

A quick guide

Early response to abuse and neglect in disability services

It's not easy to work out how to spot and report abuse and neglect in disability services, and how to stop it from happening again. This 'quick guide' only gives you the main points. The NSW Ombudsman also has other information that can help, including:

GUIDES

- **A Resource Guide for disability services. This gives a lot of information about stopping abuse and/or neglect in disability services, and what staff need to do if it happens in their service.**
- **A flowchart on Responding to alleged abuse and neglect in disability services.**

TRAINING

- **The NSW Ombudsman's office has:**
 - **a half-day course on 'Responding to abuse and/or neglect in disability services', for disability support staff**
 - **a one-day course, 'Handling serious incidents in disability services', for managers and investigators, and**
 - **a Team Meeting Pack to help managers to train staff on the important messages.**
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1 Abuse and neglect in disability services

Everybody has the right to live without violence, abuse and neglect. However, people with disability are often the victims of abuse and neglect – much more often than people who don't have a disability.

People with disability who are at high risk of abuse include people who have an intellectual disability, communication problems, high support needs, and behaviours of concern. People in supported accommodation are also at high risk, mainly because they need to rely on staff to meet their daily needs.

Examples of abuse and neglect that can occur in disability services include:

- physical abuse
- unlawful restraint and restrictive practices
- sexual abuse
- psychological or emotional abuse
- domestic violence (not only couples, but also others who live in the same house)
- financial abuse
- neglect, and
- systems abuse (abuse related to how the service is run, such as clients having to eat dinner at 4pm to fit in with staff changeover).

Watch out for possible physical or behavioural signs of abuse or neglect in the clients you support, and take action (see the *Resource Guide* for details). Show that you will stand up against abuse and neglect. **If you see, hear, or suspect anything – report it!**

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

Ensure immediate safety:

- make sure that clients, you, and other staff are safe
- protect the victim from further harm
- 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, and
- contact your manager or another senior person in your service.

3 What do I do if a client starts to disclose abuse or neglect



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

For each person with disability, disclosures of abuse and neglect will be different. Because not all clients use verbal language, sometimes a client may report abuse to a staff member using other communication methods. Depending on the client, questions may need to be repeated or put in a different way to help them to understand and provide important information.

A client may give you 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.

You should report this information to your management/response team as soon as possible. Take time to listen to the client as they may give important information without you asking questions or interrupting them.

If the client still doesn't give a picture of what might have happened, ask OPEN questions. OPEN QUESTIONS = QUESTIONS THAT CAN'T BE ANSWERED BY 'YES' OR 'NO'. eg:

'Tell me more about that?'

'Can you explain...?'

'What happened next?'

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

If **OPEN** questions do not give enough basic 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?'

'Where did it happen?'

Never ask LEADING questions. eg:

 **Don't ask** 'Was it Fred who did this to you?'

 **Ask** 'Who did this to you?'

 **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.
- Don't make promises you can't keep, such as telling them you will keep the abuse a secret.
- Stay calm.
- Let the client take their time.
- Let the client know what you will do next.

Make notes as soon as possible to help you to make a report. But, **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.

4 Protecting evidence if there has been abuse or an unexplained injury



- Staff at the scene must try their best not to disturb any evidence.
- 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.
- 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.
- Explain to the client(s) why the above is important, if needed.

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 work out what happened. However, getting medical help is a priority.

Sexual assault and examination by a NSW Health Sexual Assault Service

Forensic evidence (evidence relating to crimes) is time sensitive. Where there is an allegation of sexual assault, the victim should attend a Sexual Assault Service as soon as possible. If the timeframe for getting forensic evidence has passed, staff should still support clients to go to a Sexual Assault Service for a check of their physical condition and possible pregnancy or sexual infections.

Unfortunately, the 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. Where possible, you should plan carefully to try to avoid unnecessary stresses for the client.

The sexual assault worker and medical and forensic examiner have to get consent and consult with the client and their guardian. If the client is not able to give informed consent to a sexual assault examination, there must be a substitute decision maker. (See section 7 of the *Resource Guide* for details).

5 Reporting abuse and neglect to your management/ response team

If you become aware of possible abuse and/or neglect, **write it down**:



- Record the details of what the victim (or other person) 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, and what you did.
- Record details of any witnesses.
- 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.

Give your notes to your management/response team, and keep a copy for yourself. All notes should be kept confidential and secure so they are 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.

When in doubt, report it!

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

Informing guardians, families and other supporters about the alleged abuse

If the client has a guardian, they should be immediately told about 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.

6 Reporting to the Police



If you are not sure about whether a report needs to be made to police, talk to your manager or NSW Police. Each service has its own procedures about who will make a report to 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.

Alleged abuse by a client

Any allegation of a sexual offence or serious physical assault by a client against other client **MUST** be reported to the Police.

Disability services staff need to apply judgement about whether to report assaults between clients in cases where the clients may not understand what they have done or the consequences. For example, services have discretion not to call police for minor offences where no-one is hurt and the victim does not want police action.

However, disability 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. (See section 8 of the *Resource Guide* for more information). Disability services **MUST NOT** restrict the access of victims to police, or influence a victim not to seek police involvement.

If a report about a client is made to the 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.

7 Reporting to the FACS Child Protection Helpline



Where a child is at risk of significant harm, there must also be a report to the FACS Child Protection Helpline. A **Mandatory Reporter Guide** is on the FACS website to help reporters to work out whether a report needs to be made to the Helpline.

8 Other action in response to alleged abuse and/or neglect by a staff member

The main focus of the management/response team in response to alleged abuse by a staff member will be whether they need to make a report to the Police and/or take disciplinary action. Police will work out the extent of their investigation and will also decide whether to charge the staff member.

Sometimes, families or others will not want police to be told that an assault has occurred. You may need to explain that you have to report because you 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 an investigation, if abuse has not been proven but there are still concerns that abuse may have occurred, the service will need to take other action to protect clients. This may include staff training, supervision and support; looking at ways to manage risks; and looking at whether there are bigger issues that need to be addressed.

Allegations are serious matters for staff and can have an impact even if they are found to be wrong. If the staff member does not feel supported, they should ask for help. (See Appendix 8 of the *Resource Guide* for information about what you should do if an allegation is made about you).

9 Other action in response to alleged abuse by a client

Intellectual disability (and other conditions) can affect a client's control of, and responsibility for, their actions. The reasons for violence or other abuse by a client in supported accommodation vary and are often linked to a range of factors, such as their health or mental health, and their compatibility with the people they live with and the staff who support them.

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

- what caused the abuse, and
- what action needs to be taken, and what support needs to be provided, to stop this abuse from happening again.

10 Consent and sexual relationships

People with disability have the right to have sexual relationships, the same as everyone else. If you know your clients well, you will be in a good position to tell whether they are uncomfortable with a particular relationship. Consent needs to be ongoing if the sexual relationship is to continue.

You might 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. The Family Planning Association has some **All About Sex** factsheets that can help people with intellectual disability and their support staff.

It is important to know that, under the law:

- consent must be given freely and voluntarily, and
- a person can't consent if they lack capacity due to 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.

11 Supporting clients after abuse and/or neglect



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, such as counselling. Some places to find suitable counsellors include:

- **Justice NSW – Victims Services and Support** provides a free counselling service to 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.
- **NSW Health Sexual Assault Services** (contact details are on the **NSW Kids and Families website** or by calling your local hospital).
- **Referral by a GP** to a private psychologist with experience in working with people with disability.

12 Support for clients in their contact with police



Alleged victims

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 the police. Police may need your help to communicate with the client, such as by providing their communication aides. You also need to provide clear information about the victim's disability, support needs, health/medication needs, and whether they are under guardianship or have informal support from family/friends.

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.

NOTE: If you are a witness, you should not be present when a client is being interviewed.

Alleged offenders

A suspect does not have to make any statement to the 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 'Useful contacts').

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.

Alleged offenders with intellectual or physical disability are 'VULNERABLE PERSONS' under the **Law Enforcement (Powers and Responsibilities) Regulation 2005**, and police have to immediately contact a support person.

What should you ask for from the Police?

- the event number and the names and contact details of the officers who responded
- when police will be to tell you if they will investigate or take other action
- what information (if any) about the involvement of police can be shared and with who, and
- details of any Apprehended Violence Orders (and their conditions), charges, bail conditions, and court dates.

Useful contacts

Police:

000 (emergency only)

NSW Ombudsman

1800 451 524

02 9286 0907

**Intellectual Disability Rights Service/Criminal Justice
Support Network (9am – 10pm)**

1300 665 908

National Disability Abuse and Neglect Hotline

1800 880 052

FACS Child Protection Helpline

132 111

Contact us for more information

Level 24, 580 George Street
Sydney NSW 2000

General inquiries 02 9286 1000
Toll free (outside Sydney metro) 1800 451 524

Telephone Interpreter Service (TIS) 131 450
National Relay Service (NRS) 133 677
Facsimile 02 9283 2911

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