

'Guidelines for the prevention and management of sexual abuse for disability service providers in Western Australia'

An Information and Policy Resource

NDS WA
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1. Introduction

This information resource 'Guidelines for the prevention and management of sexual abuse in disability services in Western Australia' has been developed by National Disability Services WA (NDS WA), to provide clear guidelines to promote safety, prevent sexual assault and improve response strategies to incidents of sexual assault. The project has been funded by the Disability Services Commission through a Quality Service Improvement Grant. The guidelines have been developed by NDS WA through its Accommodation Subcommittee.

People with a disability, compared to the general population, experience a higher incidence of sexual abuse.

- Sobsey and Varnhagen (1989)¹ suggest that most people with disabilities will experience some form of sexual assault or abuse.
- Sobsey (1994)² estimates up to 80% of people with a disability are sexually abused.
- Muccigrosso (1991)³ suggests that the incidence of sexual assault against people with an intellectual disability is at least four times higher than in the non-disabled population.

People with a disability, particularly a decision making disability, can be extremely vulnerable. They:

- may not understand what constitutes sexual assault and, therefore, may not consider making a complaint;
- may not have knowledge of, or access to, complaint mechanisms if they wish to make a complaint; and
- may not be believed if they are able to access a complaint mechanism,

Service providers have a duty of care to implement prevention strategies and to provide clear and comprehensive policy guidelines in relation to abuse. These should ensure good safeguards exist to prevent any form of abuse, and enable a quick and appropriate response to concerns or allegations of abuse. In relation to allegations of sexual abuse, or assault, it is critical to respond quickly to ensure the person receives appropriate treatment and also to enable collection of forensic evidence.

Disability services are also responsible under the Disability Services Act and the associated Disability Services Standards particularly Standard 9 - Protection of Human Rights and Freedom from Abuse and Neglect – to act to prevent abuse and neglect, and to uphold the legal and human rights of consumers.

¹ Sobsey, D. & Varnhagen, C. (1989) Sexual abuse of people with disabilities. In M. Csapo & L. Gougen (Eds) *Special Education across Canada: Challenges for the 90s* (pp. 199-218). Vancouver, Canada: Centre for Human Development and Research. Cited in Sobsey (1994).

² Sobsey, D. (1994) **Violence and Abuse in the Lives of People with Disabilities**, Paul H. Brookes, Baltimore USA.

³ Muccigrosso, Lynne (1991) Sexual Abuse Prevention Strategies and Programs for Persons with Development Disabilities, *Sexuality and Disability*. Fall 1991 Vol. 9 No. 3 261.

However it is important to balance concerns about risk of abuse and assault with an acknowledgment that a person has a right to participate in appropriate sexual relationships, if they have the capacity to consent to such a relationship.

2. Definitions

Sexual Assault⁴

Sexual Assault is a crime of violence where a person uses their control and power to dominate another. Sexual Assault can be any sexual behaviour or act which is threatening, violent, forced, coerced or exploitative and to which a person has not given informed consent or was not able to give informed consent.

It may take many forms –

- Sexual harassment – sexual comments, dirty jokes, leering, wolf whistles etc,
- Exhibitionism
- Voyeurism
- An unwanted sexual touch
- Being forced to masturbate or watch another masturbate
- Being forced, coerced or bribed to watch pornographic images
- Being forced to give or receive oral sex
- Being forced to perform sexual acts on themselves or others
- Sexual penetration of a person by penis, object or other parts of the body into the vagina, anus, or mouth

Sexual Abuse⁵

Sexual Abuse occurs when someone in a position of power and authority over another (adult or child) has taken advantage of that person's trust and respect to involve them in sexual activity.

Sexual Abuse can occur between any two (or more) people including:

- A child and an older child or adult
- A person with a disability and their support worker or carer
- A patient and a medical practitioner
- A counselor and a client
- Sexual partners
- A member of staff, proprietor or service manager and a client
- A volunteer or member of a community group such as a place of worship or social club and another person

Consent:

Consent as it relates to consenting to a sexual relationship, is the permission or agreement given by each partner to the relationship. To give informed consent

⁴ Sexual Assault Resource Centre - Brochures 'Information about Sexual Assault and Sexual Abuse'
<http://www.kemh.health.wa.gov.au/services/sarc/publications.htm> downloaded 10th September 2008

⁵ Sexual Assault Resource Centre - Brochures 'Information about Sexual Assault and Sexual Abuse'
<http://www.kemh.health.wa.gov.au/services/sarc/publications.htm> downloaded 10th September 2008

the person must understand what they are physically consenting to. For example, touching, kissing or penetration. They must also understand the sexual nature of any touching, as opposed to non-sexual nature of any touching, such as that associated with personal care or medical treatment.

Additionally, the consent given by the person must be given freely and the person must understand and be able to exercise their right to refuse sexual behaviour. When the person's ability to consent is in question, referral to a qualified professional is required. ⁶

Informed Consent

Informed consent is a legal concept. A person can be said to have given informed consent based upon an appreciation and understanding of the facts, consequences and outcomes of an action.

The person needs to have all of the relevant information and have the capacity to reason and make a decision based on this information. A person may need to be provided with information in ways and formats that support their understanding e.g. such as plain English or supported by pictures. It needs to be clear what the person is consenting to and under what considerations. The person should also be informed they have the right to change their consent at any time.

Duty of Care⁷

All organisations and their staff have a duty of care towards their consumers, the families and carers of consumers and any other person who is likely to be affected by the organisation's actions.

It is not the staff member's duty to determine whether or not their concerns will be validated or are "reasonable" – it is only their duty to take appropriate action if they have concerns about a situation of abuse in relation to a consumer.

Concerns⁸

A concern is any situation where a staff member has information sufficient to raise a reasonable concern that a consumer is having their human rights infringed, or is suffering (or has on a just disclosed, past occasion suffered) abuse or neglect.

It involves a perception or impression that abuse may be occurring based upon known medical or social history, visual evidence and/or verbal communication. The information that warrants a concern is hearsay information and is documented as such – acknowledging the possibility that the concern may or may not be validated – but that attention needs to be paid to the matter.

⁶ Source DSC Accommodation Personal Relationship and Sexuality Policy July 2006

⁷ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p.24-26

⁸ See footnote 7

Allegations⁹

An allegation is a formal statement, written and/or signed by the person making the allegation, made to a staff member or to any external agency, reporting that a consumer has suffered or is suffering abuse, or neglect.

The statement generally includes a specific description of events that is formally reported to have occurred that may lead to an accusation being made.

Victim

In this resource refers to the person who has been sexually assaulted or sexually abused.

Alleged perpetrator

The person alleged to have perpetrated the assault or abuse.

Confidentiality¹⁰

While providing services to consumers, their families and/or carers, staff may find themselves privy to confidential information (either communicated or observed). While it is the staff member's responsibility to keep such information confidential, additionally they have a responsibility to report any concerns they have that a situation could be one of abuse or neglect.

Dilemmas arise where a staff member feels that to disclose concerns or make allegations (based on observed or communicated information of a confidential nature) may breach confidentiality. *In matters of care and protection, duty of care carries greater weight than the duty to maintain confidentiality,*

Child

"Child" means a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age.

⁹ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p24-26

¹⁰ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p.24-26

3. Relevant Legislation

International

The UN Declaration on the Rights of Disabled Persons (1981)

The UN Declaration on the Rights of Mentally Retarded Persons (1971)

The UN Standard Rules on Equalisation of Opportunities for Persons with Disabilities (1993)

Australian

The Human Rights and Equal Opportunity Act (1986)

The Disability Discrimination Act (1992)

Disability Services Act (1986)

West Australian

The Equal Opportunity Act (1984)

An Act to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age, or involving sexual or racial harassment or, in certain cases, on gender history grounds.

The Disability Services Act (1993)

The WA Disability Services Act 1993 (section 53) makes an offence of ill treatment. A person who ill-treats or willfully neglects a person with a disability while that person is under his or her care, supervision or authority commits an offence.

The Guardianship and Administration Act (1990)

An Act to provide for the guardianship of adults who need assistance in their personal affairs ... to provide for the appointment of a public officer with certain functions relative to thereto, to make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes.

Criminal Investigations Act 2006

An Act which prescribes police powers of search and arrest and forensic examinations, including incapable persons suspected of committing, or being a victim or witness in an offence.

WA Criminal Law (Mentally Impaired Defendants) Act 1996

An Act relating to criminal proceedings involving mentally impaired people who are charged with offences.

Western Australian Criminal Code

Children and Community Services Act 2004

The *Children and Community Services Act 2004* was proclaimed on 1 March 2006, replacing the outdated *Child Welfare Act 1947*, *Community Services Act 1972*, *Welfare and Assistance Act 1961*.

The Act provides the Department for Child Protection with a strong, modern and flexible framework for the protection and care of children. It aims to promote the wellbeing of children, families and communities, provide for the protection and care of Children, regulate the employment of children and facilitate the provision of financial and other assistance to families.

Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008

4. Summary of Guidelines

4.1 Prevention Strategies

Reducing the risk of sexual abuse/assault by paid or unpaid staff

Service providers should:

1. Undertake **adequate recruitment and screening of paid and unpaid staff**.
2. Clearly define staff responsibilities through a **position description and code of conduct** including clearly prohibiting staff engaging in sexual relations with people with a disability in their care.

Reducing the risk of sexual abuse/assault by others e.g. family or public

Service providers should:

3. **Assess and manage risks** (associated with people and environment).
4. Facilitate the **building of individual resilience** in people at risk.
5. Ensure **staff are aware of reporting requirements and responsibilities** related to incidents that occur outside the service environment.

Other prevention strategies that reduce risk

Service providers should:

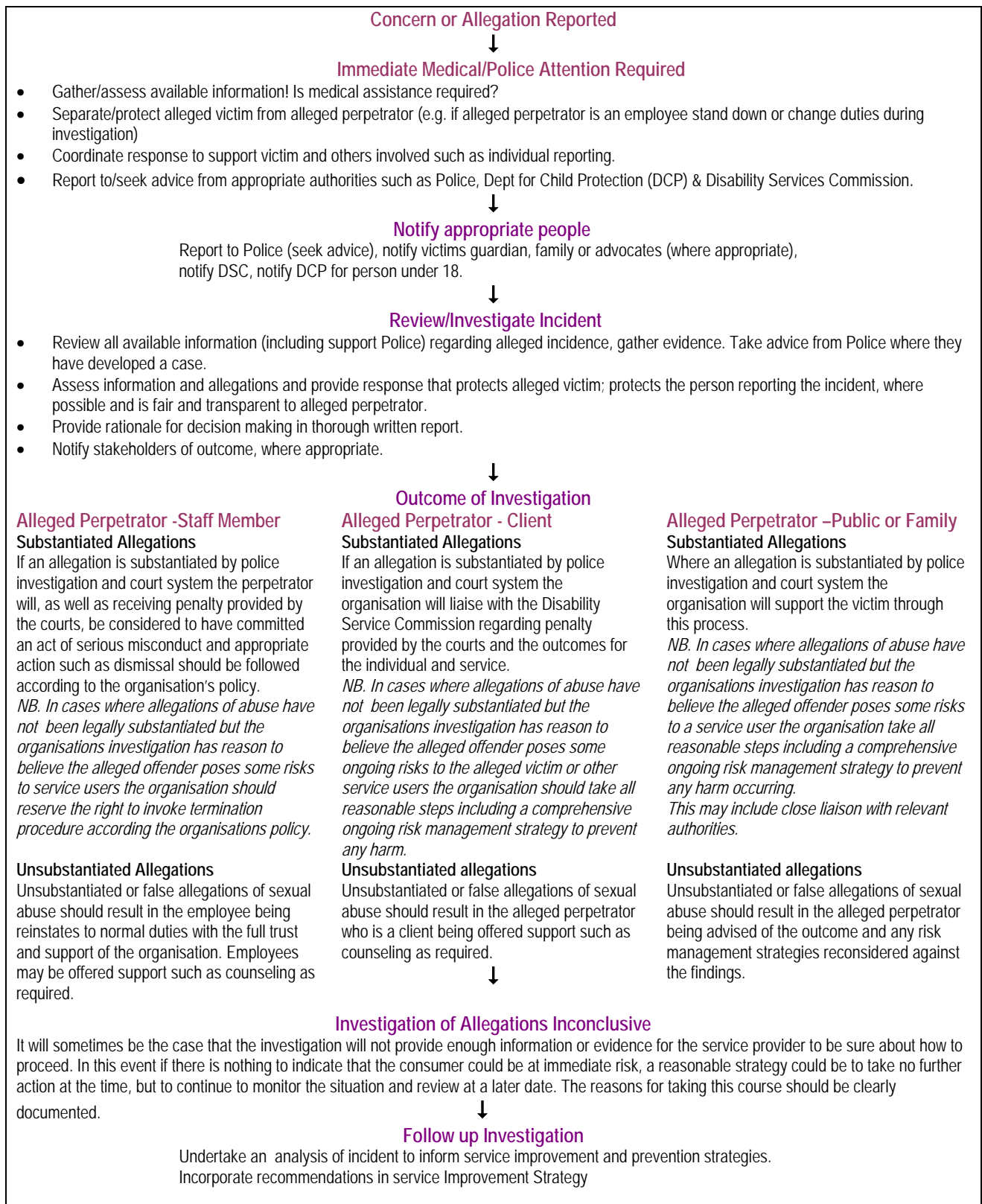
6. Provide **staff education and awareness raising** about the:
 - a. increased vulnerability of people with a disability to sexual abuse/assault;
 - b. definition of sexual abuse and sexual assault;
 - c. signs that someone may have been sexually abused or assaulted; and
 - d. organisation's policy and procedure on response to allegations of sexual abuse or assault.
7. Undertake **risk assessment and risk management practices** including:
 - a. Assessing and managing clients deemed to at increased vulnerability of being sexually abused or assaulted including those with poor self protection strategies.
 - b. Assessing and developing management plans for clients who are at risk of being abusive
 - c. Developing specific management plans for clients with sexually disinhibitive behaviour, which may place themselves or others at risk.
8. Provide and follow clear and effective **complaints procedures**.
9. Provide organisation policy and or **guidelines on sexual activity** including prohibiting between staff and clients, guidelines where sexual activity is between client and client and guidelines where sexual activity involves client and others i.e. person from outside service such as general community.
10. Provide or seek information on a **client's capacity to consent** to sexual activity.

4.2 Effective Response

Service Providers should:

1. Protect the rights and needs of victims following an allegation of sexual abuse or sexual assault;
2. Adequately investigate and respond promptly (this will range from immediately to within 24 hours depending on circumstances) to all allegations of sexual abuse and assault;
3. Instill practice and procedure that notifies senior management of all allegations of sexual abuse and assault;
4. Authorize senior management or other suitable person to direct the organisation's response;
5. Develop practice and procedure that:
 - puts victims safety as paramount;
 - notifies appropriate authorities including meeting any requirements for mandatory reporting of sexual abuse of children, Police, the Department for Child Protection Sexual Assault Support Services and Disability Services Commission through Serious Incident Reporting;
 - separates the alleged perpetrator from victim;
 - seeks appropriate medical assistance when required;
 - follows allegations with adequate and timely written reporting and note taking of incident;
 - facilitates the preservation of evidence;
 - maintains privacy and confidentiality, where required;
 - identify other stakeholders who must be notified following an allegation of abuse or assault such as guardian or family,;
 - adheres to the rights of the worker (where an employee is alleged victim or perpetrator) and responsibilities of the employer in accordance with the organisation's policy, disciplinary procedure and appropriate legislation;
 - appropriately respond to the outcome of both substantiated, unsubstantiated or inconclusive allegations; and
 - provide adequate follow up including written notes, clear outcomes and root cause analysis to inform service improvement.

4.3 Summary – Manager Response to Concerns/Allegations



5. Prevention of Sexual Abuse and Assault

Service providers have a duty of care to implement reasonable prevention strategies to address foreseeable risks. Prevention needs to include a range of strategies such as suitable recruitment screening processes and protocols for identifying the risk indicators for abuse. Service providers should consider the following strategies as components of a comprehensive approach to creating an environment safe from sexual assault and abuse.

This section divides prevention strategies into those that:

- reduce the risk of sexual assault/abuse by paid and unpaid staff
- reduce the risk of assault/abuse by others such as family members and members of the public
- generally reduce risks.

Service providers must take reasonable steps to ensure that all paid and unpaid workers understand and perform their roles in preventing abuse of clients by any person. Prevention strategies should include the employment of skilled staff who respect the rights of clients, who are aware of current policies and legislation pertaining to abuse, and who will support clients and their families or guardians to access complaint mechanisms and raise any concerns they have about services or other parties in relation to abuse.

5.1 Prevention Strategies to reduce the risk of Assault/Abuse by Paid and Unpaid Staff

5.1.1 Adequate Recruitment and Screening of Staff¹¹

Effective prevention strategies will include pre employment recruitment screening processes and ongoing screening reviews of police certificates at least every three years, to protect clients from exposure to individuals who are at risk of or have a history of harming vulnerable people. By ensuring that new recruits are adequately screened, services can increase their chances of employing suitable individuals to work with people with a disability.

Strategies that improve recruitment include:

a. Position descriptions

Avoid ambiguous statements.

Include clear expectations regarding behaviour towards clients.

b. Selection process

Conduct structured interviews.

¹¹ Abuse and Neglect Policy and procedures Final 1.0 **Accommodation and Respite Branch** NSW Department of Ageing, Disability and Home Care May 2007 (p.23)

Develop specific questions to explore applicants' attitudes to the abuse of clients and awareness of clients increased vulnerability.

c. Reference checks

Thoroughly check references provided by applicants.

d. Criminal record checks

Advise applicant that a criminal record check will be made.

Request a check from an appropriate source such as police certificate or Working with Children's Check.

Screen applicants for spent convictions.

e. Induction

Provide a code of conduct for new staff to read and sign.

Include clear statements about behaviour towards clients.

Include responding to abuse in initial training sessions.

Provide full briefing to agency staff about the organisation's policies on abuse before they commence work with clients.

f. Staff training

Keep staff well informed about inappropriate treatment of clients and procedures for reporting any observation or suspicion of abuse to a manager or supervisor.

Discuss client issues clearly and openly (within confidentiality and privacy requirements), for example sexuality and consent. Ensure staff are aware of the rights of people with a disability in terms of their sexuality.

g. Staff Performance Management

Manage staff performance.

Provide strong leadership and examples of respect for others.

5.1.2 Position Description and a Code of Conduct

A clearly defined Position Description and Code of Conduct provides employees with a framework to guide their actions and decision-making. It needs to reflect the values and principles shared within the organisation. The code should cover all employees of the organisation as well as members of committees, working groups, consultants and contractors who are working in the organisation, volunteers, and student placements. All staff should be expected to be familiar with, sign and comply with the code of conduct.

See Appendix 1; Code of Conduct on Sexual Activity.

5.2 Prevention strategies to reduce the risk of sexual assault/abuse by others such as family members and general public

Sexual assault and abuse can occur in environments outside the service setting by members of a person's family, friends or the general public. This can be challenging for service providers who may have less control over these environments. Nevertheless a service provider is likely to have a duty of care to the person with a disability even in these situations.

5.2.1 Assessing and Managing Risks

It is important to consider the following aspects of each situation with a view to take all reasonable steps to reduce any risks of harm to the person:

- risks/vulnerability of the person
- risks associated with the environment e.g. family home, friends, community
- risks associated with the individuals in the environment e.g. probity of people in the environment
- safeguards in place e.g. providing or arranging adequate supervision, where appropriate

5.2.2 Building Individual Resilience

Preventing sexual abuse and assault may be strengthened by building a person's resilience and understanding of issues associated with abuse. Individual characteristics can increase vulnerability to abuse or enhance resilience to abuse. Building individual resilience can reduce the likelihood that a person or persons will be victimised and potentially reduce the severity or impact of abuse if it does occur.

Individual resilience is not effective on its own, environment and service cultural change must provide an appropriate context for self-empowerment and protection against abuse.

Strategies to build an individual's resilience could include:

- **Increasing awareness of rights** and how to report abuse, including assertiveness training and empowerment.
- **Enhancing communication:** strategies include increasing access to facilitated communication technology, providing access to assistance and skills development eg speech therapy services, rehabilitation experts, increasing staff training in non-verbal communication and the use of communication aides.
- **Reducing compliance:** teaching parents, educators and care providers to ensure that compliance is not inadvertently taught to children and adults with a disability has long-term benefits with regard to individual resilience.
- **Building knowledge and skills:** particularly with regard to sexuality and the development of healthy sexual relationships, financial management and functional skills that increase independence, relationship skills, social

sexual rules/laws, emotional understanding of relationships and early warning signs.

- **Increasing self-esteem:** providing meaningful opportunities for people with a disability, addressing disadvantage, access to assertiveness and self-worth programs.

5.2.3. Staff Awareness of Reporting Requirements

It is important that an organisation's staff are aware of their duty of care and responsibilities regarding any suspicions or incidence of sexual abuse or assault by others such as families, friends and general public in environments outside the service setting.

All concerns or allegations should be reported in a timely and comprehensive manner to service manager.

5.3 Other prevention strategies that generally reduce risks

5.3.1. Staff Education¹²

Clients and staff should be educated to understand the rights of clients, their right to sexuality and human relationships, and their need to learn self-protective behaviours to the best of their abilities. Staff should understand the heightened risk of people with a disability to experience of sexual assault/abuse. In the same way that effective recruitment screening practices aid in reducing clients' exposure to harm, the provision of orientation sessions and ongoing training for workers to identify the risk indicators for abuse will increase their ability to recognise the early signs of possible abuse.

Staff education and awareness raising should include information about the:

- increased vulnerability of people with a disability to sexual abuse;
- rights of people with a disability including sexuality;
- definition and signs of sexual abuse;
- staffs role in making and responding to allegations of abuse;
- the organisation's policy on sexual abuse; and
- understanding how to access services and support for a client wanting to engage in an appropriate sexual relationship

Paid and unpaid employees working with people with a disability need to understand the behaviours or actions that constitute abuse. They should be able to recognize signs that may be indicators of abuse.

Possible Indicators of Sexual Abuse¹³

Physical Indicators	Behavioural Signs
<ul style="list-style-type: none"> • Direct or indirect disclosure. • Sexual act described by client. • Trauma to the breasts, buttocks, lower abdomen or thighs. • Difficulty in walking or sitting. • Injuries (e.g. tears or bruising), pain or itching to genitalia, anus or perinea region. • Torn, stained or blood stained underwear or bedclothes. • Sexually transmitted diseases. • Unexplained accumulation of money or gifts. • Pregnancy. 	<ul style="list-style-type: none"> • Repeat use of words eg "bad", "dirty"; • Self-destructive behaviour, self mutilation. • Sudden changes in behaviour or temperament, eg. depression, anxiety attacks (crying, sweating, trembling), withdrawal, agitation, anger, violence, absconding, seeking comfort and security. • Inappropriate advances to others. • Sleep disturbances, refusing to go to bed, going to bed fully clothed. • Eating disorders. • Refusing to shower or constant showering. • Changes in social patterns, refusing to attend usual places (work, respite). • Excessive compliance.

¹² Abuse and Neglect Policy and procedures Final 1.0 **Accommodation and Respite Branch** NSW Department of Ageing, Disability and Home Care May 2007 (p.23)

¹³ Abuse and Neglect Policy and procedures Final 1.0 **Accommodation and Respite Branch** NSW Department of Ageing, Disability and Home Care **May 2007 (p.30)**

5.3.2 Risk Assessment and Risk Management

As part of the organisation's usual assessment process, an initial and ongoing assessment of a person's vulnerability and or potential to harm should be required for every client of a disability service. Clients assessed as being vulnerable to abuse and exploitation including sexual abuse and assault should be placed in situations where privacy and security can be maximised. Clients assessed as having the potential to harm others should be on close observation and prevented from accessing vulnerable clients.

Many clients who display aggressive behaviours live with vulnerable clients. Special care is required in these situations to ensure the safest possible environment exists. Thorough and regular assessment is required to ensure that clients at risk, or those with a potential to harm others, are identified and ***risks minimization planning*** undertaken (see resources for tools on risk assessment).

A clear plan outlining how any risk is to be dealt with must be articulated as part of that person's care plan.

Consideration should then be given to formulation and implementation of a ***risk management plan***, which promotes the safety of that individual. Consideration should be given to supervision levels, proximity of bedroom to support staff and appropriate accommodation options. The following should be considered as part of a risk management plan:

a. Assessment of Risk of Potential to Harm Others

This assessment should include evaluation of:

- previous history/reports of sexual violence, including sexual harassment, sexual exploitation and sexual assault;
- violent behaviour;
- abusive language; and
- threats and intimidation.

Staff should be aware that persons who sexually assault might use coercion, grooming and manipulation, not only overtly violent behaviour. If a client is assessed as being at risk of harming others, a specific management plan must be developed and implemented. All steps should be taken to ensure a safe environment exists for staff and clients alike.

The management plan should consider the level of supervision required and give consideration to accommodation options in relationship to others in the service.

b. Assessment of Risk of Vulnerability to be Harmed

A person's reduced ability to protect her/himself or disclose an assault may contribute to increased vulnerability. This is important as some perpetrators may target a person specifically because they are vulnerable. In order to provide a safe environment with a focus on the

promotion of sexual safety, an ongoing assessment of vulnerability is necessary. Factors to be assessed include:

- disinhibition;
- history of promiscuity;
- intellectual and cognitive impairment;
- communication skills including competence with English language and hearing, speech and/or visual impairment;
- sedation from medication; and
- person's under 18 years of age.
- Person's self protection skills
- Does the person have a history of being abused

c. Management of Sexually Disinhibited Behaviour

As part of a comprehensive sexual assault policy, disability services should develop guidelines for the effective management of clients exhibiting sexually disinhibited behaviours.

Sexual disinhibition may involve an increase in sexual thoughts, activities and demeanour or a general disinhibition, which has a sexual element.

Behaviours may include:

- removing clothes inappropriately
- wearing inappropriate clothing
- being over-familiar, over-friendly or touching others inappropriately
- hyper sexuality, e.g. sexually provocative behaviour, masturbation in public, approaching staff and other clients for sex, engaging indiscriminately in sexual activities.

Where a client is exhibiting disinhibited behaviours, protection of the client and others from physical and sexual assault is paramount. In some situations, a client may 'agree' to engage in sexual activity. However, informed consent cannot be given when the person does not have the requisite decision making capacity to give consent. Equally a client who is sexually disinhibited may attempt to coerce another vulnerable client into sexually inappropriate behaviour. Sexual activity in these circumstances is not acceptable. Where a client is assessed as being at acute risk due to sexual disinhibition, immediate measures should be taken to ensure safety.

5.3.3 Clear and Effective Complaints Mechanisms

Protection of clients and prevention of harm will be enhanced by fostering an organisational culture that actively encourages and supports clients, and their families or guardians, to access complaint mechanisms and raise concerns about service delivery. Service providers should have (and follow) clear complaints policy and procedures. All stakeholders should be informed about accessing the complaints system. Clients and their advocates should be advised of external disability services complaints processes through the Office of Health Review.

5.3.4 Guidelines on Sexual Activity

Disability service providers should have a clear and relevant policy to address the complexities of sexual relationships for clients whilst in the care of that service. Sexual activity and sexual relationships for clients of disability services require careful examination in the context of informed consent, impaired judgement and vulnerability. Confusion may exist for staff, and therefore clients, regarding when and where the right to a sexual relationship should apply. A poor understanding of the range of behaviours that constitute sexual assault may compound this. *It is important to note that consent to a relationship does not automatically confer informed consent to all sexual encounters with that person.*

All people have the right to engage in consensual adult sexual activity. However many people with an intellectual impairment may be unable to give informed consent. Flexible policy will need to be developed according to local need; for example, sexual activity between consenting adults in a residential setting may be acceptable, while in other settings this may not be considered appropriate.

Develop guidelines on procedures to follow where a client enters into a relationship with a peer, which develops and the person wants to engage in a sexual relationship. This could include the client having a professional assessment of their capacity to provide informed consent in relation to a sexual relationship, providing access to sex education and family planning.

See Appendix 2; Sample Guidelines on Sexual Activity.

5.3.5 Information on a Clients Capacity to Consent

Sexual assault (and/or abuse) can be determined by whether the person involved has capacity to provide informed consent to a sexual relationship. If a person is unable to provide informed consent then even where they may appear to have given consent this does not mitigate sexual abuse or assault.

Where available a service provider should provide staff (and others where appropriate) with information on a person's capacity to consent to sexual activity.

When the person's ability to consent is in question, referral to a qualified professional is required.

In Western Australia consent to sexual relations can not be given where the person is a child under the age of 16 year.

6. Response to Allegation of Sexual Assault or Abuse

Service providers should have, and follow clear and comprehensive policy guidelines that provide a framework to respond quickly and appropriately to allegations of abuse.

The following response refers to incidence involving alleged perpetrators whether they are paid employees, clients, family members or members of the general public.

It is recommended that the organisation's policy and procedure include the following elements.

6.1 Reporting abuse

The procedures for reporting allegations or suspicions of client abuse (whether within the service environment or other place such as the family home or community) must be clearly articulated and include the responsibilities of all parties involved in the process.

The culture of the organisation should encourage and support any person who has witnessed abuse of a client or clients, or suspects that abuse has occurred, to make a report of abuse and be confident of doing so in a supportive environment, without fear of retaliation. Confidentiality of the details of the person reporting the incident should be maintained within the agency, unless legal advice opposes this.

All paid and unpaid workers need to be aware of their responsibility to report allegations or concerns of abuse in accordance with the service provider's documented procedures.

The organisation should be aware that the reporting of several small concerns/incidents is important, since when considered together they may show a pattern that is as significant as larger obvious events.

6.2 Responding to a report of sexual abuse

The response to an allegation of sexual assault or abuse will depend on the type of incident reported. For example, a report of an incident several years old may be responded to differently to an incident which has just occurred. However, many of the general processes of response will remain the same.

It can be extremely difficult for people with disabilities to make allegations or complaints and to follow complaints processes etc. An organisation has a responsibility to provide information and assistance in such a way that it enhances the person's chance of disclosing allegations of abuse that has occurred.

6.2.1 Response by Staff in Attendance at the Occurrence or Reporting of an Alleged Sexual Abuse or Assault

Support of victim

Staff present at the time of an assault or report of assault should:

- take appropriate measures to maintain their own safety, the safety of the victim and that of other clients, members of the public and staff.
- take reasonable steps to ensure that the victim is protected from any further harm or contact with the alleged perpetrator
- apply first aid, call for an ambulance and/or police if the victim or any other person has injuries requiring prompt medical attention.
- immediately (or as soon as practicable) advise a senior manager or delegated person of the incident (who should then notify the police if they have not been already called).
- take all steps to ensure that any evidence the Police may require in their investigation is not disturbed. This may include:
 - ensuring the victim is supported, and prevented from washing as this may destroy important forensic evidence. The person may require reassurance during this time;
 - preserving evidence which may be on the victim's clothing, sheets etc as evidence following an assault of any type;
 - isolating the area where the incident occurred and do not allow anyone to enter the area until the Police arrive, where possible; and
 - avoiding questioning clients, apart from ascertaining their physical condition and state of mind, about the incident to reduce contamination of their recall and confusion about the events. However it is important to keep a note of any information provided by the victim.

Support of Alleged Perpetrator where the person is a Client

- The staff member should advise the police if the alleged perpetrator has an intellectual disability.
- The staff member should preserve any evidence related to the alleged perpetrator.
- Notify senior manager of the incident who should seek legal advice for the client.
- If a staff member accompanies the offender (who is a client) to the police station to provide support, the staff member must not give an opinion about the offender or the alleged incident, give the offender legal advice, question the offender on behalf of the police or interpret the offender's answers. The staff member should be replaced by an independent support person or a legal adviser as soon as possible.
- Inform relevant stakeholders, where appropriate e.g. family, guardian.

6.2.2 Senior Manager Response (or other authorized person)

Response to reports of sexual abuse must be prompt, comprehensive and in accordance with clearly documented procedures. The response should include:

Initial response

- if a criminal offence may have occurred reporting to the police without delay;
- supporting police investigations and following police advice;
- ensuring the appropriate provision of medical care, as required;
- notification of Department for Child Protection, for people under 18 years of age where the person is mandated to report i.e. Doctors, nurses, teachers.
- notify appropriate authorities such as the board of management, Disability Service Commission through a serious incident report;
- taking all reasonable steps to ensure that the client is protected from further harm by preventing contact with the alleged perpetrator (where it is a member of staff who is suspected of abusing a client they may be immediately transferred to alternative duties until the matter is resolved (according to the organisation's disciplinary procedures).
- ensuring the victim is able to access independent support during the response process to the extent possible and consistent with the informed consent of the victim, where available.
- ensuring alleged perpetrator (where the alleged perpetrator is a client) is able to access independent support during the response process to the extent possible and consistent with the informed consent of the alleged perpetrator, where available.
- Notify any legally appointed guardian, and for a child, family members or DCP, as appropriate.
- the manager will notify any other appropriate people of the incident as soon as possible after the report being made. Where possible discuss with the victim and the alleged perpetrator (where they are able to provide informed consent) issues in relation to advising family or other support person about the incident.

Investigation

- supporting any police investigations and follow any police advice;
- taking all reasonable steps to investigate allegation in a timely and robust manner;
- documenting all aspects of the incident in accurate detailed written accounts, including any follow up actions;
- adhering to relevant legislation;
- appoint an appropriate person to be responsible for ensuring relevant authorities, family, guardian or other support person are provided with timely information relating to the incident and any subsequent investigations;
- restricting access to records to those who are directly involved in reporting and responding to the incident to ensure that individuals' rights to privacy are upheld.

6.3 Outcome of Investigation

Substantiated Allegations

Substantiated sexual assault or abuse by a staff member

If an allegation is substantiated by police investigation and court system the perpetrator will, as well as receiving penalty provided by the courts, be considered to have committed an act of serious misconduct and appropriate action such as dismissal should be followed according to the organisation's policy.

NB. In cases where allegations of abuse have not been legally substantiated but the organisation's investigation has reason to believe the alleged offender poses some risks to service users the organisation should reserve the right to invoke termination procedure according to the organisation's policy.

Substantiated sexual assault or abuse by another client

If an allegation is substantiated by police investigation and court system the organisation will liaise with the Disability Service Commission regarding penalty provided by the courts and the outcomes for the individual and service.

NB. In cases where allegations of abuse have not been legally substantiated but the organisation's investigation has reason to believe the alleged offender poses some ongoing risks to the alleged victim or other service users the organisation should take all reasonable steps including a comprehensive ongoing risk management strategy to prevent any harm.

Substantiated sexual assault or abuse by family, friend or other

Where an allegation is substantiated by police investigation and court system the organisation will support the victim through this process.

NB. In cases where allegations of abuse have not been legally substantiated but the organisation's investigation has reason to believe the alleged offender poses some risks to a service user the organisation take all reasonable steps including a comprehensive ongoing risk management strategy to prevent any harm occurring. This may include close liaison with relevant authorities.

- **Unsubstantiated Allegations**

Unsubstantiated allegations where the alleged perpetrator is a staff member

Unsubstantiated or false allegations of sexual abuse should result in the employee being reinstated to normal duties with the full trust and support of the organisation. Employees may be offered support such as counseling as required.

Where an allegation against a staff member is not substantiated it is recommended that due consideration is given to ensuring an employee is not placed at risk of further accusations. This may include discussing with the employee their requirements in relation to their working environment and the support which they require.

The agency may also need to consider whether any staff should be in the same situation that gave rise to the initial allegation.

For example, if a service user is known to make allegations of abuse against a carer working on shift alone, it may be necessary to ensure no workers are placed in this situation. This could involve changing shift structures, or moving a client to an environment where there are always at least two people on shift

Unsubstantiated allegations where the alleged perpetrator is a client

Unsubstantiated or false allegations of sexual abuse should result in the alleged perpetrator who is a client being offered support such as counseling as required.

Unsubstantiated allegations where the alleged perpetrator is family, friend or other

Unsubstantiated or false allegations of sexual abuse should result in the alleged perpetrator being advised of the outcome and any risk management strategies reconsidered against the findings.

- **Investigation of Allegations Inconclusive** ¹⁴

It will sometimes be the case that the investigation will not provide enough information or evidence for the service provider to be sure about how to proceed. In this event if there is nothing to indicate that the consumer could be at immediate risk, a reasonable strategy could be to take no further action at the time, but to continue to monitor the situation and review at a later date. The reasons for taking this course should be clearly documented.

6.4 Follow up

- assisting the victim and family, guardian or other support person to access any debriefing, counselling, legal or other support services if that is their wish.
- assessing the risk of further incidents and update any risk management plans pertaining to the event where a client is involved should include a consideration of what changes in process and individual programs may be necessary e.g. protective behaviours training.

¹⁴ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p. 53

- offering reporting staff a debriefing session within 24 hours of the incident occurring.
- supporting victim to access criminal injury compensation where appropriate. This may involve application to State Administrative Tribunal for appointment of administrator to carry out this task.

6.5 Record keeping

It is imperative that comprehensive and accurate documentation is maintained in the interests of all parties, and to ensure accountability and transparency in decision-making.

A detailed written report should be completed as soon as possible to ensure it is an accurate record of the incident. The report should include:

- the nature and extent of the incident;
- a description of the incident - completed as soon after the event as possible and being an exact record of the events;
- additional reports written by other witnesses or persons present at the time the incident occurred;
- the name and contact details of all those involved, particularly in relation to decisions that are made as a result of the incident;
- the response provided to the person making the allegation;
- the date and signature of the person making the report;
- ongoing actions required to resolve the matter; and
- the outcome, although, depending on the nature of the incident, an outcome may be delayed.

7. Other Situations

7.1 Incidents involving children.

These guidelines are relevant to both incidents involving adults and children with a disability. Where an incident involves a child under the age of 18, the Department for Child Protection and Police Child Abuse Unit should be notified immediately. The legal age to have sex in Western Australia is 16 years. However the person must have given informed consent.

7.2 Incident in non service managed environment such as family home or public place.

These guidelines have included incidence of sexual assault and abuse that occur in environments other than the service setting. If an allegation of assault is made, regardless of the environment the service provider has a duty of care to the client to respond. Where an incident occurs in a non service managed environment e.g. school or at home (where the service has minimal control over the environment) and/or involves a members of the public) a service provider should take all reasonable steps including reporting the incident, preserving evidence, get medical treatment and forensic testing etc. The guidelines within this document should be followed in these situations,

7.3 Concern about Practices in another Service¹⁵

If a situation arises where a service provider becomes concerned about the safety and well-being of a consumer while they are accessing another service, usually the best approach would be to carefully document the concerns, and for a senior staff member to meet with the service provider to discuss the matter.

If the meeting does not alleviate the concern, your Disability Services Commission Service Contract and Development Officer (SCDO) could be contacted for advice. There could be situations where the matter is serious, when it would be appropriate to immediately report the concern to appropriate authorities for advice and guidance on how to proceed, instead of first making an approach to the other service provider to resolve the concern. If there is an allegation of assault this will need to be fully investigated refer to procedures discussed in section about responding to assault/abuse.

7.4 Incidents that have occurred several months/years before reporting.

The allegations should be reported to police and investigated to the level that evidence is able to be gathered. The same processes as outlined in the guidelines should be followed regardless of the length of time that has passed.

¹⁵ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p. 54

7.5 Applications for criminal injuries compensation¹⁶

Victims of crime can be compensated for injuries, in accordance with the *Criminal Injuries Compensation Act 2003*. Compensation can be sought for an incident reported to the police regardless of whether a person has been identified, charged or convicted of the offence. An application can be lodged by:

- a victim of an offence where they were injured and/or experienced financial loss as a result
- a close relative of a person killed as the result of an offence.

Compensation can be awarded for suffering bodily harm, mental or nervous shock, or pregnancy, resulting from an offence. Compensation may cover:

- pain and suffering
- loss of enjoyment of life
- loss of income
- medical expenses

other incidental expenses, such as travel for medical treatment or damage of clothing.

In case of death, a close relative can apply for funeral expenses and loss of financial support.

An application must be lodged within three years from the date of the offence. The application should be made when the victim has reached the maximum stage of recovery from injuries, except where interim payments are sought for treatment, reports or funeral costs. If the claim is more than three years old, applications may still be made, but an extension of time must be sought before the three years pass, and written reasons for the delay must be provided.

Services available

To apply for compensation telephone (08) 9425 3250, fax (08) 9425 3271 or write to the Chief Assessor of Criminal Injuries Compensation giving brief details of the date, place and circumstances of the offence. An application form detailing the information required will then be sent to you.

¹⁶ Department of Attorney General <http://www.justice.wa.gov.au/C/compensation.aspx>

7. Sample Policy

Policy: Prevention and Response to Allegations (or Incidence) of Sexual Abuse

1. Purpose and Scope

The purpose of this policy is to outline procedures to prevent and protect service users from incidences of sexual abuse and respond to allegations and incidences of Sexual Abuse.

The policy has been framed around individuals' rights as they are specified in the Disability Services Act (1993) and Standard 9 of the Disability Services Standards (1993) Protection of Human Rights and Freedom from Abuse and Neglect -The service provider acts to prevent abuse and neglect, and to uphold the legal and human rights of consumers.

This policy applies to all of the agency's programs and activities.

3. Policy Statement

The agency is committed to ensuring that all clients of the agency have the right to live their lives free from abuse and neglect.

4. Procedures

The following procedures are to be implemented to ensure that the agency meets its policy objective of ensuring that all clients live free from abuse and neglect.

Prevention of Sexual Abuse

The agency will:

1. Undertake adequate recruitment and screening of employees including:
 - a. Providing clear position descriptions to all employees including clear expectations regarding behaviour towards clients.
 - b. Comprehensive selection process -conduct structured interviews and including specific questions to explore applicants' attitudes to the abuse of clients.
 - c. Reference checks -thoroughly check references provided by applicants.
 - d. Criminal record checks – obtain a satisfactory check from an appropriate source such as police certificate or Working with Children's Check and screen applicants for spent convictions.
 - e. Induction – provide a code of conduct for new staff to read and sign and include clear statements about behaviour towards clients.
2. Provide Staff Orientation including providing a full briefing to agency staff about the organisation's policies on abuse before they commence work with clients.
3. Provide ongoing staff training regarding:
 - a. inappropriate treatment of clients and procedures for reporting any observation or suspicion of abuse to a manager or supervisor.

- b. client issues. These should be discussed clearly and openly (within confidentiality and privacy requirements).
4. Manage Staff Performance including supervision, feedback and strong leadership and examples of respect for others.
5. Provide regular and comprehensive staff education and awareness raising about the:
 - a. increased vulnerability of people with a disability to sexual abuse;
 - b. definition of sexual abuse;
 - c. signs that someone may have been sexually abused; and
 - d. organisation's policy and procedure on response to sexual abuse.
6. Have clearly define staff responsibilities through a code of conduct including clearly prohibiting staff engaging in sexual relations with people with a disability in their care.
7. Provide and follow clear and effective complaints procedures.
8. Assess and manage clients deemed at risk of being abused or are abusive and develop specific management plans for clients with sexually disinhibitive behaviour.
9. Providing guidelines on sexual activity.
10. Where available and required, provide information (or refer for professional assessment) regarding a client's capacity to consent to sexual activity.

Responding to concerns of or allegations of Sexual Abuse

1. Reporting Concerns or Allegations

All employees or volunteers must promptly report any concerns or allegations of incidence of sexual abuse to their line manager or senior management. Disciplinary action will be taken against any employee or volunteer who does not report any concerns or allegations in a timely manner. Even small or isolated incidences need to be reported.

The response to a report will depend on the type of incident reported. For example, a report of an incident several years old may be responded to differently to an incident which has just or is in the process of occurring. However, many of the general processes of response will remain the same.

2. Procedures for Staff in Attendance at the Occurrence of an Alleged Sexual Assault

Staff present at the time of an assault should:

- take appropriate measures to maintain their own safety, and that of other clients, members of the public and staff.
- take reasonable steps to ensure that the victim is protected from any further harm or contact with the person who is the alleged source of abuse (the offender).
- apply first aid, call for an ambulance and/or police if the victim or any other person has injuries requiring prompt medical attention.

- immediately (or as soon as practicable) advise a senior manager or delegated person of the incident (who should then notify the police if they have not been already called).
- endeavor to ensure that any evidence the Police may require in their investigation is not disturbed. Evidence may be lost if a victim of sexual assault bathes soon after the assault. Try and delay bathing until the Police arrive if the victim is not distressed by the delay.
- If possible, preserve the victim's clothing as evidence following an assault of any type.
- If possible, isolate the area where the incident occurred and do not allow anyone to enter the area until the Police arrive.
- Apart from ascertaining their physical condition and state of mind, avoid questioning clients about the incident to reduce contamination of their recall and confusion about the events. Note any information provided by the victim.
- If a staff member accompanies the offender (who is a client) to the police station to provide support, the staff member must not give an opinion about the offender or the alleged incident, give the offender legal advice, question the offender on behalf of the police or interpret the offender's answers. The staff member should be replaced by an independent support person or a legal adviser as soon as possible.

3. Procedures for Senior Manager Response (or other authorized person)

A response to reports of sexual abuse must be prompt, comprehensive and in accordance with clearly documented procedures. The response should include:

Initial response

- timely and appropriate reporting to the Police and organizations CEO;
- supporting police investigations and following police advice;
- ensuring the appropriate provision of medical care, as required;
- notify appropriate authorities such a board of management, Disability Service Commission through a serious incident report;
- taking all reasonable steps to ensure that the client is protected from further harm by preventing contact with the alleged offender (where it is a member of staff who is suspected of abusing a client they may be immediately transferred to alternative duties following the allegation until the matter is resolved (according to the organisations disciplinary procedures).
- ensuring the victim and offender are both able to access independent support during the response process.
- ensuring that the wishes of the victim and the offender are followed in relation to advising family, guardian or other support person about the incident, where they are capable of making this known. When the victim and/or the offender are not capable then the manager will notify the appropriate person of the incident as soon as possible of the report being made.

Investigation

Staff responsible for investigation will:

- support police investigations and following police advice;
- reassure the person reporting the incident that they have acted correctly in reporting their concern, that their concerns will be investigated promptly, that their anonymity will be maintained unless legal advice requires otherwise and they will be informed of the outcome of the investigation. The reporting employee will be instructed not to discuss the matter further unless asked to do so as part of the investigation.
- take all reasonable steps to investigate allegation in a timely and robust manner
- document all aspects of the incident in accurate detailed written accounts, including any follow up actions.
- adhere to relevant legislation
- appoint an appropriate person to be the sole contact for the family, guardian or other support person in providing information relating to the incident and any subsequent investigations.
- restrict access to records to those who are directly involved in reporting and responding to the incident to ensure that individuals' rights to privacy are upheld.

Outcome of Investigation

Substantiated Allegations

Substantiated sexual assault or abuse by a staff member

If an allegation is substantiated by police investigation and court system the perpetrator will, as well as receiving penalty provided by the courts, be considered to have committed an act of serious misconduct and appropriate action such as dismissal should be followed according to the organisation's policy.

NB. In cases where allegations of abuse have not been legally substantiated but the organisations investigation has reason to believe the alleged offender poses some risks to service users the organisation should reserve the right to invoke termination procedure according the organisations policy.

Substantiated sexual assault or abuse by another client

If an allegation is substantiated by police investigation and court system the organisation will liaise with the Disability Service Commission regarding penalty provided by the courts and the outcomes for the individual and service.

NB. In cases where allegations of abuse have not been legally substantiated but the organisations investigation has reason to believe the alleged offender poses some ongoing risks to the alleged victim or other service users the organisation should take all reasonable steps including a comprehensive ongoing risk management strategy to prevent any harm.

Substantiated sexual assault or abuse by family, friend or other

Where an allegation is substantiated by police investigation and court system the organisation will support the victim through this process.

NB. In cases where allegations of abuse have not been legally substantiated but the organisations investigation has reason to believe the alleged offender poses some risks to a service user the organisation take all reasonable steps including a comprehensive ongoing risk management strategy to prevent any harm occurring. This may include close liaison with relevant authorities.

- **Unsubstantiated Allegations**

Unsubstantiated allegations where the alleged perpetrator is a staff member

Unsubstantiated or false allegations of sexual abuse will result in the employee being reinstates to normal duties with the full trust and support of the organisation. Employees may be offered support such as counseling as required.

Where an allegation against a staff member is not substantiated due consideration will be given to ensuring an employee is not placed at risk of further accusations. This may include discussing with the employee their requirements in relation to their working environment and the support which they require.

The agency will consider whether any staff should be in the same situation that gave rise to the initial allegation.

Unsubstantiated allegations where the alleged perpetrator is a client

Unsubstantiated or false allegations of sexual abuse should result in the alleged perpetrator who is a client being offered support such as counseling as required.

Unsubstantiated allegations where the alleged perpetrator by family, friend or other

Unsubstantiated or false allegations of sexual abuse should result in the alleged perpetrator being advised of the outcome and any risk management strategies reconsidered against the findings.

- **Investigation of Allegations Inconclusive** ¹⁷

It will sometimes be the case that the investigation will not provide enough information or evidence for the service provider to be sure

¹⁷ Disability Service Commission (2005) Disability Services Standard 9 – Protection of Human Rights and Freedom from Abuse and Neglect p. 53

about how to proceed. In this event if there is nothing to indicate that the consumer could be at immediate risk, a reasonable strategy could be to take no further action at the time, but to continue to monitor the situation and review at a later date. The reasons for taking this course should be clearly documented.

Follow up

- assessing the risk of further incidents and update any risk management plans pertaining to the event where a client is involved.
- if it is a member of staff that has sexually abused a client, ensure dismissal of the staff member, as well as any action taken by the Police.
- offering staff a debriefing session within 24 hours of the incident occurring.
- assisting the victim and family, guardian or other support person to access any debriefing, counselling, legal or other support services if that is their wish.
- supporting victim to access criminal injury compensation where appropriate. This may involve application to State Administrative Tribunal for appointment of administrator to carry out this task

Record keeping

Comprehensive and accurate documentation will be maintained in the interests of all parties, and to ensure accountability and transparency in decision-making.

A detailed written report will be completed as soon as possible to ensure it is an accurate record of the incident. The report will include:

- the nature and extent of the incident;
- a description of the incident - completed as soon after the event as possible and being an exact record of the events;
- additional reports written by other witnesses or persons present at the time the incident occurred;
- the name and contact details of all those involved, particularly in relation to decisions that are made as a result of the incident;
- the response provided to the person making the allegation;
- the date and signature of the person making the report;
- ongoing actions required to resolve the matter; and
- the outcome, although, depending on the nature of the incident, an outcome may be delayed.

6. Review of the Policy

This policy will be reviewed on a two yearly basis. However, if at any time the legislative, policy or funding environment is so altered that the policy is no longer appropriate in its current form, the policy will be reviewed immediately and amended accordingly

Diagram 1: Example Summary of Procedure for Staff following an Alleged Incident of Sexual Abuse

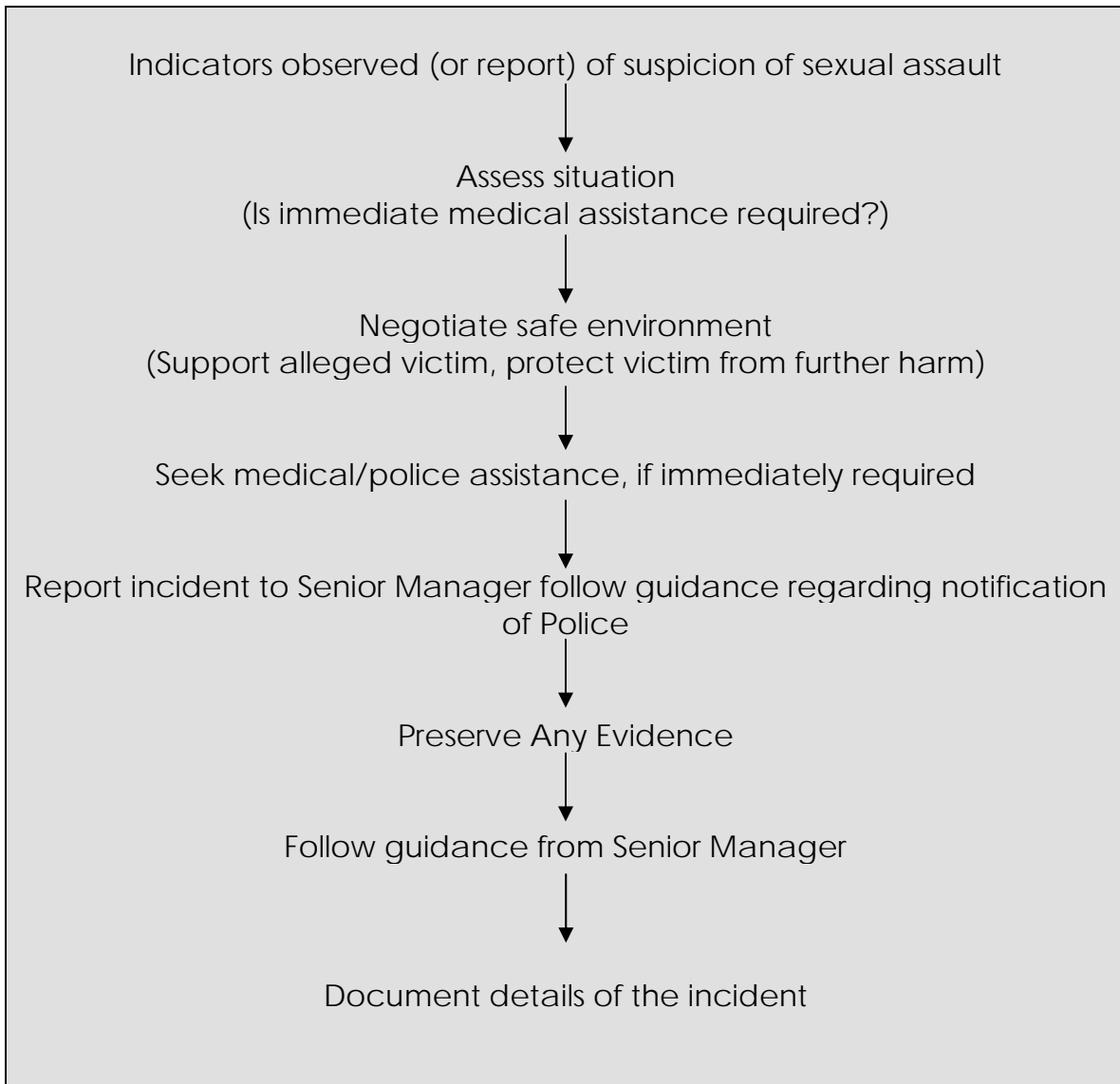
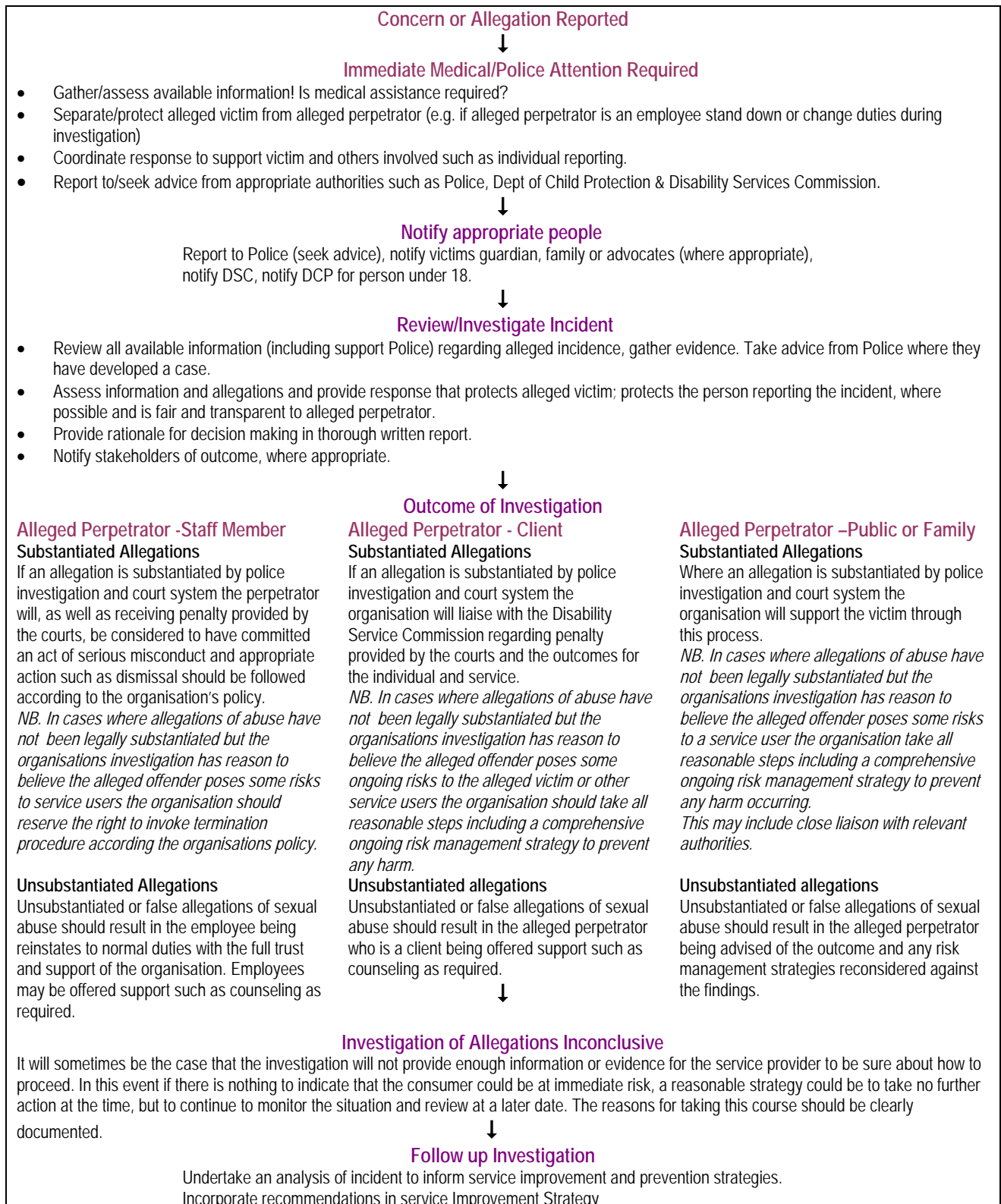


Diagram 2: Example - Summary of Process for Senior Management



8. Appendices

APPENDIX 1: CODE OF CONDUCT ON SEXUAL ACTIVITY¹⁸

SOURCE: The text below is an extract from the booklet *Caring for young people and the vulnerable? Guidance for preventing abuse of trust*; produced by the Home Office, Northern Ireland Office, the National Assembly for Wales, Department of Health, and Department for Education and Employment (UK). The UK Government provides this guidance to service providers, it contains model principles and content requirements for codes of conduct for sexual activity within relationships of trust. This guidance has not statutory enforcement.

A **Code of Conduct** on sexual activity between individuals within a relationship of trust should contain the following points:

- **A clear policy statement on the paramount need to safeguard and promote the welfare of young people/vulnerable adults** and protect them from sexual activity from those looking after them within a relationship of trust. This should make it clear that those taking on work or already working with young people/vulnerable adults must be aware that they are in a position of trust and the responsibilities this brings with it; and that they are bound by the Code. It should also make clear that the purpose of the Code is two-fold:
 - it aims to protect the young person/vulnerable adult being looked after from an unequal and potentially damaging relationship; and
 - it aims to protect the person in a position of trust by preventing him/her from entering into such a relationship deliberately or accidentally by providing clear and enforceable guidance on what behaviour is acceptable.
- **An explanation of the relationship between the Code on abuse of trust and policies and procedures for safeguarding young people and vulnerable adults more widely from other abuse.**
- **An explanation of the circumstances in which a relationship of trust will arise and the responsibility that arises from that relationship.** In broad terms a relationship of trust will arise where one party, through their work or activity, whether paid or unpaid or as a volunteer, has responsibility for the care of a young person/vulnerable adult in a way which gives them power or influence over him/her. The circumstances will vary in each organisation. If a list of circumstances in which such a relationship of trust is present is produced, it should normally not be viewed as exhaustive. Posts may need to be reviewed on a regular basis to take account of any changes of responsibility.

¹⁸ Commonwealth Department of Family and Community Services, 2001

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- **A definition of those to be protected by the Code.** In some circumstances this might possibly cover those, such as close friends or siblings of those in foster care, who are outside the immediate relationship of trust but come into close contact with the carers, but this would depend on the individual circumstances to be dealt with in each code.
- **A clear statement that any behaviour which might allow a sexual relationship to develop between the person in a position of trust and the individual or individuals in their care should be avoided; and that any sexual relationship within a relationship of trust is unacceptable so long as the relationship of trust continues.**
- **A clear supporting explanation of what behaviour is or is not acceptable within the particular organisation.** This is particularly important in areas such as sports coaching which may involve non-sexual physical contact or in care situations where intimate services may need to be performed for another person. This will need to be worked out in detail for each organisation but unacceptable activity would include sexual intercourse, masturbation, and oral sex or other sexual activity. This is not an exhaustive list. An objective test of sexual activity is important in this context i.e. what a reasonable observer would consider was sexual in all the circumstances. Thus some behaviour, such as cuddling another person when they are hurt or distressed or spontaneous activity such as celebratory embraces, for example on the sports field, would not normally be construed as sexual. Guidelines are needed in each area to help avoid misunderstanding or misuse of the Code.
- **A clear statement that all those in the organisation have a duty to raise concerns** about behaviour by staff, managers, volunteers or others which may be harmful to those in their care, without prejudice to their own position.
- **A clear statement that the principles apply irrespective of sexual orientation:** neither homosexual nor heterosexual relationships are acceptable within a position of trust; and that they apply equally to all without regard to gender, race, religion, sexual orientation or disability.
- **The detailed procedures to be put in place;** the Code should serve to protect the young person/vulnerable adult from abuse of trust; it should also serve to help organisations to deal properly with false, malicious or mistaken allegations of abuse of trust and contain safeguards to protect those maliciously, falsely or mistakenly suspected or accused; it should be constructed to protect both the young people/vulnerable adults and those in a position of trust; the procedures should include:
 - **how to ensure abuse of trust is identified if it occurs;** this includes ensuring a culture of openness within the organisation; that the young people/vulnerable adults know their right to say "no" and know that sexual relationships with staff are not allowed; it also means ensuring that they know what to do if they believe that they have been subjected to inappropriate behaviour; for example, consideration could be given to nominating a single named person within an organisation to whom the child/vulnerable adult knows

they can turn to, to discuss concerns or receive advice in confidence;

- **what to do if abuse of trust is reported or suspected;** this includes procedures for reporting concerns, whistle blowing, and the action the organisation should take when a complaint is made; it will need to reflect the internal processes of each organisation and should identify the person, both within and outside the organisation, to whom the complaint should be made; if a complaint is made it is good practice always to ensure that the particular relationship of trust is suspended until the matter is resolved;
- **how to minimise the risk of situations** where abuse of trust could occur or relationships which could lead to abuse of trust could develop; or where false, malicious or mistaken accusations might be made; in looking at this, organisations will need to consider how to disseminate the codes; this might involve training and support for staff and monitoring arrangements, depending on the organisation concerned, and could form part of such arrangements already in place to prevent sexual or other forms of abuse;
 - what an individual should do if they are concerned they are developing a relationship which could represent an abuse of trust;
 - what an individual should do if they are concerned the other person is becoming attracted to them; what an individual should do if they are concerned a colleague is becoming attracted to someone in his/her care; and
 - what an individual should do if they are concerned that their actions or words have been misunderstood.
 - The sanctions for abuse of trust; the seriousness of the abuse of trust should be reflected in the sanction. This is an area which should always be taken very seriously with dismissal as a possible sanction.

APPENDIX 2: RESPONDING TO CONSUMER TO CONSUMER ASSAULT¹⁹

SOURCE: The text below is reproduced from the Executive Summary section of the report: Kennedy R. & CO PTY LTD for the Ageing and Disability Department, (1997) *Development of a Policy Framework on the Prevention of Consumer to Consumer Assault in Funded Disability Services*, NSW Ageing and Disability Dept.

Elements and Key Principles to inform the development of good practice In Responding to Consumer to Consumer Assault, include:

1. The need for legal intervention-

- Mandatory to call police if a crime has been alleged- People with disabilities should not be above the law.
- People with disabilities who have been assaulted must be informed of their legal rights.

2. Ensuring the safety of consumers

- Separate victims and perpetrators.
- Wherever possible, victim should remain in the service and the perpetrator be relocated.

3. Assistance to victim

- Assault mustn't be ignored.
- Immediate access to medical attention, legal and counselling services.

4. Assistance to perpetrator

- Access to legal support & advocacy where police have been contacted.
- If consumer has a history of abuse, this must be addressed in their individual service plan.

5. Appropriate staff training and supervision

- Staff trained to respond appropriately to incidents of assault.
- Untrained staff should not be left in charge of services.

6. Appropriate decision-making and reporting protocols

- Staff to record all incidents of assault and report to management.
- Staff must be provided with clear policies and direction on responding to assault.
- Clear lines of responsibility to ensure that immediate action can be taken.
- Where perpetrators moved to a new service, the new service must be provided with adequate information about the perpetrator's history of abusive behaviour.

7. Referral to mainstream and specialist services

- Both victims & perpetrators to be referred to appropriate mainstream and specialist service providers e.g. legal, medical, sexual assault, counselling & advocacy.
- Disability services should have a clear understanding of the role and function of relevant mainstream/specialist services and ensure appropriate referral protocols are established with them.

¹⁹ Commonwealth Department of Family and Community Services, 2001

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APPENDIX 3: OTHER RESOURCES

DSC Risk Management Tip Sheets

- Risk assessment plan
- Risk Assessment Plan sample
- Writing a Risk Management Plan

Available at

<http://www.disability.wa.gov.au/publication/behaviourtipsheets.html>

Sexual Assault Resource Centre

SARC has a 24 hour Crisis Line (08) 9340 1828 Freecall 1800 199 888

Brochures

- If You Don't Agree, It's Not Okay
- Information about Sexual Assault and Sexual Abuse
- Information for Men About Sexual Assault and Sexual Abuse
- Ready, Willing and Able
- Sexual Assault Resource Centre

Other Useful Brochures

- What the Law Says About Sex
 - Fact Sheets
 - Caring for a Friend or Family Member Following Sexual Assault
 - Caring for Yourself - A guide to Recovery Following Sexual Assault
 - Child Sexual Abuse
 - Criminal Proceedings Flowchart
- Dealing With Nightmares and Flashbacks

Information Sheet

- Responding to Sexual Assault
- Sexual Abuse is not the Victims Fault
- What You Need to Know About Sexual Assault or Sexual Abuse to the Police

Videos and DVDs

- Ready, Willing and Able: A young persons guide to consent
- Responding to Sexual Assault and Sexual Abuse
- Working with Aboriginal Adolescents and Adults Who Have Experienced Sexual Assault or Abuse

Available to order or download at

<http://www.kemh.health.wa.gov.au/services/sarc/publications.htm>

Sexual Assault in Disability and Aged Care Project website

This website has been developed as a resource for residential disability and aged-care services in New South Wales. The aim of this project is to enhance the effectiveness and capacity of residential disability and aged-care services to prevent and respond to sexual assault of service-users.

The site is divided into four sections on the following topics:

- Sexuality
- Sexual assault
- Preventing sexual assault
- Responding to sexual assault.

Available at

<http://www.sadaproject.org.au/index.html>

Sexuality Education Counselling and Consultancy Agency (*secca*)

secca is a non-profit organization designed to support people with disabilities, in their efforts to learn about human relationships, sexuality and sexual health across the lifespan;

as well as helping them to develop skills that will empower them to make informed choices, while acknowledging their own individual capacity to enhance the quality of their lives.

<http://www.secca.org.au/home.htm>

People 1st Programme (PIP)

PIP supports people with an intellectual disability in human relationships, protective education and sexuality, along with parents, carers and service providers. Services are available in the Perth metropolitan area and regional WA.

PIP is a programme of [Family Planning WA Sexual Health Services](#), which provides sexual health services, information and training.

<http://www.people1stprogramme.com.au/>

APPENDIX 4: WA DISABILITY SERVICE STANDARDS – STANDARD 9

Standard 9: Protection of Human Rights and Freedom from Abuse and Neglect

The service provider acts to prevent abuse and neglect, and to uphold the legal and human rights of consumers.

Supporting Standards

9.1 The service provider has developed, in consultation with consumers, comprehensive written policies and procedures that act to protect the human rights of consumers and protect them from all forms of abuse and neglect.

9.2 The service provider's policies and procedures are accessible to potential and current consumers, staff members and other relevant stakeholders.

9.3 The service provider demonstrates that these written policies and procedures are implemented.

9.4 The service provider's policies and procedures that protect the human rights of consumers and protect them from abuse and neglect are reviewed regularly with consumers.

9.5 The service provider supports consumers to empower them to exercise their legal and human rights.

9.6 The service provider responds within seven (7) working days to allegations of abuse and neglect, including appropriate reporting mechanisms and strategies for protecting consumers from further abuse.

Supporting Standards 9.1 to 9.5 are about setting up the organisation to proactively promote understanding of human rights and to empower consumers so that the risk of rights being infringed or abuse and neglect occurring is minimised, and Supporting Standard 9.6 is about how the organisation should respond when a concern or an allegation is made.

If a consumer's rights are infringed, or we have reason to believe that they have been abused or neglected, we will respond quickly, professionally and compassionately.

9. References

Commonwealth Department of Family and Community Services, (2001)
Abuse Prevention Strategies in Specialist Disability Services FINAL REPORT
This project was undertaken on contract to the National Disability Administrators
by Samantha Page, Peter Lane and Gavin Kempin from the Nucleus Group

Disability Services Commission (March 2005) **Care and Protection Operational
Procedure Operational Procedure for Accommodation Services Staff**

Disability Services Commission (July 2006) **Personal Relationships and Sexuality
Policy**

Disability Services Queensland (February 2002) **POLICY - Preventing and
responding to the abuse, assault and neglect of people with a disability**

Victorian Government Department of Human Services, (August 2005)
Responding to allegations of physical or sexual assault Departmental Instructions

Nulsen Haven Association **2.6.2. Human Relationships and Sexuality.** Nulsen
Haven Association Handbook of Policies and Procedures

Nulsen Haven Association **2.9.3. Protection of Human Rights and Freedom from
Abuse, Neglect or Exploration** Nulsen Haven Association Handbook of Policies
and Procedures

NSW Department of Ageing, Disability and Home Care (May 2007) **Abuse and
Neglect Policy and Procedures** Final 1.0 Accommodation and Respite Branch

NSW Department of Health (2004) Guidelines for the promotion of sexual safety in
NSW mental health services (second edition)