

Joint protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system

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1. Purpose

This Protocol applies to people with disability living in supported group accommodation¹ ('supported accommodation') in NSW. The implementation of this Protocol will be supported by Annexure A: Procedures for disability services staff and Annexure B: Policing responses to incidents in disability supported accommodation services.²

The Protocol aims to:

- i) Reduce the frequency of police involvement in responding to behaviour by people with disability living in supported accommodation, which would be better managed solely within the service.
- ii) Promote the principle that the arrest and detention of a person with cognitive and/or mental health impairment should only be used as a last resort.
- iii) Promote the safety, welfare and wellbeing of people with disability living in supported accommodation, by improving relationships, communication and information sharing both at a corporate level and between local police and disability services.
- iv) Facilitate a shared commitment by police and disability services to a collaborative early intervention approach.
- v) Enhance police efforts to divert people with disability from the criminal justice system by improving the information disability services provide police about the circumstances of the person to inform the exercise of their discretion.
- vi) Ensure that appropriate responses are provided to people with disability living in supported accommodation who are victims.

Like the general population, people with disability living in supported accommodation have varying capabilities. The primary focus of this Protocol is people with cognitive and/or mental health impairment – irrespective of whether the cognitive impairment is due to an intellectual disability, severe mental illness, acquired brain injury, autism, a neurological condition such as dementia, or other cause.

The Protocol (and procedures) emphasise the importance of flexibility and proportionality in determining the most appropriate response to a person with disability's behaviour on a case by case basis. The procedures for disability services staff stress that contact with police should only be made when the circumstances warrant it.

While the central purpose of the Protocol is to reduce unnecessary police contact with people with disability in supported accommodation, it is equally important that disability service staff respond to the needs of any victim(s). In this regard, the Protocol also emphasises the importance of ensuring disability services promptly contact police when necessary – especially when there are immediate safety risks which require a police response. When police are called in these circumstances, they will attend the service and take appropriate action to secure the safety of any alleged victim(s), the involved person with disability and service staff.

The Protocol makes clear that serious incidents, such as alleged sexual abuse, fall outside its scope. Such incidents generally warrant a sensitive and comprehensive response from a number of agencies. It is also important to recognise that this protocol does not pertain to alleged abuse or neglect by staff against people with disability in supported accommodation – all allegations of criminal conduct by staff must be reported to the Police.

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1. Under the *Disability Inclusion Act 2014* and *Disability Inclusion Regulation 2014* 'supported group accommodation' means premises where:
 - a) a person with disability is living in a shared living arrangement (whether short-term or permanently) with at least one other person with disability
 - b) none of the people with disability have a guardian or a member of their family responsible for their care living at the premises
 - c) the premises are under the control, direction or management of a disability service provider
 - d) support is provided 'on-site' at the premises, and
 - e) a fee is charged if the accommodation is permanent.
 2. For young people in residential care (including disability supported accommodation), this Protocol should be read in conjunction with the *Joint Protocol to Reduce the Contact of Young People in Residential Out-Of-Home Care with the Criminal Justice System*.

1.1. Guiding principles

This Protocol is underpinned by the following guiding principles:

- i) People with disability living in supported accommodation tend to have a range of complex needs arising from their disability, support needs, circumstances, and trauma associated with abuse and neglect.
- ii) People with disability living in supported accommodation may exhibit a wide range of behaviours of concern associated with experiences of trauma and neglect. These behaviours of concern are best managed using trauma-informed and person-centred approaches to support.
- iii) A multiagency commitment is necessary to divert people with disability in supported accommodation from unnecessary contact with the criminal justice system.
- iv) Police should be called as a last resort in response to incidents arising from behaviours of concern by people with disability in supported accommodation unless it is to prevent a breach of the peace.³
- v) Services should always call police to respond to incidents involving people with disability in supported accommodation where there is a safety risk that cannot be met through appropriate risk management and behaviour support strategies. For example, services have discretion not to call police for minor offences where no-one is hurt and the victim wants no police action. Services will not restrict the access of victims to police, or influence a victim not to seek police involvement.
- vi) People with disability living in supported accommodation have the same rights as everyone else to seek assistance from police. Disability services staff will provide appropriate support and assistance to clients who choose to report an incident to police.
- vii) The arrest and detention of a person with disability in supported accommodation should only be used as a last resort.

2. Background

There is clear evidence of over-representation of people with cognitive and mental health impairments at all stages of the criminal justice system.⁴

The NSW Law Reform Commission has reported that, in relation to their contact with the criminal justice system, people with intellectual disability are most likely to commit offences involving impulsive or unpremeditated behaviour (such as offences against property), whereas crimes involving planning or foresight feature infrequently.⁵

Around 8,000 people with disability live in supported group accommodation in NSW.⁶ While the circumstances and support needs of these individuals are diverse, research has identified that people with disability in supported accommodation are at greater risk of abuse for many reasons, including the congregate nature of some of the accommodation settings; the placement of incompatible people in the same accommodation; and inadequate behaviour or other supports, and unsatisfactory environments leading to frustration, boredom, behaviours of concern, and aggression.⁷

3. A breach of the peace occurs when harm is done or likely to be done to a person or to property when a person is present. It includes, for example, a situation where a person is in fear of being assaulted. Police are empowered to arrest a person they reasonably believe will commit or cause a breach of the peace. There must be some level of violence, threatened or actual, in order to justify an arrest for breach of the peace. [*R v Howell* (1982) QB 416] This allows police to take action to prevent serious injury or damage to property. However, a person arrested in relation to a breach of the peace will not be charged unless they commit a statutory offence.

4. NSW Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system: Diversion*, Report 135, June 2012

5. NSW Law Reform Commission, *People with an intellectual disability and the criminal justice system*, Report 80, 1996.

6. Data from the NSW Official Community Visitor scheme

7. NSW Ombudsman, *Initial and early response to abuse or neglect in disability services: A resource for frontline staff*

In NSW, supported accommodation for people with disability is provided by services that are operated or funded by the Department of Family and Community Services (FACS), or funded as part of a National Disability Insurance Scheme (NDIS) participant's plan. Care and accommodation for people with cognitive and mental health impairments is also provided in assisted boarding houses,⁸ and in accommodation services operated or funded by NSW Health. It is anticipated that this Protocol will be extended to these services in the future.

2.1. Trauma and behaviours of concern

Many people with disability in supported accommodation have experienced complex trauma due to events such as life-long discrimination and bullying, separation from family, hospitalisations, lack of control over their life, and increased vulnerability to abuse and/or neglect.⁹ For some individuals, the impact of past experiences of trauma, and a range of internal and external factors, can result in behaviour that is violent or otherwise harmful to themselves and/or others. Some of the internal and external factors for people with cognitive or mental health impairment in supported accommodation that can influence whether or not they might be involved in incidents of violence or other abuse include:

- their health and mental health
- any prior experience of abuse, neglect or trauma
- 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
- 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 minimise the factors that trigger or adversely affect their behaviour (such as noise, change in routine, boredom)
- the extent to which they are supported to have control over their life and circumstances, including choice over their own activities and schedule, and
- the way they are treated, including the way they are spoken to, spoken about, and supported.

While some behaviour exhibited by people with cognitive or mental health impairment in supported accommodation may meet the threshold of criminal behaviour, the same behaviour occurring in family homes would generally be managed without the involvement of police.

Behaviours of concern need to be managed in a way that supports the person who has exhibited the behaviour, and ensures the safety of all residents and workers. Disability accommodation services have a duty to ensure the safety of their staff and the clients in their care. Police are also responsible for taking action to ensure community and individual safety.

A 'trauma informed' approach recognises the presence of trauma symptoms; and acknowledges the role of the person's experience of trauma in that person's patterns of behaviour and aims to support people to manage their emotions and regulate their behaviour. A key responsibility for those involved in providing care is to provide planned, positive and person-centred strategies to assist them to work towards more positive patterns of behaviour and, where possible, to avoid more punitive approaches. FACS promotes a positive approach to behaviour support, with the development of behaviour support strategies that are based on comprehensive assessment and analysis of the meaning and function of behaviour in a whole-of-life context.¹⁰

8. Under the *Boarding Houses Act 2012*, 'assisted boarding houses' comprise boarding premises that provide beds, for fee or reward, for use by two or more residents who are persons with additional needs (including age related frailty, mental illness, and/or disability). Assisted boarding houses are required to be authorised by FACS.

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

10. Ageing, Disability and Home Care, *Behaviour Support Policy and Practice Manual*, January 2009

A 'trauma informed' approach also seeks to protect people with disability in supported accommodation from further trauma caused by conflict with, or victimisation from, other people living at the service. It is important that 'client mix' is a key consideration in decisions relating to supported accommodation arrangements for people with disability, and that the needs and views of any victim are always taken into consideration when responding to incidents at the service.

2.2. Interagency collaboration

People with cognitive and mental health impairments who have complex and multiple needs are likely to require the combined support of a number of different services and agencies. The parties to this Protocol share a commitment to working collaboratively on early intervention and prevention strategies which support people with cognitive and mental health impairments, enhance their wellbeing, and assist them to develop and sustain positive behaviour that is less likely to bring them into contact with the criminal justice system.

It is widely acknowledged that collaborative interagency approaches that facilitate integrated responses to people with cognitive and mental health impairments are preferable to dealing with incidents in isolation. This kind of collaborative case management should ideally lead to improved service delivery by reducing duplication and clarifying roles and responsibilities. It can also enhance the opportunity for creative solutions. Incidents in supported accommodation services can present opportunities for collaborative problem solving and trigger revision of current strategies and/or involvement of additional partner agencies in the support for the person with disability.

3. Roles and responsibilities

3.1. Joint responsibilities

While each agency has a specific role to play in implementing the Protocol, all parties endorse the Guiding Principles (above) and agree to:

- i) Act within the spirit of the Protocol when responding to incidents involving people with disability in supported accommodation.
- ii) Implement procedures for supported accommodation services and police that ensure the safe, appropriate and proportionate response to individual incidents in supported accommodation services (for further details see Annexures A and B).
- iii) Ensure that systems are in place to facilitate the implementation and evaluation of the Protocol, including appropriate record keeping.
- iv) Subject to privacy legislation, liaise and share information with other parties to the Protocol (and where appropriate, with other agencies such as health providers and other support services).
- v) Develop, implement and promote the delivery of appropriate training and guidance about the Protocol and related policies.

3.2. Department of Family and Community Services

As the government agency with a lead role in the provision of services and support for people with disability in NSW, FACS has an overriding interest in the promotion of interagency practices that minimise the involvement of people with disability (particularly people with intellectual disability) in the criminal justice system. As a funding body for non-government disability services until transition to the NDIS, FACS is responsible for promoting good practice in providing services to people with disability assisted by disability services through its ongoing management of service contracts and related performance monitoring.

FACS will promote the effective implementation of the Protocol to disability supported accommodation services through existing governance mechanisms, such as interagency meetings within each District. FACS will develop resources and work with peak bodies to encourage local implementation of these protocols as part of their annual planning, including information sessions and practice forums to promote provider requirements. In this regard, FACS will work with peak bodies and the disability services sector to identify and promote examples of best practice in relation to behaviour support in individual residences and local processes between disability services and police.¹¹

3.3. Disability supported accommodation services

As day-to-day support providers, disability support staff are uniquely placed to know the history, relationships and current situation of the people with disability residing at their service. They are frequently called upon to decide whether to contact police in response to incidents, and should be provided with the necessary support and guidance to make these decisions in difficult and demanding circumstances. To effectively implement this Protocol, it is recognised that staff in disability supported accommodation services require training and guidance to appropriately prevent and effectively respond to behaviours of concern. This includes training on the effective use of behaviour support strategies, and to more easily identify situations that require a call for police assistance.

To implement this Protocol, disability supported accommodation services will nominate an appropriate senior staff member (eg: service coordinator or manager) as the 'liaison officer' to regularly liaise with local police. The liaison officer is also responsible for ensuring information is provided to police following an incident involving police attendance at the service according to the *Procedures for disability supported accommodation services* (Annexure A).

National Disability Services (NDS) is the peak organisation for non-government disability services. NDS has led the development of a Zero Tolerance framework, including the development of practical tools and resources for disability services to improve prevention, early intervention and responses to abuse, neglect and violence towards people with disability. The Protocol is consistent with, and reinforces, the Zero Tolerance framework.

3.4. NSW Police Force

A key aim of the Protocol is to provide practical guidance for police in implementing their existing legislative responsibilities in the context of responding to people with disability in supported accommodation.

Each Local Area Command's Crime Management Unit (CMU) is the 'hub' for community information and plays a significant role in local crime prevention strategies. The CMU within each Local Area Command will be responsible for Protocol case management, including engagement with local supported accommodation services, information sharing and recording. In addition to the Crime Manager and Crime Coordinator, CMUs typically also include the various liaison roles within the command such as the Domestic Violence Liaison Officer (DVLO) and Youth Liaison Officer (YLO), and unsworn officers such as the Aboriginal Community Liaison Officer and Multicultural Community Liaison Officer.¹² The Crime Coordinator will have responsibility for liaison with supported accommodation services within the local area command. Police are uniquely placed to liaise with service providers and government agencies, as they are not bound by NSW information privacy principles in these circumstances.¹³

Police usually attend supported accommodation services in response to calls from staff members or other members of the community, such as neighbours. Better engagement between the CMU and disability services will allow frontline police to gain a better understanding of a person's circumstances and ideally will lead to a more informed response.

11. See also Section 5: Training and Identification of Best Practice.

12. The DVLO and YLO roles are sworn officers. A primary aspect of their role is stakeholder engagement. However, these officers do not generally attend incidents.

13. See Annexure B, and *Privacy and Personal Information Protection Act 1998*, s27

When responding to incidents at supported accommodation services, police will consider information provided by staff members, victims and witnesses, and have regard to relevant legislation, Standard Operating Procedures, and their own judgement in applying the Protocol.

Local CMUs will ensure frontline police officers are provided with appropriate training and guidance to ensure consistent implementation of this Protocol. (Annexure B provides an outline of Police responsibilities in implementing the Protocol.)

The NSW Police Force Domestic and Family Violence SOPS advise frontline police about responding to personal and domestic violence offences in accordance with the *Crimes (Domestic and Personal) Violence Act* and other relevant legislation.

Each Local Area Command is to ensure that the disability service who will receive or have access to NSWPF information submits a completed Deed Poll of Confidentiality before being granted access to the information (see Annexure C).

3.5. National Disability Insurance Agency

The National Disability Insurance Agency (NDIA) is responsible for delivering the NDIS. Rollout of the full scheme started progressively from July 2016. The full scheme is expected to be in place in NSW on 1 July 2018.

Registered providers in NSW are required to report serious incidents to the NDIS State Manager and to the relevant statutory authority, including (but not limited to) allegations of, or actual, sexual or physical assault of a participant, and significant damage to property or serious injury to another person by a participant.¹⁴

Part of the role of the NDIA in response to cases, or suspected cases, of abuse or neglect, is to consider any implications for the participant's NDIS plan, including review and adjustment of NDIA arrangements for the participant.¹⁵ As part of the response, NDIA staff are required to:

- review the appropriateness of supports and safeguards in the plan and assist in accessing supports from other schemes that may be appropriate, and
- consider the need for the new NDIS plan to provide additional formal supports or a crisis response with time-limited additional resources – including whether existing supports need to be maintained and whether additional supports such as coordination of complex supports or specific capacity-building supports are reasonable and necessary.

The NDIA will promote the effective implementation of the Protocol through interagency meetings and liaison with FACS and registered providers.

4. Governance

A state-wide interagency governance structure underpinned by local arrangements will be established to ensure the consistent and effective implementation of the Protocol and to provide clear pathways for resolution of any systemic issues.

4.1. Statewide Steering Committee

The implementation of the Protocol will be overseen by a steering committee, chaired by the Ombudsman's office, which comprises representatives of the following agencies:

- NSW Police Force
- Family and Community Services (FACS)

14. NDIS Terms of Business

15. NDIA *Operational Guideline – General Conduct – Responding to Abuse, Neglect and Exploitation*

- National Disability Insurance Agency (NDIA)
- National Disability Services (NDS)
- Department of Justice – Public Guardian
- Department of Justice – Diversity Services
- NSW Mental Health Commission
- Association of Children’s Welfare Agencies (ACWA)
- Disability Services Australia
- House With No Steps
- Intellectual Disability Rights Service (IDRS)
- Legal Aid NSW
- Lifestyle Solutions
- Life Without Barriers
- LiveBetter
- Northcott
- NSW Council for Intellectual Disability (NSW CID)
- People with Disability Australia (PWDA)
- Quality Health Care
- Royal Rehabilitation Centre
- Samaritans Foundation
- Sunnyfield
- Sylvanvale

From time to time, the Statewide Steering Committee (SSC) will invite other agencies and experts to participate in its deliberations on discrete issues.

The functions of the SSC include:

- i) Identifying the type of data disability services and police will need to systematically collect and report on to inform the effective implementation and evaluation of the Protocol.
- ii) Developing a communication and promotion strategy to support the implementation of the Protocol.
- iii) Ensuring that local arrangements are in place to guide the implementation of the Protocol (these should not be prescribed by the committee and, wherever possible, should seek to use existing suitable mechanisms).
- iv) Monitoring the initial rollout of the Protocol and related procedures, and identifying the need for any other processes or related tools to be developed to support this process.
- v) Identifying and addressing any systemic issues associated with the Protocol’s implementation.
- vi) Developing a strategy for identifying and promoting good practice in implementing the Protocol, including effective strategies used by services to support behaviour needs and households more generally.
- vii) Providing regular feedback to local police and disability services in relevant locations to inform the ongoing rollout of the Protocol.

- viii) Overseeing provision of training to support the Protocol's implementation, including providing specific information relevant to supporting Aboriginal people with disability, people with disability from culturally and linguistically diverse backgrounds, and young people with disability.
- ix) Developing an evaluation strategy, including identifying key benchmark data and outcome measures.

4.2. Internal agency governance

Signatory NSW government agencies – the NSWPF and FACS – will identify suitable internal governance processes to facilitate consistent implementation of the Protocol across each agency. Disability supported accommodation services will also need to ensure consistent implementation of the Protocol occurs across their organisation.

Agencies will assign responsibility for implementation of the Protocol to a suitably senior officer.

4.3. Local level arrangements

Local police, local FACS representatives and disability supported accommodation services will determine the nature and frequency of liaison necessary to meet the objectives of the Protocol. Where appropriate, existing local governance structures will be used.

At a local level, disability supported accommodation services and local area commands will agree on the practical arrangements and information that are required to implement the Protocol, such as:

- names of parties, eg: 'X' local area command and 'Y' disability service
- designated liaison officer for each party and contact details, eg: service manager and crime coordinator (or other member of the CMU), and
- agreed processes, eg: frequency of liaison, location of meetings, records of the meetings and who will be responsible for them, local data collection processes, and local dispute resolution/escalation.

Disability supported accommodation services vary according to governance structures, size and geographic distribution. Some of the larger providers will have accommodation services across a number of local area commands. Accordingly, it will be a matter for each provider to determine the best way to ensure that arrangements are in place with the corresponding local area command to ensure consistent implementation of the Protocol across its service outlets.

4.4. Dispute resolution

Open and honest communication will be maintained between parties to the Protocol. Parties should aim to resolve any disputes about procedures or actions in relation to this Protocol at the local level as soon as possible. Local level resolution includes escalation of unresolved issues to the local area commander (or region commander where relevant), district director and/or accommodation service chief executive officer (or equivalent).

As needed, local level disputes about how best to resolve systemic issues can be escalated to the SSC when attempts to resolve the issues locally have been unsuccessful. However, the SSC will not be involved in resolving concerns about the performance of individual services or police commands.

5. Training and identification of best practice

A range of training methods will be considered within and across agencies. Training will be informed by a process that seeks to identify good practice across organisations in relation to the management

and operation of accommodation services, behaviour support, and the relationship between accommodation services and local police. The training will also address the type of key benchmark data and outcomes measures that will be used to inform the Protocol's ongoing implementation and evaluation.

6. Evaluation and monitoring

The SSC will develop a strategy for evaluating the Protocol's implementation and the necessary data collection and reporting processes to support the evaluation process.

The process for collecting data should not be onerous and should not be inconsistent with the type of records that should already be made by police and residential services in responding to incidents. A critical component of evaluation and monitoring will involve assessing not only the contact between disability services and police, but also the systems and processes disability services have in place to monitor and guide their ongoing collaborative work with police; and how services manage behaviours of concern and incidents more generally.

7. Term and review of protocol

The Protocol will be in place until the commencement of the NDIS Quality and Safeguarding Framework on 1 July 2018. The SSC will review the Protocol before the end of the term, with a view to informing the potential broader application of the Protocol on a national level.

8. Signatories

The following parties agree to the terms and guiding principles of this Protocol

- NSW Police Force
- FACS
- NDIA
- NDS
- Disability Services Australia
- House With No Steps
- Lifestyle Solutions
- Life Without Barriers
- LiveBetter
- Northcott
- Quality Health Care
- Royal Rehabilitation Centre
- Samaritans Foundation
- Sunnyfield
- Sylvanvale

The following agencies support the principles of this Protocol:

- Department of Justice – Public Guardian
- Department of Justice – Diversity Services
- NSW Mental Health Commission
- ACWA
- IDRS
- Legal Aid NSW
- NSW CID
- PWDA

9. Related legislation and guidelines

- *Disability Inclusion Act 2014*
- *Standards in Action* (National Standards for Disability Services)
- FACS: ADHC *Abuse and Neglect* policy
- FACS: ADHC *Behaviour Support* policy and practice manual
- Charter of Victims Rights, Part 2, Division 2, *Victims Rights and Support Act 2013*
- NSW Ombudsman *Resource Guide on the initial and early response to abuse and neglect in disability services*
- FACS: ADHC *Risk and Safety* policy
- FACS: *Justice Services* policy

Annexes

Annexure A: Procedures for disability supported accommodation services

1. Overview

This document:

- i) Provides disability services staff with additional guidance on supporting the behaviour needs of people with disability in supported accommodation, consistent with a positive approach to behaviour support.¹⁶
- ii) Promotes adherence to the *NSW Disability Services Standards*¹⁷ and the Department of Family and Community Services: Ageing, Disability and Home Care *Behaviour Support* policy.
- iii) Recognises that people living in supported accommodation may exhibit behaviours associated with their disability or with experiences of trauma and neglect, and that these behaviours are best managed using person-centred positive behaviour support and trauma-informed responses.
- iv) Reinforces the right of people with disability who are victims of crime to report an incident to police and to be provided with appropriate support from disability services staff – in connection with guardians, family and other supporters, where relevant – to do so.
- v) Recognises the right to a safe living environment for people with cognitive and/or mental health impairment in supported accommodation and the need for disability services to anticipate and take action to prevent abuse.
- vi) Recognises the right of disability services staff to a safe workplace, and provides guidance for staff to exercise informed judgement about when police assistance is required.
- vii) Encourages disability services to use a measured and consultative decision-making process to determine whether a call for police for assistance is necessary – **except in circumstances where there are immediate safety risks requiring a faster response, or there is an alleged sexual offence or serious physical assault.**

2. Behaviour Support Plans and other support issues

Where a person with disability in supported accommodation displays behaviours of concern, a behaviour support service, including the development of a Behaviour Support Plan (BSP), may be required. BSPs are prepared by a psychologist or other skilled professional in the area of behaviour support. A BSP should be tailored to the needs of each individual person, and based on a current and comprehensive assessment. BSPs should demonstrate a positive approach to behaviour support and address presenting behaviour in the context of the person's overall care, health, and circumstances, including their interaction with others in their environment. Intervention should be person-centred and culturally appropriate.

Disability services should give consideration to:

- i) the training provided to staff to:
 - as relevant, support and promote residents' capacity to communicate their needs and wishes
 - provide person-centred, active support
 - provide appropriate behaviour support (including incident prevention and response)

16. These procedures should be read in conjunction with the person's current Behaviour Support Plan.

17. The standards that are particularly relevant to the Protocol are Rights (1), Individual outcomes (3), and Service management (5).

- identify potential situations where resident safety may be at risk and develop appropriate safety plans to avoid and respond to these
 - identify the situations and behaviours that require police assistance
 - minimise client-initiated conflict, and
 - implement, review or refine the BSP
- ii) the routines in the household and environmental factors such as the provision of quiet spaces and privacy that can help minimise stress and conflict
 - iii) the mix and compatibility of residents
 - iv) opportunities provided to residents to raise, and receive assistance to resolve, concerns
 - v) strategies promoted to support residents to manage stressful and escalating situations, and
 - vi) strategies to improve the relationship between the household and the neighbourhood if police are being called by neighbours to deal with concerns about incidents in supported accommodation, such as mediation training for staff.

3. Appointing a liaison officer for police

The disability service will appoint a senior staff member (eg: service coordinator or manager) to be the liaison officer for the purposes of this Protocol. The liaison officer is the main (though not necessarily the only) point of contact between the local Police Crime Management Unit and the disability service. The liaison officer should be kept informed of all contact between supported accommodation staff and police.

The liaison officer is responsible for ensuring that regular meetings occur with local police to implement the aims of the Protocol according to the local level arrangements in section 4.3.

4. Before calling police

Before calling police, be clear about the purpose of the call.

Police should always be called in circumstances where a staff member believes there are immediate safety risks which cannot be met by appropriate risk management and behaviour support strategies.

Strategies for disability services staff

Some strategies for disability services staff to consider include:

- i) **Ensure there is a comprehensive handover at the beginning of each shift.** The changeover should include an outline of the events of the day (including the client's mood, presence of conflict or tension, any incident that occurred during the day) as these may provide a context to any triggers that arise later.
- ii) When a client starts exhibiting behaviours of concern, **apply the strategies for de-escalation contained in the person's BSP.**
- iii) If the behaviour cannot be de-escalated, **contact senior staff in the disability service** (eg: Manager, Coordinator, Head Office, or the after-hours On-Call Manager) to discuss options, including on-call attendance at the residence, deployment of additional staff, etc. Senior staff will discuss:
 - the nature and seriousness of the incident
 - any legal requirements to notify police

- the views of any victim about calling the Police (including any capacity issues)¹⁸
- contacting the guardian and family/other supporters of the client and any victim¹⁹
- the current behaviour and situation of the client and any victim
- steps already taken to de-escalate the behaviour
- previous incidents or behaviour of a similar nature by the same client
- the staff member's views about calling police
- any relationships which may have an impact on the client's behaviour, eg: between clients involved in the incident
- any environmental or other factors that have contributed to the incident (eg: issues relating to new or unfamiliar staff on duty; mental health of the client; medication changes; changes in routine)
- potential impact (positive and negative) on the client if police involvement is requested, and whether the situation can be managed safely without police involvement, and
- alternative courses of action.

5. Authorisation to call police

In emergency situations, supported accommodation staff should not hesitate to call 000.

For non-emergency situations, the following guidance applies:

- i) Only senior staff in the disability service (eg: Manager, Coordinator, Head Office (business hours) or the On-Call Manager (after hours)) can *authorise* seeking police assistance.
- ii) Once authorisation has been given, the relevant staff member will contact local police and provide the following information:
 - an explanation of what has occurred
 - the wishes of any alleged victim
 - any historical context
 - any relevant information about the clients involved, eg: mental or physical health issues, cognitive impairment, communication support needs
 - the existence of any bail/AVO conditions
 - what has been done to de-escalate the behaviour
 - the strategies in the BSP that have been implemented, and
 - the nature of the police assistance sought.

18. If the alleged victim is unable to make an informed decision in relation to whether they wish the matter to be reported to the Police, senior staff should consult with the person's guardian, family, and/or other supporters.

19. Where a guardian has been appointed for the alleged offender and/or victim, they should be immediately informed of the incident. Where the alleged offender or victim has provided consent (or they are unable to provide informed consent), their family and/or other supporters should be promptly notified so they can assist the person with support and decision-making as appropriate.

6. After calling police (post-incident response)

6.1. Records

An incident report must be completed before the end of the staff member's shift. The incident report provides a summary of the incident(s) leading up to a request for police involvement, including what was done to de-escalate the presenting behaviour. Records should be sufficiently detailed (although not onerous) to ensure continuity of care at staff changeovers and inform agency liaison meetings, risk assessments and evaluation of the Protocol. Records should be made in all circumstances where police assistance is requested. Ideally, records will be made whenever the Protocol is used, including where a decision is made not to call police.

6.2. Within two weeks of incident

Two weeks is the maximum period and is indicative only. Police and senior staff in the disability service may agree on a different and lesser time period as appropriate.

- i) Senior staff in the disability service will undertake a **review of the incident** with the staff member(s) on duty at the time the incident occurred. This will enable discussion and consideration of the options that were available throughout the course of the incident. The service will consider the circumstances leading up to the incident and any previous similar incidents, and review the behaviour support strategies.
- ii) As a result of the incident review, **the BSP will be reviewed** and, where appropriate, amended (by an appropriately qualified behaviour clinician). Staff involved in the incident will be provided with the opportunity to debrief, as required.
- iii) Depending on the wishes of the client, the service will arrange **a meeting with them** to reflect on the incident and identify what could be done differently in future (including alternative behaviours). Where appropriate, the meeting may include local police (preferably the police officer who responded to the incident or, where available, the Vulnerable Communities Liaison Officer or Mental Health Intervention Team Officer). The client should have a support person present.
- iv) Senior staff in the disability service will give consideration to whether the service should **engage other support services** for the client, to ensure that the client is supported through an integrated approach. In the context of contributory factors to the incident, senior staff will also consider **other changes that may be required** in the service to prevent recurrence.
- v) After discussing the above actions with the appointed liaison officer,²⁰ an appropriate staff member will update the Police and provide relevant information about the actions taken. (Police will use the information provided in exercising their discretion to determine whether and how to proceed).

20. The Protocol requires that a senior staff member in the disability service be nominated as the liaison officer.

Annexure B: Policing responses to incidents in disability supported accommodation services

The NSW Ombudsman, in consultation with the NSW Police Force (NSWPF), has prepared this document to outline how local police will work with service providers in responding to incidents that occur in disability supported accommodation services.

The NSWPF has committed to providing guidance and training to frontline police to facilitate the effective implementation of the Protocol; and ensuring it has adequate processes in place to support the evaluation of the Protocol's use and impact.

This document outlines:

- police responsibilities when responding to incidents notified by disability supported accommodation services
- factors to be considered by police when determining how to respond to incidents at disability supported accommodation services
- available options for responding to people with cognitive and/or mental health impairments
- police responsibilities to take action to protect victims consistent with the *Crimes (Domestic and Personal Violence) Act 2007*, and
- responsibilities in relation to recording incidents and relevant information.

1. Responding to incidents in disability supported accommodation services

The appropriate and informed use of police discretion is central to the effective operation of this Protocol. Police will respond to incidents reported by disability supported accommodation services consistent with usual police practice.

Once police have attended a disability supported accommodation service in response to an incident, they will determine the appropriate action. Police will adopt a consultative approach with services in reaching a decision; however, police retain the ultimate authority to make the decision.

Police may need to take immediate action to deal with the person with disability involved. However, where immediate action is not necessary, police will consult with their local Crime Management Unit (CMU) to determine the most appropriate way to respond. All matters involving people with disability in supported accommodation will be reported to the CMU as soon as practicable for its review.

In considering what action should be taken by attending police, the following factors will be considered:

- the seriousness of the offence
- the degree of actual or threatened violence involved and any harm caused to alleged victims
- age and any capacity issues
- the wishes of any alleged victim,²¹ and
- any other matter the investigating officer thinks appropriate in the circumstances.

Following the initial response, and in consultation with the CMU, police should consider the following factors:

- the number and nature of any offences committed by the person with disability

21. If the alleged victim is unable to provide a view, police should consult with the person's guardian, family or other supporters.

- information provided by the service about the person's situation (including cognitive and/or mental health impairment/illnesses/medication issues) or other factors impacting on the person's behaviour (including new/unfamiliar staff on duty; inadequate supervision; change in routine)
- the person's Behaviour Support Plan and any proposed actions to amend it
- the views of the victim/s²²
- the views of any guardian or family of the alleged offender
- whether the person has shown remorse, apologised or made reparations (eg: damage has been repaired), and
- the views of senior staff of the disability service as to the potential effect of a criminal justice intervention on the person with disability.

An approach that first considers the appropriateness of exercising discretion to deal with a person with disability informally or by issuing a warning is likely to leave police with more diversionary options down the track.

Where police attending a disability supported accommodation service initially determine that formal action is required (eg: by instituting criminal proceedings), they will consult with the relevant disability service liaison officer, and directly with any alleged victim within two weeks of the incident and before making a final determination about taking action. The consultation will enable police to take into account any measures that have been put in place by the service to manage the person's behaviour and provide effective support to prevent recurrence, and any additional information the service may provide.

2. A stepped approach to deciding how best to respond

2.1. No further action

Police may determine, after discussing the incident with relevant disability service staff, the person with disability and any victim/s, that no further action is required in response to an incident.

2.2. Criminal proceedings

The age²³ and capacity²⁴ of a person with disability are relevant factors for police to consider when determining whether to initiate criminal proceedings. Where a decision to initiate formal criminal proceedings is made, police will continue to liaise with the service to ensure the ongoing wellbeing of the person with disability, including linking them with programs and services to divert them from crime.

A person with cognitive disability living in supported accommodation would be considered a 'vulnerable person' in relation to the Law Enforcement (Powers and Responsibilities) Regulation 2005. If the Police arrest such a person, they must make efforts to ensure that the person has a support person, and that they have the opportunity to receive legal advice. It is preferable that the support person is independent of the disability service to avoid conflict of interest. The Criminal Justice Support Network provides free legal advice and support workers to assist people with intellectual disability at police stations and at court.

22. If the victim is unable to provide a view, police should consult with the person's guardian, family or other supporters.

23. The common law presumption known as 'doli incapax' is a legal presumption that a young person between 10 and 14 years of age is incapable of forming the necessary intent to commit a criminal offence. This is often understood to require the prosecution to prove that the child knew what they did was seriously wrong in the criminal sense.

24. The question of legal capacity (or fitness to be tried) may be raised in relation to some people for reasons such as cognitive and/or mental health impairment. The *Mental Health (Forensic Provisions) Act 1990* sets out the law in relation to fitness to stand trial, which refers to the accused's capacity to understand and participate in the court proceedings.

3. Police responsibilities to take action to protect victims consistent with the *Crimes (Domestic and Personal Violence) Act 2007*

Domestic violence law in NSW is largely governed by the *Crimes (Domestic and Personal Violence) Act 2007*. This legislation obliges police to apply for an AVO in certain circumstances.²⁵ In line with legislative provisions, NSWPF *Domestic and Family Violence Policy* ‘enforces a proactive victim support response and will ensure appropriate protective measures are taken to keep victims safe and prevent further violence against them, including applying for an Apprehended Violence Order (AVO)’.

The *Crimes (Domestic and Personal Violence) Act* broadly defines ‘domestic relationship’ and includes relationships between long-term residents living in the same residential facility (s.5(e)), and between carers and the people dependant on their care (s.5(f)). This broad definition was designed to protect the most vulnerable in our community – in particular to protect people with disability, older people and young people from abuse and violence in formal care settings.

The legislation requires police to proactively apply for AVOs in a wide range of circumstances and settings, which can include within residential services. The sole fact that a victim is reluctant to apply for an AVO does not override a police officer’s obligation to apply for an AVO in circumstances where the officer believes there has been violence to the victim or where a significant threat of violence exists.²⁶

The NSWPF *Domestic and Family Violence Policy* recognises that ‘domestic and family violence involves an abuse of power’.²⁷ While the relationships between people with disability and their carers are within the legislative definition of domestic relationship, they do not typically demonstrate the kind of power imbalance which sets domestic violence apart from other forms of personal violence.²⁸ The legislation does not recognise that the person(s) named as the person(s) in need of protection on the AVO may actually be in a position of power, with the person with disability in a position of vulnerability.

Police attending disability supported accommodation services will consider all the circumstances of an incident and any history of violence between the parties before determining whether an AVO is necessary. The routine use of AVOs can further disadvantage vulnerable people with disability who have a history of trauma and abuse. The NSWPF recognises that AVOs are designed to protect victims from violence and should not abrogate the disability service’s responsibility to implement appropriate behaviour management strategies.

Breaching an AVO can expose people with disability to criminal sanctions, loss of a dwelling and the possibility of incarceration. The use of AVOs may not always be the most effective or suitable method to address the behaviour of people with disability towards carers and other residents of supported accommodation. In many cases, the person with disability will not have the capacity to understand the legal process, the order itself, or the consequences of breaching the order; or have the capacity to comply with the order due to the effects of their disability.²⁹ A collaborative interagency approach between the service and other relevant agencies may achieve better and more enduring outcomes.

Police will always focus on the protection of the victim when responding to incidents of violence.

However, there are a number of options currently available to police dealing with incidents at disability supported accommodation services. In some circumstances, police may determine that there is a good reason not to apply for an AVO. The *Crimes (Domestic and Personal Violence) Act* provides that where the police officer investigating the matter believes that there is good reason not to apply for an AVO, and any victim is 16 years of age or older, an application for an AVO need not be made.³⁰

25. *Crimes (Domestic and Personal Violence) Act 2007*, s.27 and s.49.

26. *Crimes (Domestic and Personal Violence) Act 2007*, s.27(6) and s.49(6). In addition, where the victim is reluctant to apply for an AVO and the police officer believes that the victim has an intellectual disability and no guardian, this reluctance cannot be the sole reason for not applying for an AVO (s.49(6)(b) and s.27(6)(b)).

27. *NSW Police Force Domestic and Family Violence Policy*, 2012, p.8.

28. Legal Aid practitioners report that the majority of protection orders dealt with in the context of the Children’s Court in NSW do not demonstrate the type of power imbalance which the legislation seeks to address. The Intellectual Disability Rights Service reports that the legislation does not recognise that the person(s) named as the person(s) in need of protection on the AVO may actually be in a position of power (such as a staff member), with the person with disability in a position of vulnerability. (IDRS *Defendant Incapacity and AVOs* issues paper, December 2014).

29. IDRS *Defendant Incapacity and AVOs* issues paper, December 2014

30. *Crimes (Domestic and Personal Violence) Act 2007*, s.49(4) and s.27(4).

In determining whether there might be good reason **not** to apply for an AVO against a person with disability in supported accommodation, a police officer should take into account all the circumstances of the incident, including consideration of:

- the nature of the incident, including whether there was violence or significant threats of violence to the victim
- the views of the victim, including whether the victim wants an AVO in place³¹
- the age of the victim and any capacity issues
- the nature of the relationship between the people involved in the incident, including whether the incident occurred in the context of a coercive and abusive relationship, and what action the disability service will take to protect the victim in the future.

If a police officer decides not to apply for an AVO, the *Crimes (Domestic and Personal Violence) Act* requires that they make a written record of the reason.³²

4. Recording incidents and relevant information

There are concerns that some people with disability living in supported accommodation attract numerous police records in relation to minor incidents, and that this can affect the decisions of police when they attend an incident involving these individuals. The Protocol aims to reduce the frequency of police attendance at disability services in relation to behaviour which could be safely managed within a service and this, in turn, should lead to a reduction in, or prevention of, the number of police records held about a person with disability relating to minor incidents.

Even where police attend a disability service, there may still be scope for police to determine that no formal action is required and no entry needs to be made against the person with disability's record on COPS. If the attending officers choose to make a record of the incident on COPS, the entry should record the factual events of the incident and reference any decision not to take further action based on the Protocol, such as any consultation with the disability service.

Disability services may provide police with information about a client's history (for example relevant disability, medical conditions, behavioural issues, and/or traumatic events) where this information will assist them to provide an appropriate response to the person. It will be a matter for the disability service to determine the nature of any additional information that should be provided to police to inform their responses to the client.

If a person with disability moves to another disability supported accommodation service, the Local Area Command's Crime Coordinator will ensure the new command is promptly provided with relevant background information about the person.

The NSWPF has committed to ensuring it has adequate processes in place to support the appropriate recording of information about its response to incidents that occur in disability supported accommodation services.

Police are uniquely placed to liaise with service providers and government agencies in relation to incidents and relevant background information about clients. Police are exempt from compliance with the information privacy principles prescribed under NSW privacy legislation, and so can disclose information about incidents, clients and other matters relevant to their work for the purposes of performing their functions under this document and the Protocol generally.³³

31. If the victim is unable to provide a view, police should consult with the person's guardian, family or other supporters.

32. *Crimes (Domestic and Personal Violence) Act 2007*, s.49(5) and s.27(5).

33. *Privacy and Personal Information Protection Act 1998* s 27. The information privacy principles apply to Police only when they are carrying out administrative functions (eg: maintaining personnel and other internal records) and educative functions (eg: carrying out school and community programs, or internal training). Administrative and educative functions have been described as functions that are not unique to the Police Force, but are typically carried out by any organisation. See *Commissioner of Police, New South Wales Police Force v YK (GD)* [2008] NSWADTAP 78; *HW v Commissioner of Police, New South Wales Police Service* [2003] NSWADT 214 at [20], [31]; *AEC v Commissioner of Police, NSW Police Force (GD)* [2013] NSWADTAP 30.

Annexure C: Requesting information from police – confidentiality deed

Disability service providers will sometimes be given confidential and sensitive information from Police relating to clients and staff of the service provider to ensure the safety and wellbeing of clients. The information may be provided in response to a specific request, or in general case management meetings between Police and the provider.

The provision of this information is in the absolute discretion of Police.

Disclosure and use of the information is governed by privacy legislation and confidentiality obligations imposed by law. Service providers:

- should only seek this information where it cannot be obtained from another source and the provider reasonably believes the information is necessary to ensure client and staff safety and wellbeing, and
- must agree that they will only use the information for the purpose for which it is supplied, and to keep the information confidential.

To maintain the confidentiality of any information provided by Police, service providers should sign the attached Confidentiality Deed (in front of a witness), provide the Deed to the relevant Police Local Area Command and maintain a copy for their records.

Confidentiality Deed

THIS DEED POLL is made on the day of 20

BY

.....

.....

.....

[name, title, business address and e-mail of Service Provider's head of agency]

(Service Provider)

IN FAVOUR OF **the Commissioner of Police** for and on behalf of the New South Wales Police Force, being an agency of the Crown in right of the State of New South Wales, of 1 Charles Street, Parramatta New South Wales (**NSWPF**).

RECITALS:

- A. NSWPF may, from time to time and in its absolute discretion, give the Service Provider information relating to clients and staff of the Service Provider for the sole purpose of ensuring client and staff safety and wellbeing.
- B. The Service Provider acknowledges that the information provided by NSWPF is confidential and regulated by the *Privacy and Personal Information Protection Act 1998* (NSW) (**PIIPA**), and that the Service Provider has a legal obligation to maintain the confidentiality and security of the information.
- C. The Service Provider agrees to keep the information confidential and to use the information only for the purpose for which it is disclosed, in accordance with the terms of this Deed.

OPERATIVE PART:

INTERPRETATION

In this Deed:

Confidential Information means information provided by the NSWPF to the Service Provider and includes (but is not limited to):

- a) COPS event details
- b) information about Apprehended Violence Orders
- c) information about charges laid, bail conditions and court orders
- d) information about NSWPF investigations

relating to clients or staff of the Service Provider.

Disclose or **Disclosure** includes (but is not limited to) provision of information in any format to any person or group of persons.

1 Use, disclosure and storage of confidential information

- 1.1 The Service Provider will only use the Confidential Information for the purpose of ensuring the safety and wellbeing of the Service Provider's clients and staff.

- 1.2 The Service Provider will take all reasonable precautions to ensure the Confidential Information is securely stored and cannot reasonably be accessed by anyone who is not entitled to receive it.
- 1.3 The Service Provider will only Disclose the Confidential Information:
- a) to members of the NSWPF
 - b) to other persons who have signed a similar confidentiality deed or agreement in favour of NSWPF, or
 - c) in accordance with an obligation imposed, or function authorised, by law.

2 Assistance by service provider

If requested by a member of the NSWPF in the course of their official duties, the Service Provider will provide information, logistical support, services or access to property:

- a) where there is an emergency that poses an imminent threat to life or property
- b) in the investigation of an alleged criminal offence, or
- c) in the routine exercise of community protection functions.

3 Legal proceedings

- 3.1 The Service Provider acknowledges that the Crown in right of the State of New South Wales (through NSWPF) may take legal proceedings against the Service Provider (including ex parte applications for injunctive orders) if there is any actual, threatened or suspected breach of this Deed by the Service Provider.
- 3.2 Should an ex parte injunction be sought in accordance with clause 3.1, the Service Provider agrees that damages would not be an adequate remedy.
- 3.3 If the Service Provider Discloses Confidential Information to a third party in breach of this Deed, the Service Provider agrees to use all reasonable endeavours to assist NSWPF to restrain the third party from disclosing the Confidential Information including, but not limited to, assigning or enforcing any contractual, equitable or moral rights that the Service Provider may have in respect of the Confidential Information.

4 No exclusion of law or equity

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information, which rights and remedies are cumulative to the rights under this Deed.

5 Indemnities

The Service Provider indemnifies and undertakes at all times to keep indemnified the State of New South Wales, its officers, employees or agents from and against any claims, actions and demands which any person may have against them in relation to the Service Provider's Disclosure of Confidential Information in breach of this Deed.

EXECUTED AS A DEED POLL

SIGNED SEALED AND DELIVERED)

By the Service Provider)

.....
Signature of Service Provider

.....
Name of Service Provider

.....
Signature of Witness

.....
Name and address of Witness