

Preventing and Responding to Abuse in Services Procedure

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Through	Director, Disability and Community Services		15 April 2014
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Revision History

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Introduction

The purpose of this procedure is to:

- outline the obligations that service providers have to ensure that people with a disability receive support services which uphold and maintain their rights as equal members of society
 - outline the steps necessary to uphold professional and legal responsibility to provide an environment for clients that is safe and work practices that aim to prevent any form of abuse
 - assist staff to respond promptly and sensitively to allegations, in consultation with relevant others, to protect the person(s) from further harm and to offer medical and psychological assistance
 - direct service providers and staff in their response to situations where allegations of abuse have occurred and provide the basis for service providers to develop procedures appropriate to the services they provide and to the nature of their particular organisation.
- This procedure has been developed to assist service providers and staff in their response to situations where allegations of abuse have occurred and provides the basis for service providers to develop additional procedures appropriate to the operational services they provide and to the nature of their particular organisation.
 - The intent is to outline the essential elements of best practice in responding to allegations of abuse and to protect the safety and interests of the alleged victim.

Transition to the NDIS

- Until commencement of the Full Scheme NDIS on 1 July 2019 all providers delivering DCS funded specialist disability services and services to NDIS funded participants are required to maintain compliance with DCS policies and procedures.
- Working collaboratively, open communication and information sharing during this transition period are essential. Providers with questions about DCS policies and procedures should contact their DCS Area Office, Community Partnership Team for clarification.
- Existing arrangements relating to Quality and Safety will remain in place for all individuals and NDIS participants until a National Approach is finalised. Eg. providers are required to comply with the *DHHS Quality and Safety Standards Framework for Tasmania's Agency Funded Community Sector* and ensure compliance with the *Tasmanian Disability Services Act (2011)* and *Tasmanian Disability Services Regulations (2015)*. Providers will be notified formally of any change in arrangements relating to quality assurance.

Mandatory Requirements

- The *Tasmanian Disability Services Act 2011* outlines that disability service providers have a duty of care to deliver services that are free from abuse and neglect, and promote a culture of best practice and open disclosure of alleged incidences or the occurrence of abuse.
- This procedure must be read in conjunction with the Preventing and Responding to Abuse Policy P2010/1102-001.
- Certain types of abuse such as physical and sexual abuse are a criminal offence under the *Criminal Code Act 1924* and require notification to and investigation by Tasmanian Police.

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- The Tasmanian *Disability Services Act 2011* provides the legislative basis for the provision of specialist disability services.
- The Act defines disability as an impairment that:
 - is attributable to a cognitive, intellectual, psychiatric, sensory or physical impairment, or a combination of these, and
 - is permanent or likely to be permanent, and
 - results in a substantial reduction in the capacity of the person to participate in everyday life, and
 - requires continuous significant support services, and
 - may or may not be of a chronic episodic nature.
- To be eligible for specialist disability services in Tasmania, a person must:
 - have a disability as defined under the Act
 - live permanently in Tasmania
 - be an Australian citizen, or a permanent Australian resident, or a Temporary Protection Visa holder, or a member of a family on a work or study visa sponsored by the Australian Government
 - have a disability that manifests before the age of 65 years.
- The policy and procedure must be read in conjunction with the Tasmanian *Disability Services Act 2011*, the Eligibility for Access to Specialist Disability Services Guidelines P2010/1094-002 and the Restrictive Interventions in Services for People with Disability Guideline P2012/0177-013.
- The Tasmanian specialist disability sector will not add to or duplicate services provided by other state, federal or local governments. There are conditions which are outside the scope of specialist disability services which may include mental illness, chronic medical conditions and age related conditions.

Procedure

Staff are to ensure a swift and consistent response in preventing incidence of abuse. All Staff must recognise they have a duty of care to report abuse and must act according to their organisation's procedural guidelines.

Reporting the Allegation

- Allegations of abuse may be reported directly by the alleged victim (through the National Abuse Hotline on 1800 880 052), **or** to the Disability and Community Services (DCS) Area Manager in your local area.
- Information on the support of an Advocacy Service must be provided to the client making the allegation in this process.
- Support staff must report all allegations or concerns about possible abuse to a supervisor or manager in their organisation.
- The worker who first becomes aware of the allegation must immediately advise the most senior staff member in the relevant work area of full details of the allegation.
- If the allegation is against the most senior staff member on duty it must either be reported to their immediate line manager or in accordance with that organisation's grievance mechanism. A preliminary investigation may be required to clarify whether or not there is sufficient evidence to support a formal allegation of abuse.

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- Allegations of abuse which may be of a criminal nature must be reported to Tasmania Police in the first instance.
- If Tasmania Police have been notified, there must be no contact made with other parties until the Police have completed their preliminary investigation.
- An investigation must be undertaken by the organisation if further action is not taken by police.

Supporting the Client

1. The client must have immediate access to health care if required, and any injuries must be documented and any evidence preserved. Whilst first-aid should be administered, evidence of the alleged assault should be preserved until such time as independent medical and police assessment has been completed. In the case of alleged sexual assault, the victim should be encouraged not to bathe, wash, shower, change or discard their clothes.
2. The **Allegation of Abuse Alert (AAA) 'Form 1'** must be provided to Disability and Community Services (DCS) within two working days of being notified of an allegation of abuse (unless otherwise advised by the Police).
3. The Service Provider must provide a report to Disability and Community Services (DCS) regarding the progress of the matter on the **Allegation of Abuse or Neglect Report (AANR) 'Form 2'** and provide this to Disability and Community Services (DCS) within 28 calendar days.
4. Within 48 hours (unless otherwise advised by police) service providers must:
 - inform the client's guardian, person responsible or significant other of the alleged incident
 - notify Disability and Community Services (DCS) of the alleged incident on the prescribed form.
5. All Service Providers must note that other immediate action will depend on the nature, type and severity of the allegation and may include:
 - engaging additional staff to be on duty
 - ensuring that no further contact occurs between the alleged perpetrator and the alleged victim
 - redeploying a staff member to another part of the service
 - suspending staff from work for the duration of the investigation.

Conducting the Investigation

1. Organisations must develop appropriate internal mechanisms for investigating allegations of abuse and evidence as part of Tasmanian State reporting laws and the organisations duty of care to all clients accessing services.
2. Clear reporting processes must be developed, evidenced and regularly communicated to all staff.
3. All persons accessing services, including both the alleged victim and the alleged perpetrator have rights and responsibilities during the investigation process and staff must guarantee procedural fairness for all of those involved in any matter covered by this policy.
4. At all times all parties must provide adequate support and service in a:
 - timely, adequate and appropriate manner
 - manner that promotes freedom from pre-judgement and retribution
 - confidential way that displays at all times respect for the client's privacy.

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5. Note that confidentiality must be provided and adhered to within the boundaries of the investigation process.
6. All people with disability must have the option of support of an advocate. All staff involved in supporting the client must recognise that an advocate may be a family member, friend or representative of an advocacy organisation.
7. All Organisations are responsible for ensuring that advocacy and support is offered and available to clients at any time they, their family member or carer request.
8. Disability and Community Services (DCS) will investigate all notifications received through the National Disability Services Abuse and Neglect Hotline.

Roles and Responsibilities/Delegations

All Service Providers:

- must ensure the client has immediate access to health care if required and that any injuries are documented and any evidence preserved
- should preserve evidence of the alleged assault whilst first-aid should be administered until such time as independent medical and police assessment has been completed. First-aid should be administered as required
- must ensure that in the case of alleged sexual assault, the victim should be encouraged **not** to bathe, wash, shower, change or discard their clothes
- must complete an **Allegation of Abuse Alert (AAA) 'Form 1'** and provide this to Disability and Community Services (DCS) within two working days of being notified of an allegation of abuse (unless otherwise advised by the Police)
- must provide a report to Disability and Community Services (DCS) regarding the progress of the matter on the **Allegation of Abuse or Neglect Report (AANR) 'Form 2'** and provide this to Disability and Community Services (DCS) within 28 calendar days
- are required to:
 - inform the client's guardian, person responsible or significant other of the alleged incident, and
 - notify Disability and Community Services (DCS) of the alleged incident on the prescribed form within 48 hours (unless otherwise advised by police)
- are to note that other immediate action will depend on the nature, type and severity of the allegation and may include:
 - engaging additional staff to be on duty
 - ensuring that no further contact occurs between the alleged perpetrator and the alleged victim
 - redeploying a staff member to another part of the service
 - suspending staff from work for the duration of the investigation
- all Service Providers must contact Tasmania Police where the abuse might be considered a criminal offence under the *Criminal Code Act 1924* and ensure the client has access to appropriate representation/advocacy to support them in making a complaint

Disability and Community Services:

- receive all reports of suspected abuse and neglect from funded services and will ensure that organisations are compliant in responding appropriately to those reports

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- maintain an overview of the service system and provide advice and support as required to funded services
- independently investigate all notifications received through funded services
- independently investigate all notifications received through the Abuse and Neglect Hotline and reporting of outcomes to the Hotline
- initiate and undertake service reviews, surveys and quality improvement activities as appropriate with funded services.

Disability and Community Services Funded organisations:

- must contact Tasmania Police where allegations of abuse (as defined) have been raised.
- must maintain and develop further necessary systems and processes to prevent occurrences of abuse and evidence a system for responding appropriately to allegations of abuse and neglect.
- will provide information to clients about advocacy services. must develop and implement clear policies and processes relating to the documentation and reporting of incidents.
- will provide the completed **Allegations of Abuse Alert (AAA) 'Form 1'** to Disability and Community Services (DCS) within two working days of being notified of an allegation of abuse (unless otherwise advised by the Tasmania Police).
- will provide the completed **Allegation of Abuse or Neglect Report (AANR) 'Form 2'** to Disability and Community Services (DCS) within 28 calendar days.
- must ensure that the organisation has an adequate complaints management policy and incident reporting and investigation process that is communicated to all staff and clients accessing the service.
- must ensure that the quality standards of service are communicated to all staff and clients accessing the service.

Key Definitions

Client

A person with disability, as defined by the Tasmanian *Disability Services Act 2011*, who may either be receiving support directly from, or be funded directly by, Disability and Community Services or receiving support from a service provider funded under the Act.

Abuse

Abuse is generally taken to be any action that results in a violation of a person's human or civil rights. There are five main types of abuse: physical, sexual, emotional / psychological, neglect and financial abuse. Abuse can be one off or persist over a period of time. However, a defining element is that there is the potential for significant and enduring harm as a result of the abuse.

Generally the term abuse is used to refer to intentional acts committed by a person who has power over another person (e.g. parent – child; support worker – client; doctor – patient).

Some forms of abuse are criminal offences and can be punishable by law.

While certain forms of abuse may not be considered a criminal act (e.g. physical coercion, sexual harassment, all forms of psychological abuse) these behaviours are termed harassment under the Australian *Anti-Discrimination Act 1998* and are also illegal.

Complaints involving harassment are investigated by the Australian Anti-Discrimination Commission (ADC).

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Physical Abuse

Physical abuse is the act of applying force to another person either directly (e.g. hitting, pushing, grabbing) or indirectly (e.g. threats, physical intimidation). This includes inflicting pain of any kind or causing bruises, fractures, burns, electric shock or any unpleasant sensation. eg hitting, kicking, punching, pinching, slapping, spanking, hair pulling, biting, spitting, force feeding, choking, shaking, pushing, scratching, corporal punishment and recklessly endangering the client's life through the carer's actions. Grabbing a person to protect them from potential harm is not defined as abuse.

Sexual Abuse

Sexual abuse occurs when a person is subjected to any sexual activity without their consent (this includes clients, employee, volunteer, carer, family member etc). It can be defined as any sexual contact between an adult and a child 17 years of age or under; or any sexual activity with an adult who is unable to understand, has not given consent, is threatened, coerced or forced to engage in sexual behaviour.

Sexual activity includes intercourse, genital manipulation, masturbation, voyeurism, sexual harassment, and also inappropriate exposure to pornographic media. Sexual abuse in the above context is defined as sexual assault. The Tasmanian *Criminal Code Act (1924)* divides sexual assault offences into three categories, namely:

- rape - penetration of the vagina, anus or mouth by the penis
- aggravated sexual assault - penetration of the vagina or anus with any object or body part other than the penis
- indecent assault -touching or threatened touching which has sexual overtones.

Inappropriate touching may or may not be classed as sexual abuse depending on the context in which it occurs and the level of functioning of the individuals involved. Sexual harassment, while not classed as sexual abuse can have serious consequences for the persons concerned. Sexual harassment or suggestion that is uninvited, unwelcome or unwanted is unacceptable and complaints can be pursued under the Tasmanian *Disability Services Act 2011*.

Financial Abuse

Financial abuse is the unlawful or improper use of a person's property or finances by someone with whom the person has a relationship that implies trust. Examples include: misappropriation of money or property (such as theft, fraud); any unauthorised denial of the person's right of access to or control over their personal finances and/or any undue influence brought to bear on the person in relation to their financial affairs.

Psychological or Emotional Abuse

Any conduct which could cause mental anguish, fear or isolation, feelings of shame, humiliation and powerlessness or loss of dignity would constitute psychological abuse. Examples include: repeated verbal assaults; threats, humiliation or intimidation; emotional blackmail; failure to interact with a person or to acknowledge that person's existence; and treating the person in a disrespectful manner. It also includes: the making of continual derogatory remarks about the individual, their appearance or attributes, their parents, family or cultural heritage; activities which place the individual in an unsafe environment or produce fear with the aim of demeaning the person; threats to make the individual perform a task/action they do not wish to perform; and threats to discharge the person from a program or restrict access to services.

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Neglect

The failure to provide adequate food, shelter, stimulation, clothing, and medical or dental care all constitute neglect. This may involve the refusal to permit other people to provide appropriate care. Examples of neglect include, abandonment, non-provision of nourishing food, adequate clothing or shelter, inappropriate use of medication (including over medicating) and poor hygiene or personal care. It does not include self-neglect.

Restrictive Practices

The Tasmanian *Disability Services Act 2011* defines restrictive practices as any action taken to restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person. It does not include such actions that are taken for therapeutic purposes, or to enable the safe transportation of the person or actions authorised under mental health legislation or guardianship.

Restrictive practices that are not authorised under the Tasmanian *Disability Services Act 2011* may constitute abuse if they occur on a continual basis or if they are likely to cause harm. The use of restraint without authorisation under the Tasmanian *Disability Services Act 2011* is only acceptable where it is required, in emergency situations, to prevent the individual from harming themselves or others and where it is the least restrictive method available under the circumstances. The use of restrictive practices in emergency situations must be reported to the Senior Practitioner as soon as practicable after the event. The Senior Practitioner will monitor the practice to ensure that it complies with the requirements of the Tasmanian *Disability Services Act 2011*.

For further information on the use of restraint refer to the Restrictive Interventions in Services for People with Disability Guideline P2012/0177-013.

Related Documents/Legislation

Tasmanian Disability Services Act 2011

Anti-Discrimination Act 1998

Restrictive Interventions in Services for People with Disability Policy P2012/0177-001

Restrictive Interventions in Services for People with Disability Procedure P2012/0177-013

Children, Young Persons and Their Families Act 1997

Criminal Code Act 1924

Disability Discrimination Act 1992 (Commonwealth)

Disability Services Formal Incident Review Process

Attachments

- 1 Preventing and Responding to Abuse Policy P2010/1102-001
- 2 Allegations of Abuse Alert Form (AAA)
- 3 Allegations of Abuse and Neglect Report Form (AANR)

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