Disability services should encourage staff to be open and report honest mistakes, errors and incidents. This is good for everyone, and healthier than 'covering up'.

Empowering clients

Because clients rely on service staff, there is automatically a power imbalance. There are many things your service can do to help clients to be aware of their rights and to act in a way which respects their rights. Good practice examples include:

- developing plain English and picture resources to talk with clients about abuse, neglect and their rights³²
- having frequent discussions with clients about their rights
- giving clients, families, guardians, and advocates contact details for managers and teams that respond to allegations and concerns
- having people independent from the service regularly meet with clients to discuss any concerns and talk with clients about their rights
- helping clients to build relationships and networks outside of your service, and
- helping clients to access self-advocacy programs led by people with disability and other experts.³³

³¹ Department of Family and Community Services, 2014. *Disability Inclusion Act 2014 – reporting abuse and neglect to the NSW Ombudsman*. Available at: http://www.adhc.nsw.gov.au/_data/assets/file/0013/300352/DIA-Factsheet-5-Reporting-incidents-to-the-Ombudsman.pdf [Accessed 13 April 2015]

³² For examples of plain English guides for clients refer to: a) Victorian Disability Services Commissioner *It's OK to Complain* (Plain English with pictures) 2015; OR b) E. W. Tipping Foundation *Say no to Abuse* (Plain English and picture) 2015.

DRAFT

Having a positive complaints and reporting culture

It is important that clients, families and staff are supported and encouraged to raise concerns and make complaints. Some ways to do this include:

- asking staff, clients, families and other supporters how they would like to give feedback
- promoting a range of ways to give feedback, such as:
 - individual supervision and team meetings
 - house meetings
 - client feedback groups, and
 - suggestion boxes
- reminding everyone that complaints are positive and 'there is nothing so big or so small that we cannot talk about it'
- sharing examples of how complaints have led to improvements for clients, and
- recognising that new staff are important because they bring fresh eyes, and can sometimes be more likely to speak up.

The NSW Ombudsman provides information to help clients, families and staff get the best result in making a complaint: <https://www.ombo.nsw.gov.au/complaints>. The NSW Ombudsman also provides complaint handling courses, including Effective Complaint Management in the Disability Sector.

Services need to show that they will support and protect staff that, in good faith, make complaints. People making complaints to the Ombudsman about disability services are protected under the *Community Services (Complaints, Review and Monitoring) Act 1993*.

Screening, induction, training and supervision

In NSW, the *Disability Inclusion Act 2014* requires new and existing employees and board members³⁴ to have a National Criminal Records Check. A person who has been convicted of a 'prescribed criminal offence' (detailed in the Act) is not allowed to work directly with people with disability. Employers can show discretion in relation to some offences if they occurred more than 10 years ago and there have been no further convictions. Screening must be repeated at least every four years.³⁵

National Disability Services (NDS) has produced a guide for services to help them to design recruitment and induction processes so that services are safer for clients. It aims to help prevent inappropriate people from being employed to work with people with disability.³⁶

³³ For example self advocacy programs and training are run by the Individual and Group Advocacy Service (People with Disability Australia) and Self-Advocacy Sydney.

³⁴ FACS and FACS-funded disability services must conduct these checks for all people who provide supports and services directly to people with disability in a way that involves face-to-face or physical contact, including:

- employees
- volunteers
- students undertaking training (other than school students on work experience), and
- self-employed people, contractors, subcontractors, consultants or agency staff.

FACS-funded disability services also need to conduct these checks for board members who work, or are likely to work, directly with people with disability in a way that involves face-to-face or physical contact.

³⁵ For more information, see Department of Family and Community Services, 2014, *Disability Inclusion Act 2014 – employment screening*.

³⁶ National Disability Services, 2014, *Zero Tolerance practice advice 1: Safer Recruitment and Screening*.

[Online]

Available at: <http://www.nds.org.au/projects/article/194> [Accessed 28 April 2015].

DRAFT

Regular and recorded supervision processes for staff are important. They help to build a rights-based culture, reinforce the performance that is required, and to make fair decisions about probation periods and performance management.

DRAFT

Appendix 6: The role of the management/response team

There needs to be a response to every allegation, observed event, or suspicion of abuse and/or neglect. While your role is to report, it is the responsibility of your management/response team to direct the response. As investigations can have a major impact on people – including the alleged victim, the alleged offender, other staff and other clients – it is essential that they are well managed.

It is useful for you to be aware of the issues that the management/response team must address. They will need to make inquiries and decisions to keep the response on track, and to make sure that everyone's rights are upheld and all are supported and treated fairly. Some of these actions include:

- Checking what has been done to protect the physical, emotional and medical needs of the alleged victim and the alleged offender.
- Making sure everything is done to record and protect evidence.
- Making sure that any staff to client alleged criminal offence is reported to police.
- Making sure that any client to client alleged sexual offence or serious physical assault is reported to police.
- Making sure that a client who is the alleged offender has legal representation.
- Making sure that reports are made to the FACS Child Protection Helpline of any matters which concern a child, and which meet the risk of significant harm threshold.
- Making sure that the client's guardian is quickly told of the allegation (and family members, unless the client does not consent). There may be limits on the amount of detail that the management/response team can give to family members and others, particularly if it might negatively affect an investigation or prejudice the rights of other individuals.
- Addressing the key issues of concern for guardians, families or other supporters; for example letting them know:
 - that the client is safe from further harm
 - how the client's safety is being ensured, and
 - how the client is being supported.
- If the client is a child, making sure that their parent/guardian is informed. In the case of a child in out-of-home care, the supervising out-of-home care agency is to be informed.
- Conducting a risk assessment following an incident. Crisis responses may be needed to provide immediate safety for the victim while longer term strategies are being put in place, such as:
 - moving a client or clients if the client mix is incompatible
 - adjusting or changing client routines to reduce minor incompatibility, crowding, or noise issues that may contribute to behavioural issues
 - moving a client if continued contact with the person who is the alleged offender may re-traumatise the victim
 - increasing or changing staffing
 - physically changing the environment to reduce contact between the victim and the client who allegedly has abused them, and
 - reviewing the training and skills of direct care staff.
- Obtaining support services and referrals through Victims Services – NSW Department of Justice.

DRAFT

- Arranging counselling/debriefing for staff, clients and others who may be affected by an event.
- Supporting staff who are the subject of allegations, including:
 - finding other duties if required during an investigation
 - referring the staff member to an Employee Assistance Program if available
 - considering a support person for the staff member
 - keeping in regular contact while the staff member is doing other duties or is suspended, and
 - supporting the staff member's return to the original workplace, if that this is the investigation outcome.
- Talking with police and making sure that your service's internal investigations do not interfere with any police inquiries. This will generally mean that services' formal internal investigations (or parts of their investigations) will not occur until police have finished their investigation.
- Updating the client (and, if applicable, guardian, family and other supporters), without affecting police or other investigations.
- Providing information to Human Resources (HR) if staff performance or misconduct may be involved; and working out with HR if suspension or transfer to other duties is required pending completion of the investigation.
- Starting a critical incident, medical, and/or behaviour support review.
- Making sure all staff members are appropriately supported.
- Providing information to senior management to enable the matter to be notified to the NSW Ombudsman if it meets the criteria of a reportable incident or reportable conduct.

You will be asked to take a range of actions as directed by the management/response team.

DRAFT

Appendix 7: What should you do if an allegation is made about you?

It is stressful for any staff member when they are told that an allegation has been made about them. While every case is different, you might consider:

- asking your union for advice
- if it is provided, getting support from your service's Employee Assistance Program (EAP)
- asking for details of the allegation, noting that all details may not be available – or even appropriate to provide – until they are put to you in a formal interview
- you have the right to expect that your need for confidentiality will be appropriately handled – it is natural for you to seek support from others; however, this must not be done in a way that breaches the privacy and confidentiality of the client or affects the proper investigation of the allegations
- you have the right for an allegation against you to be investigated by someone who is impartial and who does not have a conflict of interest, and
- you should expect investigations to be conducted with procedural fairness – in workplace investigations, you should be given the right to respond to allegations and any adverse finding which your employer might be considering making against you.

DRAFT

Appendix 8: Flowchart for initial and early response

Responding to alleged abuse and neglect in disability services



1. Ensure immediate safety

- Make sure that clients, you and other staff are safe.
- Protect the victim from further harm/ contact with the offender.
- Contact police if there is a risk of immediate harm which needs their help.
- Call for a doctor or an ambulance if someone is hurt.
- Contact your manager or other senior person in your service.



2. Respond appropriately to client disclosures of abuse/neglect

- Take time to listen. The client may give you important information without you asking questions or interrupting them.
- As soon as the client gives you a general understanding of the allegation, provide support but do not keep asking questions.
- Only if necessary ask OPEN questions, eg: 'Tell me more about that?', 'What do you mean by...?', 'Can you explain that to me in more detail.....?'
- If this doesn't give a clear understanding, try 'When, What, Where, Who' questions.
- Don't ask LEADING questions (putting words into the client's mouth), eg: 'Was it in the bus?' 'Did Jo do this?'
- Don't ask the client to repeat what they have already told you.
- **STOP** any questions as soon as you have enough information to make a report.
- Let the client know what you will do next. Don't make promises you can't keep.
- Some clients may be unable to make a disclosure. Watch out for any physical or behavioural signs of abuse, and raise them with your manager (see the Resource Guide for signs).



3. Protect evidence

- Make sure that any evidence is not disturbed.
- Protect the area where the incident took place until police arrive. Do not clean, and do not let people enter the area.
- If the client has been recently sexually assaulted, try to delay bathing until police arrive, or the client has been seen by a Sexual Assault Service.
- Encourage the client not to change clothing unless they have to for their wellbeing.



4. Report

- Your role is to report, not to investigate. **When in doubt, report it!**
- Record the details of what the victim has told you, using their exact words if possible.
- Record what you saw and heard, what you did, and the details of any witnesses. Stick to the facts – do not include opinions.
- Report all concerns about possible abuse or neglect to management.
- Where a child is at risk of significant harm, this must be reported to the FACS Child Protection Helpline.
- Alleged crimes by staff against clients must be reported to police.
- Managers will take the lead in saying who needs to be informed (such as families).
- In relation to client to client assaults:
 - Any allegation of a sexual offence or serious physical assault must be reported to police.
 - In less serious matters, disability staff need to carefully think about whether to report assaults between clients in cases where the clients may not understand what they have done or the consequences. Incidents that are minor or don't have a big impact may not need to be reported to police.
 - However, staff must consult with the victim to find out their wishes before making a decision not to report to police. (If they are not able to make an informed decision, staff must consult with their guardian, family and/or other supporters).
 - If a report about a client is made to police, staff must tell them that the offender with disability is a 'vulnerable person'. Police then have to arrange a support person to be present before an interview takes place.



5. Support clients in their contact with police

- Police may need your help to communicate with the victim, such as by providing their communication aides.
- If you are a witness, you should not be present when a client is being interviewed by police.
- Where there is a client to client assault, the alleged offender

DRAFT

- | | |
|---|--|
| <ul style="list-style-type: none">• Provide clear advice about the client's disability, support needs, health/medication needs, and whether they have a guardian or informal support to make decisions.• If a victim needs to go to a Police station to be interviewed, as them whether they agree to go. The person's guardian and family/other supporters may need to be involved. | <ul style="list-style-type: none">• should have an independent support person.• A suspect does not have to make any statement to police, and should receive legal advice before they decide whether to be involved in an interview.• From police, get an event number, details of the officer(s), what information can be shared, and what will happen next. |
|---|--|



6. Counselling and recovery

Clients should be offered support, and can be assisted to access counselling through:

- Victims Services NSW provides a free counselling service to people who are victims of violent crime in NSW
- NSW Health Sexual Assault Services
- Referral by a GP to a private psychologist

Useful contacts Police 000 (emergency only) **FACS Child Protection Helpline** 132 111 (mandatory reporters) 131 627 (other reporters) **National Disability Abuse and Neglect Hotline** 1800 880 052 **Intellectual Disability Rights Service/ Criminal Justice Support Network** 1300 665 908 **NSW Ombudsman** 1800 043 159

